

CLR

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ABOUT THE JOURNAL

Purpose and Scope

The *Christian Libertarian Review* (CLR) is an open access academic publication founded in 2017 by the 501(c)(3) Libertarian Christian Institute (LCI). The purpose of the CLR is to foster intellectual dialogue, exploration, and research surrounding the relationship between Christianity and libertarian thought. As an interdisciplinary journal, contributions may span into fields of philosophy, political philosophy, theology, ethics, law, economics, anthropology, history, social studies and similar disciplines in the humanities and social sciences.

CLR is blind-reviewed by a team of scholars with terminal degrees in their respective fields. Each annual volume contains full-length articles and critical book reviews. Some accepted articles/reviews may be published online prior to the release date of the volume in which they appear. Contributors come from a wide variety of backgrounds and typically have graduate education and/or professional experience in the business world. The journal publishes contributions primarily by those who identify as “Christian” and “libertarian,” and occasionally by agnostic/atheist/irreligious persons with research contributions relevant to the journal. The intended reader audience is generally upper-class undergraduate or graduate level.

General Submission Information

Submissions (articles to editor@christianlibertarianreview.com; book reviews to bookreviews@libertarianchristians.com) should be of academic quality and tone, and should generally conform to the standards laid out within the *Chicago Manual of Style: Sixteenth Edition* supplemented by *The SBL Handbook of Style for Biblical Studies and Related Disciplines: Second Edition* for ancient text citation and abbreviation. All submissions will be evaluated through blind peer-review and edited for publication. The initial review process generally takes a minimum of two months. Some published articles/reviews may appear online before others in the same volume have been published; all such “pre” publications are at the discretion of the General Editor and have no set schedule. Otherwise, complete volumes of the journal are released each July 1. More information can be found at christianlibertarianreview.com.

EDITOR'S PREFACE

This edition of the *Christian Libertarian Review* was published during an unprecedented time of social and economic turmoil related to the COVID-19 pandemic and murder of George Floyd. While most of our concerns naturally relate to personal health and the safety of loved ones, the economic and political effects loom large in the hearts and minds of millions as well.

THE NEVER ENDING CHAOS OF 2020 (...AND IT'S ONLY JULY)

Central banks have used all their “tools” (including not only zero interest rates, but zero reserve requirements and infinite quantitative easing) hopelessly trying to solve an insolvency problem with liquidity. The state has come into its own with the immediate revival of curfews, stay-at-home orders, and penalties for not wearing masks across multiple countries. (In an ironic twist, even critics of President Trump are calling for him to assume and use more power to fight the pandemic.) Meanwhile, disinformation about the virus saturates popular media and, unfortunately, seems to have gained a foothold in certain religious (i.e., evangelical) and libertarian circles. Enormous pressure is levied upon individuals to endorse one controversial narrative or another about the CDC, WHO, Bill Gates, vaccinations, the deep state, Big Pharma, death counts, treatment, the origin of COVID-19, etc. Private companies like Twitter and Facebook feel obligated to censor or flag known disinformation, creating even more panic in the popular mindset of others. Many conservative and libertarian think tanks and organizations have doubled-down against the consensus to stress the exaggerated danger of the virus and the uselessness of wearing masks and “self-quarantine.”

Others, on other hand, assert that freedom entails responsibility, "so wear a mask." Churches have become a particularly hot site for both COVID spreading and defenses against state encroachment of liberty.

While it is not surprising to witness such polarization, it is more surprising to see it *within* so many groups. And it is an altogether strange affair to see different groups' political, religious, and psychological inclinations play out in the public arena of a pandemic. (Who would have thought public mask-wearing and *refusal* of mask-wearing would both become opposing badges of honor?)

On top of COVID chaos is the latest wave of national protest against systemic racism, particularly as it is embodied in police brutality and the police state. Protestors are (predictably) being brutalized by police in the process,¹ while many governments on all levels are passing (overdue) police reform laws and legislation. "Police the police," "defund the police," and other popular slogans saturate the media and public discourse. At the same time, statues are being toppled across the globe because of their roles, significance, and meaning relating to slavery, racism, and subjugation of indigenous peoples—all of which is not being tolerated by others who feel threatened by such shameless desecration. As confederate symbols continue to be expunged, talk of "civil war" is not uncommon.

Again, libertarians are particularly divided, with some fully on board with the protestors and Black Lives Matter (BLM) movement and/or organization, and others hyper-reactive to anything "progressive," frequently finding the boogey-woman of "Marxism," "Neo-Marxism," and "cultural-Marxism" under every rock and pebble in a discursive avalanche of what can only be described as fanatical ignorance about Marx's own writings and ideas.

¹ Khaleda Rahman, "Police Violated Human Rights of George Floyd Protesters 125 Times: Amnesty International," *Newsweek* (June 23, 2020).

A NOTE OF INTERNAL CRITICISM

I've never witnessed such polarizing division, herd mentality, public disinformation, and mass derision between colleagues and family members. (I've also never seen so many liberty advocates morph into advanced epidemiologists, virologists, and statisticians overnight).²

More relevant to the purposes of this publication, is that there evidently remains a huge need for a more "thick" and coherent framework of justice in mainstream (but also Christian) libertarian and anarchist thought that extends beyond non-aggression and into intentional protection of the vulnerable and suffering, regardless of who they are or who else is doing the same work. This was, we might recall, made a point of attention in *CLR 1*:

Christian libertarianism, as expressed in the local church and elsewhere, is non-aggression *plus*. It is absence from violence *and* the individual and communal pursuit of the good, true, and beautiful. It's as if the (libertarian) Silver Rule of Confucius ("Don't do to others what you'd not have them do to you") combines with the (Christian) Golden Rule of Jesus ("Do to others what you'd have them do to you"). Reformulated into the typical NAP creed, it might look something like the following: "It is legitimate—*blessed*, in fact—to initiate goodness, grace and all the fruits of the Spirit (Gal 5:22-23) towards another person and/or their property."³

Many Christian libertarians (in my experience) unfortunately seem too worried about association with "progressives" to concretely and intentionally make anti-racism (along with anti-sexism, and similar

² COVID-19, one figure writes, is just "a cold virus." A prominent anarcho-capitalist meme reads: "*Mask On*: Trust the government. Give up your liberty. Stay in debt. Live in fear. Obey. *Mask Off*: Government is violence. Take back your liberty. Taxation is theft. Epstein didn't kill himself. Disobey."

³ Jamin Andreas Hübner, "Christian Libertarianism: An Introduction and Signposts for the Road Ahead," *CLR 1* (2018): 15-74.

systemic prejudices and fundamental attitudes and cultural moorings about what it means to be human) a part of this “plus,” even though influential libertarian thinkers have shown such deficiencies.⁴ (“Justice,” in fact, has played a relatively minor role in traditional libertarian vocabulary, so many ask: why worry about it now?) Many even concur with the Trump administration and cabinet members that systemic racism (and similar prejudices and social injustices) doesn’t exist or isn’t a problem in society anymore—all while the same political officers publicly utter racial slurs, gather unprecedented support from white supremacy organizations, and defend public symbols of white supremacy and/or violent defeat over indigenous peoples and hold political rallies at their sites.⁵ In my conversations, it is further imagined that “if we do nothing, it will get better,” as if moral indifference somehow leads to a more desirable, just, and peaceful society.

In other words, it seems that the politically conservative and libertarian communities are missing the otherwise obvious point that *violence doesn't emerge out of a vacuum*. Physical aggression has very well-studied and (usually) observable preconditions beyond the collectivist and nationalist metanarratives of the last two centuries. As I reviewed about Ruwart’s *Healing Our World*, also in volume 1:

⁴ Note Quinn Slobodian “Anti-’68ers and the Racist-Libertarian Alliance,” *Cultural Politics* 15:3 (2019): 372-386; “Perfect Capitalism, Imperfect Humans: Race, Migration and the Limits of Ludwig von Mises’s Globalism,” *Contemporary European History* 28:2 (2019): 143-155, though note Philip Magness, “Racial Determinism and Immigration in the Works of Ludwig von Mises: A Critique of Slobodian’s Alt-Right Thesis” (forthcoming). Other examples include the uncritical and substantially problematic anti-feminist discourse of Thomas Woods and the first chapters of Gerard Casey, *Freedom’s Progress?: History of Political Thought* (Exeter: Imprint Academic, 2017), who, like many apologists for “western civilization,” deny the existence of patriarchy altogether in the same manner as those who deny the existence of contemporary systemic racism.

⁵ As I type this, President Trump and Kelly Anne Conway are preparing their trip to Mount Rushmore, and also (apparently) Main Street Square in nearby Rapid City, South Dakota—a two minute drive from my house. (I won’t be attending.)

Incisive psychological observations like these are scattered throughout. This helps identify personal concessions that have to be made before aggression can occur, thus providing indirect insight to the more complicated matters of racism, sexism, and other kinds of prejudice.

Before we can deceive people, steal from them, or assault them, we must first separate ourselves from them internally. We feel justified in bending them to our will because we consider ourselves wiser, nobler, or stronger. In other words, we feel that we are somehow better than they are; we are different, separate, apart. *Aggression is the physical manifestation of our judgement of others and our internal separation from them...in using aggression as our means, we have destroyed the connectedness (goodwill toward all) that appears to be a necessary precondition of the happiness we seek.* In using aggression as our means, we sabotage our ends. (p. 276)⁶

One would therefore think that microaggressions, racism, sexism, xenophobia, etc., the established and visible mechanisms of (for example) white supremacy, and otherwise would be the active vocabulary and object of research by libertarians and activists, since mitigating peace and nonviolence are so central. But again, apparently because of an allergy to joining hands with perceived enemies, or fear of getting mislabeled, it isn't, and the relationship between hateful hearts and heavy handguns is tragically obfuscated.⁷ Jesus said "You have heard that it was said to those

⁶ Review of Mary Ruwart, *Healing Our World: The Compassion of Libertarianism* (San Francisco: Sunstar Press, 2015) for *The Christian Libertarian Review* 1 (2018):R37-42.

⁷ I have unfortunately found that many libertarians are just as prone to the error of contrary identity, wherein the left/right, blue/red political arrangement, for example, one's views are predetermined by what one's perceived opposite holds to be true. So if person A believes B, person D reactively and/or habitually believes non-B. This is particularly the case with regard to the use of words: each political ideology and party has monopolized terms that the other is not allowed to use—to such an extent, in fact, that the group's identity is determined almost entirely on the use of such terms. The average libertarian, for example, won't be caught dead uttering "social justice" (or even "equality") without feeling obligated to issue a string of qualifications, even if he or she conceptually agrees with someone of an opposite

who lived long ago, *Don't commit murder*, and all who commit murder will be in danger of judgment. But I say to you that everyone who is angry with their brother or sister will be in danger of judgment" (Mt 5:21-22a, CEB). The predominant attitude of many libertarians and Christian libertarians unfortunately seems to be the opposite: "as long as there's no physical violence, everything is fine; no reason to raise a fuss." And to further the irony, it seems that far more American Christians, libertarians, and (in some cases) Christian libertarians publicly voiced their concerns at BLM and anti-racist riots that damaged government property, but not when cops killed the man who spurred the same riots days earlier.

All of this is to say that, at least in this editor's view, something isn't quite right.

ON OTHER MATTERS

Perhaps in a few years from now we will all look back with more clarity. (I certainly hope so.) This will obviously be the case for research on COVID and its effects; the best studies have yet to be published. In any case, these turn of events continually reminds me of the importance of not only humble ethical introspection and reflection, but critical reasoning and the value of methodical evaluation of sources, peer review, and realistic standards of credibility—that is, the importance for academic journals such as this one, despised as academia often is.

group, and even if those terms are the most accurate and useful. It would seem most helpful to deconstruct such popular identifiers to encourage critical thinking and open up bridges for conversation, especially since opposing terms take on a distorted life of their own. For example, "Marxism" has somehow become synonymous with "statism" and "empowering the government," when Marx was explicitly anti-state, expressed hardly any sustained interest in the roles of traditional government, and inspired countless anarchist movements since his death. (When I have uttered the quote "Political power, properly so called, is merely the organised power of one class for oppressing another," Bastiat and Rothbard are what usually comes to mind for most libertarians—not *The Communist Manifesto*.)

On the up side, Dr. Jo Jorgenson became the first woman Libertarian Presidential Nominee in history, the only 2020 presidential candidate with ballot access to over 270 electoral votes, and more significantly, perhaps the only currently contending presidential candidate that never sexually assaulted another human being (a rather low hurdle, to be sure, but an apparently difficult one for committed Republicans and Democrats to cross). Meanwhile, Justin Amash became the first member of the Libertarian Party to serve on U. S. Congress. How significant these milestones are in the big picture, I'm not sure. But they are noteworthy enough.

Finally, before introducing the contributions to this third volume, I should also note my departure as General Editor as of the release of this volume. While the reasons are fortunately nothing serious, they extend beyond the scope of this brief introduction. Suffice to say, it was my own decision, and I am tremendously grateful for those who have made the *Review* possible and have been supportive—especially Ruth Ryder and Norman Horn. I look forward to cultivating different but similar fields of research in years ahead. Most of all, I hope for greater collaboration across ideological lines for common causes. When peace, freedom, justice, and decentralized power become the basis for our thought and actions, the well-worn labels of “socialist,” “libertarian,” “Marxist,” “anarchist” and the rest become more and more irrelevant.

VOLUME 3

The first contribution by Kollin Fields is entitled “Christian Libertarianism and the Judeo-Christian Tradition in Murray Rothbard, Bob Dylan, and Woody Allen.” This interdisciplinary article explores some of the libertarian themes and religious underpinnings in the lives of these three different contemporaries and influential cultural figures. The second article, “Departurism: Gentleness and Practical Consistency in Trespasses Inside and Outside the Womb” by Sean Parr, is a highly

analytical argument in favor of departurism over evictionism, clarifying various aspects of this ongoing dialog surrounding libertarian property rights theories and abortion. It builds off previous research and dialogue with Walter Block. Then, Eric Schansberg attempts to clear the table and provide the foundations for “Biblical Christianity and Legislating Economic Justice” from a conservative evangelical perspective. In the last contribution, I provide an extended review of the book *Just Capitalism* by Brent Waters, and attempt to help readers prioritize some of the main concerns of the economics-ethics intersection. The volume concludes with five reviews of recent literature on a wide array of subjects.

Jamin Andreas Hübner
Rapid City, SD
July 1, 2020

CULTURAL LIBERTARIANISM AND THE JUDEO-CHRISTIAN TRADITION IN MURRAY ROTHBARD, BOB DYLAN, AND WOODY ALLEN

Kollin Fields¹

Abstract: Because libertarianism is rooted in the non-aggression principle, libertarians tend to focus on the state as the most violent offender of rights. However, this paper proposes that we likewise consider the validity of "cultural libertarianism." Though this term has been in existence since at least the early 2000s, I define it in a specific way, and use the lives of Murray Rothbard, Bob Dylan, and Woody Allen as real-world examples of its practice. Cultural libertarianism, as conceptualized herein, suggests that social forces can be coercive to individuals in a way that complicates traditional libertarian theory. For Rothbard, Dylan, and Allen, I also show a connection between their roots in the Judeo-Christian tradition, and their cultural libertarianism. While religion is certainly not a prerequisite for libertarianism, there is a clear connection between Judaism, Christianity, and their belief in the uniqueness of the individual that is complementary to the philosophy of libertarianism.

Keywords: cultural libertarianism, Christian libertarian, Judaism, Jewish libertarian, Judeo-Christian, Murray Rothbard, Bob Dylan, Woody Allen

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I. INTRODUCTION

It has been said that politics is downstream from culture. Whether or not this is always true, the idea is that culture precedes and shapes the political climate.² The polemicist H. L. Mencken said that “democracy is the theory that the common people know what they want, and deserve to get it good and hard.”³ Consequently, we might say that the culture people want leads to the politics they deserve. If one’s culture emphasizes conformity and obedience, then a political climate of conformity and obedience will likely follow. Libertarianism, on the contrary, stresses individuality and self-ownership. However, largely since its formal inception in the early 1970s, the libertarian movement has seemed often to skip the step of culture formation in favor of focusing on the realms of economics, history, and political theory.

Significant figures in the modern libertarian movement have mostly been theorists, economists, historians, and, occasionally, politicians. Brian Doherty, in his *Freewheeling History of the Modern American Libertarian Movement* (2007), focuses primarily on Ludwig von Mises, Friedrich Hayek, Ayn Rand, Murray Rothbard, and Milton Friedman. But, with the exception of Rand, this list excludes the artists, those who largely create culture on a mass scale. While social theory, political theory, and economics are vital to an understanding of the way the world works, these fields are not readily accessible to and/or consumed by the public; in short, they are not part of popular culture. One definition of *culture* is “the characteristic features of everyday existence . . . shared by people in a place or time.”⁴ To be sure, there is a “libertarian culture,” but few within the

² The quote is typically attributed to the late founder of Breitbart News, Andrew Breitbart. See Lawrence Meyers, “Politics Really is Downstream from Culture,” *Breitbart* (Aug. 2011). <https://www.breitbart.com/entertainment/2011/08/22/politics-really-is-downstream-from-culture/>.

³ H. L. Mencken, “The Citizen and the State,” in *A Mencken Chrestomathy* (New York: Vintage Books, 1982).

⁴ *Merriam-Webster*, entry 1:1a. <https://www.merriam-webster.com/dictionary/culture>.

general public would define this niche subculture as a “characteristic feature of everyday existence.” In attempting to define and explain libertarianism largely through an economic or political lens, Doherty’s protagonists tend to ignore the power of popular culture. But if we believe, at least in part, that politics is downstream from culture, then a libertarian culture will precede the political world (or lack thereof) envisioned by libertarian theory.

If libertarianism focuses too narrowly on being “anti-state,” then it ignores one of the primary avenues by which ideas about the state are influenced. In terms of the definition of culture as relating to everyday existence, many, if not most Americans, have never heard of Ludwig von Mises, for example. There is certainly something to be said about libertarian education, but this is only one way to reach the broader public. Another way of conceiving libertarianism is through its cultural instantiation, an avenue which readily reaches the masses. Popular culture—in this case music and cinema—have long been woven into the fabric of American society. They are consumed en masse and are not typically overtly “political.” In short, they are accessible. As I will show, the output of two major figures in their respective fields, Bob Dylan and Woody Allen, has in many ways mirrored the prolific output of Murray Rothbard within the field of libertarian study, but reaching far greater audiences in the cases of the former. It is not only their work, but their personal lives which are emblematic of the kind of cultural libertarianism I am proposing. Though the politics of Rothbard, Dylan, and Allen are much different, they approached their professional lives in a similar way, and I argue that both Judaism and Christianity impacted their propensity for individual liberty. But first, let us further explore this concept of cultural libertarianism.

II. CULTURAL LIBERTARIANISM AS CONCEPT

Although the term has been in circulation for at least a century now, there are still competing and conflicting definitions of *libertarianism*. As Stephen Kinsella has said, while “libertarians tend to agree on a wide array of policies and principles . . . it is not easy to find consensus on what libertarianism's defining characteristic is, or on what distinguishes it from other political theories and systems.”⁵ Broadly speaking, libertarianism is a political philosophy that deals with the proper use of force in society. Murray Rothbard (1926–1995) believed that “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.” He referred to this as the nonaggression axiom, which elsewhere has been referred to as the non-aggression principle (NAP), the liberty principle, the freedom philosophy, the non-aggression obligation, and the zero-aggression principle. Rothbard defined aggression as “the initiation of the use or threat of physical violence against the person or property of anyone else.”⁶ Libertarians generally measure the legitimacy or permissibility of an action based on its adherence to the non-aggression principle. The prolific libertarian writer and theorist, Walter Block, has written that libertarianism “asks only one question, and gives only one answer. It asks, ‘Does [an] act necessarily involve initiatory invasive violence?’”⁷ If so, Block and most libertarians believe such an act may be justifiably responded to with force, if necessary.

More recently, however, self-styled “left-libertarians” have proposed additional commitments for libertarians which go beyond simply following the non-aggression principle. Long-time writer and libertarian

⁵ Stephen Kinsella, “What Libertarianism Is,” *Ludwig von Mises Institute* (Aug. 2009). <https://mises.org/library/what-libertarianism>. Adapted from the collected essays in *Property, Freedom, and Society: Essays in Honor of Hans-Hermann Hoppe*, edited by Jörg Guido Hülsmann and Stephan Kinsella (Auburn: Ludwig von Mises Institute, 2009).

⁶ Murray Rothbard, *For a New Liberty: The Libertarian Manifesto*, 2nd ed. (Auburn: Ludwig von Mises Institute, 2006), 27.

⁷ Walter Block, “Libertarianism and Libertinism,” *Journal of Libertarian Studies* 11:1 (Fall 1994): 119.

thinker Charles Johnson proposed a “thick” libertarianism in his essay from 2008 which raised concerns for the supposed inability of the non-aggression principle to fully deal with coercive or aggressive activity *not* perpetrated by the state:

Noncoercive authoritarianism may be consistent with libertarian principles, but it is hard to reasonably reconcile the two. Whatever reasons you may have for rejecting the arrogant claims of power-hungry politicians and bureaucrats . . . probably serve just as well for reasons to reject other kinds of authoritarian pretension, *even if they are not expressed by means of coercive government action* (emphasis mine).

And later:

...there may be social practices or outcomes that libertarians should (in some sense) be committed to opposing, even though they are not themselves coercive...If aggression is morally illegitimate, then libertarians are entitled not only to condemn it, but also to condemn the destructive results that flow from it—even if those results are, in some important sense, external to the actual coercion.⁸

The notion of “noncoercive authoritarianism” is certainly interesting, if a bit clumsily delivered by Johnson. As is often the case in philosophy, however, the veracity of an idea depends on how it is defined. In this case, what would be deemed “coercive,” and, more importantly, what would count as non-state “authoritarianism”? Critics of Johnson—“thin”

⁸ Charles Johnson, “What Kind of Commitment Is Libertarianism?,” *The Foundation for Economic Education* (July 2008). <https://fee.org/articles/libertarianism-through-thick-and-thin/>. For another perspective on “thick libertarianism,” see Sheldon Richman, “TGIF: Libertarianism Rightly Conceived,” *The Future of Freedom Foundation* (May 2014). <https://www.fff.org/explore-freedom/article/tgif-libertarianism-rightly-conceived/>. For a defense of “thin libertarianism,” see Lew Rockwell, “The Future of Libertarianism,” *LewRockwell.com* (May 2014). <https://www.lewrockwell.com/2014/05/lew-rockwell/the-future-of-libertarianism/>.

libertarians who believe that libertarianism is a philosophy on the use of force, and nothing more—condemned the notion that being a libertarian entails more than adherence to the non-aggression principle. If, thin libertarians wondered, to be a libertarian assumes one should also be, for example, a feminist, will this progression demand that libertarians also become Christians, or atheists, or a host of other things? Thin libertarians believe that libertarianism is only that propounded by Rothbard, Block, and others, defined as opposition to the wrongful initiation of force.

One critical review of Johnson believes that in arguing for a “thick” conception of libertarianism, “the very definition of libertarianism is at stake.” The authors write, “the problem here is that libertarianism does not have the necessary equipment to oppose non-coercive activity because libertarianism simply states that the initiation of aggression is inappropriate.” In brief, the review affirms the Rothbardian notion of philosophical libertarianism, adding that whatever libertarians do beyond the framework of the non-aggression principle is not done *as* a libertarian. Walter Block agrees, writing that if/when one takes a position on non-coercive activities, “...the libertarian *qua* libertarian, has absolutely no view of them at all. To the extent that he takes a position on them, he does so as a non-libertarian.”⁹ A man may prefer apples to oranges, for example, but this preference (and even if we more boldly called it a “commitment” or an “obligation” to apples) is not the result of his libertarianism. The reviewers criticize Johnson and “thick” libertarianism for intentionally blurring the language: “The fruit of blurring is a corruption of the libertarian doctrine.”¹⁰

I propose that both Johnson and his critics are correct to some degree; as I show, even non-state actors can achieve the same results as the state when it comes to coercing particular behaviors or actions, and can do so

⁹ Block, “Libertarianism and Libertinism,” 119–20.

¹⁰ Jeff Peterson II, Chris Calton, Blaine Kelley, Henry Moore, Matt Tanous and Rocco Stanzione, “Sophistry Through Thick and Thin,” *Liberty.me* (Nov. 2015). <https://wti.liberty.me/sophistry-through-thick-and-thin/>.

without technically violating the libertarian non-aggression principle. If we conceive of cultural libertarianism, then, as the exercise of personal freedom against the coercive powers of non-state actors (that is, society at large, or groups within society), then this is simply a different expression of Rothbard’s “libertarian creed.” It *does not* entail actual commitments or obligations beyond adherence to the non-aggression principle, but *it does* recognize the potentially coercive power of a social majority, even when such a majority is not acting as part of or through the state. In brief, cultural libertarianism simply presents another front in the struggle for individual liberty.

The notion of cultural libertarianism, or cultural libertarians, has been around since at least the early 2000s. In 2001, writing for the flagship conservative outlet, *National Review*, Jonah Goldberg wrote disparagingly of the concept, arguing that “cultural libertarianism...is rapidly replacing liberalism as the real threat to America, and the true opposition to conservatism. Cultural libertarianism basically says that whatever ideology, religion, cult, belief, creed, fad, hobby, or personal fantasy you like is just fine so long as you don’t impose it on anybody else, especially with the government.”¹¹ Goldberg referred to this brand of freewheeling libertarianism as “Chinese-menu culture.” Nick Gillespie at *Reason* responded that cultural libertarianism does imply choice, but it does not result in the cultural nihilism that Goldberg fears. “Tolerance,” Gillespie wrote, “particularly in a libertarian framework, is grounded in respect for individuals as equal and autonomous agents...[it] is a universal principle that underwrites all sorts of local differences. To believe in tolerance is manifestly not to believe in nothing.”¹² The term waxed and waned throughout the next two decades, notably taking on new meaning in the

¹¹ Jonah Goldberg, “Freedom Kills,” *National Review* (December, 2001).

<https://www.nationalreview.com/2001/12/freedom-kills-jonah-goldberg/>.

¹² Nick Gillespie, “Really Strange Bedfellows II,” *Reason* (December, 2001).

<https://reason.com/2001/12/20/really-strange-bedfellows-ii/>.

reemergent “culture wars” of the pre- and present Trump years.¹³ More recently, writers at *Breitbart* argued in 2015 that cultural libertarians were essentially free speech advocates pushing back against the rise of “politically correct” culture, especially as manifested in entertainment and the universities. This brand of libertarianism was, supposedly, a response to the rise of the so-called Social Justice Warrior. Allum Bokhari and Milo Yiannopoulos, then at *Breitbart*, wrote in 2015 that cultural libertarianism “has yet to be fully defined. There is not yet an intellectual figurehead or classic text for fans to cleave to.”¹⁴ Elizabeth Nolan Brown at *Reason* went “In Search of the Elusive Cultural Libertarian” in 2016, suggesting that while the “anti-PC” crowd might earn short-term gains in the so-called culture wars, “they fail...by turning off more people in the process than they win over...”¹⁵ However, I have suggested a simpler definition of the concept of cultural libertarianism, one which shares little, if anything, with more recent notions.

As we’ve seen, both the modern libertarian movement and its major figures have tended to focus on conceptual questions of theory, history, economics, and politics; and, more generally, how all of these areas are impacted by and through the state. Indeed, many libertarians use shorthand slogans such as “anti-state” and “anti-war” to quickly convey their philosophy. But the state, while historically the most blatant aggressor, is

¹³ See, for example, Daniel Larison’s discussion in “On Cultural Libertarianism,” *The American Conservative* (January 2006).

<https://www.theamericanconservative.com/larison/on-cultural-libertarianism/>. See also Daniel Pryor’s essay at *The Center for a Stateless Society* titled “‘Cultural Libertarianism’ on Trial,” (August, 2015). <https://c4ss.org/content/39463>.

¹⁴ Allum Bokhari and Milo Yiannopoulos, “Enough! Entire Entertainment Industry Says ‘No More’ to Social Justice Warriors,” *Breitbart* (July 2015).

<https://www.breitbart.com/entertainment/2015/07/20/enough-entire-entertainment-industry-says-no-more-to-social-justice-warriors/>. See also Bokhari’s follow-up entitled “Rise of the Cultural Libertarians” (August 2015).

<https://www.breitbart.com/politics/2015/08/24/rise-of-the-cultural-libertarians/>.

¹⁵ Elizabeth Nolan Brown, “In Search of the Elusive Cultural Libertarian,” *Reason* (April 2016). <https://reason.com/2016/04/20/the-elusive-cultural-libertarian/>.

not the only coercive institution. This is where I believe Johnson is correct to allude to non-political authoritarianism. While we tend to think of authoritarianism as unbridled political power, it can also simply refer to the diminution of personal freedom at the hands of any number of forces. A parent who locked their child in a room for days, without food or water, would likewise be acting in an authoritarian manner. While libertarians are apt to propose social shaming or ostracism as non-aggressive forms of influence—that is, seeking to curb another’s behavior in a manner that does not violate the libertarian principle of non-aggression¹⁶—collective action in this manner can likewise potentially be classified as authoritarian in the sense that the recipient of the social shaming or ostracism has (or *perceives* that they have) no substantive recourse, or that if they were to concede to the demands of others in a particular instance, they would be sacrificing principles, morals, monetary profit, power, or any other number of things.

In defining coercion and aggression, libertarians should differentiate between acts that are voluntary, involuntary, and *nonvoluntary*. In terms of the latter, an act can be nonvoluntary while also not being in direct violation of the NAP. Free-market libertarians generally agree with the Rothbardian theory of exchange which is that all parties to an exchange

¹⁶ See, for example, the following passage from *Getting Libertarianism Right*, a collection of essays by Hans-Hermann Hoppe (Auburn: Ludwig von Mises Institute, 2018): “And moreover: Just as a libertarian order must always be on guard against ‘bad’ (even if non-aggressive) neighbours by means of social ostracism, i.e., by a common ‘you are not welcome here’ culture, so, and indeed even more vigilantly so, must it be guarded against neighbours who openly advocate communism, socialism, syndicalism, or democracy in any shape or form. They, in thereby posing an open threat to all private property and property owners, must not only be shunned, but they must . . . be ‘physically removed,’ if need be by violence, and forced to leave for other pastures. Not to do so inevitably leads to — well, communism, socialism, syndicalism, or democracy and hence, the very opposite of a libertarian social order” (p. 84).

are better off when trade is conducted voluntarily.¹⁷ Generally speaking, in a libertarian society, actors would not voluntarily agree to an exchange unless they subjectively felt the exchange was beneficial; in short, in such a society there would be no exchanges where only one party benefited. An example of this sort of one-sided exchange would be the state benefiting by extracting taxes from citizens who would otherwise not pay them if not for threat of force. However, real world examples are not always as binary as “voluntary” and “involuntary.” Libertarians must also reconcile with the prospect of nonvoluntary actions, and must also address the theoretical and philosophical implications of non-aggressive coercion, which of course is coercion nonetheless.

For example, if a man driving a car hits a patch of ice and will either hit another car or skid off the road, he is not *really* making either of those choices voluntarily. It is not *involuntary* because he does have a choice, but it is not willful volition in the sense that he would normally be choosing from among these options. Within a libertarian framework of non-aggression, nonvoluntary actions complicate the idea that voluntarism is the prerequisite for, or marker of, free exchange or autonomous choice. In the case of the state, clearly paying taxes is involuntary since the threat of force backs up the demand; on the other hand, the man who exchanges his dollars for a loaf of bread at the store is acting voluntarily, since both parties benefit from the transaction and neither is coerced into making the exchange. Libertarians rightly see the first example as pure aggression on the part of the state, but they likely wouldn't be as quick to see social or cultural coercion as similarly problematic, at least as a near-violation of the NAP (while not technically a violation). To be sure, the idea of non-aggressive coercion does not have the physical or legal backing of the state, but that is the point: the intended result can be the same whether the state is involved or not, even while we

¹⁷ While Rothbard did not invent this concept, he does spend ample time explaining free exchange in *For a New Liberty* (pp. 47–50), *The Ethics of Liberty* (pp. 35–45), and, of course, in *Man, Economy, and State* (see Chapter 2, “Direct Exchange”).

acknowledge that the action or behavior being coerced is much milder than something such as military conscription or some other nefarious state function. This is not to say that social coercion can ever realistically reach the proportions of the state, or that it is as predatory, but if libertarians seek to defend individual liberty, then even non-state coercers should be recognized as potentially problematic.

Cultural libertarianism, then, is the idea that resistance to unjustifiable social coercion is likewise key to a free society and individual agency. Just as libertarianism proper sees the state as an inherent violator of the NAP, cultural libertarianism likewise sees coercive social pressure as a potentially problematic constraint on individual liberty, *even when not acting aggressively* in the Rothbardian sense of aggression. Brian Doherty writes that Albert Jay Nock, the early-twentieth-century protoliberalist of whom Rothbard was so fond, likewise “firmly opposed...social pressure that might limit the freedom of alternative lifestyles....He argued not merely for legal freedom but for the necessity of an overarching spirit of liberal tolerance.”¹⁸ When nonvoluntary actions are extracted through social pressure, the actor is doing something he or she wouldn’t normally do, all other things being equal. Libertarians cannot simply ignore this type of coercive pressure just because the state and/or physical force is absent. However, unlike Charles Johnson, I propose no “thick” conception of libertarianism that requires or suggests commitment to extra-libertarian beliefs or causes; we simply need to broaden our conception of *who* or *what* we are resisting. In short, the state is simply one institution which challenges our individual autonomy. Society—those who do not act under the guise of the state—often effects nonvoluntary behavior and actions as well, and thus resistance to this type of coercion-by-the-majority is another instantiation of the expression of libertarianism; it is the “spirit of liberal tolerance” of which Nock wrote.

¹⁸ Brian Doherty, *Radicals for Capitalism: A Freewheeling History of the Modern Libertarian Movement* (New York: Public Affairs, 2007), 57.

To be clear, this is not to conflate libertarianism with libertinism. If libertarianism is a philosophy on the use of force (which, as I argue, should also include unjustifiable social pressure as a form of non-aggressive coercion), then authorities to which persons have voluntarily assented or submitted are perfectly compatible with libertarianism. As I will show (and others have shown), libertarianism is a natural fit with beliefs such as Judaism and Christianity; and is also compatible with atheism in the sense that the former takes no moral position on the latter. This notion of cultural libertarianism, insofar as it is used herein, does not advocate rejection of *all* authority or social pressure simply for the sake of rejection. Oftentimes, in societies and cultures of generally like-minded persons, social pressure (of the Hoppean “shame and ostracize” variety) is a proper remedy to aberrant or undesirable behavior. However, specifically as I relate the term to Murray Rothbard, Bob Dylan, and Woody Allen, cultural libertarianism is a rejection of unjustifiable social pressure. In this sense, unjustifiable could mean unsolicited, creatively stifling, or in a manner that seeks to conform to the mainstream. True art and original thinking are organic, and even, in a sense, anarchic. Therefore, Rothbard, Dylan, and Allen’s consistent rejection of social and/or professional criticism in favor of personal autonomy and creative expression is a model example of the sort of cultural libertarianism I’ve proposed. In addition to serving as significant figures in their respective fields, I focus on these three in particular because another element that binds them together intellectually is their roots in the Judeo-Christian tradition, a tradition which is readily compatible with libertarianism.

III. THE JUDEO-CHRISTIAN TRADITION IN LIBERTARIANISM

Writing in 1987, Murray Rothbard said that “The libertarian movement, and the Libertarian Party, will get nowhere in America—or throughout the world—so long as it is perceived, as it generally is, as a

movement dedicated to atheism.”¹⁹ Even though, according to Rothbard, most libertarians were atheists after the 1950s, he nonetheless expressed his desire for a more inclusive libertarianism that in no way philosophically excluded religious persons.²⁰ In short, even to Rothbard, *the* major libertarian figure of the twentieth century, libertarianism and religion were not mutually exclusive. He himself was an agnostic Jew, seemingly to the end, which makes his views on libertarianism and religion all the more interesting.²¹ Though they were not all “practicing,” several other key figures in the broad libertarian movement have been Jews, including Ludwig von Mises, Ayn Rand, Milton and David Friedman, Israel Kirzner, Robert Nozick, David Gordon, Randy Barnett, and Walter Block, to name only a few. And, of course, Bob Dylan and Woody Allen are Jewish.

More recently, “Christian libertarianism” has become its own field of study within the broader libertarian movement, aided by the efforts of organizations such as the Libertarian Christian Institute (f. 2008),²² and by notable Catholic libertarians such as Tom Woods and Lew Rockwell. Dr. Norman Horn, founder of the Libertarian Christian Institute, believes that “libertarianism is the most consistent expression of Christian political thought.”²³ Laurence Vance, a long-time commentator on the intersection of faith and libertarianism, has written that “Not only is libertarianism compatible with the most strict, most biblically literal form of Christianity,

¹⁹ Murray Rothbard, “Freedom is for Everyone (Including the Despised ‘Rightists’),” *Liberty Magazine* 4:1 (March 1987): 43–44.

²⁰ On the intersection of religion and libertarianism in the 1950s, see Lee Haddigan, “The Importance of Christian Thought for the American Libertarian Movement: Christian Libertarianism, 1950–71,” *Libertarian Papers* 2:14 (2010).

²¹ See Justin Raimondo, *An Enemy of the State: The Life of Murray Rothbard* (Amherst: Prometheus Books, 2000), 67.

²² Similar organizations include the Acton Institute, The Institute for Faith, Work, and Economics (IFWE), and to a lesser degree but nevertheless noteworthy given several Christian staff and authors, the CATO Institute.

²³ Quoted in Jamin Hübner, “Christian Libertarianism: An Introduction and Signposts for the Road Ahead,” *The Christian Libertarian Review* 1 (2018): at 37.

it is demanded by it.”²⁴ Rothbard even noted that “The greatest and most creative minds in the history of mankind have been deeply and profoundly religious, most of them Christian.”²⁵ All of this to say, libertarianism is certainly not incompatible with religion. As I and others argue, the Judeo-Christian tradition is actually the most natural expression of the libertarian non-aggression principle. The Judeo-Christian tradition focuses on mankind’s individual uniqueness through his creation in the image of God (*imago dei*), as well as living in peace and harmony with those around us. Proverbs 3:30 says, “Do not contend with a man for no reason, when he has done you no harm” (ESV).²⁶ In Romans, Chapter 12, the Apostle Paul likewise implores readers to live in peace with one another and to not avenge themselves, for vengeance is the Lord’s (vv. 18–21). As Laurence Vance says, “if libertarianism is not compatible with these things then it is not compatible with anything.” Summarizing the connection between libertarianism and Christianity (a connection which is equally applicable to Judaism), Jamin Hübner writes, “Christian libertarianism exhibits an intersection of key concepts and practices in both Christian and libertarian thought, namely, (a) peace and nonviolence, (b) freedom and voluntary order, (c) decentralization and the diffusion of power, and (d) concern for economic flourishing.”²⁷

Our cultural libertarians under review—Rothbard, Dylan, and Allen—are all Jews. As we’ve seen, even though Rothbard was agnostic, he welcomed the intellectual compatibility of libertarianism and religion, specifically Judaism and Christianity. From what we can tell based on his

²⁴ Laurence Vance, “Is Libertarianism Compatible with Christianity?,” *Lewrockwell.com* (March 2011). <https://www.lewrockwell.com/2011/03/laurence-m-vance/is-libertarianism-compatible-with-religion/>.

²⁵ Quoted in *ibid.*, originally in Murray Rothbard, “Libertarians in a State-Run World,” *Liberty Magazine* 1:3 (Dec. 1987): 23–25.

²⁶ Laurence Vance says this verse (as well as 1 Peter 4:15) “embodies the essence of libertarianism,” *ibid.*

²⁷ Hübner, “Christian Libertarianism: An Introduction and Signposts for the Road Ahead,” 16.

public comments, Bob Dylan’s Judaism waxed and waned throughout his career, but the more predominant faith factor in his life has been his evangelical Christianity. Authors Jeff Taylor and Chad Israelson argue that Dylan is a Christian anarchist, which, in terms of our concept of cultural libertarianism, is a model example of rejecting undue social coercion while voluntarily submitting one’s self to other forms of authority.²⁸ Woody Allen is an atheist, but, interestingly, Jewish themes in his work are the most pronounced between these three. The connection for Rothbard, Dylan, and Allen, then, is one of a Jewish heritage which, while not necessarily inspiring a life of Jewish religious practice, significantly impacted all of their inclinations toward personal autonomy and artistic or literary freedom. In terms of libertarianism proper, the economist Steve Horwitz writes, “It is no exaggeration to say that the modern libertarian movement would not exist were it not for these Jews.” In a fitting summation of the correlation between the Jewish heritage and individual liberty—one which aids our understanding of Rothbard, Dylan, and Allen—Horwitz concludes that while “Judaism is not libertarianism...it is consistent with the long liberal tradition [and] it should not surprise us that Jews...would find libertarian ideas particularly attractive.”²⁹

IV. CULTURAL LIBERTARIANS: MURRAY ROTHBARD, BOB DYLAN, AND WOODY ALLEN

It would be hard to imagine three people who lived such different lives as Murray Rothbard, Bob Dylan, and Woody Allen, and yet who shared such a similar disposition toward professional success and autonomy, personal freedom, and a rejection of undue external influence

²⁸ See Jeff Taylor and Chad Israelson, *The Political World of Bob Dylan: Freedom and Justice, Power and Sin* (New York: Palgrave Macmillan, 2015).

²⁹ Steve Horwitz, “Libertarianism Rejects Anti-Semitism,” *Foundation for Economic Education* (Aug. 2017). <https://fee.org/articles/libertarianism-rejects-anti-semitism/>.

in their lives. All three are pinnacles of professional success, each of their careers and work spanning decades, and their staggering output nearly unfathomable to aspirants in each of their fields. Personally, all three shared a few things in common, such as being sons of Jewish European immigrants, rising to fame roughly around the same time in the early 1960s (granted, for Rothbard, perhaps this fame is retrospective), their associations with New York City (for Dylan and Allen, this included their beginnings in the Bohemian Greenwich Village), and similar professional challenges each faced as their careers flourished. Collectively, they are notable examples of cultural libertarianism applied to vastly different areas of life.

Although rather reserved in their personal lives, the professional lives and careers of Rothbard, Dylan, and Allen often placed them in the public eye, as each of them challenged certain mainstream views of their day. For Rothbard, no feelings were spared in his lifetime assault on organized government. He was a champion of individual liberty, a firm defender of property rights, and a relentless critic of the state. Rejecting centuries of theoretical apologia for the state, Rothbard simply called it what it was: a gang of criminals. He likewise rejected all of the tenets of America's celebrated democratic system, including its alleged basis in the consent of the governed, and the so-called legitimacy of taxation.³⁰

While Rothbard was rightly acknowledged as "Mr. Libertarian" (though certainly not without controversy), this shouldn't mean that those who do not self-identify as libertarians are necessarily excluded from this camp. Woody Allen fits the bill of a cultural libertarian, even while never conceiving himself as such. Allen's films are emblematic of his libertarian outlook on society and filmmaking: a complete non-dependence on anyone or any group, and a sort of unannounced withdrawal from popular culture. The writer Mark Evanier said of Allen:

³⁰ For a concise introduction to Rothbard's views on government, see Murray Rothbard, *The Ethics of Liberty* (New York: New York University Press, 1998), Chapter 22–23.

People have a resentment of the untouchable person...People who were assaulting him [and saying] ‘You have to come out and play our game. You have to attend our film festivals. You have to come to my parties, do a personal appearance. And do the interviews we want.’ And [Allen] just said, ‘No, I’m going to do what I want.’ And Woody doesn’t want to play anybody else’s game.³¹

We find in Allen’s radically independent outlook similarities to the libertarian philosophy of Rothbard and Dylan. Jeff Taylor and Chad Israelson have written, “Some persons would not claim the title ‘anarchist,’ but nonetheless have such strong suspicion of human authority that they come close to anarchism.”³² Though this statement was in reference to Bob Dylan, the same could be said of Woody Allen and libertarianism. If we broaden the target of non-resistance to include social pressure, then Allen’s entire life is an expression of this.

Allen has the unique ability to explore taboo social topics in a comedic fashion, and to defy standards of cultural appropriateness. William Zinsser referred to Allen’s approach as “a perfect formula for an anxious new age: therapy made hilarious.”³³ A central part of Allen’s makeup is his Jewish heritage, specifically the Jewish people’s plight throughout history and, more specifically, the Holocaust, which occurred in his own lifetime. Though a self-described atheist, Allen never sought to escape the ethnic and cultural associations of his Jewishness. To the contrary his Jewishness, coupled with the New York City ethos he embodies so well, constitute the thrust of his cinematic *schlemiel* persona. Allen’s approach to filmmaking has always been fiercely independent, making what he wants, when he wants, with whom he wants.

Likewise, Bob Dylan has lived a life in defiance of social expectations and political power structures, serving instead his self-appointed leader,

³¹ David Evanier, *Woody: The Biography* (New York: St. Martin’s Press, 2015). Kindle ed., 318.

³² Taylor and Israelson, *The Political World of Bob Dylan*, Kindle ed., 149.

³³ William Zinsser, “My Stardust Memories,” *The American Scholar* (August 2010). <https://theamericanscholar.org/my-stardust-memories/#.Xg5XiBdKhBw>.

Jesus Christ. "Power is at the heart of politics and Dylan distrusts both the exertion of power and the ability of human beings to utilize it to correct the wrongs of society," write Taylor and Israelson.³⁴ Bob Dylan's career, both pre- and post-conversion to Christianity, has adhered to an ideology of cultural libertarianism and a severe distrust of organized authority. Dylan, like Rothbard and Allen, recognizes the state as the largest instrument for potential violence, namely war and genocide. Dylan confronted these "Masters of War" as early as 1963, reminding them he *can see through [their] masks*.³⁵

Though hardly walking similar paths of life, Rothbard, Dylan, and Allen have all served as expressions of cultural libertarianism throughout the last half-century. In terms of the impact of their Jewish heritage, skeptics may well point to the fact that neither Dylan, Rothbard, nor Allen considered themselves religiously Jewish; however, this is precisely where their rejection of what they deemed to be coercive authority began: in repudiating what they felt were the restraints of forced, Orthodox Judaism. On religion in general, Allen has remarked, "Obviously, I'm not a religious person, and I don't have any respect for the religious point of view. I tolerate it, but I find it a mindless grasp of life."³⁶ Nonetheless, Allen's films are filled with themes of Judaism and "Jewish guilt." In *Annie Hall* (1977), he imagines that his girlfriend's *goyish* family is looking at him as a Hasidic Jew during dinner, dressed in all black and with a rabbinic beard. Though Allen is not religious, the Judeo-Christian tradition has certainly left what we might refer to as a secular impact on his life and work. Moreover, this is certainly not to say that atheism is a prerequisite to cultural libertarianism; indeed, Rothbard himself disavowed the atheist trend in the libertarian movement. Although Rothbard was an agnostic, he wrote positively about Christianity, and Bob Dylan himself is a born-

³⁴ Taylor and Israelson, *The Political World of Bob Dylan*, viii.

³⁵ "Masters of War," from the album *The Freewheelin' Bob Dylan* (1963).

³⁶ Ann Hornaday, "Woody Allen on 'Rome,' Playing Himself and Why He Skips the Oscars," *The Washington Post* (July 2012).

again Christian. In all three cases, a deviation from their Jewish religious upbringing reveals an early inclination against forced forms of authority. For Rothbard, this started with the pervasive Communism of his youth.

"I grew up in a Communist culture," Rothbard writes, "The middle-class Jews in New York whom I lived among, whether family, friends, or neighbors, were either Communists or fellow-travelers in the Communist orbit. I had two sets of Communist Party uncles and aunts, on both sides of my family."³⁷ Rothbard was born in 1926 to a set of Jewish immigrants, his father from Poland and his mother from a small village on the Russian-Polish border. He recalls how his father, David, quickly sought to assimilate to American culture and its way of life, which meant downplaying his Yiddish accent and culture. More than this, though, his father took on, as Rothbard put it, "the basic American Way: minimal government, belief in and respect for free enterprise and private property, and a determination to rise by one's own merits and not via government privilege or handout." His father, then, raised young Murray under the guiding American principles of minimal government and free-market economics. While the latter took, a budding Rothbard eventually outgrew what he felt were the logical inconsistencies of minimal government.³⁸ "The intellectual stance projected here [by his father]—a love of liberty, a hatred of collectivism, and a refusal to be absorbed by the 'religious fanaticism' of the Old World Jews—was to remain constant throughout his life," Justin Raimondo writes.³⁹ And thus, what is found even in an adolescent Rothbard is a fledgling bent toward independent thought and a rejection of what he deemed to be an illogical religious heritage.

Rothbard also notes that as a young boy, his political options were not really options at all: "...the one great moral question in the lives of all these people was: Should I actually join the Communist Party and devote the

³⁷ Murray Rothbard, "Life in the Old Right," *Chronicles* (July 1994). Online version at <https://www.lewrockwell.com/1970/01/murray-n-rothbard/life-in-the-old-right/>.

³⁸ Raimondo, *An Enemy of the State*, 47.

³⁹ *Ibid.*, 27.

whole of my life to the cause, or should I remain a fellow-traveler and 'selfishly' devote only a fraction of my energy to communism? That was it; any species of liberalism, let alone conservatism, was nonexistent."⁴⁰ Consequently, Rothbard associated religious Judaism with socialism and thus, took to neither. This is not to say that Rothbard disassociated himself with his family or Jewish culture in general, but even at an early age he wanted no part in institutionalized religion or political collectivism. He recalls that even in his youth he thought "all socialism seemed...monstrously coercive and abhorrent." His adolescent protolibertarianism reared its head on occasion, such as when he quieted the room by asking his family what was so wrong about the Spanish dictator, Francisco Franco. Or the time he managed to not be expelled from grade school despite his friends having been, since "the idea that the school rightist was a commie was unthinkable."⁴¹ Later at university, Rothbard said that he was often the only conservative he knew within the entire campus. In sum, Rothbard certainly had a contrarian streak, even from a young age.

Bob Dylan, another contrarian born fifteen years after Rothbard, grew up in Minnesota, the eldest son of Abram and Beatty Zimmerman. Like many American Jews at the time, Dylan was a descendent of Jewish European expatriates who had left Russia to escape the pogroms. The town of Hibbing in which Dylan's family moved when he was six was defined in its day by the blue-collar ruggedness of its families. The men worked the Iron Range, a tight-knit community whose politics have been described as a "quasi Libertarian brand of Democrat."⁴² During his youth, Dylan was exposed to the ups and downs of an economy built largely around a single commodity. This instilled in him a sense of empathy for victims of circumstance; first, for the men in Hibbing whose financial well-being rested in the hands of ownership, and later, for the myriad muses

⁴⁰ Rothbard, "Life in the Old Right."

⁴¹ Ibid.

⁴² Taylor and Israelson, *The Political World of Bob Dylan*, 4.

he projected through his “finger-pointin’” music. However, despite some of Dylan’s passing nods to liberal politics throughout his career, such as his line in “I Shall Be Free No. 10” (1964) that he was “*liberal, but to a degree,*” his economic outlook has tended toward capitalism. As the economist Joseph Salerno summarizes, Dylan has typically expressed an “appreciation for entrepreneurs as virtuous job creators and for voluntarism as the organizing principle of a prosperous economy.”⁴³ Even so, Dylan’s music has, at times, chronicled the less romantic elements of capitalism such as layoffs and the struggle of middle and lower-class Americans to get by, expressed, for example, in “Union Sundown” (1983): *Well, the job that you used to have/They gave it to somebody down in El Salvador/The unions are big business, friend/And they’re going out like a dinosaur.*

Even at an early age, Dylan, like Rothbard, felt that he did not fit in with his surroundings. For Dylan, the small-town, increasingly suburban America seemed stale and banal. A high school classmate of Dylan’s says he was “treated as an outcast as he was growing up. He was odd, and different.”⁴⁴ For a time, he closely identified with the sentiments of restlessness evinced in Jack Kerouac’s classic Beat novel, *On the Road*.⁴⁵ Dylan and this emerging group of countercultural, mid-century “subterraneans” (to borrow Kerouac’s term) would question everything: the Cold War, political elitism, racism, and, in a broader sense, what it meant to be American. These youths, as chronicled by Kerouac, “were like the man with the dungeon stone and the gloom, rising from the underground, the sordid hipsters of America, a new beat generation.”⁴⁶

In terms of Dylan’s embrace or rejection of religious Judaism prior to his conversion to Christianity, it is somewhat ambiguous. As he would do

⁴³ Joseph Salerno, “The Political Economy of Bob Dylan,” *Ludwig von Mises Institute* (March 2015). <https://mises.org/wire/political-economy-bob-dylan>.

⁴⁴ Taylor and Israelson, *The Political World of Bob Dylan*, 5.

⁴⁵ Bob Dylan, *Chronicles: Volume One* (New York: Simon & Schuster, 2004). Kindle ed., 57.

⁴⁶ Jack Kerouac, *On the Road* (New York: Penguin Books, 1976). Kindle ed., 54.

throughout his life, Dylan was careful to avoid being labeled, and thus we are left with intermittent, at times fragmented, and cryptic comments that point toward his views on religion and, more specifically, Judaism. After his father's death in 1968 it was believed he had reconnected with Judaism, and a *People* magazine article from 1975 informed readers that he had "returned to his Jewish roots."⁴⁷ In the 1980s there was speculation that he was joining an Hasidic group, despite having converted to Christianity sometime in 1979 or the early 1980s. Dylan observed Jewish rites and holidays on occasion, although he spent the second half of his career as a Christian, which might otherwise imply a repudiation of Orthodox Judaism. As is often the case with Bob Dylan, we have to sift through the multiple meanings of the things he says. For instance, his comment that "religion is a dirty word" should not insinuate that he rejects all religion, just as his criticism of capitalism at times was not a rejection of the entire system. After his conversion to Christianity, his pastor at Vineyard Christian Fellowship summed up Dylan's religious outlook as a sort of fusion between historic Judaism and evangelical Christianity, and one that did not necessarily contradict itself. We might speculate, then, that Dylan's Jewishness stayed with him, both religiously and culturally, even though he put his faith in Jesus Christ and became a born-again Christian. In an apt assessment of Bob Dylan's religious outlook, Jeff Taylor and Chad Israelson write that "his attitudes toward freedom, power, and the workings of the world within a religious context were influenced first by Judaism, later by Christianity, and then continually by both."⁴⁸

Exploring Dylan's inchoate cultural libertarianism from his youth, we see these sorts of leanings through his desire to break out of traditional confines: Orthodox Judaism, his small-town environment, and what he perceived as an uninspiring future. Many of his albums seemed to capture the sentiment of what came to be known broadly as the "counterculture."

⁴⁷ Taylor and Israelson, *The Political World of Bob Dylan*, 23.

⁴⁸ *Ibid.*, 24.

"Blowin' in the Wind," "Masters of War," "A Hard Rain's a-Gonna Fall," "Oxford Town," "The Times They Are a-Changin'" and "With God on Our Side" are only a few songs from his early albums that young Americans in the counterculture clung to, believing Dylan was their generation's voice. However, Dylan vehemently disavowed the idea that he was "the voice" of anything. As one biographer, Ian Bell, notes, many people admire Dylan for "defending his artistic integrity against all the clamant voices: those who thought they could conscript creativity, [and] who wanted slogans-on-demand...."⁴⁹ Nonetheless, the notion that a young Bob Dylan could inspire millions of people to reject dominant cultural trends (namely, the Cold War and racial violence) is exemplary of the libertarian creed applied culturally. The same may be said of the cinematic feats and personal views of Woody Allen.

Despite Allen's self-professed atheism, he typifies traditional Jewish culture far more than Rothbard and Dylan. Consequently, Woody Allen has become synonymous with Jewish humor—a modern-day version of Groucho Marx or Mort Sahl. His *shtick* over the course of decades of filmmaking embodies a comedic blend of wit, narcissism, and self-deprecation. Asking his on-screen father in *Hannah and Her Sisters* (1986) why Nazis existed, his dad retorts, "How the hell do I know why there were Nazis? I don't know how the can opener works!" The juxtaposition of the tragic and existentialist with the comedic is one of the reasons Allen is unique in his field.

Born during interwar New York City in 1935, Allen quickly began traversing the world of magic tricks, jazz, and comedy. His family, like Rothbard's and Dylan's, immigrated to avoid the oppressive pogroms directed against Jews. A childhood friend of Allen's notes that "he always had this concern about death, death looming. And pessimism."⁵⁰ Those familiar with Allen's films will no doubt see a connection between his adolescent preoccupation with the morbid, and the sardonic humor of his

⁴⁹ Ian Bell, *Once Upon a Time: The Lives of Bob Dylan* (New York: Pegasus Books, 2012), 341.

⁵⁰ Evanier, *Woody: The Biography*, 71.

films. Speaking of death as a cinematic theme, in what may be taken as equal parts humor and sincerity, Allen has said that “perishing is what it’s all about.”⁵¹ During the 1960s, Allen forged a cinematic path for himself with his own take on the “self-hating Jew.” Biographer David Evanier sums up best the cultural achievement of Woody Allen:

Woody Allen became a comedy star at a time when every preconception about American life came into question. His arrival and triumph were emblematic of the sea change in American society in the sixties; a rejection of a multitude of prejudices—sexual, ethnic, racial, and class—in the spirit of the civil rights movement. The flood had opened up, releasing a new flexibility, open-mindedness, acceptance of differences—differences that accorded society a wealth of new insights, ways to live, ways to explore culturally and sexually. His material was not interchangeable with that of other comedians. The earlier generation of comics could steal from one another because their jokes were so similar, and not directly related to their personalities. With Allen there was a presumption, whether it was true or not, that he was telling you something a little more personal and autobiographical.⁵²

Allen’s rise to prominence came at a time when Jews, in Hollywood and American culture in general, were more free to realize their potential *as* Jews. While there had been a steady rise in Jewish control of production companies and financial industries in the early twentieth century, acceptance of Jewish actors and Jewish themes *as such* lagged behind. Woody Allen’s career, then, would prove to be a prime example of uncharted Jewish territory, making a Jewish caricature an ecumenical cultural icon. His style as a writer, actor, and director went beyond false gratitude for new opportunities being afforded to Jews; his films were *avant-garde*, confronting previously tabled cultural conversations like

⁵¹ Stig Björkman, *Woody Allen on Woody Allen: In Conversation with Stig Björkman* (New York: Grove Press, 1995), 106.

⁵² Evanier, *Woody: The Biography*, 51.

sex, fidelity, the existence of God, and social power structures. Evanier writes that Woody’s characters were “innovative, inherently revolutionary. He gave voice to the funny-looking Jewish guys, but, he also gave voice to the tall blonde gentile football players who secretly felt like the short Jewish guys inside.”⁵³

Allen has written and directed nearly every production he has been a part of (over fifty since his directorial debut in 1966), revealing his need for creative control and artistic independence. As opposed to actors and directors who spend years making a movie and then throw a party for themselves (something to which Allen often dismissively alludes), he breaks the mold by working on his next movie before his previous film even debuts. He says making movies is like “stamping out cookies.”⁵⁴ Allen has never cared whether his movies were well-received, only whether he is proud of the finished product; he claims he has never watched one of his movies once it is finished. In the same vein, Allen routinely skips the Academy Awards, even when his movies have been nominated and won. This type of cultural libertarianism—a complete rejection of social and professional expectations and accolades—has allowed him the freedom to create timeless films that give moviegoers a glimpse into an otherwise inaccessible world. “It almost strains credulity,” Evanier writes, “that a Jewish film star and comedian who placed his Jewishness front and center and audaciously proclaimed it—utilizing constant references to his Jewish identity, his preoccupation with anti-Semitism and the Holocaust, and his ambivalent and satiric ways of defining gentile . . . could capture the imagination and even beguile a wide audience as Allen has done.”⁵⁵

Murray Rothbard reviewed a number of Allen’s films throughout the 1970s and ‘80s, and published them in the newsletter he edited, *The Libertarian Forum*. It is evident when reading Rothbard’s later comments

⁵³ *Ibid.*, 119.

⁵⁴ Björkman, *Woody Allen on Woody Allen*, 96.

⁵⁵ Evanier, *Woody: The Biography*, 60.

about Woody Allen that he clearly disliked him on a personal level: “For decades Woody Allen has been the very embodiment of left-liberal values and expression...[his] ideology has been implicitly leftist.” Writing in the *Rothbard-Rockwell Report* in 1992, Rothbard also commented on Allen’s illicit romance with Mia Farrow’s adopted daughter, Soon-Yi Previn (whom Allen married in 1997). In the essay, Rothbard criticized Allen as the epitome of “alternative lifestyles,” hedonism, and the New Culture.⁵⁶ However, despite Rothbard’s later feelings about Allen’s personal life, many of Rothbard’s earlier reviews were quite glowing, frequently commenting on the uniqueness of Allen’s films. “Woody Allen,” Rothbard wrote in 1974, “is surely the outstanding comic in films today...It is a pleasure to see that great and now dead tradition of visual and cinematic humor recreated [in *Sleeper*].”⁵⁷ In 1982 Rothbard referred to Allen as one of the “last great comic forces in our culture.”⁵⁸ Regarding *Annie Hall*, one of Allen’s most well-known films, Rothbard called it Allen’s “best film to date.”⁵⁹ And also, “Annie Hall is a constant stream of hilarious, scintillating wit.” Rothbard likewise agreed that *Manhattan* (1979) “is the greatest movie of the 1970’s,” referring to Allen as a champion of the Old Culture. Ironically, the plot of the movie involves Allen’s character’s on-and-off romance with a much younger girl, the same taboo that Rothbard would later criticize as emblematic of Allen’s hedonism. As of 1979, however, Rothbard believed that “The mature Allen is emphatically and defiantly a romantic, and romanticism is at the heart of the Old Culture.” In his review of *Manhattan*, Rothbard even compares Allen to the “great satirists” such as Jonathan Swift, G.K. Chesterton, and H.L. Mencken. The film, according to Rothbard, was a “wonderous testament to what the

⁵⁶ Murray Rothbard, “Woody Allen, Murphy Brown, and the Art-For-Art’s Sake Scam,” in *The Irrepressible Rothbard: The Rothbard-Rockwell Report, Essays of Murray N. Rothbard* (Burlingame: The Center for Libertarian Studies, 2000): 294-98.

⁵⁷ Murray Rothbard, *The Complete Libertarian Forum 1969-1984*, Vol. I (Auburn: Ludwig von Mises Institute, 2012), 442.

⁵⁸ *Ibid.*, 2:1070.

⁵⁹ *Ibid.*, 2:782.

mind of man can achieve.”⁶⁰ Rothbard’s dotting approval of Allen’s early work speaks to the type of artistic independence and creative control that I am suggesting is part-and-parcel of cultural libertarianism.

Politically, Rothbard would likely have been glad to hear that Allen was against the War in Vietnam, that he had campaigned for Adlai Stevenson’s presidential runs (1952, 1956), and that he considered American imperialism in Latin America to be “exploitative,”⁶¹ a theme Allen satirized in *Bananas* (1971). We could also imagine Rothbard echoing Allen’s desire to read the “non-fiction version” of the Warren Report. Despite Rothbard’s later condemnation of Allen’s personal life, we do find a camaraderie in the social views of these two New York City Jews, specifically in their rejection of mainstream art and culture, political correctness, and, at times, their defense of what Rothbard calls Old Culture. Perhaps Rothbard’s opinion of Allen’s cinematic career would have been more positive had he lived to see Allen’s twenty-first century renaissance, including critically-acclaimed films such as *Match Point* (2005) and *Midnight in Paris* (2011).

In terms of Allen’s Judaism, we find that it is the most culturally pronounced between he, Rothbard, and Dylan, while at the same time being the most religiously rejected. It is a stark contrast between the unshakeable influence of his Jewish upbringing, coupled with his intellectual dismissal of religion in general. In both personal comments and on-screen dialogue, Allen points to his rejection of God and an afterlife. His early deviation from religious Judaism is similar to that of Rothbard’s, both of whom seemingly could not allow their ultra-rationalistic intellects to conceive of anything other-worldly. In the same way that Rothbard’s philosophical libertarianism rejects the legitimacy of the state, Allen, rightly or wrongly, could not abide what he felt to be the restrictive nature of religion. “All of these religious do’s and don’ts,” Allen

⁶⁰ Ibid., 2:889-90.

⁶¹ See Björkman, *Woody Allen on Woody Allen*, 39-41.

remarked, “ranged for me from the laughable to the offensive.”⁶² Commenting on the blind rabbi in *Crimes and Misdemeanors* (1989), Allen said that the rabbi is not only blind literally, but also metaphorically in terms of his naive belief in God.⁶³

Religiously, we find three divergent paths between Rothbard, Dylan, and Allen, despite the fact that all three were born into practicing Jewish families. Whereas Rothbard takes a radical anarchist position politically, he was agnostic when it came to the existence of God. And yet, as we have seen, Rothbard was inclined to see the merits of the Judeo-Christian tradition, especially as he saw its compatibility with libertarianism. As he said, the libertarian movement would never succeed as long as it was perceived to be a group of atheists. In his personal life, his wife Joey was a Presbyterian, and toward the end of Murray’s life, many speculated that he might convert to Catholicism, but of course this wasn’t to be. Author Gerard Casey cites a letter Rothbard wrote to Justin Raimondo in 1990 wherein he (Rothbard) vociferously praised the connection between the Christian basis of Western civilization and the advance of individual liberty: “I am convinced that it is no accident that freedom, limited government, natural rights, and the market economy only really developed in Western civilization. I am convinced that the reason is the attitudes developed by the Christian Church in general, and the Roman Catholic Church in particular....even though I am not a believer, I hail Christianity, and especially Catholicism as the underpinning of liberty.”⁶⁴ While Woody Allen seems to be the most impacted by his family’s Judaism and Jewish culture, he is also the most sure of his atheism. And even while Allen has described himself as a liberal Democrat,⁶⁵ he has supported policies and expressed views which resonate with Rothbardian

⁶² *Ibid.*, 204.

⁶³ *Ibid.*, 223.

⁶⁴ Gerard Casey, *Murray Rothbard*, 15, from the series *Major Conservative and Libertarian Thinkers*, edited by John Meadowcroft (London: Continuum, 2010).

⁶⁵ Björkman, *Woody Allen on Woody Allen*, 39.

libertarians. And as we’ve seen, Rothbard certainly relished the artistic and cultural achievements of Allen’s earlier work.

Bob Dylan’s politics, if we may call them such, are informed by his ultimate allegiance to Christ. Dylan told an interviewer in 1986 that “you don’t see nothing about right or left” in the Bible.⁶⁶ Around the same time, his albums underwent a noticeable shift toward Christian themes and a gospel sound. While this “new,” evangelical Dylan shocked fans once again, Dylan simply continued to say and sing what he believed to be true, revealing the cultural libertarianism inherent in his career. Albums such as *Slow Train Coming* (1979), *Saved* (1980), and *Shot of Love* (1981) offered fans a drastically different version of their counterculture hero. To be sure, many disapproved. In 1979, a review of Dylan’s concert published in the *San Francisco Chronicle* had the headline, “Bob Dylan’s God-Awful Gospel,” afterward informing readers that “Dylan has written some of the most banal, uninspired and inventionless songs of his career for his Jesus phase.”⁶⁷ Once, during this so-called Jesus phase, Dylan paused to tell concert-goers that the end times are near: “You know we’re living in the end times....The scriptures say, ‘In the last days, perilous times shall be at hand. Men shall become lovers of their own selves. Blasphemous, heavy and highminded....I’m telling you now Jesus is coming back, and He is! And there is no other way of salvation...Jesus is coming back to set up His kingdom in Jerusalem for a thousand years.”⁶⁸ Jeff Taylor and Chad Israelson lament the fact that Dylan essentially stopped writing explicitly Christian music sometime around the 1990s, but they argue that we should nonetheless interpret Dylan’s politico-religious stance as a modern version of Leo Tolstoy—a spiritually radical, Christian anarchist.⁶⁹

⁶⁶ Taylor and Israelson, *The Political World of Bob Dylan*, 39.

⁶⁷ David Lister, “How Bob Dylan Embraced Jesus in a Born-Again Period Lasting Three Years,” *Independent* (November, 2017). <https://www.independent.co.uk/arts-entertainment/music/features/bob-dylan-jesus-trouble-no-more-bootleg-series-volume-13-slow-train-coming-u2-a8031031.html>.

⁶⁸ Quoted in *ibid.*

⁶⁹ Taylor and Israelson, *The Political World of Bob Dylan*, 195.

Authors R. Clifton Spargo and Anne Ream argue that “...even without the rebirth in 1979, Jewish and Christian idioms persist in his work to such a degree that Dylan would have to be reckoned one of the most powerful interpreters of religious language and sensibility in all of American pop culture.”⁷⁰

While Rothbard, Dylan, and Allen were impacted by this Judeo-Christian tradition, their cultural libertarianism often manifested in non-religious ways. Rothbard’s libertarian contrarianism was a philosophical and deductive approach aimed at concepts of rights, violence, and the illegitimacy of the state. He, like Dylan, strove for justice. He viewed governments, specifically the American government under which he lived, as a tool for violence, theft, and all manner of actions that would be deemed criminal were an average citizen to commit them. While Rothbard was a trained economist and a disciple of the Austrian economist, Ludwig von Mises, he also made significant contributions to political theory, history, and strategies for the libertarian movement. In the purist-versus-pragmatist debate that often plagues libertarian circles, Rothbard formulated and exercised a strategy of pure anarcho-capitalism in theory, but pursued through compromises and coalitions in the present. His posthumously published work, *The Betrayal of the American Right* (2007), chronicles his libertarian ideological journey in a world dominated by Left and Right. His willingness to build temporary coalitions sometimes led him into the camp of old guard conservatives who opposed the New Deal and the Korean War, and later brought him to align with those forming the New Left who opposed the War in Vietnam and emerging forms of domestic militancy. Works such as *Man, Economy, and State* (1962), *America’s Great Depression* (1963), *For a New Liberty* (1973), *The Ethics of Liberty* (1982), and *The Case Against the Fed* (1994) are but a few of

⁷⁰ R. Clifton Spargo and Anne. K Ream, “Bob Dylan and Religion,” in *The Cambridge Companion to Bob Dylan*, edited by Kevin J. H. Dettmar (Cambridge: Cambridge University Press, 2009): 98.

Rothbard's timeless and prescient contributions to modern political and economic thought.

Most of all, Rothbard pursued truth. Justin Raimondo writes that Rothbard "never coveted the honors heaped on other far less worthy scholars; all he ever wanted was to be left alone to his work."⁷¹ As homage to the threat Rothbard posed to conventional political thought and the powers that be, Raimondo titled his biography of Rothbard *An Enemy of the State*. Ever the optimist, Rothbard concluded his *Betrayal of the American Right* with the following: "...the passion for justice and moral principle that is infusing more and more people can only move them in the same direction; morality and practical utility are fusing ever more clearly to greater numbers of people in one great call: for the liberty of people, of individuals and voluntary groups, to work out their own destiny, to take control over their own lives. We have it in our power to reclaim the American Dream."⁷²

The cultural libertarianism of Bob Dylan, on the other hand, is a product of both his Jewish upbringing and his conversion to Christianity. Authors Chad Israelson and Jeffrey Taylor write in reference to Dylan's Christian anarchism, "The concepts of law and authority are assumed to be diametrically opposed to the concepts of liberty and anarchy, but this is not necessarily true. In the proper, godly context, law and authority free human beings."⁷³ And thus, Bob Dylan sees no conflict between being both a Christian and a political anarchist; albeit, he doesn't identify as such, but Bob Dylan has never really identified as anything. We find in Christian anarchism, as opposed to Rothbard's purely political anarchism, the willful submission of one's self to Christ. It is often wrongly assumed that anarchism and its proponents are completely against all forms of authority. On the contrary, both the Dylanesque Christian anarchism and

⁷¹ Raimondo, *An Enemy of the State*, 283.

⁷² Murray Rothbard, *The Betrayal of the American Right* (Auburn: Ludwig von Mises Institute, 2007), 205–6.

⁷³ Taylor and Israelson, *The Political World of Bob Dylan*, 153.

the free-market anarchism of the Rothbardian variety would readily recognize legitimate forms of authority. Whereas Dylan's authority is Christ, Rothbard's anarchism proposes submission to whomever one chooses. In both instances, whether religious or not, the important aspect is that the authority is freely chosen. The very concept of Christian salvation centers on willful submission to Christ, an act made freely.⁷⁴ Indeed, as Rothbard said, "There is no sense to any concept of morality, regardless of the particular moral action one favors, if a man is not free to do the *immoral* as well as the moral thing. If a man is not free to choose, if he is compelled by force to do the moral thing, then, on the contrary, *he is being deprived of the opportunity of being moral*" (emphasis mine).⁷⁵ Dylan expressed a similar sentiment in "Gonna Change My Way of Thinking" (1979) during the early years of his conversion to Christianity, saying, "*Gonna change my way of thinking/Make myself a different set of rules,*" and later, "*You remember only about the brass ring/You forget all about the golden rule.*" Indeed, many libertarians see the non-aggression principle as a logical corollary to the Golden Rule found in Matthew 7:12. In an apt description of Dylan's Christian anarchism, he says toward the end of the song, "*There's only one authority/And that's the authority on high.*"

Countless authors have attempted to analyze Dylan's politics pre- and post-conversion to Christianity, but his cultural libertarianism that rejects labels makes this task impossible. He intentionally obfuscates, misdirects, and rejects labels that might otherwise seem to fit. While seemingly everything Dylan does and says is taken by some to be political, Dylan admitted early in his career that he cared little for politics. In 1963, accepting the National Emergency Civil Liberties Committee's *Tom Paine Award*, Dylan launched into a slightly drunken tirade against everyone's

⁷⁴ In John 3:36, for example, Jesus says that "Whoever believes in the Son has eternal life; whoever does not obey the Son shall not see life, but the wrath of God remains on him" (ESV), thus implying man's choice to both believe and obey, or not.

⁷⁵ Murray Rothbard, *Man, Economy, and State, with Power and Market*, 2nd ed. (Auburn: Ludwig von Mises Institute, 2009), 1305.

expectations of him, saying, "There's no black and white, left and right to me anymore; there's only up and down and down is very close to the ground. And I'm trying to go up without thinking about anything trivial such as politics. They has [sic] got nothing to do with it. I'm thinking about the general people and when they get hurt."⁷⁶ After the fallout from this incident, Dylan told an interviewer from *The New Yorker*, "I tell you, I'm never going to have anything to do with any political organisation again in my life."⁷⁷ Though he didn't become a Christian until later in his career, this anti-authoritarian attitude has remained consistent. The same Bob Dylan that sang about "The Death of Emmett Till" (1962) and performed at the March On Washington in 1963 continued to sing about power structures in the late 1970s and beyond. The only difference is that the Christian Bob Dylan infused his anarchism with theological undertones. "It may be the devil, or it may be the Lord/But you're gonna have to serve somebody," Dylan sang in 1979.⁷⁸

His Christian anarchism tends toward a distrust of political power since state activity is often, according to Christian libertarians, opposed to the tenets of peace found in the New Testament. His conversion coincided with the emerging Religious Right, and Dylan recognized the unseemly combination of evangelical Christianity and concentrated political power. Even before he became a Christian, Dylan mocked the ultra-nationalist Christians who seemed to think anything was defensible "With God On Our Side" (1964). And as a believer who takes Jesus's call to love one another seriously, Dylan laments the fact that Americans are apt to pawn off their Christian obligation to the government. "Dylan understands that liberty frightens people who do not want to accept the responsibility of

⁷⁶ Bob Dylan, remarks from the *Tom Paine Award* speech at the National Emergency Civil Liberties Committee's Bill of Rights dinner, 1963. A full transcript of the speech may be found online at <http://www.daysofthecrazy-wild.com/watch-listen-bob-dylans-infamous-1963-tom-paine-award-speech/>.

⁷⁷ Quoted in Bell, *Once Upon a Time*, 295.

⁷⁸ "Gotta Serve Somebody," from the album *Slow Train Coming* (1979).

being free,” write Taylor and Israelson.⁷⁹ In other words, Dylan is a Christian anarchist in-part because he realizes that the state attempts to manage people’s lives in a way that individuals alone are called to do, a sentiment with which Rothbard would surely agree. Responding to questions in 1986 about the patriotic tunes of singers like Bruce Springsteen and John Cougar Mellencamp, and whether or not they inspired patriotic principles, Dylan said “The only principles you can find are the principles in the Bible. Proverbs has got them all.”⁸⁰

Bob Dylan’s long career has not been without controversy. Fans and critics alike want to understand him and his motivation for everything: going electric, retreating to a quiet life in the country, straying from his “protest songs,” and converting to Christianity. Dylan has commented, both in his memoir *Chronicles* (2004) and elsewhere, about the backlash he faced from going electric at the Newport Folk Festival in 1965. The previous year’s festival exemplified the claim his fans thought they had on him when he was introduced with the grand pronouncement: “Here he is...take him, you know him, he’s yours.” Quickly after Dylan’s ascent in the early 1960s, everyone wanted to claim him for their cause, something which rubbed Dylan the wrong way. Similarly to Woody Allen’s dismissal of popular opinion, Dylan has always pursued the art without worrying about its or his reception. In terms of Dylan’s famous “going electric” moment, we find a similar incident in Woody Allen’s decision in 1978 to make the non-comedy *Interiors* after the widespread success of *Annie Hall*. He told Stig Björkman in 1993 that the negative reception to *Interiors* was essentially due to people’s claim on his art: “People were shocked, and so disappointed with me that I broke my contract with them, my implicit deal with them.”⁸¹ Likewise, Bob Dylan often broke whatever “implicit deal” his fans thought they had with him throughout his career. Both Dylan’s life and music have been emblematic

⁷⁹ Taylor and Israelson, *The Political World of Bob Dylan*, 108.

⁸⁰ *Ibid.*, 153.

⁸¹ Björkman, *Woody Allen on Woody Allen*, 95.

of the cultural libertarianism by which he abides. He doesn't care what people think of him. He, like Rothbard, has usually just wanted to be left alone, which is ironic in light of his growing popularity through the decades. Nonetheless, “Dylan remains standing,” write Israelson and Taylor, “as a voice of cultural dissent. A personally inconsistent but still compelling-scourge of institutionalized nonsense. An undercover example of Christian anarchism.”⁸²

V. CONCLUSION

The common strand between Dylan, Rothbard, and Allen is their aversion to other people telling them what to do. In a personal, social, professional, and political sense, Bob Dylan has always been fiercely independent and even intentionally contrarian at times. Since his debut in 1961, his career has been the subject of much scrutiny, with fans and critics always trying to more fully understand him. In many ways, Dylan embodies the rebellious ethos he has so often captured with his music. He does not care about awards, public perception, or cultural expectations of what a star should be. Even as recently as 2016, Dylan confused many by forgoing his reception for the Nobel Prize in Literature, in a manner not unlike Woody Allen's frequent abstention from the Academy Awards. This is but one of innumerable examples of Dylan showing no regard for awards, popularity, or social acceptance. Politically, we might say that Dylan's seemingly inexplicable politics are the result of his Judaism, Christianity, and his generally defiant social outlook. Though he is now on the latter end of his career, his words from “Let Me Die in My Footsteps” (1962) are still a prescient example of his lifelong cultural libertarianism: *There's been rumors of war and wars that have been/The meaning of life has been lost in the wind/And some people thinkin' that the end is*

⁸² Taylor and Israelson, *The Political World of Bob Dylan*, 195.

*close by/‘Stead of learnin’ to live they are learning to die/Let me die in my footsteps/Before I go down under the ground.*⁸³

Rothbard, on the other hand, reveled in the libertarianism that so often made him a social and professional pariah. Those familiar with his work are struck by Rothbard’s expansive command of economics, history, philosophy, and political theory. And he also deserves credit for aiding the revival of the Austrian tradition of economics. His career and work were a constant challenge to establishment consensus and to what the historian Thomas Woods refers to as “allowable opinion.” This is evidenced early in Rothbard’s career when he was unable to publish his doctoral dissertation at Columbia over differences of opinion with a faculty advisor. But Murray refused to acquiesce to suggested changes, even when doing so would have been the easiest path to a life in academia.⁸⁴ Even after obtaining his Ph.D. and subsequently publishing his seminal work in the field of economics, Rothbard was never offered positions at prominent research universities. Despite Rothbard’s prolific career, Brian Doherty notes that Rothbard never attained the broader recognition of his libertarian peers: “He lacks Milton Friedman’s almost universal respect as an economist and commentator. He lacks [Ayn] Rand’s huge cult following. [And] he lacks Hayek’s academic influence.”⁸⁵ Nonetheless, in addition to teaching part-time at New York Polytechnic Institute in Brooklyn, Rothbard and others organized the famed *Circle Bastiat*, a “group of friends who held endless discussions, went to the movies, sang, and composed songs, played board games, and...joked about how [they] would be treated by future historians.”⁸⁶ Rothbard, along with Llewellyn Rockwell, also founded the Ludwig von Mises Institute in 1982 as the premier center for Austro-libertarian studies. While

⁸³ “Let Me Die In My Footsteps,” first recorded in 1962. Featured on the album *The Bootleg Series Volumes 1–3 (Rare & Unreleased) 1961–1991*, released in 1991.

⁸⁴ On this episode, see Raimondo, *An Enemy of the State*, 44.

⁸⁵ Doherty, *Radicals for Capitalism*, 13.

⁸⁶ Raimondo, *An Enemy of the State*, 82.

hardly receiving due recognition in his own lifetime, Rothbard's legacy and contribution to libertarianism are seemingly unrivaled. "Anarcho-Capitalism," his comprehensive approach to political theory (fleshed out in *For a New Liberty*, *The Ethics of Liberty*, and elsewhere) has inspired scores of libertarians since his passing, many of whom style themselves as "Rothbardian" libertarians or anarchists. Because Rothbard was ideologically unyielding, it may be safely assumed that he never attained the literary or professional success in his own time that he might otherwise have; however, his rigorous consistency of principles, without regard for their implications for his personal and financial success, is a quintessential example of cultural libertarianism.

Though more enigmatic than Rothbard, Woody Allen's life and career in film possess, to some degree, the same marks of cultural libertarianism evidenced by Dylan and Rothbard. While political "to a degree," Allen has never focused on political issues per se in his films. "I don't find political subjects or topical world events profound enough to get interested in them myself as an artist," Allen has said. "The history of the world is like: he kills me, I kill him. Only with different cosmetics and different casting... Political questions, if you go back thousands of years, are ephemeral, not important. History is the same thing over and over again."⁸⁷ Although Rothbard would disagree with the idea of political questions being unimportant, he likely would have sympathized with the sentiment that history is essentially a story of violence and that the answer is not to be found in politics.

Just as Bob Dylan has seemingly always been claimed and commodified by his fans, it has been said of Allen that "his followers ascribed to him whatever [political position] they believed in at the moment." But Allen has, for the most part, refused to be co-opted by political groups and causes. His politics, like Dylan's, can be hard to

⁸⁷ Woody Allen, "Spiegel Interview with Woody Allen, *Spiegel Online* (June 2005). <http://www.spiegel.de/international/spiegel/spiegel-interview-with-woody-allen-nothing-pleases-me-more-than-being-thought-of-as-a-european-filmmaker-a-361905.html>.

ascertain. He has said he's apolitical, but also admitted that he could be described as a liberal Democrat. He has campaigned for politicians that Rothbard also supported, but also "gave [his name] to the Clinton people" in the 1990s.⁸⁸ However, like Dylan and Rothbard, Allen recognizes the genocidal capabilities of the state, expressed most often in his films through references to the Holocaust, the "therapy made hilarious" that Allen is known for. While some of his films deal peripherally with political themes, such as *Bananas, Love and Death* (1975), and *Zelig* (1983), others such as *Annie Hall, Manhattan, Midnight in Paris*, and *Blue Jasmine* (2013) deal more with existential themes. Allen says that the things which interest him are the "unsolvable problems: the finiteness of life and the sense of meaninglessness..."⁸⁹ Big-budget action films may still dominate Hollywood, but Allen's work has been an example of something more timeless. Allen cares little for critics or public reception of his movies. Regarding critics, he said, "If they say you're bad, it doesn't mean you're bad. If they say you're good, it doesn't mean you're good."⁹⁰ While not without controversy, Allen has spent his career quietly going about his work, turning out movies "like cookies." While Allen *has* achieved the personal success that seemed to elude Rothbard, it has not been without its challenges. Just as Dylan angered fans by both going electric and later making gospel albums, Allen often follows up commercially successful movies with something else entirely. Rothbard defended Allen in this regard, commenting after Allen's *Stardust Memories* (1980) was met with mixed reviews:

Their [the reviewers'] behavior is ironic, however, because it bears out the thesis of this picture which they have so bitterly condemned: namely, that adoring fans of Superstars can be treacherous, boring, and selfish, and can turn savagely on their idol when he or she fails to live up to their

⁸⁸ Björkman, *Woody Allen on Woody Allen*, 39.

⁸⁹ Evanier, *Woody: The Biography*, 5.

⁹⁰ *Ibid.*, 203.

fantasy-expectations. Again and again, the critics, sensing all too well that Woody considers *them* as part of the problem, have denounced him for treating his fans in this film in cranky and mean-spirited fashion. His fans depicted boorish, ugly, etc. What none of the critics has bothered to ask is: is Woody right? I suspect that he is.⁹¹

Like Rothbard, Allen is always going to produce what he wants to produce, regardless of others' expectations or the ramifications of such creative freedom for his career.

While Rothbard has passed, and Dylan and Allen's most creative years are likely behind them, their contributions continue to entertain, inspire, and perhaps perplex. Rothbard continues to be a major and oft-discussed figure of the libertarian movement. Bob Dylan, nearing eighty, continues to tour and write new music, having produced a corpus of work throughout his life that rivals Rothbard's literary output. The octogenarian Allen likewise continues to simply "do the work," an approach he has consistently taken throughout his career. "I've always kept my nose to the grindstone," Allen says. "All I do is work, and my philosophy has always been that if I just keep working, just focus on my work, everything else will fall into place. It's irrelevant whether I make a lot of money or don't, or whether the films are successful or not. All that is total nonsense and superfluous and superficial."⁹² At its essence, this is the philosophy of Allen, Rothbard, and Dylan.

In terms of the genesis and fairly recent evolution of the concept of cultural libertarianism, I have suggested that we look backwards to see it actually practiced. In assessing the lives of Rothbard, Dylan, and Allen this way, we glean a better sense of what it means to resist undue influence in one's life, and to do so against forces that have little to do with the state. Cultural libertarianism is no addendum or additional "commitment" beyond the non-aggression principle, it is simply another way of looking

⁹¹ Rothbard, *The Complete Libertarian Forum 1969-1984*, 2:964.

⁹² Björkman, *Woody Allen on Woody Allen*, 192.

at *whom* libertarians are resisting. It does not deny legitimate forms of authority, nor does it necessarily imply *libertinism*. Murray Rothbard and Woody Allen lived (and continue to live, in the latter case) fairly conservative personal lives. Bob Dylan certainly spent years in the libertine culture of the 1960s, but this seems to have changed after having children and after his conversion to Christianity. For Rothbard, Dylan, and Allen, there is a clear connection between the freedom of the individual as espoused by Judaism and Christianity, and each of their general worldviews and professional outlooks. Cultural libertarianism, like libertarianism as traditionally understood, proposes a threshold of personal autonomy, but does not take a view on what one does with that autonomy. As Rothbard said, “The concept of ‘morality’ makes no sense unless the moral act is freely chosen...Coercion deprives a man of the freedom to choose and, therefore, of the possibility of choosing morally.”⁹³

⁹³ Rothbard, *For a New Liberty*, 128–29.

DEPARTURISM: GENTLENESS AND PRACTICAL CONSISTENCY IN TRESPASSES INSIDE AND OUTSIDE THE WOMB

Sean Parr¹

Abstract: Libertarians approach the abortion controversy by viewing it through the lens of property rights. In an unwanted pregnancy, then, the fetus is to be seen as a trespasser occupying the premises of the mother’s womb. The prevailing libertarian position in this regard has been that the eviction rights of the mother should not be curtailed. This view, evictionism, maintains as much even when eviction will result in the death of the child in question. But does this property owner/trespasser relationship entail that the mother be legally permitted to act so strongly against the child in the upholding of her property rights? Is gentleness, that basic and NAP-preserving axiom of libertarianism, to be abandoned in such cases? According to the theory for which this paper argues, certainly not.

Keywords: abortion, evictionism, libertarianism, positive obligations, property rights

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“The first to speak seems right, until someone comes forward and cross-examines.”

—Proverbs 18:17

I. GENTLENESS

Gentleness is an element of law, like proportionality, that seeks to preclude the victim of an invasion from acting so strongly against the perpetrator that the victim, too, violates the libertarian code.² The distinction between these two legal aspects is where they stand in relation to an occurrence of initiatory aggression. Whereas gentleness concerns the degree of defense appropriate for use against a perpetrator to halt an aggression while it is taking place, proportionality has to do with proper punishment after the fact. And though it’s generally the case that harsher measures are more likely to be viewed as justified in stopping an invasion *as it is occurring* than in doling out punishment for it *afterward*, a victim cannot simply employ any old means that he wishes in the defense of his rights. Severe responses or overreactions place the victim at risk of falling

² It is the *victim* of a non-criminal invasion on which the gentleness principle places a restraint. This is because it would be libertarianally absurd for a restraint to be placed on any severe measures that the perpetrator might wish to inflict upon himself in the arresting of his own aggression. This should help to clarify confused concerns about there not being “enough ‘gentleness’ to go around” (Walter Block, “Rejoinder to Parr on Evictionism and Departurism,” *Journal of Peace, Prosperity & Freedom* 2 [2013]: 128). It is not egalitarianism but the very definition, the very purpose of gentleness that speaks to “who should be given this benefit” (ibid.); namely, the non-criminal perpetrator.

on the wrong side of the non-aggression principle (NAP);³ violating it to a degree far more egregious than the perpetrator.⁴

Because it is helpful in illustrating this very point (and a few others), the Example of the Inadvertent Misstep is included here below (footnotes omitted), and will be referenced throughout. It highlights the difference between two possible responses on the part of a property owner to aggression directed at his property:

One: an innocent person A, inadvertently sets foot on B’s lawn; B forthwith blows A away with a bazooka. Two: an innocent person A, inadvertently sets foot on B’s lawn; B notifies A of his misstep, and asks him, politely, to please cease and desist, and to avoid such action in [the] future. Only if A refuses to respect private property rights (at which point he ceases to be guilty, merely, of a tort, and now becomes a purposeful criminal, replete with *mens rea*) may B properly employ violence against A. And, even then, the bazooka would not be the first option. If B could remove A from his property in a more gentle (sic) manner... other things equal, B is obliged to do just that, by the libertarian legal code. If B, instead, utilizes the bazooka immediately, he is guilty of murder.⁵

A, in either case, is a non-criminal in his trespass *by virtue of the unintentional nature of the encroachment*. Further, he remains a non-criminal *so long as a respect for private property rights is demonstrated*⁶ (or until such

³ For the uninitiated, the NAP states that invasions against the persons or legitimately obtained property of innocent people is illicit. Too violent a response on the part of the victim in bringing to an end an instance of non-criminal aggression will equate to such an illicit act.

⁴ See Walter Block, “Response to Wisniewski on Abortion, Round Two,” *Libertarian Papers* 3, 4 (2011): 3–4.

⁵ Walter Block, “Rejoinder to Wisniewski on Abortion,” *Libertarian Papers* 32:2 (2010): 3–4.

⁶ It is necessary to establish what, if anything, makes A an innocent person. A, no doubt, is aggressing against B’s property, but, as is pointed out, he is inadvertently doing so. Evictionism, here, suggests that it is this inadvertence of trespass that causes A to be guilty, merely, of a tort, rather than of a crime. So, it seems that one of the factors that determines whether or not an aggressor is to be treated as a non-criminal is if his aggression is

time that he deliberately persists in his property rights violation or is bazooka-ed by B).

Gentleness, then, entails that folks like A, non-criminals, be treated in the gentlest manner possible consistent with stopping their aggression. And from this notion there have spawned two opposing “liberty and private property rights approach[es] to the issue of abortion:”⁷ evictionism and departurism. Each of these approaches acknowledges that the fetus is a distinct, living human being and, further, admits his personhood,⁸ as well as makes the case that if the occupation of a fetus in its mother’s womb is to be viewed as a trespass, then the fetus is to be treated by the mother in “the gentlest manner possible, for the trespasser in this case is certainly not guilty of *mens rea*.”⁹

purposefully initiated. A second factor, it appears, is whether or not this aggressor demonstrates a respect for private property rights (that is, once his occupation of the premises is deemed a trespass, his departure from there begins or continues).

⁷ Walter Block and Roy Whitehead, “Compromising the Uncompromisable: A Private Property Rights Approach to Resolving the Abortion Controversy,” *Appalachian Law Review* 4:1 (2005): 1.

⁸ The evictionist is on record as stating that the fetus becomes invested with human rights only once he is viable outside of the womb (Walter Block and William Barnett, “Continuums,” *Ethics & Politics* 10:1 [2008]: 158). But this is problematic—and not simply because there are no good reasons to believe that it’s true. It implies that the value of a human being is dependent upon something as arbitrary and inconsistent as the medical technology available at the time and in the place that he happens to be in utero. Such a view also calls into question the very reasoning behind developing the evictionist position in the first place. That is, it would just seem superfluous to try to justify the eviction and killing of an organism, like a tapeworm, that has precisely the degree of human rights that the evictionist here claims that the fetus has in the early stages of pregnancy; namely, none. The eviction of such an organism requires no gentleness, no justification whatsoever, and, thus, no need to craft a theory attempting to provide just that. Thankfully, it seems that the evictionist position on this matter has evolved to some degree. Cf. Block, “Response to Wisniewski, Round Two,” 1: The fetus becomes viable not when he graduates from medical school, not at birth, but when “human life begins at the fertilized egg stage.”

⁹ Walter Block, Stephan Kinsella, and Roy Whitehead, “The Duty to Defend Advertising Injuries Caused by Junk Faxes: An Analysis of Privacy, Spam, Detection and Blackmail,” *Whittier Law Review* 27:4 (2006): 925–949.

The feud between these competing views, then, principally stems from a disagreement concerning the constitution of the gentleness principle and what this principle ought to look like when it is properly applied to situations of trespass within the womb.

II. EVICTIONISM

According to evictionism, the mother may not directly kill the unwanted child (e.g., initiate a medical abortion with RU 486),¹⁰ but she may remove him from her premises. And if this eviction happens to necessitate the child’s death—which, given the current state of medicine, it quite frequently does—then “the owner of the land is still justified in upholding the entailed property rights.”¹¹ That is, the mother may kill the unwanted child but only indirectly by eviction.

However, the distinction between RU 486-ing the trespassing fetus and evicting him unto death seems a spurious one. As a matter of fact, when confronted with the reality that the lethal eviction of a trespasser is “tantamount precisely to blowing him away with a bazooka,”¹² the evictionist, without balking, has affirmed, “well, yes, it is,”¹³ and nonetheless deemed it justified.¹⁴ But what, then, if not merely its indirectness, does evictionism view as justifying of lethal eviction?

Here is where gentleness is said to come into play.

According to the evictionist, the indirect killing of the trespassing fetus is brought into accord with libertarianism only via the pre-eviction

¹⁰ Block and Whitehead, “Compromising the Uncompromisable,” 25: “RU 486... which kills and then flushes out the fetus, [should not] be legal.”

¹¹ Block, “Response to Wisniewski, Round Two,” 2.

¹² Jakub Bozydar Wisniewski, “Rejoinder to Block’s Defense of Evictionism,” *Libertarian Papers* 2:37 (2010): 2–3.

¹³ Block, “Response to Wisniewski, Round Two,” 4.

¹⁴ To the evictionist, this lethal eviction is warranted “when there exists [*sic*] no other ways of removing” (Wisniewski, “Rejoinder to Block,” 3) the trespasser. But it is warranted also, and much more radically, in situations like normal, unwanted pregnancies when there, in fact, do exist other ways of removing the trespasser.

notification of the authorities (e.g., “the hospital, the church or synagogue, the orphanage”¹⁵) And why does this notification justify lethal eviction? Because it is said to be a requisite of gentleness. That is, “the ‘gentlest manner possible’ in this case requires that the mother notify the authorities to see if they will take over responsibilities for keeping alive this [unwanted child].” The evictionist reasoning here is quite vague, but it would appear that it relies on the assumption that notifying others before killing a person is gentler than just killing this person. Demonstrating precisely how this notification requirement neither *derives from* nor *constitutes* the gentlest manner possible and, thus, is a positive obligation will be the key to dismantling evictionism as a libertarian theory of abortion. Such, however, is a project for a later section of this paper.

In any event, evictionism holds that once the notification of others has occurred, eviction is fair game. The mother then is within her rights to evict the unwanted child from her womb because, and despite the fact that, it is the alleged gentlest manner possible that “implies the death of this very young human being.”¹⁶

While evictionism twists the principle of gentleness into permitting the very sort of NAP-violating overresponse which is its purpose to prohibit, departurism stands firm in its pure comprehension of gentleness as “the least harmful manner possible”¹⁷ wholly consonant with seeing an end to the aggression.

III. DEPARTURISM

What, then, is departurism? Briefly, it is a theory of abortion that considers the relevant conditions of an unwanted pregnancy in order to arrive at the correct and practically consistent application of the gentleness

¹⁵ Block, “Response to Wisniewski, Round Two,” 2.

¹⁶ *Ibid.*

¹⁷ *Ibid.*, 3.

principle in situations of trespass inside the womb and similar situations of trespass outside the womb.¹⁸ Departurism thus maintains that the fetus is not simply morally innocent of his trespass, but morally innocent on the grounds that he is incapable of human action. Moreover, departurism affirms that such a fetus retains his non-criminal status throughout pregnancy because the very process of gestation, by its innately certain and temporary duration,¹⁹ ensures that property rights are being respected.²⁰ In instances, then, when the mother’s life is not imperiled and when the eviction of this fetus equals his death, gentleness entails that the mother allow for him to carry on that which he is already doing: leaving her premises.

In short, like evictionism, departurism holds²¹ that the mother may evict but not kill the unwanted child in her womb, but, contrary to evictionism, neither may she kill him by eviction. This means that departurism does not view the uterine-eviction of a child as *per se* incongruous with libertarianism. That is, it is only the lethal (or otherwise debilitating) eviction of a fetus during a normal pregnancy that departurism views as discordant with gentleness and, thus, a violation of the NAP. This flexibility, which demonstrates just how moderate a position departurism actually is, will permit the non-lethal eviction of a fetus for the purpose of the *reasonable* upholding of the mother’s property

¹⁸ When this paper refers to situations of trespass outside the womb it does not mean abnormal, extrauterine pregnancies. Rather, it is referring to instances of trespass not at all occurring inside the body of the mother or any other person.

¹⁹ The duration of pregnancy is nearly always between 0 and approximately 37 to 42 weeks.

²⁰ All that is meant here and throughout by the notion of “respecting private property rights,” or some different way of phrasing this same sentiment, is that proper deference is, in some manner, being displayed with regard to them as evidenced by a marked discontinuation of their violation (e.g., an inadvertent trespass in the process of being brought to an end).

²¹ Under the conditions specified in the departurist argument.

rights²² and as the gentlest means of effecting his removal in the event that the unfettered natural course of fetal departure proves the more harmful alternative (such as those situations requiring a cesarean section).

(a) The Place of Departurism in the Libertarian Abortion Controversy

Before any warrant is provided for the departurist thesis, or potential objections to it addressed, it will be helpful to highlight some of the serious challenges to the evictionist position that are posed by and unique to departurism. While there is nothing novel in the departurist criticism that the lethal eviction of a trespassing fetus fails to live up to the principle of gentleness, precisely how it fails to do so, as well as its reliance on a less slipshod analogy, are just two of a number of concerns solely broached by the departurist position.

Departurism, further, has recognized in the libertarian anti-abortion literature a dearth in attempts to defend, from a property rights perspective, unwanted pre-birth children who are the result of rape from the NAP-violating reactions of their mothers. The departurist view takes account of these neglected persons in an effort to address this deficiency. To wit, departurism holds that placing importance on whether or not a trespassing fetus is the result of consensual intercourse (e.g., “one’s

²² See Block and Whitehead, “Compromising the Uncompromisable,” 28: “With advanced medical technology, based on [future breakthroughs], it is extremely likely that a greater and greater number of fetuses will be able to be safely transported from the (original) mother’s womb to another safe and supportive place.” Departurism thus would allow for a trespassing fetus to be transferred to another womb, natural or artificial, so long as this did not constitute an action on the part of the mother that was significantly more harmful than necessary in bringing the fetal trespass to an end. This has been the departurist view from the jump (see Sean Parr, “Departurism and the Libertarian Axiom of Gentleness,” *Libertarian Papers* 3:34 [2011]: 1-18, at 14), however sloppily articulated, but not until this paper has the notion of permitting the gentleness-upholding eviction of the unwanted child been incorporated into the departurist argumentation scheme.

[voluntary] actions”²³) only confounds what is rightly understood as an issue solely of warranted versus unwarranted response to non-criminal aggression.²⁴ Whether an unwanted child is the product of rape (or of incest, or is malformed) does nothing to affect his non-criminal status. In other words, gentleness is equally accessible to all fetuses because “they are all equally innocent.”²⁵ This, of course, is not to imply that all unwanted pre-birth children are due the *same* treatment at the hands of their mothers. The degree of severity necessary in the treatment of a fetus (wanted or unwanted) whose occupation of the womb seriously endangers the life of the mother would be more than is appropriate, nay, more than is compatible with libertarianism, in dealing with a fetus whose occupation represents a mere trespass.²⁶

Additionally, departurism points out a critical failure of evictionism as a libertarian theory namely, the evictionist notification requirement (ENR)—which is what is intended to square the theory with gentleness and, so, with libertarianism—places an arbitrary, positive, and, so, unlibertarian obligation on the mother.

(b) The Departurist Argument

Departurism is perhaps best explained, justified, and defended by means of the following argumentation scheme, where S_1 represents the situation of a trespasser who is (a) incapable of purposeful behavior, (b)

²³ Stephan Kinsella, “How We Come to Own Ourselves,” Mises Daily, September 7, 2006, par. 16, <https://mises.org/library/how-we-come-own-ourselves>.

²⁴ There seems to be no warrant for the proposition that, depending on how they come to find themselves in situations of aggression, only particular non-criminals should be subject to gentleness while others should not.

²⁵ Block, “Response to Wisniewski, Round Two,” 8.

²⁶ And this according to Block, “Rejoinder to Parr,” 132: “Most of the time, violations against property rights in the person are more important than those which attack non-person property rights.”

in the process of departing the property owner's²⁷ premises, (c) not jeopardizing the proprietor's life via aggression against his property rights in the person²⁸ and where, (d) eviction from said premises would necessitate the trespasser's death,²⁹ and S_2 represents the situation of an unwanted child in his mother's womb. Also, let A represent the continued departure of the trespasser until such time that eviction no longer entails his death.³⁰

- 1) The course of action that libertarian legal theory ought to endorse in S_1 is A .
- 2) S_2 is relevantly similar to S_1 .
- 3) Therefore, the course of action that libertarian legal theory ought to endorse in S_2 is A .

This argumentation scheme represents an argument from analogy and serves a few purposes. The first of these is to set the appropriate comparison. For the evictionist insistence that the fetus is analogous to your everyday, run-of-the-mill trespasser³¹ simply will not do—as it will lead us to conclusions about unwanted pregnancies that are problematic. To wit, such an unnuanced likening might cause us to err that unwanted womb-aged children are fit for treatment typically reserved for ordinary

²⁷ We can add, also, that this property owner knows (or, in any event, can be reasonably expected to know) that the trespasser in this instance is incapable of purposeful behavior.

²⁸ Any situation, then, in which the proprietor's life *is* at stake will constitute a different situation than S_1 and thus may call for a different course of action than A .

²⁹ The specific conditions of S_1 , but particularly that the trespasser is *in the process of departing the property owner's premises* and *not jeopardizing the proprietor's life via aggression against his property rights in the person*, may well be sufficient to differentiate it from, say, a situation involving an unconscious violinist requiring an odd form of emergency renal dialysis.

³⁰ It is the view of departurism that A entails that the property owner *allow for*, and not *ensure*, the continued departure of the trespasser. The property owner is not obliged to facilitate this trespasser's departure.

³¹ Block, "Response to Wisniewski, Round Two," 2: "The relation of the fetus to the mother is akin to the one that obtains between the ordinary trespasser and the owner of the property in question."

trespassers; criminals.³² The departurist view therefore takes into account the unique characteristics of an unwanted pregnancy, maintaining that it constitutes no standard instance of trespass. The idea is that when the appropriate comparison is made, it is all the more clearly demonstrable that evicting the trespasser unto death—whether inside or outside the womb—is anything but the gentlest manner possible of ending the aggression. It is aggression itself. And to a much more terrible and unjustifiable degree.

A second purpose of the above argumentation scheme is to elucidate the precise conditions of a situation of trespass that must be present in order for the departurist course of action to be applicable. This will reduce and limit the effectiveness of any attempts at *reductio* which might be leveled against departurism.

The third and final purpose for including the departurist argumentation scheme is to ensure an organized approach in providing warrant for each of departurism’s principal contentions. Such an approach will also permit the systematic presentation of possible criticisms of this paper’s thesis followed by the departurist response to them.

IV. PREMISE ONE

(a) The Conditions of S₁

³² The endeavor is to make the notion of trespass inside the womb less fuzzy (and our assessment more accurate) by incorporating the relevant conditions of such a trespass into our analogy, applying them to similar and more familiar situations in which the proper libertarian course of action might more readily present itself. We can then glean from these relevantly similar trespasses outside the womb what gentleness will entail in situations of unwanted pregnancy—as the trespasser must be subject to the same treatment in both cases. And this on the basis of the requirement of practical consistency which will not allow for a case to be treated differently if the compared cases are similar to each other in all relevant respects (see Douglas Walton, *Informal Logic: A Pragmatic Approach* [New York: Cambridge University Press, 2008], 306).

Before attempting to show what the proper libertarian approach should be in S_1 , it's helpful to first illustrate what such a situation of trespass might actually look like (see Figure 1). In formulating such an illustration (which is just one of a number of possible expressions of S_1) we must, to begin with, posit a property. A property that, for the purposes of our analogy, abuts a cliff on one of its borders; its southern border, say.

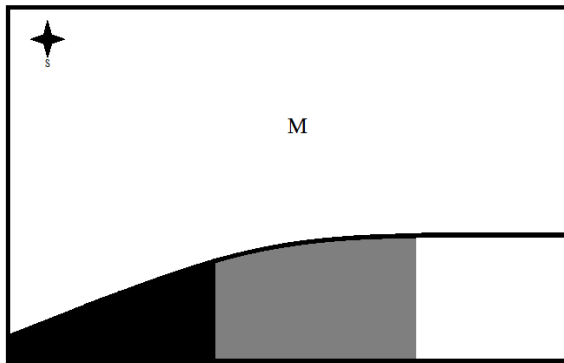


Figure 1

The owner of this property, M , is aware that a fall from this cliff would more than likely prove fatal. Certainly fatal, if it occurred toward the western end of the premises where the height differential from cliffside to terrain below is the most severe (the black area); not fatal at all, if it occurred toward the eastern end of the premises where the height differential from cliffside to terrain below is the least severe (the white area); and possibly fatal, if it occurred somewhere in between these two ends (the gray area).³³

³³ Whether or not a fall from the gray area is fatal depends on the technology available at the time to prevent it from becoming so. To wit, 1000 years ago the gray area would have been all black; 1000 years from now, with technological advances, the gray area will be all white. Currently, falls from the gray area are more likely to result in death and serious injury the closer they are to the black area, and less likely to result in the same the closer they are to the white area.

Let’s imagine that M is, say, gathering vegetables from the on-site garden when F is perceived as a trespasser.³⁴ F is morally innocent of his trespass because he is *incapable of purposeful behavior*; F cannot know that he is trespassing. It could be the case that F is a very young child which, continuum problems notwithstanding,³⁵ is incapable of making informed decisions. Or perhaps F is a full-grown adult in an altered mental state (e.g., suffering from hypoxia, hypoglycemia, traumatic brain injury, ethanol toxicity, Alzheimer’s, etc.). We could just as easily settle on a person of any age with pronounced Down’s Syndrome or Intellectual Disability. As far as concerns F’s non-criminal status, it makes no difference (see Figure 2).

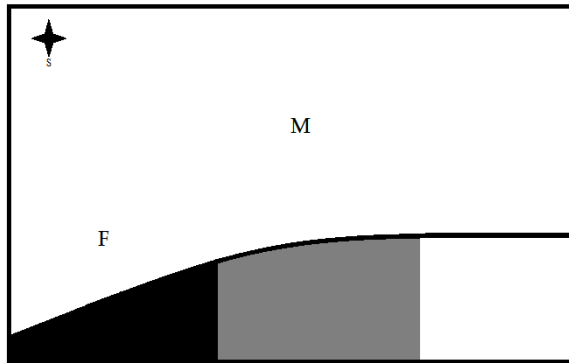


Figure 2

Now, it could be the case that F was once M’s guest but now, as the result of a rescinded invitation, is no longer welcome.³⁶ Or perhaps F was

³⁴ Importantly, the duration of F’s trespass is wholly dependent upon when, or the point at which, M acknowledges F as a trespasser and when, or the point at which, F’s trespass ceases. This cessation of trespass could be the result of M no longer acknowledging F as a trespasser, M evicting or otherwise having F removed from the property, M bazooka-ing F, or F departing the premises.

³⁵ Block and Barnett, “Continuums,” 157.

³⁶ There seems to be no reason that F could not be M’s own child. There’s nothing in evictionism to suggest that post-birth children of any age are immune from the evicting whims of their parents.

abducted by villains and has been heaved onto M's premises. As a matter of fact, F's presence on M's property might well be a necessary condition of his very existence. As far as concerns F's non-criminal status, it makes no difference.

Further, F, in this instance, is not obstinately sitting crisscross-applesauce aside M's garden. He is *in the process of departing the property owner's premises*; steadily travelling eastward off M's property.³⁷ It could be the case that F is an unwitting passenger on a moving walkway that runs along the extreme southern perimeter. Or perhaps F is being driven by hurricane-force winds. As a matter of fact, F might very well be in the throes of dementia and reliving what he takes to be his heady days as a civil servant in the Ministry of Silly Walks. As far as concerns F's non-criminal status, it makes no difference (see Figure 3).

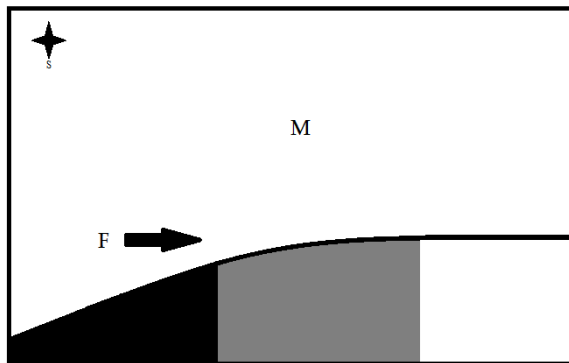


Figure 3

We might also add that F is engaged in an aggression only against M's property rights in external things and is *not jeopardizing the proprietor's life*

³⁷ We might, if we wished, posit that F is further aggressing against M's property by instinctively eating some of the garden vegetables as he proceeds eastward. An aggravating aggression, to be sure. But, like his current trespass, an inadvertent, property-directed one that is in the process of ending and is not justly ended sooner by the quashing of F's innocent life.

via aggression against his property rights in the person. F is not, as could be the case, crazily brandishing an assault rifle and zipping off shots willy-nilly in all directions. F is not, as is perhaps possible, clutching a basket of grenades and chucking its contents one-by-one this way and that. As a matter of fact, F is not doing anything at all that could seriously threaten the life of M.³⁸

S₁, then, is concerned primarily with evictions of trespassers like F, on premises like those belonging to M, from the black area where *eviction from said premises would necessitate the trespasser’s death* (and those from the gray area which, if they didn’t necessitate the trespasser’s death, would result in serious injury and nonetheless constitute a monstrous overresponse on the part of the property owner).

(b) The Course of Action

Before the departurist-proposed course of action is discussed, it’s helpful to again consider that which evictionism would proffer as the gentlest manner possible consistent with stopping F’s trespass.

Curiously, what fits the libertarian bill according to the evictionist is *not* that M be legally prohibited from killing F in response to his unwitting violation; M, in fact, may kill F. But if M does so anywhere on the premises directly, or indirectly without first telling someone about it, well, that’s

³⁸ Were F doing such, M would be justified in employing much harsher means to end the aggression than would otherwise be appropriate for use in S₁, and as soon as is necessary, in defense of M’s life. To spell it out: If it’s a choice between the proprietor’s and the trespasser’s life, departurism’s nod would not go to the latter in such a case. The property owner, if he chose to do so, would be justified in tragically killing the trespasser. And this, yes, as an exercise in gentleness: employing measures against a non-criminal in defense of one’s rights the severity of which is appropriate for ending the aggression to be combated. This, again and obviously, has everything to do with “a rights-based libertarianism” (Block, “Rejoinder to Parr,” 129).

murder.³⁹ If, however, M perceives poor F as a trespasser, notifies others of his impending eviction, and then proceeds to shove him headlong off the cliffside while he happens to be situated toward the western end of the premises, well, that's justified killing.

The present target is to demonstrate the madness required in maintaining the evictionist position: one must champion (as a gentle manner, nay, as *the gentlest possible manner!*) the proposition that innocent people who don't even know that they are trespassing, from the imbecile to the senile, can be lawfully killed despite their not threatening the lives of the property owners whose premises they happen to be vacating. This is nothing if not a textbook example of the very response on the part of the victim that gentleness was placed into libertarian law so as to preclude.

This can't be right. And it isn't.

What, then, is the course of action that libertarian law ought to endorse in S₁? What reaction on the part of the property owner will see an end to the aggression and not represent a much more heinous violation of the NAP than that which has been initiated by the trespasser?

The simple, rational, and singularly libertarian departurist position is that M be precluded from evicting F from the premises when doing so represents a degree of severity inappropriate for bringing to an end this particular situation of trespass. That is, if M perceives F as a trespasser while F is situated toward the western end of the premises, then M must allow for *the continued departure of the trespasser until such time that eviction no longer entails his death*. The property owner must allow for A.

The important issue when considering the evictionist and departurist courses of action is which of them better comports to the principle of gentleness. The answer is uncontroversial. Departurism's means are consistent with stopping the aggression, and this by the evictionist's own

³⁹ "Well, murder with an asterisk. That is, [M] is guilty only of a lesser crime, perhaps manslaughter, since [M] is not the initiator of the violence, [F] is." (Block, "Rejoinder to Wisniewski," 4).

admission,⁴⁰ and comparatively less harmful than evictionism’s means (e.g., they don’t entail that the non-criminal perpetrator be subjected to unwarranted life-taking or NAP-violating violence of any kind). So, then, it’s clear that, at least in relation to departurism, evictionism *cannot* constitute the gentlest manner possible. And it is for this reason that *A* should receive the endorsement of libertarian law.

(c) Objections from Gentleness

Objection: Departurism elevates gentleness to a basic premise of libertarianism, and to do so “is to very seriously misconstrue this philosophy. Libertarianism is based, rather, on the [NAP] coupled with private property rights based initially on homesteading.”⁴¹

Departurism views gentleness in precisely the same way that evictionism at least pretends to: as, in the evictionist’s words, “a basic axiom of libertarianism”⁴² that comes into play “when it comes to the question of how to deal with [non-] criminals, trespassers”⁴³ (that is, *now*; it comes into play *presently*). The entire point of gentleness is to prevent victims from violating the NAP in the defense of their rights. The evictionist admitted as much when he pronounced: “From whence, then, does [gentleness] spring? I contend that it stems from the [NAP].”⁴⁴ Foregoing gentleness, harming non-criminal perpetrators more than is necessary, *just is* to violate the NAP.

⁴⁰ Block, “Rejoinder to Parr,” 131: “I agree... that ‘gestation constitutes a process that works to affect the cessation of property-directed aggression.’”

⁴¹ *Ibid.*, 127.

⁴² Block, “Rejoinder to Wisniewski,” 3.

⁴³ Block, “Rejoinder to Parr,” 127.

⁴⁴ Walter Block, “Evictionism is Libertarian; Departurism is Not: Critical Comment on Parr,” *Libertarian Papers* 3, 36 (2011): 5.

Objection: Departurism doesn't uphold the eviction rights of property owners.

According to the evictionist, non-criminal perpetrators are due gentleness, sure, but "provided, only, that the rights (sic) of the property owner to evict trespassers is upheld."⁴⁵ And by this, of course, he means the right to kill them by eviction where such is unnecessary to end their trespass. However, to tout gentleness before offering such a proviso

is something like saying, "I'm all for monogamous relationships. Provided, only, that either member of them is free to date other people." Such would be defining monogamy in a way that absolutely precludes a relationship with only one person at a time.⁴⁶

In like manner, evictionism attempts to preempt departurism from the jump by implying that non-criminals aren't really due gentleness at all (or that the only legitimate gentleness is that which allows for the total effacement of the distinction between the treatment of criminal and non-criminal aggressors). Evictionism has elsewhere employed similar verbiage if not to likewise settle the debate by definition—leaving no place *in* gentleness *for* gentleness—then to make itself into an ever-shrinking target. For example, where once it was the evictionist's conviction that the property owner must remove the trespasser in the gentlest manner possible consistent with stopping the aggression, now and suddenly the evictionist holds that the property owner must do so in the gentlest manner possible consistent with "retaining full rights over his own property."⁴⁷ But what the evictionist implies by this latter comprehension is really just a way of telling the NAP to go kick rocks. Retaining full rights over one's own property does not mean that one may cliff-toss F when less

⁴⁵ *Ibid.*, 2.

⁴⁶ Sean Parr, "Departurism Redeemed—A Response to Walter Block's 'Evictionism is Libertarian; Departurism is Not: Critical Comment on Parr,'" *Journal of Peace, Prosperity & Freedom* 2 (2013): 112.

⁴⁷ Block, "Rejoinder to Parr," 126.

injurious means exist of affecting his removal. Prohibiting people from violating the NAP may infringe on their right to kill folks without proper warrant on their own property, but said prohibition is nonetheless licit – at least for the libertarian.

Then there is the further evictionist claim that “innocence must not be allowed to prevail over private property rights,”⁴⁸ The departurist’s point is not that *innocence* must prevail in this instance, but *the NAP*. In other words, when all of the conditions of S_1 are met, the right of the property owner to evict the trespasser should and must be curtailed when the former means to deal with the latter “more severely than libertarian punishment theory allows.”⁴⁹ To refuse to acknowledge this is just to proceed as though gentleness serves no purpose, or wish that it had no place, in libertarian law.⁵⁰

The evictionist view is well understood. It does not support the gentlest manner possible in S_1 because allowing for A would prevent the property owner from evicting the trespasser *right now!* or precisely when he might wish to. Departurism, on the other hand, indeed supports the eviction rights of property owners provided, only, that the libertarian axiom of gentleness and, thus, the NAP are not violated.

(d) Objections from Positive Obligation

⁴⁸ Ibid., 128.

⁴⁹ Ibid., 132.

⁵⁰ The vehemence with which the evictionist has repeatedly attempted to make fatuous this principle is curiously self-destructive given that he has staked the libertarianism of his entire theory on it (remember, the ENR is said to be entailed by the gentlest manner possible). As it turns out, the meaninglessness of the evictionist conception of gentleness is matched only by the pointlessness of its subsequent use of the principle to justify its libertarian *bona fides*.

Objection: Allowing for *A* is to place a positive obligation on the property owner. As “there are no positive obligations in the libertarian lexicon,”⁵¹ departurism has no place in libertarian law.

Both departurism and evictionism entail a requirement that *S*₁'s property owner withhold the eviction of the trespasser for some length of time. That duration represents, for the former, the amount of time required for *F*'s continued departure to reach the point at which his eviction no longer necessitates a NAP-violation, and, for the latter, the amount of time required for *M*'s notification of the authorities.

Whether or not either of these requirements place a positive obligation on the property owner is arrived at not by attempting to measure the time liability incidental to fulfilling each requirement, but by simply discerning the genesis of these requirements. That is, it is irrelevant whether or not it takes only a trifling amount of time for *M* to notify others of *F*'s imminent and fatal ousting. If this notification requirement is a positive one, whether it be snappily satisfied or drawn out over the course of a decade, it is anathema to libertarianism. What then must generate these requirements if their associated theories are to jive with libertarianism? Well, if the departurist or evictionist requirements originate from and are applications of the gentleness principle, they cannot be positive obligations. Again, this is what the evictionist himself has laid down as the rules of the game: “The ‘gentlest manner possible’ ... requires that the mother notify the authorities to see if they will take over responsibilities for keeping alive this [unwanted child].”⁵²

In light of this, it is fairly easy to consider departurism's requirement and conclude that in this instance it does not simply derive from the

⁵¹ Walter Block, “Libertarianism, Positive Obligations and Property Abandonment: Children's Rights,” *International Journal of Social Economics* 31:3 (2004): at 281.

⁵² Block, “Response to Wisniewski, Round Two,” 2.

principle of, but *just is*, the gentlest manner possible.⁵³ That is, allowing for F to continue his departure is imposing no positive obligation on M. And this for the same reason that the prohibition on bazooka-ing Innocent Person A is imposing no positive obligation on B: such is necessary in order that the victim in either case avoid violating the NAP. In other words, allowing for A is a requirement of gentleness exercised so as to have the victim’s response to the perpetrator’s aggression comport with libertarian law.

Now let us establish how evictionism weathers this particular storm. Does the ENR constitute a positive obligation? Well, in short, yes. This accusation, of course, carries with it a serious consequence, for if it hits its mark evictionism is doomed as a libertarian theory. Demonstrating the failure of evictionism is difficult, but only because the evictionist has, deliberately or not, rather obfuscated the libertarian justification for his notification requirement.⁵⁴

A comprehensive look into the view shows that the evictionist has concealed his theory’s fatal flaw in the dust cloud kicked up by two dancing analogies. And here we do well to separate our analysis of the issue into two parts: (1) navigating through this fog of analogies so that

⁵³ If not the gentlest manner possible, then, at a minimum, it can certainly be said of departurism’s means that they employ less harmful measures to stop the trespass than evictionism’s means.

⁵⁴ Without even treading terribly far into the weeds it’s apparent that the evictionist is in trouble. He has recognized that something is amiss with his theory’s notification requirement. To this end, the evictionist has in effect beseeched libertarian law to turn a blind-eye to his view’s predominant shortcoming. “If [the evictionist is] indeed guilty of making an exception to the general libertarian stricture against positive obligations, it is a very narrow and limited one” (Block and Whitehead, “Compromising the Uncompromisable,” 36). But, of course, exceptions cannot be made. And though the evictionist “strenuously argued that this required does not constitute a positive obligation” (Block, “Response to Wisniewski, Round Two,” 2), it will be shown that this strenuous argument fails.

we can, at last, (2) consider just how the ENR relates, if at all, to the gentleness principle.

(1) The Problem of Analogy

So, what are these analogies?

The first is the one claimed by evictionism, that an unwanted child is to a mother what a trespasser is to a property owner.

The second is the one smuggled into evictionism, that an unwanted child is to a mother what physical land⁵⁵ is to a property owner.

This second analogy, which is supposed to somehow impart or transmit legitimacy to the notification requirement of the first, concerns not the eviction of trespassers, but the homesteading of property. To explain: it is the evictionist view that territory “cannot be homesteaded in a manner that shuts off virgin [or, more to the point, relinquished] land to the activities of other people, as in the form of a bagel or donut with a hole in the middle of it”⁵⁶ and, for the same reason, a child cannot be abandoned “sans notification to the proper authorities.”⁵⁷ That is, such would be an example of the illicit preclusion of others from “accessing that which is no longer... wanted, the land in one case, the baby in the other.”⁵⁸ Failing to notify others is failing to give them a chance to care for a no longer wanted child, which is equivalent to preventing folks from homesteading the relinquished land that comprises the hole in the donut.

It’s the evictionist view that this notification requirement does not place a positive burden on the property owner/mother:

Must the man who wishes to abandon the interior portion of his land notify others of his act? Yes. And this follows not from any positive

⁵⁵ Well, a particular configuration of unwanted physical land.

⁵⁶ Block, “Rejoinder to Parr,” 133.

⁵⁷ Ibid.

⁵⁸ Ibid.

obligation whatsoever, but rather from the logical implication of what it means to abandon something. You cannot (logically) abandon something if you do not notify others of its availability for their own ownership.⁵⁹

If others have not been made aware of the availability of that which is no longer wanted (let’s call it P), then P is not *really* available for homesteading because ownership over it has not in fact been relinquished; it is still under the absentee ownership of the proprietor (O) who has failed to notify others of its supposed availability. O, then, has “not yet succeeded”⁶⁰ in abandoning P.⁶¹ This equates to a *definitional justification* of the notification requirement in that, in the absence of notification, abandonment simply does not take place. One needs to notify to abandon.

This is fine and there is nothing at this time to say against it. For argument’s sake, it’s licit to require a mother⁶² to notify the authorities prior to giving up her kid. It is an alright theory on the subject of property homesteading. But what on earth has it to do with trespasser eviction; with the first analogy on which the evictionist thesis relies? Briefly, nothing. But this will not stop the evictionist from ascribing to trespasser evictors what is rightly applicable only to property abandoners.

⁵⁹ Block, “Children’s Rights,” 279 (footnotes omitted).

⁶⁰ Ibid.

⁶¹ It’s unclear and, in any event, not germane to the discussion whether or not O *must* advise others of any and every P. In other words, it’s a bit irrelevant for our purposes to consider if proper homesteading entails that property owners relinquish control over property, anything they own, that they no longer want or use (which would seem to criminalize the notion of absentee ownership). The important point is that O must make P available for new ownership *if he abandons it*, and abandonment is accomplished only via the notification of others. And if O does fail to notify others of his intent to abandon P, of P’s homesteadability (whether or not this omission is itself an illegitimate act), and then proceeds as though he has actually abandoned it, then he is responsible for any negative outcome that may ensue as a result of his neglect (see Block, “Children’s Rights,” 282).

⁶² The term *mother* is consistently used in lieu of *parents* due to the fact that in homesteading theory the mother’s rights are weightier than the father’s “in that she did far more of the ‘work’ of gestating the baby than did the father” (Block, “Children’s Rights,” 284).

Pay close attention because here comes the Ol' Switcheroo (or is it the Kansas City Shuffle?). The evictionist would have it that even pre-birth children (fetuses) fall prey to this second analogy. They, too, are to parents what no longer wanted donut hole land is to property owners. Claims the evictionist, "the exact same analysis holds."⁶³ So, the evictionist requirement that M withhold eviction for the duration of notification is not, by this understanding, a positive obligation.

"But wait a tick, were not pre-birth children (fetuses) to be viewed as *trespassers*?"⁶⁴ Did not the evictionist state that "the relation of the fetus to the mother is akin to the one that obtains between the ordinary trespasser and the owner of the property in question"⁶⁵? "Is it not *this* analogy that is the thrust of the entire evictionist thesis?"⁶⁶ And when we return to considering this first analogy, the unwanted child as trespasser, the haze begins to lift as we dwell on notification: why it's required for homesteading and why it's gratuitous for eviction. The debilitating trouble concerns that which the evictionist holds as justifying of notification in each analogy; that of which notification is said to be a requirement.

For trespasser eviction, it is the principle of gentleness.

For property homesteading, it is what proper homesteading means.

However, in order for the second analogy to rescue the first, these justifications would have to be *identical*, or else an argument would have to be made that the notification of others is part and parcel not only of "the rights/responsibilities of owning property in the first place,"⁶⁷ but also of evicting trespassers. It is thus only in a strange world that evictionism's notification requirement is not a positive obligation. A world in which

⁶³ Block, "Critical Comment on Parr," 7.

⁶⁴ Parr, "Departurism Redeemed," 116.

⁶⁵ Block, "Response to Wisniewski, Round Two," 2.

⁶⁶ Parr, "Departurism Redeemed," 116.

⁶⁷ Block, "Children's Rights," 280.

property owners are capable of abandoning the trespassers on their premises so that these perpetrators may be made available for ownership. A world in which evictions that actually take place can be said to have never really occurred because nobody was told about them. A world in which the idea of absentee trespasser evictors is not nonsense on stilts.

To make it plain, there is *no* definitional justification of the notification requirement in which, in the absence of notification, eviction does not take place. One need not notify to evict. This means that notification is *not* a requirement for eviction in the same way that it is for homesteading. And it must be if the evictionist position is to be a coherent one.

This fact presents very little wiggle room for the evictionist. He has no choice but to keep the notification requirement. Without it, the first analogy’s evicting action is reduced to unjustified homicide and the second analogy’s relinquishing action to neglect—the result of which is either abuse (and potentially murder) in the case of children, or merely weeds and dilapidation⁶⁸ in the case of physical land. The only question now concerns the analogy to which the evictionist opts to adhere, unwanted child as trespasser or unwanted child as no longer wanted donut hole. And this is the conundrum. If he adheres to the former, his theory will break under the weight of its positive obligation. If he adheres to the latter, he loses his theory altogether because without a *trespasser to evict* there simply is no *eviction to -ism*. In other words, because there is no way of excising the notification requirement, evictionism must either die the death of positive obligation or else (forgive the pun) abandon eviction altogether, and so vamoose from the libertarian literature.⁶⁹

⁶⁸ Or if proper homesteading requires that one must abandon all that he owns but no longer wants/uses, then non-notification would represent a purely illicit act, the equivalent of land theft. This, again, is fuzzy, and ostensibly problematic to the legitimacy of the concept of absentee ownership, but thankfully beside the point.

⁶⁹ If this does not constitute a knockdown argument against the evictionist position, then it nonetheless convincingly makes the case that evictionism cannot be stomached by

Of course, however, the evictionist is not without a life vest—well, a pair of life vests; contingencies upon which to rest in the event that his theory is capsized by the problem of analogy. By engaging in this first maneuver, which acts more as an anchor than a buoy, he is doing a bit of damage control. The evictionist reasoning here is that even if the astute recognize the implications of the departurist critique of the ENR—that it is a positive and pointless obligation—the prevalence of this requirement’s arbitrariness can nonetheless be minimized. To this end, the evictionist now holds that notification is really only a characteristic of S₂:

There is an important distinction between an adult trespasser and an infant one: the former can take care of himself, the latter is helpless without adult supervision. The question of notification simply does not arise in the first case, it is of the greatest moment in the second.⁷⁰

The evictionist here is again guilty of straddling both analogies. Yes, if we are in relinquished donut hole territory, parents don’t need to inform anyone of their wish to relinquish control of their grownup kids who can provide for themselves just fine (because the latter, as full self-owners, are no longer under the control of the former). But in eviction territory, we’re not trying to convert our non-criminal trespasser, infant or otherwise, from unowned into owned property. We’re trying to make him scam without breaking the libertarian rules. In any event, the supposed important distinction cited by the evictionist vanishes once we realize that F, to begin with, isn’t necessarily an adult and, more significant, is akin to a pre-birth child in a manner most relevant: he is incapable of purposeful

libertarianism and, consequently, is a theory which, when henceforth referenced, ought to be placed within quotation marks or else precede an asterisk.

⁷⁰ Block, “Rejoinder to Parr,” 133. Is the evictionist here saying that if a person can look after himself, then a property owner doesn’t have to comport this person’s removal with the NAP via pre-eviction notification? Do self-owners have no expectation of justice in an evictionist libertarian society?

behavior. The evictionist’s attempt to draw out this alleged distinction falls flat on its face.

The evictionist’s second fallback position, which camouflages itself quite well as a defeater of the above departurist critique, is that “an analogy is merely a story that attempts to explain, to clarify, an otherwise complicated issue.”⁷¹ The second analogy, thus, was strictly used “so as to elucidate the concept of forestalling.”⁷² The chess move here is to imply that departurism takes all of this analogy business far too seriously.⁷³ The evictionist wasn’t really making a case for anything, he was just making “an attempt at explication.”⁷⁴ This line represents a rather clever tactic on the part of the evictionist, as it’s no secret that “analogies are often used nonargumentatively, for example...to explain something unfamiliar by comparing it to something more familiar.”⁷⁵ But is this what the evictionist has done, used a nonargumentative form of analogy? Or has he succumbed to the above-described problem of analogy by committing himself to something more formal?

Now, reaching a verdict here is not intractable. There is, luckily for us, a means by which we can discern between the forms of analogy and assess whether or not the evictionist was innocently employing a comparison for clarity’s sake.

When approaching any corpus, a first question is always to ask what is the conclusion, or if there is a conclusion to be established by the arguer.

So in this instance too, it is well at the first point of examining a corpus

⁷¹ Ibid.

⁷² Ibid.

⁷³ At the outset, the evictionist attempted to preempt any criticism of his requirement by asking that an exception be made for it. *Even if my theory contains a positive obligation, it’s only a little one*, the appeal went. Now, confronted with the reality that eviction is not given meaning by notification, he has, in like manner, tried to downplay the significance of being caught out. *Even if there is a disconnect between my analogies that spells a dark result for my theory, I wasn’t making a proper analogy anyway*, the entreaty goes.

⁷⁴ Block, “Rejoinder to Parr,” 133.

⁷⁵ Walton, *Informal Logic*, 311.

containing an analogy to carefully distinguish whether there is an argument from analogy or whether it is an instance of the nonargumentative use of analogy.⁷⁶

So, what are we to make of the fact that the evictionist deigned to chronicle the legitimacy of the notification requirement in the homesteading of property? Did he do this simply as a fun and educational excursus? Or was the matter detailed in order to *argue, make the point, conclude* that the notification requirement should likewise be licit in the eviction of trespassers?

To ask this question is to answer it. That the evictionist would run away from the very point that he is trying to make by claiming a nonargumentative form of analogy shows just how devastating the departurist critique of his view is and the desperate lengths to which he will go, scrambling in vain, to keep his sinking theory afloat.

(2) *The Problem of Origin and Constitution*

Now that we've shed the analytical burden of juggling two analogies, we can refocus our attention on notification *vis-à-vis* gentleness. There are two points to make in this regard.

First, as we've just seen, the ENR does not *derive from* the gentlest manner possible. The evictionist, from one side of his mouth, will *claim* that it does—because he recognizes that it must so derive for his theory of trespasser eviction to be a libertarian one—but, from the other side of his mouth, he will revert to the second analogy and concede that this notification requirement stems, rather, from the homesteading of property and has nothing whatever to do with the gentleness principle nor, even, with the eviction of trespassers.

⁷⁶ *Ibid.*, 312.

Second, the ENR does not *constitute* the gentlest manner possible. How could it?⁷⁷ There’s nothing about curbing overly violent responses to non-criminal trespass that entails the pre-eviction notification of others because there’s nothing about the pre-eviction notification of others that curbs overly violent responses to non-criminal trespass. With respect to gentleness, what does notification of the authorities accomplish prior to evictions from the white or eastern gray areas where death or serious injury *will not* result? Well, nothing. Technology is such that the height differential from cliffside to terrain below will not prove injurious and so notifying an authority of any kind will have no impact on F’s treatment at the hands of M. Were such an authority to be contacted they would likely tell M to evict away, as no NAP-violations are looming.⁷⁸ And how about prior to evictions from the black or western gray areas which *will* prove deadly or disproportionately injurious? What does notification provide as far as mitigating the overwhelming severity of M’s reaction? Well, in the future, when technological breakthroughs transform these areas such that they are white,⁷⁹ notification likewise achieves nothing because such future evictions, like all white area evictions, do not represent a violation of the NAP. Presently, however, western end evictions do lend themselves to this unfavorable outcome. So, *currently*, how does the notification of the authorities temper the heinous evicting actions of M; where does evictionist gentleness come into play nowadays? Very simply put, it just

⁷⁷ Particularly, with departurism present in the arena of ideas.

⁷⁸ Of course, taking F’s life after such a harmless eviction would simply be illicit, even in an evictionist libertarianism where the killing of F is justified only post-notification and as a result of eviction. And it is not the intervention of the authorities, nor their mere notification, that forbids this but laws already on the books criminalizing murder.

⁷⁹ Getting ahead of ourselves for a moment, what this future looks like in S₂ is that pro-life forces will ensure that the relevant doctors’ offices are continuously stocked with state-of-the-art artificial wombs, or some such, for the purpose of successful first trimester fetus-transplantation. If we ever do reach a point at which we’re capable of transforming the black area into a gray or even white area, it will be the eventuation not of the notification of others, but of advances in science and technology and the vigilance and tenacity of organizations eager to utilize said advances to prevent historically fatal evictions from remaining such.

does not. The evictionist asserts that the property owner must merely make others aware of what's to come, and he balks at the idea that M will actually have to *wait* for these others to intervene before initiating an eviction. The evictionist thinking is: if the authorities are capable of preventing a fatal eviction, good; if not, so be it. But in what way does simply telling other people of one's intent to indirectly kill an unwitting intruder, before just indirectly killing him, *equal* the gentlest manner possible of ending his trespass? Merely notifying of the eviction those who would, if possible, prevent it from being lethal is, after all, simply giving them knowledge of the impending violent act—and the knowledge of others will not and cannot somehow or magically imbue the act itself with legal permissibility. So, we need the evictionist to provide some warrant for the proposition that a simple notification of others will bestow gentleness on the subsequent lethal eviction of the trespasser, and some explanation as to how it will do so apart from any silly allusions to a theory concerning the homesteading of relinquished property. Now, the authorities might suggest that M withhold the eviction of F until he approaches the eastern part of the premises. But, again, the evictionist will have none of that; he'll insist that M has every right, post-notification, to fatally remove F. The authorities will complain that someday the terrain below the cliffside, all areas, will be white. And the evictionist will feign remorse and offer that when that day comes the NAP will once again be something observed by libertarianism. The point here is that—whether unto the white, gray, or black areas; whether presently or in the future—it will be the available technology and not the ENR that determines if M's cliffside eviction of F constitutes just an abhorrent violation of the principle of non-aggression. The ENR is a directive required of M which, given its superfluity, borders on the macabre; it is no more than

burdensome red-tape through which M must navigate so as to make legal the murder of F.⁸⁰

(e) Objections from Duration

Objection: The property owner must be able to stop the trespass when he sees fit to do so, or else libertarianism is transformed into an ideology of squatters.

⁸⁰ In order to be comprehensive, it's necessary to mention that it's not just notification that the evictionist requires. Rather, M must notify others and then *refrain from setting up roadblocks*. Justification for this addition to the notification requirement is again borrowed from the second analogy. That is, it's not enough that the property owner be made to provide "'mental egress' through the miasma of lack of information" (Block, "Children's Rights," 280) by notifying someone that he is abandoning property. He must also provide "physical egress [to the donut hole land] through what would otherwise be considered his property" (ibid.). A child-abandoner can't notify all and sundry about his no longer wanted kid and then barricade the tot so that no one can care for him. This makes since, as to do the latter would be to engage in forestalling. So, if one abandons physical land/a child, really abandons it, then he has to "notify someone who will spread the word about this; and refrain from preventing others from homesteading it (e.g., setting up a blockade against their doing so)" (ibid., 282). (It has yet to be investigated in the relevant [e.g., homesteading] literature whether imposing an arbitrary time-frame on those who would take over responsibilities for P, outside of which they are precluded from doing so, is not tantamount to creating a homesteading roadblock. Such is an invitation for further research in the area of property homesteading/abandonment, though a digression.) And just how would this additional step in the notification requirement translate to S_1 ? It would mean that, apart from notification, the property owner must not impede others from preventing the eviction from being lethal. That is, M contacts the private police (the equivalent in S_2 of notifying the church, orphanage, etc.), ensures that the front door is unlocked (the equivalent in S_2 of removing barriers to pro-life intervention in the abortion), and then proceeds to intercept F at the cliffside (the equivalent in S_2 of setting up and attending the abortion appointment). F may then lawfully be shuffled loose the mortal coil (the equivalent in S_2 of pulling the womb-aged child apart with forceps). Thus, this further implication of the ENR is likewise superfluous with regard to gentleness. The dual-mechanism of notification and non-hindrance has no effect on the severity of the property owner's response because it does not, cannot, convert a black area eviction into a white (or even gray) area eviction. The ENR thus is simply a duo of tedium that M must exercise which, as has been shown, has no correlation to that which is proposed to lend it libertarian legitimacy, the gentleness principle.

This objection arises from the evictionist observation that if the law requires M to allow for A, then the law, essentially, is permitting F to squat on M's premises for that duration. Now, the initial departurist response to this sally was basically *Yeah? You and me both*. Why? Because if the law requires M to withhold the eviction of F until such time that the authorities have been notified (and roadblocks removed), then the law, likewise, is allowing for F to squat on M's premises for *that* duration. This was an especially devastating response given that the evictionist, at that time, held that "it matters not one whit how long a duration we are talking about."⁸¹ That is, even if the duration of notification were as little as nine minutes, that amount of time "could be turned to nine or even ninety years, without any change in principle whatsoever."⁸² This reasoning proved inescapable, so the evictionist promptly changed his position on duration, stating suddenly that "the amount of time is crucial."⁸³ Now, this play operates on the assumption that the evictionist requirement has a less onerous time liability than does the departurist requirement, and so should be preferred. There is a two-fold trouble here for the evictionist. First, as already noted, it makes no difference if the ENR will be over in a jiffy if it places a positive obligation on the property owner, which it most certainly does. Second, there really is no way of demonstrating that one requirement has an inherently more oppressive time liability than the other.

Consider first evictionism. How long does it take for M to notify others of the intent to lethally evict F? The evictionist may find solace in his assertion that it takes only "a *de minimus* amount of time,"⁸⁴ but the rest of us might not be so confident. In reality, who's to say? Does M already know just whom to notify, or is research required? Does M possess the means to conduct said research? Will a simple email or phone call to one

⁸¹ Block, "Response to Wisniewski, Round Two," 11.

⁸² *Ibid.*

⁸³ Block, "Critical Comment on Parr," 8.

⁸⁴ *Ibid.*, 9.

person suffice? Or are “two qualified witnesses”⁸⁵ required? What characterizes a witness as qualified? How does M discover such? Does M have a computer? A phone? If not, does M have a car or some other means by which to rapidly reach the authorities in order to notify them? Where are the authorities located? Does M live in the boonies? How far away are the authorities? Is Snail Mail M’s only option? What further time hindrances are placed on M in the removal of roadblocks? It may take a *substantial*, nay, an *oppressive* amount of time to satisfy the ENR.⁸⁶ In fact, by the time it’s satisfied F may well have reached a point in his departure where M’s evicting ideations no longer portend death.⁸⁷ Which is great, for both F and society, but it does not bode well for the supposed great *toot sweetness* of the ENR.

What about departurism’s requirement? How long does it take for F to reach the point in his continued departure where M’s eviction of him does not result in his unjustified death or debilitation? Well, this depends on when, or the point at which, F is perceived as a trespasser—which can take place anywhere on the spectrum from the western to the eastern end of M’s premises—and the height differential between the cliffside and the terrain below (the technology available to prevent F from succumbing to eviction-tragedy). That is, there are situations in which M might perceive F as a trespasser and not have to withhold eviction for any duration whatsoever because said eviction would not constitute a NAP-violating

⁸⁵ Block, “Children’s Rights,” 283.

⁸⁶ The evictionist will not begrudge departurism ascribing such modest time-estimates to his notification requirement, particularly after the evictionist has stipulated a nine-month long rape (see Section V [c] of this paper) in his effort to undercut the departurist position.

⁸⁷ The duration of notification may be such that F has time enough to continue on his way to the point where his eviction at the hands of M happens to fall within the bounds of the NAP—which would be a welcomed, happy, and justified outcome—but, to stress a point, this would not at all concern notification. The evictionist could just as well require that the property owner do a handstand or milk a German Shepherd, actions that are sillier but no less arbitrary than notification, and the trespasser might likewise be lucky enough to escape the eviction danger-zone.

overresponse. The evictionist has even heaped high praise on the so-called pro-life authorities in their ability to speedily achieve their goal of making, where they're capable, evictions non-lethal. How long does M have to wait before evicting F? Anywhere from "not too long"⁸⁸ to no time "at all."⁸⁹

In any event, assessing the time liability entailed by the requirements of departurism or evictionism is a highly shaky basis on which to petition for the unlibertarianism of either view. So, we turn now from the quite exaggerated and double-edged evictionist accusation that departurism transforms libertarianism into an ideology of squatters, to the departurist response that evictionism transforms libertarianism "into an ideology of corpses."⁹⁰

How does evictionism so transform libertarianism? This criticism finds its basis in those instances where a trespasser becomes such as a result of a rescinded invitation; the property owner initially welcomes but now rejects an invitee's presence on the premises. Does evictionism permit that the property owner may simply evict unto death this newly-designated trespasser? Well, this depends on one of two things.

First, it depends on whether or not the trespasser's duration of departure falls within the limits of that which is covered by the phenomenon of implicit contracts. If, given the situational context, it's a reasonable duration of departure, then the trespasser certainly may not be lethally removed. That is, the now-unwanted invitee (and libertarian law) would be properly aggrieved if his host could just rescind his invitation and then fatally evict him⁹¹ on the grounds of not wanting to bear the burden of his, say, nine-minute departure. Without the notion of implicit contracts, we might expect to see the justified murders of such guests occurring all over the fruited plain.

⁸⁸ Block, "Critical Comment on Parr," 9.

⁸⁹ Ibid.

⁹⁰ Parr, "Departurism," 13.

⁹¹ Sigh, after notifying others.

Second, it depends on whether or not the phenomenon of implicit contracts is even applicable to the guest in question. Here's where evictionism faces real trouble. That which stays the execution of the ordinary no-longer-welcomed guest simply does not extend to F. Why not? "Because a necessary condition for a contract ... is that there be *two* contracting parties."⁹² Much like the babe in the womb, who simply did not exist at the time that any contract between him and his mother could be said to have occurred, the trespasser in S₁ cannot "be a partner in a contract in any case."⁹³ Why? Because he has not the capacity to "understand and agree to a contract."⁹⁴ So, "how could there be a *contract* of any type or variety"⁹⁵ with him? The point here is what the evictionist full well knows. Because both the unwanted fetus and the trespasser in S₁ are incapable of purposeful behavior, that aspect of implicit contracts which condemns the babe in the womb condemns also F, "a category of persons to which much more than simply very young human beings belong."⁹⁶ The phenomenon of implicit contracts is thus impotent to rescue poor F—whether the duration of his trespass is onerous or whether it is reasonable. Now this impotence may not amount to a genocidal holocaust, but it certainly does allow for the legally justified homicide of innocent persons, and not just really young ones in their mothers' wombs. It is open season on anyone whom a property owner can argue is just like F. As to whether or not the evictionist would grant the validity of the above critique of his view, if he would admit that "it is logically possible for such a sad state of events to take place,"⁹⁷ we need not even speculate. The evictionist has flat out conceded that the departurist "does make the not totally unreasonable point that under evictionism, 'libertarianism is

⁹² Block, "Critical Comment on Parr," 10.

⁹³ *Ibid.*, 11.

⁹⁴ Walter Block, "Response to Wisniewski on Abortion, Round Three," *Libertarian Papers* 37:3 (2011): 12.

⁹⁵ *Ibid.*, 11.

⁹⁶ Parr, "Departurism Redeemed," 120.

⁹⁷ Block, "Children's Rights," 281.

transformed into an ideology of corpses.”⁹⁸ He further affirmed that this “of course sounds horrible,”⁹⁹ before trying to justify it on utilitarian or Coasean grounds.¹⁰⁰ But just because *he* would not blush at lawfully permitting the intentional life-taking of innocent people, of all ages and stages of development, “does not mean that this is not a telling argument against the position he has staked out. The point is, no one else would make this sort of legal judgment.”¹⁰¹

F, whether a little kid or a stroke patient, is on his way off the premises. He is not threatening the life of M. Would libertarian law permit the proprietor to cliff-toss such a trespasser, even if he first tells someone about it, when doing so *just is* to kill this innocent person? This paper argues that libertarian law would not. And it should not. The conditions of S_1 , seen together with the requirement that such a trespass be stopped by the least harmful possible means, argue against such a course of action. But does S_2 possess these same conditions, those which prohibit as a course of action any eviction of the trespasser that would necessitate a violation of the NAP up to and including murder?

V. PREMISE TWO

All that is required to demonstrate that the situations compared in premise two are relevantly similar is to show that the conditions of S_1 are to be found in S_2 . If the same conditions are to be found in both situations, the notion that this comparison is strong and relevant will have a firm foundation.

⁹⁸ Block, “Rejoinder to Parr,” 134.

⁹⁹ *Ibid.*

¹⁰⁰ The evictionist ploy here was to acknowledge that his view results in a lot of dead babies, just not as many dead babies as under pro-choice—which spells doom for those fetuses even in their third trimester of gestation. Of course, a justification based on the counting of scalps has no place in a deontological libertarianism—the evictionist notwithstanding.

¹⁰¹ Block, “Response to Wisniewski, Round Two,” 10.

(a) The Conditions of S₂

Both that the fetus is *incapable of purposeful behavior* and that he is *in the process of departing the property owner’s premises*¹⁰² are seemingly uncontroversial propositions, as evictionism has affirmed the presence of these conditions in S₂. Concerning the former condition, the evictionist has maintained:

Of course, this baby human being lacks *mens rea*, and thus cannot be considered a criminal.... It cannot be denied that the fetus is totally devoid of any intention to trespass.... The same can be said for the unconscious adult.¹⁰³

And, regarding the latter condition, the evictionist has agreed that gestation constitutes a process that works to affect the cessation of property-directed aggression.¹⁰⁴

With respect to the remaining two conditions of S₁, it is unlikely that the evictionist would begrudge departurism focusing its attention on those instances of trespass within the womb which are the most prevalent (those in which the trespasser is *not jeopardizing the proprietor’s life via aggression against his property rights in the person*) and, with regard to the principle of gentleness, the most relevant (those in which *eviction from said premises would necessitate the trespasser’s death*).

(b) Objections from Gentleness

¹⁰² It can be assumed that every pregnancy begins at the western end of M’s premises. From fertilization to parturition, the process of gestation takes the fetus from the western to the eastern end (and off) of M’s premises. The fetus, as a matter of fact, is departing the premises of the property owner and he is so doing from the moment that he first arrives there—regardless of the point at which he is deemed a trespasser.

¹⁰³ Block, “Rejoinder to Parr,” 127.

¹⁰⁴ *Ibid.*, 131.

Objection: The trespassing fetus, though totally without *mens rea*, is not a non-criminal *in effect*, and so the gentleness principle is not applicable to him.¹⁰⁵

What if this objection were spot-on? What if the fetus, despite previous authoritative and assiduous declarations by the evictionist to the contrary, were nothing more than a criminal? Would this mean that his trespass should not be stopped in the gentlest manner possible? Well, no—and this by the evictionist’s own admission. In the Example of the Inadvertent Missetp, it is stated that the proprietor may only properly employ violence against Innocent Person A if the latter refuses to respect private property rights. And,

even then, the bazooka would not be the first option. If B could remove A from his property in a more gentle (sic) manner... B is obliged to do just that, by the libertarian legal code.¹⁰⁶

The take-away here is that the evictionist believes that gentleness should apply even to criminals, which removes the teeth of the present objection.¹⁰⁷ Now it’s profitable to turn from *What if this objection were true?* to *What good reasons are there to think that this objection is true?* Not surprisingly, an investigation into this latter consideration reveals a scarcity of warrant.

Here is that from which evictionism would like to escape: the unwanted fetus is a non-criminal and so is due gentleness which means A. To evade this course of action, the evictionist has opted to back-pedal by claiming of the fetus that, though he is morally innocent, “he is still

¹⁰⁵ *Ibid.*, 128.

¹⁰⁶ Block, “Rejoinder to Wisniewski,” 3–4. Italics added.

¹⁰⁷ A second take-away amounts to a bit of a semantical low-blow: it is *only* if the trespassing fetus refuses to respect private property rights that he can be viewed as a criminal. But the trespasser in an unwanted pregnancy is incapable of refusing anything *at all* (he’s a fetus for crying out loud!). Playing by evictionism’s own rules, then, the trespassing fetus cannot be viewed as a criminal.

occupying territory owned by another person, his mother, against the will of the latter. If that is not (ok, non) criminal trespass, then nothing is.”¹⁰⁸ However, this does not amount to an argument for the permissibility of the harsh treatment of the fetus. It’s just a nugatory observation. After all, departurism and evictionism are in agreement that a trespass is occurring in an unwanted pregnancy. But the whole point of the dispute is to establish whether or not the severity appropriate for seeing an end to a trespass within the womb should be equivalent to that required in combating an ordinary, criminal trespass. Just repeating the reality that a trespass is taking place is not enough to swing the libertarian pendulum in the direction of evictionism, nor is it sufficient to erase gentleness from libertarian law.

Objection: Allowing for a trespassing fetus to continue his departure is not the gentlest manner possible consistent with stopping the aggression. It is hardly upholding the private property rights of the mother; it is not at all *stopping* the aggression.¹⁰⁹

The evictionist has put forth a thought experiment that involves a knifeman making a frontal attack on him (footnotes omitted):

If I have two guns, one with a rubber bullet which will stop the knifing by rendering the assailant unconscious, and the other with a lead bullet which will kill him, then, the libertarian legal code requires that I use the rubber bullet. If I, instead, avail myself of the lead bullet, then I, too, am guilty of a crime, that of not abiding by the “gentlest manner possible” principle. But, suppose there is no guarantee that the rubber bullet... will halt the perpetrator in his tracks; that the only way to stop him for sure will be to plug him full of lead, thus causing his death. Do I have a right to do so? Of *course* I do.¹¹⁰

¹⁰⁸ Block, “Rejoinder to Parr,” 128.

¹⁰⁹ See Block, “Critical Comment on Parr,” 4.

¹¹⁰ Block, “Response to Wisniewski, Round Two,” 4.

What is the relevance of the foregoing? Well, plugging the knifeman full of lead is only licit in the event that other means of stopping the aggression do not exist; that there are no rubber bullets or that said bullets would prove ineffectual in halting the aggressive act. However, the moment that the evictionist acknowledged that gestation is a process that works to affect the cessation of property-directed aggression, he conceded that his own theory is tantamount to icing the knifeman where he ought instead to render him unconscious.¹¹¹ The real evictionist objection here, it seems, is that departurism's means entail too long of an aggression-stoppage. And to address this particular gripe we must move on to the next subsection.

(c) Objections from Duration

Objection: The owner's property rights should not be held in abeyance for a nine-month period of time.¹¹²

The charge that departurism necessitates that the mother endure a nine-month unwanted pregnancy is simply false. A nine-month occupation of an unwanted fetus in its mother's womb is *possible*, assuming that the fetus is perceived as a trespasser from the very outset of pregnancy and the mother chooses to carry the child to term.¹¹³ But the duration of departure might be as little as nine minutes, assuming that the pregnancy becomes unwanted during or proximal to the period in which the fetus can be removed without incurring unjustified harm or at the very end of gestation when he can be delivered without incident. The duration of trespasser departure all depends on when, or the point at which, the

¹¹¹ Notice, again, that the evictionist is wont to extend the gentleness principle to actual criminals, like the knifeman, which simply nullifies his charge that it shouldn't apply to so-called criminals *in effect*, like, allegedly, the unwanted fetus.

¹¹² See Block, "Rejoinder to Parr," 131.

¹¹³ Rather than evict him, sans death, prematurely.

pregnancy becomes unwanted and when, or the point at which, the unwanted pregnancy ceases.¹¹⁴

To say that departurism *requires* a mother to withhold the eviction of an unwanted fetus for a full nine months is just to miscomprehend the view. And it is because of this misunderstanding that the evictionist cooks up silly scenarios, like the following (footnotes omitted), which are intended to reveal a chink in departurism’s armor which simply does not exist.

Suppose an ordinary man, a non-rapist, is drugged or hypnotized into engaging in this sort of evil attack on a woman. Then, this “rapist” would lack *mens rea*, just like the baby. If this is the case, then according to departurism, he would indeed be entitled to “just a little more time” to complete his despicable act, provided, only, that to not allow him to do so might injure him... very seriously, even leading to his death.... The departurist, if he consistently cleaves to his misbegotten views, would have to urge “gentleness” for the rapist. Perhaps, even, if this were physically possible, to allow him to continue his rape of this unfortunate woman for a full nine months. We now assume that rape, not only gestation requires “time to finish up.”¹¹⁵

Rape, like any consideration of pregnancy in which the mother’s life is at stake, is an aggression against property rights in the person, and not one against property rights in external things, and so simply is not germane to the present discussion. And this based on the very conditions

¹¹⁴ This cessation of unwanted pregnancy could be the result of the mother no longer acknowledging the fetus as unwanted, the mother evicting or otherwise having the fetus removed from her womb (whether over-injurious/fatally or as a result of medical technology precluding an instance of unjustified counter-violence), the mother RU 486-ing the fetus, or parturition.

¹¹⁵ Block, “Rejoinder to Parr,” 131.

of S_1 .¹¹⁶ The degree of harshness appropriate in dealing with a rapist, even a drugged or hypnotized one, even a non-criminal one, even if he's finishing up, would not be equal to that which is appropriate in dealing with F, the evictionist's illegitimate criticism notwithstanding.¹¹⁷

VI. PREMISE THREE

Because of the extent to which S_2 is similar to S_1 , there exists no reason to suggest that the course of action appropriate for the latter should not also be appropriate for the former. In fact, the requirement of practical consistency will not permit these cases to be treated differently. So just as it ought to be illicit for M to send F fatally off into the wild blue yonder, it ought also to be illicit for a mother to kill, or otherwise unjustifiably maim, the unwanted fetus in her womb by eviction.

VII. CONCLUSION

¹¹⁶ There's another manner by which this rape scenario is disanalogous to an unwanted pregnancy. A calls for the *continued* departure of the trespasser until the mother's evicting action would not equate to a NAP-violation. Because one cannot continue that which has not already begun, A as a course of action would only be applicable to situations in which the perpetrator was already in the process of ceasing his aggression. For this evictionist sally to even come close to doing the devastation intended by its author, the perpetrator in this failed example would have to be not only (a) unintentionally engaged in a violation that (b) at least approximates a mere trespass, but, forgive the image, (c) zipping up his fly. In other words, whatever this *reductio* was intended to indict, it's a swing and a miss with regard to departurism.

¹¹⁷ There is an old pun which seems appropriate to mention here: "Do you know the difference between a living room and a bathroom?" The joke is, if you say "no", I say, "Don't come to my house." Well, the analog joke is: "Do you know the difference between rape and inadvertent trespass?" If you don't know the difference between those two things, I say, "Don't get into legal theory." This bit was borrowed (and modified) from Walter Block and Richard Epstein, "Debate on Eminent Domain," *NYU Journal of Law & Liberty* 1:3 (2005): at 1144.

The evictionism-departurism debate concerns that which is the weightier libertarian concern: the eviction rights of property owners or the NAP. Which one trumps the other in situations of, and relevantly similar to, trespass in the womb? The evictionist argues that it's the NAP which ought to get short shrift. Currently, his theory runs afoul of libertarianism for the sake of swiftness of trespasser removal, and much is sacrificed at this altar. The great casualty is the gentleness principle—to which the evictionist only feigns an allegiance, yet neuters and perverts (much like the law in Bastiat's estimation) to allow for “that very inequity which it was its mission to punish.”¹¹⁸ An evictionist libertarianism is one that champions the most *expedient* manner possible consistent with stopping not the aggression but the *aggressor*, a principle that does nothing to avert the overly severe treatment of non-criminals, nothing to uphold the NAP.¹¹⁹ What's more is that the evictionist accomplishes this debasement of libertarian theory only by debasing it further, requiring a positive obligation to see it through. And the dire results of evictionism do not end with the preceding. Because said obligation is positive, a direct consequence of adhering to it is that property owners are made to unjustifiably permit the trespassers on their property to squat there while this obligation is satisfied.¹²⁰ Under evictionism, libertarianism must acquiesce not only to squatters, but also to dead folks in numbers that dwarf those of merely unwanted fetuses. And this because it's not just to womb-aged children that the phenomenon of implicit contracts does not

¹¹⁸ Frederic Bastiat, *The Bastiat Collection: Volume I* (Alabama: Ludwig von Mises Institute, 2007), 49.

¹¹⁹ “In the *Godfather* movies, certain members of the Corleone family often employed the phrase ‘I’m gonna make him an offer he can’t refuse,’ in order to imply a particular point. Under the evictionist view, the Corleone family might as well have employed the phrase ‘I’m gonna make him leave my property in the gentlest manner possible.’” (Parr, “Departurism,” 12).

¹²⁰ Not so for adherence to the departurist requirement, which boasts libertarian justification in that it is not a positive obligation as it both derives from and is an application of the NAP-preserving gentleness principle.

apply, but *anyone* who is mentally or developmentally incapable of entering into a contract. An evictionist libertarianism cannot prevent all such people from potentially becoming the gruesome results of (supposedly) justifiably upheld property rights.

Now, rather than make the departurist case all over again in summation, it's perhaps enough to end with the following as a safe, though only generally applicable, libertarian rule: Innocent Person A should not be bazooka-ed, knifemen should not be plugged full of lead when rubber bullets will do, F should not be fatally cliff-tossed, and babies should not be aborted.

BIBLICAL CHRISTIANITY AND LEGISLATING ECONOMIC JUSTICE

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Abstract: “Justice” and related terms like “fairness” are common but rarely defined or used in a coherent manner. Working toward clarity, it’s clear that the concept of justice can be considered in terms of processes or outcomes; justice can be applied to a wide array of contexts—from personal interactions to public policy; and within public policy, justice can be an important consideration in the realms of economic or “social” policy. Broad questions arise from this intersection: what does Christian faith truly offer on such matters? Is justice important biblically and theologically? How do Christians see justice play out in the life and ministry of Jesus Christ? How does “legislating morality” differ from “legislating justice”? And how might biblical norms about justice apply to contemporary economic policy concerns? This paper seeks to briefly answer these questions, helping readers construct a framework about what biblical texts and themes convey about justice and its applications.

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I. INTRODUCTION

An interest in justice is universal, from the child who protests “*that’s not fair*” to the woman who contemplates the fairness of life, and to the man who shakes his fist at the heavens. The concept of justice easily extends into the realm of public policy, but views about justice differ widely. For example, psychologist Jonathan Haidt finds that those on “the Left” see fairness as “equality” and on “the Right” as “proportionality.”²

Some are fond of harnessing the coercive power of government as an ethical and practical means to just ends; others are repulsed by efforts to use government or are skeptical of its ability to be effective. James Schall points to the subjective weights and definitions of justice, noting that its use can be noble or twisted. Without roots in a greater system of the good, “justice” often “introduces an unsettling utopianism” and can be “the most terrible of virtues.”³

What does Christianity offer that might be more stable and helpful? This essay will describe what Christianity rooted in the biblical tradition teaches and implies in the realm of economic justice and public policy. But a few caveats are in order.

² Jonathan Haidt, *The Righteous Mind: Why Good People Are Divided by Politics and Religion* (New York: Vintage Books, 2013). Haidt also notes that there is more to morality than harm and fairness, so an overarching emphasis on fairness or justice is not helpful. Sowell distinguishes between two “visions”, including thoughts of justice as process and rules vs. outcomes and opportunity. Thomas Sowell, *The Vision of the Anointed* (New York: Basic Books, 1995), 105.

³ James Schall, “Justice: The Most Terrible of the Virtues.” *Journal of Markets & Morality* 7:2 (Fall 2004): 409–21. Asma argues that fairness is not a morally-central concern and even argues for favoritism. Stephen Asma, *Against Fairness* (Chicago: University of Chicago Press, 2013). Especially given the ease with which fairness can be invoked, it can crowd out other virtues and it can easily devolve into destructive envy.

First, my discussion of Christianity does not inherently preclude what other religious traditions might bring to the table.⁴ But an analysis of all religions—or even, a single additional religion—would expand the scope of this project too far and take us into areas beyond this author’s purview of research.

Second, my insistence on “biblical” Christianity will focus our attention on the authoritative text(s) of the faith. By contrast, I will not rely on much input from Christian tradition or Christian views that are not particularly rooted in Scripture.⁵ This is not to dismiss the value of such efforts, but to narrow the scope of this study. In addition, I will not weigh the impact of the more cultural forms of Christianity in syncretic combination with deism, patriotism, nationalism, consumerism, various “social gospels,” and so on.

Third, a call to consider all types of “social justice” would also be too broad for this article. Social justice could easily imply an interest in explicitly social issues where justice is clearly involved—most notably, abortion, civil rights, and rights such as freedom of speech and religion. So, I will narrow the field further to concentrate on its common conception as “economic justice.” Again, this is not to downplay social justice in “non-economic” issues, but to reduce the paper to a manageable size and to rely on my areas of study.⁶

⁴ As an example, for an impressive essay on justice from a Jewish perspective, see Curt Biren, “The market, justice, and charity: A Jewish perspective,” *Acton Institute* (September 10, 2018). <https://acton.org/publications/transatlantic/2018/09/10/market-justice-and-charity-jewish-perspective> (Accessed March 12, 2019).

⁵ As such, this largely ignores the vast and impressive historical commentaries on Scripture. For particularly Catholic angles on religion and government, see Thomas Woods, *The Church and the Market: A Catholic Defense of the Free Economy* (Lanham, MD: Lexington Books, 2005) and Randy England, *Free Is Beautiful: Why Catholics Should Be Libertarian* (Scotts Valley, CA: CreateSpace, 2012).

⁶ Recognizing the broad, common and sloppy use of vague terms such as a “justice” and “social justice,” Teevan argues for the term “integrated justice.” He notes that “Justice is claimed by many who unjustly want the broad benefits of that term.” John Teevan, *Integrated*

Fourth, we need a working sense of what turns out to be a slippery term. Paul Heyne notes that “Justice is notoriously hard to define in any way that goes much beyond platitude and still commands wide assent.”⁷ Still, for want of a term and given its popular use, we must persist. We can start by noting that there are many types of justice: *commutative* (defining fair economic processes—e.g., exchange with minimal fraud and coercion), *distributive* (equitable outcomes and allocation, independent of process), *procedural* (e.g., legal processes are equitable and contracts are honored), *remedial* or *retributive* (e.g., punishment for misdeeds and compensation for victims), and so on.⁸ In this essay, with a focus on economic justice, I will mostly discuss commutative and distributive justice—and injustice.⁹

Moreover, it is insufficient to define and describe justice with respect to “consequentialist” outcomes but to ignore justice in terms of the chosen

Justice and Equality. Biblical Wisdom for Those who Do Good Works (Grand Rapids, MI: Christian’s Library Press, 2014), 12.

⁷ Paul Heyne, *Are Economists Basically Immoral? and other Essays on Economics, Ethics and Religion* (Indianapolis: Liberty Fund, 2008), 151. All persons (I would contend) believe that justice exists, but the “devil is in the details.” Lewis relies on the universal appeal to justice and moral standards (however defined)—at least when we believe we’ve been wronged—to make his case for the existence of a God who transcends this world. C. S. Lewis, *Mere Christianity* (New York: HarperCollins, 1952).

⁸ Stapleford discusses different types of justice in abstract terms and relates it to public policies. John Stapleford, *Bulls, Bears, and Golden Calves: Applying Christian Ethics in Economics*, (Downers Grove, IL: InterVarsity Press, 2002), 26, 48-50, 86-88. Lebacqz provides a useful overview in her engagement with the concepts from various utilitarian and Christian angles. Karen Lebacqz, *Six Theories of Justice*, (Minneapolis, MN: Augsburg Publishing House, 1986). Finkel writes at length to distinguish between injustice, unfairness, and misfortune. He argues that justice is used to imply greater objectivity and authority—whereas fairness is more subjective and the more appropriate term for use in daily life. Norman Finkel, *Not Fair!: The Typology of Commonsense Unfairness* (Washington, DC: American Psychological Association, 2001).

⁹ Heyne, *Are Economists Basically Immoral?*, 152, also observes that “The problem of talking clearly and sensibly about justice diminishes considerably, however, when we shift our focus and talk about *injustice*.” He then quotes Aristotle in encouraging his readers to focus on injustice as a negative instead of justice as a positive.

means to those ends. The concept of justice can be applied to concerns about both process and outcomes. Here, I will discuss the use of government policy as a just means to just ends.

Fifth, it should not be overlooked that justice can be pursued through private action or through public policy. The former is noteworthy—whether the efforts of a heroic individual or the impressive work of a group of private actors. Heyne notes that “In the Kingdom of law, [the Christian] pursues the goals of order, minimization of conflict, reasonable equity, and the preservation of life...This is justice. In the kingdom of the Gospel, however, mere justice gives way to the life of love.”¹⁰ It is tempting to imagine justice as purely in the realm of public policy, but it is also a matter of everyday life. Hebrew Bible scholar Walter Brueggemann observes that “The issues of God’s freedom and his will for justice are not always and need not be expressed primarily in the big issues of the day. They can be discerned wherever people try to live together...”¹¹ I will honor Brueggemann’s sentiment by acknowledging the tremendous role of private actors and roles within the smaller issues of public policy.

Sixth, although bureaucrats, the executive, and the judicial are key components of the implementation of government policies, my terminology will bow to common usage and emphasize the legislative part of the process. “Legislating” will describe the process by which government uses its power to restrict or motivate behavior through law—prohibitions, mandates, taxes, and subsidies. By extension, this focus includes efforts by outside parties to promote government activity.

II. LEGISLATING JUSTICE VS. LEGISLATING MORALITY

One other key distinction remains—what I will describe as justice and morality.

¹⁰ Heyne, *Are Economists Basically Immoral?*, 135.

¹¹ Walter Brueggemann, *The Prophetic Imagination* (Philadelphia: Fortress Press, 1978), 110.

“Legislating morality” (henceforth LM) can be categorized in two strands. The first is an effort to regulate and restrict consensual but “bad” acts by an adult or between two adults in which no significant, direct costs are imposed on others. Examples of this would include sex outside of marriage, drug abuse, and worshipping within a false religion. Although decisions to do these activities are made willingly, since they are “sins,” Christians believe that the choices are harmful on net. But the behavior is voluntary for all parties and they expect to benefit—what economists call “mutually beneficial trade.”

The second category is the use of government to mandate or subsidize “good” behaviors, such as prayer in K–12 schools and charitable activity. Here, a failure to act is a sin of omission. As a sin, the failure to act is assumed to cause net harm—to the one who decides to abstain, and often, to others as well.

In contrast, “justice” issues are those in which someone's rights are directly and significantly violated. Examples of this include murder, rape, and theft. One party uses significant force of some type to directly harm another party; someone benefits directly at the expense of another. It follows that “legislating justice” (henceforth LJ) is a change in government policy in an attempt to improve justice or reduce unjust processes and outcomes. LJ could entail more government—or less government, if the status quo is using unjust methods or reaching unjust outcomes.

Thus, the key distinctions between justice and morality are the extent of the earthly consequences of the offense (“sin”) and whether those costs are imposed directly on others or not. Pope John Paul II draws the same line: “each individual’s sin in some way affects others...Some sins, by their very matter, constitute a direct attack on one’s neighbor.”¹² Spooner distinguishes between vices (“those acts by which a man harms himself or his property”) and crimes (“those acts by which one man harms the person

¹² John Paul II, *Reconciliatio et Paenitentia* (Vatican City, 1984), no. 16.

or property of another”).¹³ Reed makes a similar distinction when he concludes that “the best standard for government is still John Stuart Mill’s principle of allowing the greatest liberty possible until someone else’s life or liberty is jeopardized.”¹⁴ And Rawls argues that “liberty can be restricted only for the sake of liberty.”¹⁵

A few points of further clarification are needed before moving on. First, morality and justice are certainly intertwined to some extent: to act justly is a matter of morality and the morality of one’s actions often determines the justice of the subsequent outcome.¹⁶ Still, there are important distinctions, so that distinguishing between the two is more beneficial than conflating them.

Second, both justice and morality issues involve *costs* imposed on others. Proponents of LM often argue that other parties are indirectly harmed by gambling, prostitution, etc., and thus, that government activism is warranted. Of course, everything we do (or don’t do) imposes costs of some sort on others. So, we’re left with noting or ignoring the extent of those costs. At the least, this framework is helpful in distinguishing between more/less significant and direct costs—from murder to second-hand cigarette smoke.

In *Just Capitalism* (reviewed in this volume), Waters defines justice in terms of freedom to pursue human flourishing.¹⁷ When my freedom is

¹³ Lysander Spooner, *Vices Are Not Crimes: A Vindication of Moral Liberty* (Indianapolis: Liberty Fund, 2013), ch I.

¹⁴ Ralph Reed, *Active Faith* (New York: Free Press, 1996), 278.

¹⁵ John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1976), 250.

¹⁶ Machan notes another overlap. In distinguishing between “the Right’s idealism”—seeking to regulate “spiritual or mental actions” (“the crafting of people’s souls”)—and “the Left’s materialism”—seeking to regulate “economic or material actions,” he notes that the two intersect “since body and soul aren’t ever sharply divided.” He then cites examples of this overlap—the Right seeking “blue laws” and affecting commerce and the Left restricting free speech and thought at the expense of social freedoms. Tibor Machan, “Libertarianism in One Easy Lesson”. *The Philosophers’ Magazine* 21 (2003): 44–7.

¹⁷ Brent Waters, *Just Capitalism: A Christian Ethic of Economic Globalization*, (Louisville: Westminster John Knox Press, 2016), 187.

used in ways that are inconsistent with the freedom of others, using government to restrict my freedom becomes more coherent. But, what happens when my choices are clearly or debatably consistent with my own flourishing?

Note that the size and type of the costs vary between offenses—for example, not being charitable to the needy, driving too fast, supporting the central tenets of a false and harmful religion, being a serial rapist, and eating an extra piece of pie. Should the state legislate on all of these? When do the costs become significant enough to allow Christians to righteously invoke government solutions? As the costs become larger and more direct, there is a greater potential ethical role for government activism. And on a practical level, it will be easier to strive for improvements in justice with the reduction of costs that are larger, clearer, and more direct.

III. WHAT DOES THE BIBLICAL TRADITION SAY ABOUT JUSTICE?

What follows is a brief (and highly simplified) survey of what the Hebrew Bible and New Testament scriptures seem to indicate about justice and standards of justice, according to a broadly Christian orientation.

Christians worship a God of justice and righteousness; “righteousness and justice are the foundation of His throne” writes the Psalmist.¹⁸ God does not show favoritism,¹⁹ repeatedly condemns oppression,²⁰ and defends the poor and needy in the face of affliction and oppression.²¹

¹⁸ Ps 89:14. See also: Job 37:23, Ps 9:16, 11:11, 33:5; Is 9:7, 28:17, 30:18, 61:8; Jer 9:24, I Jn 1:9, Rev 15:3. All scriptures are from the NIV.

¹⁹ Prov 22:2, Rom 2:11, Eph 6:9, Col 3:25.

²⁰ Dt 27:19, Is 10:1-3, Jer 5:26-29, 7:5-7; Ez 18:12, 45:9-10; Amos 2:7, 4:1, 5:11, 8:4-7; Jas 5:1-6.

²¹ Ex 3:7-8, 6:5-7, Dt 10:18, 26:6-8; Job 5:15-16, Ps 10:15-18, 12:5, 68:5, 72:4, 107:41, 140:12, 146:7; Is 25:4, Mal 3:5, Lk 1:53.

As a result, leaders placed in positions of authority by God are instructed to judge between the rich and poor fairly.²² They should not oppress others, but are to establish “rules that are just.”²³ Moreover, they are to enforce these rules and promote justice—for the ruler “does not bear the sword for nothing.”²⁴ As an example of a theocratic king representing the government of God, David did what was “just and right”—at least early in his reign.²⁵ And his son followed in his footsteps as king: “the Lord was pleased that Solomon had asked for...discernment in administering justice.”²⁶

Counter to the world's norms, believers are not supposed to show favoritism.²⁷ They are supposed to defend the poor, the needy, and the defenseless.²⁸ They are instructed not to oppress others.²⁹ Christians are encouraged to do good, to be generous, and to lend freely.³⁰ Moreover,

²² Ex 23:3,6; Lev 19:15, Dt:17, 16:18–20.

²³ Pr 8:15, Is 3:14–15, Jer 21:12, Dan 4:27, Amos 5:15. See also: Ps 72 and Ez 34.

²⁴ Rom 13:4. See also: Rom 13:2, Prov 21:15, 28:5.

²⁵ II Sam 8:15, I Chron 18:14. Cf. Ps 71:1, Lk 3:10–14, and Jamin Andreas Hübner, review of Moshe Halbertal and Stephen Holmes, *The Beginning of Politics: Power in the Biblical Book of Samuel*. Princeton: Princeton University Press, 2017) in *Christian Libertarian Review* 2 (2019): R30-37.

²⁶ I Kings 3:9–11. In I Kings 10:9, the Queen of Sheba later told him that God had made him king to “maintain justice and righteousness.” Unfortunately, Solomon failed to live up to this standard; even the wisest man in the world was responsible for some very poor policy. See the forced labor and high taxation of I Kings 5:13–18—and the polygamy and idolatry of I Kings 11. Friedman notes that Solomon imposed a disproportionate tax burden on the Northern tribes (land and money) while disproportionately building up military defenses in the South. Richard Friedman, *Who Wrote the Bible?* (Englewood Cliffs, NJ: Prentice Hall, 1987), 44–45. Ironically, these events follow God's “measureless” provision of wisdom to Solomon in I Kings 4:29–34. An extension of Solomon's unjust “heavy yoke” by his son Rehoboam (I Kings 12:4) eventually led to the division of his kingdom.

²⁷ I Tim 5:21, Jas 2:1,9. Solomon warned, “If you see the poor oppressed...and justice and rights denied, do not be surprised at such things.” (Eccl 5:8)

²⁸ Ps 82:2–4, Pr 17:5, 31:8–9, Is 1:17, 58:3,6–11; Jer 22:3–5,13–17.

²⁹ Ps 52:7, Pr 22:22, Is 3:14, Ez 22:29, 45:9; Amos 2:7, 5:11–12, 8:4–6; Mic 2:1–2, 6:10–12; Zech 7:9–10, Jas 2:6.

³⁰ Ps 112:5, Pr 19:17, I Tim 6:18–19, I Jn 3:17.

believers are told that God values justice over rituals of sacrifice, and thus, that we should “follow justice and justice alone.”³¹ Other passages also point to justice as a top priority. Proverbs 16:8 says “Better a little [gain] with righteousness than much gain with injustice,” and the very purpose of the book of Proverbs as defined in 1:3 is to do “what is right and fair.”³²

In addition, Scripture often defines the pursuit of justice as a matter of character: “The righteous care about justice for the poor”; “when justice is done, it brings joy to the righteous”; and “the righteous give generously.”³³ “The wife of noble character” in Proverbs 31:20 “opens her arms to the poor and extends her hands to the needy.” Proverbs also relates our behavior toward others to our attitude toward God: one “who oppresses the poor shows contempt for their Maker, but whoever is kind to the needy honors God”; and “he who is kind to the poor lends to the Lord.”³⁴ But, Micah 6:8 probably best sums up what God wants from us: “To act justly and to love mercy and to walk humbly with [our] God.”

IV. HOW DID JESUS CHRIST DEAL WITH INJUSTICE?

Jeremiah had prophesied that the Messiah would “reign wisely and do what is just and right.”³⁵ His ministry was largely centered on reaching the poor and those outside of power.³⁶ He was remembered as being

³¹ Pr 21:3, Amos 5:21–24, Mic 6:7; Dt 16:20.

³² Scripture often equates the seriousness of these issues with sexual sins. In discussing the “sin of Sodom,” Ez 16:49–50 lists arrogance, being overfed, and having no concern for the poor and needy—along with “detestable practices.” And given its reference to Sodom and Gomorrah, Is 1:10–17 places a greater emphasis on shedding blood and oppressing the poor than on “carnal” sins.

³³ Pr 29:7, 21:15, Ps 37:21. See also: Job 29:12–17, Pr 22:9.

³⁴ Prov 14:31, 19:17.

³⁵ Jer 23:5.

³⁶ Christ’s teachings and ministry seem to favor the poor. (See: Lk 16:19–31’s parable of the rich man and Lazarus, Mt 19:23’s pithy analogy, Lk 6:24’s “woe”, Lk 12:21’s parable of the rich fool, and Lk 21:1’s account of the widow’s offering. See also: Lk 4:18b, 7:22b; Jas 2:1–5,

critical of the Pharisees for giving a tenth of their spices but failing to follow “the more important matters of the Law—justice, mercy, and faithfulness.”³⁷

Christ suffered, endured, and tolerated tremendous personal injustices. His ministry threatened the power of the religious leaders of his day, eventually resulting in his crucifixion. Even after his death, Matthew 28:11–15 records a bribe to the guards at the tomb in order to try to protect the status quo. And perhaps most noteworthy, in arranging arguably the greatest act of injustice in history, he was betrayed by Judas to the chief priests and the officers of the temple guard—in a political market, taken by force, for a bribe of thirty silver pieces.³⁸

In stark contrast to the injustices done to him, Christ was far less tolerant of injustices done to others. In Luke 4:18, he quotes (or in the view of non-conservative and/or non-Christian scholars, is *remembered* quoting) Isaiah to describe part of his mission—“to release the oppressed.”³⁹ Mark 10:14 records Christ becoming “indignant” when the disciples tried to keep the children away from him. In Matthew 18:6, he promised severe punishment for one “who causes one of these little ones to sin.” When the Pharisees were bothered that he healed a man on the Sabbath, Mark 3:5 records that he “looked around at them in anger and [was] deeply distressed at their stubborn hearts.” Concerning his numerous healings on the Sabbath, he flaunted the timing of these miracles to show that loving others often runs counter to the norms of the religious establishment.

The Gospel accounts of Christ clearing the Temple combine his anger when the rights of the relatively powerless were violated by the powerful

5:1–6.) Why? At the least, Christ was dealing with a contemporary religious bias in favor of the wealthy—e.g., given the Old Testament’s tight correlation between obedience and blessings. Many Jesus scholars highlight this economic aspect of Jesus’ ministry and setting.

³⁷ Mt 23:23.

³⁸ Lk 22:4–6.

³⁹ Cf. Lk 4:25–29.

and when God's name was maligned by the behavior of religious people.⁴⁰ Among other sins, the religious leaders had allowed those who exchanged currencies (“money-changers”) and vendors (“those who sold doves”) to turn the temple into “a den of robbers.”⁴¹ To “rob” the people, customers must have been forced to buy currency and doves at too high of a price. If sellers had been charging competitive prices, they would have been merely providing a valuable service (cf. Dt 14:24–26). As with government today, the governing authorities of the temple probably sold exclusive rights to operate in the temple area, allowing sellers to exploit the resulting monopoly power by charging high prices and providing unfavorable exchange rates—thus, “robbing” the people. In particular, since doves were the usual offering of the poor (Leviticus 5:7), the effects of this monopoly power would have been disproportionately borne by the poor.⁴²

V. WHY IS LEGISLATING JUSTICE PREFERABLE TO LEGISLATING MORALITY?

Followers of God should treat others with dignity, respect, and justice—and they should hope for (and perhaps work toward) a government that does the same. But, in my perspective, the Bible also describes a God of perfect morality as well. Does this provide license to use the government to pursue greater “morality”?

Francis Beckwith argues that “A Christian’s moral obligation to do justice may also involve concern for the public culture and how it affects the virtue of its citizens...And yet, the Christian must exercise care in the

⁴⁰ Mt 21:12–13, Mk 11:15–17, Lk 19:45–46, Jn 2:14–16. On whether his use of a whip was “violent,” see N. Clayton Croy, “The Messianic Whippersnapper: Did Jesus Use a Whip on People in the Temple (John 2:15)?,” *Journal of Biblical Literature* 128:3 (Fall, 2009): 555–568.

⁴¹ Matthew, Mark, and Luke record this, while John’s account has Christ critical of turning his “Father’s house into a market.”

⁴² For an excellent discussion of this topic, see Richard Horsley, *Covenant Economics: A Biblical Vision of Justice for All* (Louisville: Westminster John Knox, 2009).

extent to which the government uses its power to protect a community’s moral ecology.”⁴³ Christianity is concerned with both private and public spheres. But the use of government to mediate private spheres requires “care.”

For a variety of reasons that I develop at length elsewhere, LM is an inappropriate tool for Christians on ethical and biblical grounds.⁴⁴ But to note one important aspect, Christ showed that anger in the name of justice—in defense of the rights of others—can be ethical. He verbally defended the rights of others in matters of “social justice,” especially the powerless. However, he did not restrict the freedom of non-followers in matters of “social morality” by using human government.

The pursuit of social justice, rather than social morality, can produce better results. Attempts to LM are always fraught with unfortunate costs, but attempts to LJ (if done well) will have a number of beneficial by-products. First, with LJ, Christians set themselves apart as “servants”—in ministering to others, defending the defenseless, and so on. In other words, it is easier to be seen as “the light of the world.” Those who LM are inevitably seen as prudes and busy-bodies who are trying to keep people from doing what they think is best.

Second, to the extent that Christians are critical of injustices, those who benefit from, or are responsible for, the injustices are usually the only ones who will view LJ efforts negatively. For example, if the poor are being

⁴³ Francis Beckwith, *Politics for Christians: Statecraft as Soulcraft* (Downers Grove, IL: InterVarsity Press, 2010), 68, 70.

⁴⁴ See D. Eric Schansberg, “Common Ground Between the Philosophies of Christianity and Libertarianism”, *Journal of Markets and Morality* 5:2 (2002): 439–57 and *Turn Neither to the Right nor to the Left: A Thinking Christian’s Guide to Politics and Public Policy* (Greenville, SC: Alertness Books, 2003). Cf. Doug Bandow, *Beyond Good Intentions: A Biblical View of Politics* (Wheaton, IL: Crossway Books, 1988) and Jamin Andreas Hübner, “Christian Libertarianism: An Introduction and Signposts for the Road Ahead.” *Christian Libertarian Review* 1 (2018): 15–74.

exploited in some way, arguing against the injustice is likely to raise the sympathies of objective observers, not rankle them.⁴⁵

Third, the pursuit of justice gives Christians an opportunity to be *for* something—and for something greater. Christians, especially in North America, are often known for what they are *against*. Libertarians are in a similar position—often perceived as focused on niche rights (e.g., legal prostitution and pot), rather than for broader rights, especially for the oppressed. In addition to its merits, the pursuit of justice for the poor and oppressed will typically be perceived well.

VI. CONFLATING JUSTICE AND OPPRESSION WITH POVERTY

Scripture often mentions “the poor and the oppressed”; thus, the two terms are often connected.⁴⁶ However, since some other texts also distinguish between the two, there can also be a distinction between them. Many people believe that the rich often oppress the poor to gain their wealth. Although more prevalent in biblical times, it is unusual today—at least without help from unjust government policies. Schneider writes that “we now know beyond controversy that modern high-tech economies do not work in the same way that the ancient orders did....Nor do they work in the ways that the capitalism observed by Wesley, Marx, and Weber did....[It] works primarily by means of the creation of wealth, not by its seizure from others.”⁴⁷

⁴⁵ An exception to this would be when a majority of (powerful) people benefit from an injustice. Even in these cases, Christians should value justice highly.

⁴⁶ Motyer notes that “Both *dal* (poor) and *ani* (oppressed) have the same general ambience...The latter, however, also includes the sense of “humiliated, downtrodden”—not only uninfluential but because uninfluential, manipulated by the authorities as existing only for others’ advantage.” Alec Motyer, *The Prophecy of Isaiah* (Downers Grove, IL: InterVarsity Press), 111.

⁴⁷ John Schneider, “The Good of Affluence,” *Religion and Liberty* (March/April 2002), 6–8.

To oppress, as Webster's *Dictionary* describes, is “to keep down by the cruel or unjust use of power or authority; to trample down; the imposition of unreasonable burdens...[through] excessively rigorous government.” In other words, oppression stems from a use of force which makes others worse off.⁴⁸ This would seem to occur much more frequently through government policy than economic activity. Economic markets feature voluntary transactions and mutually beneficial trades that enhance wealth and well-being. But wealth can also be gained through the use of force, theft, extortion, and bribes. For example, political markets often involve the use of government power to make some better off at the expense of others.

To the extent that oppression occurs in any realm, it is wrong. However, the primary causes of poverty today are poor decisions by individuals and poor policies by their governments. As Chilton notes, “God is against certain poor people”: sluggards (Proverbs 6:6–11), law-breakers (Proverbs 28:6), those who covet and then curse God (Proverbs 30:7–9), and so on.⁴⁹ Thus, Christians should seek to educate others about the consequences of poor decisions and oppose unjust policies.

VII. REDISTRIBUTION, BRIBES, AND JUSTICE

After reading a pointed description of redistribution, the first problem that may come to mind for Christians is that it seems to violate the 8th

He argues helpfully that this theological response should be based on the doctrine of the creation (how to use resources wisely) and the Exodus (a focus on freedom from oppression and poverty in a land of “milk and honey”).

⁴⁸ For example, James critiques those who withhold wages rather than criticizing the wage rate itself (Jas 5:4). Ironically, the government forces employers to “withhold” wages by mandating that they collect income and payroll taxes from workers, even the working poor.

⁴⁹ David Chilton, *Productive Christians in an Age of Guilt Manipulators: A Biblical Response to Ronald J. Sider*, 3rd ed. (Tyler, TX: Institute for Christian Economics, 1985), 80–5.

Commandment: “Do not steal.”⁵⁰ In criticizing attempts to LJ through government redistribution, Chilton argues that “The mark of a Christian movement is its willingness to submit to the demands of Scripture...‘You shall not steal,’ for instance...must not be relativized on the mere excuse that the thief has no bread.”⁵¹ Likewise, Bandow argues that “the political process has become a system of legalized theft, with personal gain rather than public interest becoming the standard for government action.”⁵² Pursuing godly goals with ungodly methods is not a godly option.

This use of force cannot be motivated from a Christian perspective, unless perhaps the government spending is for the “general interest” or the “common good”—a narrow set of examples when economic markets do not function efficiently (e.g., some “public goods” and externalities). But it is not even clear whether Christians should vocally endorse those efforts. And certainly, Christians should eschew the use of government to appropriate funds from the general public to benefit “special interests” or, especially, themselves.⁵³

⁵⁰ The 10th Commandment, injunctions against moving boundary stones (Dt 19:14, Pr 23:10, Hos 5:10), and the concepts of tithing and sacrifice (out of what one owns and controls) also support strong property rights. See also: Mic 4:4, Mt 25:14–30, and the narrative in Genesis 3 which includes taking God’s stuff.

⁵¹ Chilton, *Productive Christians in an Age of Guilt Manipulators*, 5.

⁵² Doug Bandow, “The Necessity of Limited Government”, in *Caesar’s Coin Revisited: Christians and the Limits of Government*, ed. M. Cromartie (Grand Rapids, MI: Eerdmans, 1996), 51. Cf. Herbert Schlossberg, *Idols for Destruction: The Conflict of Christian Faith and American Culture*, (Wheaton, IL: Crossway Books, 1990), 118: “Since government produces no goods, it can distribute only what it takes from others. This process is indistinguishable from theft.” Note also: Eccl 4:1, 5:8–9. Augustine said that the only difference between the state and a band of highwaymen is its justice and supposed legitimacy: “Justice being taken away, then, what are kingdoms but great robberies? But what are robberies themselves, but little kingdoms? The band itself is made up of men; it is ruled by the authority of a prince; it is knit together by the pact of the confederacy; the booty is divided by the law agreed upon” (cited in Bandow, “The Necessity of Limited Government,” 147.)

⁵³ An interesting potential counter-example is in the Israelites accepting money from the Persian king in rebuilding the temple (Ezra 6:4,8–9, 7:15). But note that the money was

Biblical texts are active in condemning bribery as injustice. In wisdom literature, Proverbs 17:23 says that "a wicked man accepts a bribe in secret to pervert the course of justice." In the Torah, the Israelites were told not to "accept a bribe, for a bribe blinds those who see and twists the words of the righteous."⁵⁴ In establishing Israelite government under God, the selection process for judges included that they should "hate dishonest gain."⁵⁵ Thus, I Samuel 8:3 notes when Samuel's sons unfortunately "turned aside after dishonest gain and accepted bribes and perverted justice." And Samuel's farewell sermon included his declaration and the people's affirmation that he had not cheated or oppressed anyone, and had not taken any bribes.⁵⁶

In moving from the historical writings to the prophetic literature, two prophets noticeably explicitly tie together the themes of bribery and justice. Isaiah 1:21-23 reads, "See how the faithful city has become a harlot! She once was full of justice; righteousness used to dwell in her...(now) your rulers are rebels, companions of thieves; they all love bribes and chase after gifts." And in Amos' treatise on justice, he accuses the people, and especially, the leaders: "You trample on the poor and force them to give you grain....I know how many are your offenses and how great are your sins. You oppress the righteous and take bribes and you deprive the poor of justice in the courts."⁵⁷

What does such bribery and injustice look like today? For one, special interest groups use money to influence outcomes in political institutions.

volunteered not requested and God might have considered it a form of "back-pay" (as Ex 12:35-36).

⁵⁴ Ex 23:8. See also: Dt 10:17, 16:19, 28:25; Job 15:34-35, 36:18; Ps 15:5, 26:9-10; Pr 15:28; Eccl 7:7, Is 5:23; Mic 3:9-12.

⁵⁵ Ex 18:21.

⁵⁶ I Sam 12:3-4.

⁵⁷ Amos 5:11-12. One can draw a moral distinction between taking and paying bribes. See: D. Eric Schansberg, "The Ethics of Tax Evasion Within Biblical Christianity: Are There Limits to 'Rendering unto Caesar?'," in *The Ethics of Tax Evasion*, ed. R. McGee (South Orange, NJ: Dumont Institute for Public Policy Research, 1998), 156.

In less-developed countries, the stereotype of these transactions is political graft on a national scale, or the \$20 paid to a customs officer to make his inspection less thorough or a tariff less burdensome. In the United States, bribes are less frequent—or at least, more subtle.⁵⁸ Campaign contributions are the most prominent example of legal, political influence. They are not inherently evil. But to the extent that they influence justice negatively, they are a cause for great concern.

VIII. POLICY APPLICATIONS

Given a biblical license to pursue LJ, what would constitute a godly agenda for justice and which prescriptions will have the intended results? In theory, LJ could involve additional government intervention. But in practice, the available data indicate that LJ will typically involve less government activity—or at the least, different policies.

In biblical tradition, government appears to be portrayed at its best as “a necessary evil” to restrain evil (Romans 13:1–7). Otherwise, biblical perspectives on government appears quite pessimistic from Genesis to Revelation. The first mention of a city has an ominous origin, with the jealous and murderous Cain as its founder.⁵⁹ The first detailed description of a city includes Babel’s troubling civic agenda (Genesis 11). As the Israelites clamor for what an earthly king will do *for* them, God memorably warns them about what government will do *to* them (I Samuel 8:10–22).⁶⁰ The State is certainly rough on Jesus and the early church, from

⁵⁸ Cases of excessive corruption are prosecuted on occasion. And a provision in campaign finance laws that allowed retiring U.S. representatives to pocket excess campaign contributions in 1992 was uncomfortably close to bribery.

⁵⁹ Gen 4:17. Ironically, Cain’s twisted sense of justice led to the impulses behind the murder.

⁶⁰ Jamin Andreas Hübner, “Israel’s History as a Post-Exile Critique of Political Power,” presented at the “Peace and Violence in Scripture and Theology” Fall Conference of the Canadian-American Theological Association (October 20, 2018; transcript available at <https://independent.academia.edu/JaminH%C3%BCbner>) argues that the Enneateuch as a

persecution to martyrdom. And in John’s marvelous apocalyptic, the State’s evils are broadly described in colorful terms as the first Beast (Revelation 13:1–10). From the many examples of bad government in the Scriptures, one can only worry and be wary about the potential for evil overreach.

From economic theory—Public Choice economics and Austrian economics in particular—one shouldn’t be surprised to find that government activism is fraught with corruption and incompetence. And from any study of world history, it is clear that many government policies—economic, social, and military—have been unjust means toward unjust ends.⁶¹

The first requirements of an effective agenda for LJ would probably require satisfying the concerns of Public Choice and Austrian economics. Policy should be reasonably well-intentioned—and based on sufficient knowledge of how the economies and human behavior are known to work, rather than merely good intentions. A full accounting of troubling economic policies would require a full book and is well beyond the scope of this paper.⁶² But a few key, quick examples can be briefly traced out.

First, consider the use of government to try to help the poor. Ethically, welfare programs are troubling, since they forcibly take money from one party to give to someone else. Practically, these programs face the inherent disincentives and moral hazard problems of any effort to render assistance. These concerns are likely exacerbated by impersonal government agents who are spending someone else’s money.⁶³ And

whole exhibits an anti-political bias by the post-exile scribes, and provides more inter-narrative reasons for this conclusion.

⁶¹ Cf. Robert Higgs, *Delusions of Power* (Oakland: Independent Institute Press, 2012).

⁶² See D. Eric Schansberg, *Poor Policy: How Government Harms the Poor* (Boulder, CO: Westview Press, 1996).

⁶³ Corbett and Fikkert point to the difficulties of even doing private charity, despite with the best of intentions. Steve Corbett and Brian Fikkert, *When Helping Hurts: How to Alleviate Poverty Without Hurting The Poor...and Yourself* (Chicago: Moody, 2009). For the societal

government can hardly be expected to ably address more than material well-being, when any holistic understanding of the human person recognizes that there's much more in play. In sum, such efforts can be no better than a mixed bag in practical terms.

Unfortunately, many Christians actively advocate government welfare programs—out of general ignorance or a misunderstanding of the Scriptures. In particular, those on the Religious Left point to the communal living of the early church—as depicted in Acts 2 and Acts 4—and extrapolate from a small voluntary arrangement to large coercive policies such as welfare or even state socialism. Although helping the poor on a voluntary basis—individually or through a group like the church—is laudable if done well, there is no biblical license to advocate the force of government to redistribute income, even to the poor.

Second, consider the use of government to help special interest groups in a way that oppresses by imposing costs on others, especially the poor.⁶⁴ Sometimes the redistribution is direct, but usually it's indirect and more subtle—as government restricts competition, redistributing wealth from consumers and workers to those in politically-powerful interest groups. Koyzis argues that we “are justified in appreciating constitutional democracy...Yet we must avoid the assumption that democracy is identical to just government...Western democracies routinely pervert justice, albeit in less overtly destructive ways.”⁶⁵

Such policy outcomes are initially surprising to imagine in a democracy. The majority should easily outvote what most would consider an unjust outcome—often a form of “reversing Robin Hood,” in redistributing from common folk to the wealthy and politically

implications of these problems, see: Charles Murray, *Coming Apart: The State of White America, 1960–2010* (New York: Crown Forum, 2012).

⁶⁴ Note Hübner's review article of Waters' *Just Capitalism* in this volume, which deconstructs the “market-state” (market democratic socialism) as being “exploitative,” not so much parental.

⁶⁵ David Koyzis, *Political Visions and Illusions: A Survey and Christian Critique of Contemporary Ideologies* (Downers Grove, IL: InterVarsity Press, 2003), 151, 250.

connected.⁶⁶ Compare the subtle, small-per-person costs borne by members of the general public who are “rationally ignorant and apathetic”—with the concentrated benefits pocketed by a motivated interest group—to understand and explain the winning political calculus.

Koyzis notes that “it is simplistic to assert that one side favors justice while the other does not. It is more accurate to observe that each party wants to see justice done but that each conceives of it differently...”⁶⁷ This is true to some extent. But one wonders how often those pursuing their own interests are able to fool themselves into imagining that the outcomes fall under a robust and coherent sense of “justice.” In any case, an objective view of justice will find difficulty in this approach, reducing justice to a purely subjective preference.

This redistributive mechanism describes a vast array of government policies. Government increases the price of food, clothing, and shelter. It often insists on providing K–12 education through public-sector entities with tremendous monopoly power, especially over the poor. Its War on Drugs foists costs onto a range of innocents, particularly in the inner city. It locks less-skilled workers out of some labor markets through occupational licensing—and makes them more expensive to hire through minimum wages and mandated benefits. If they have a job, many state governments have income taxes on the working poor, while the federal government imposes its remarkably oppressive FICA taxes on every dollar they earn. Social Security has a rate-of-return near zero—the only nest egg for most poor people. And so on.

Many of these policies redistribute income to the *non*-poor at the expense of the poor. Presumably, these efforts are not designed to hurt the poor; their harm is merely a by-product or an indirect effect of policies with other goals. Unfortunately, neither the methods nor the outcomes

⁶⁶ Some have argued that this phenomenon has occurred during the Trump Presidency. For example, see Christopher Ingraham, “For the first time in history, U.S. billionaires paid a lower tax rate than the working class last year,” *Washington Post* (October 8, 2019).

⁶⁷ Koyzis, *Political Visions and Illusions*, 250.

can be considered just. But this laundry list provides a wealth of opportunities for those who want to pursue LJ through less government intervention.

IX. CONCLUSION

Brueggemann warns us not to focus too much on a laundry list of “concrete issues” and missing “the dominant crisis.”⁶⁸ Woodiwiss concurs from a different angle: “the church of Christ exists not as the institution for the eradication of poverty, but rather as God’s emblematic institution for how the poor are to be treated, welcomed, cared for, and respected...There simply cannot be a Christian *theory* of justice. They can only be local, particular, ecclesial efforts to be the church.”⁶⁹

As such, Christians should share the concern of God toward the poor and oppressed, have the passion of Christ for justice, and use methods consistent with biblical principles in dealing with oppression and injustice. In this context, knowledgeable Christians should be willing to stand up in the public square—especially for the poor who are disproportionately harmed by many forms of government activism. Where government is limited or deeply flawed, the call to minister to the poor and oppressed is still relevant.

When we fail to do so, “justice is driven back, and righteousness stands at a distance; truth has stumbled in the streets, honesty cannot enter...The Lord looked and was displeased that there was no justice. He saw that there was no one, he was appalled that there was no one to intervene.”⁷⁰ We should respond to God’s call to promote justice and righteousness.

⁶⁸ Brueggemann, *The Prophetic Imagination*, 13.

⁶⁹ Ashley Woodiwiss, “Christian Economic Justice and the Impasse in Political Theory” in *Toward a Just and Caring Society: Christian Responses to Poverty in America*, ed. David Gushee (Grand Rapids, MI: Baker Books, 1999), 141, 143.

⁷⁰ Is 59:14–16.

Often, the motives to help are there, but the knowledge about how to do so, ethically and practically, is lacking. Guinness draws an analogy to the Tin Man in *The Wizard of Oz*. In one scene, Scarecrow reasons “I shall ask for brains instead of a heart; for a fool would not know what to do with a heart if he had one.” But the Tin Man replies, “I shall take the heart; for brains do not make one happy, and happiness is the best thing in the world.”⁷¹ Of course, the optimal strategy is to use one’s heart and brains, with zeal and knowledge, to love the Lord our God with our heart *and* our mind—in pursuit of social justice for others.

⁷¹ Os Guinness, *Fit Bodies, Fat Minds: Why Evangelicals Don’t Think and What to Do About It*, (Grand Rapids, MI: Baker Books, 1994), 30.

ONE-AND-A-HALF CHEERS, BUT NOT THREE: A CONCISE AND CRITICAL REVIEW OF *JUST CAPITALISM*

Jamin Andreas Hübner

Abstract: As the world economy and structures of society continue to rapidly evolve, ethicists, theorists, political philosophers, and economists continue to offer various proposals as to how best to organize the economy. *Just Capitalism* is a recent book by Christian ethicist Brent Waters that aims to erect signposts for the twenty-first century Christian entangled in the intersection of ethics and economics. The book's proposal is ultimately a form of market-socialism very similar to European interventionism. This extended review suggests that the overarching proposal of the "market-state" is unfortunately not as helpful or as original as the book implies, especially for a world that needs to address more basic questions of power and economic functioning. The review contends that the Christian and ethics community at large must look to more radical and unorthodox solutions to achieve their goals of peace, freedom, and justice.

Keywords: socialism, democracy, globalism, economic ethics, anarchism

I. INTRODUCTION

Just Capitalism: A Christian Ethic of Economic Globalization by Christian ethicist Brent Waters (Garret Evangelical Theological Seminary) is a recent monograph that aims to erect signposts for the twenty-first century

Christian entangled in the intersection of ethics and economics.¹ It is the latest in the growing subgenre of books on these topics and “globalization.”² The basic thesis of the book is that global capitalism can be affirmed for the good things that it does, but is inadequate to address all of society’s needs.³

I explain in [great] detail why Christians can give economic globalization two-and-a-half cheers, but not three. (p. 15)

This forms the basic structure of the book—“Sustaining Human Life: Why Exchange Is Necessary” (Part 1) and “...but Not Sufficient: Enabling Human Flourishing” (Part 2). As such, the overall tenor is one of continual dichotomies, dualisms, and “yes—but” propositions, establishing a feel (and, as I’ll argue, veneer) of balance and modesty.

As one reads through *Just Capitalism*, it becomes clear that the book is much more than an ethical reflection on global economy or a critique of neoliberalism, neoconservatism, and Western consumerism. It offers relatively concrete proposals beyond theory. Most notably, it forcefully argues that deficiencies in “the market” (or “capitalism”) is a license for traditional political coercion. Washington D.C. may have its problems, but

¹ Brent Waters, *Just Capitalism: A Christian Ethic of Economic Globalization* (Louisville: Westminster John Knox Press, 2016). Short in-text references of page numbers will be used for this extended review.

² E.g., Max Stackhouse, Peter Berger, M. Douglas Meeks, eds., *Christian Social Ethics in a Global Era* (Nashville: Abingdon Press, 1995); Peter Heslam, *Globalization: Unraveling the New Capitalism* (Cambridge, UK: Grove Books, 2002); Douglas Hicks, ed., *Global Neighbors: Christian Faith and Moral Obligation in Today’s Economy* (Grand Rapids: Eerdmans, 2008); Peter Heslam, ed. *Globalization and the Good* (Grand Rapids: Eerdmans, 2004); Bob Goudzwaar and Harry de Lange, eds. *Beyond Poverty and Affluence: Toward an Economy of Care* (Washington D.C.: World Council of Churches, Ethics and Public Policy Center, 1994). Related books include such works as Rebecca Blank and William McGurn, *Is the Market Moral?: A Dialogue on Religion, Economics and Justice* (Washington D.C.: Brookings Institution, 2003) and Daniel Finn, *Christian Economic Ethics* (Minneapolis: Fortress Press, 2013), among many others.

³ I suspect there is wide and growing agreement of this general sentiment; I certainly concur.

it is the completing half to an otherwise incomplete and dysfunctional society. This rather anodyne and (in this reviewer's view) problematic conclusion seems to undermine instead of support many of the book's own legitimate goals and observations.

II. SITUATING THE BOOK'S FRAMEWORK

On the ethical dimension, *Just Capitalism* functions more or less as version 2.0 of John Rawls's *Theory of Justice*,⁴ with its economic and social model roughly aligned with other Christian thinkers like James Skillen,⁵ Jim Wallis,⁶ Ron Sider,⁷ Charles Gutenson,⁸ Tony Campolo,⁹ and to a lesser degree, Lew Daly,¹⁰ Kees van Kersbergen,¹¹ John Milbank,¹² Joerg Rieger,¹³

⁴ John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971).

⁵ James Skillen, *The Pursuit of Justice: Christian Democratic Explorations* (Lanham: Rowman and Littlefield, 2004).

⁶ Jim Wallis, *Justice for the Poor: Participant's Guide* (Grand Rapids: Zondervan, 2010).

⁷ Ronald Sider, *Rich Christians in an Age of Hunger: Moving from Affluence to Generosity* (Nashville: Thomas Nelson, 2015, orig. 1978); *idem.*, *Just Generosity* (Grand Rapids: Baker Books, 2007).

⁸ Charles Gutenson, *Christianity and the Common Good* (Grand Rapids: Brazos Press, 2011).

⁹ Tony Campolo, *Red Letter Christians* (Ventura: Regal, 2008) and *Was Jesus a Republican or Democrat?* (Nashville: Thomas Nelson, 1995).

¹⁰ Lew Daly, *God's Economy: Faith-Based Initiatives and the Caring State* (Chicago: Chicago University Press).

¹¹ Kees van Kersbergen, *Social Capitalism: A Study of Christian Democracy and the Welfare State* (London: Routledge, 1995).

¹² John Milbank, "Can the Market be Moral? Peace and Prosperity Depends on a Reimagined Socialism," *ABC Religion and Ethics* (October 24, 2014) and *The Future of Love: Essays in Political Theology* (Eugene: Cascade, 2009).

¹³ Joerg Rieger, *No Rising Tide: Theology, Economics, and the Future* (Minneapolis: Fortress Press, 2009).

Luke Bretherton,¹⁴ Max Stackhouse,¹⁵ Douglas Meeks,¹⁶ Cornell West,¹⁷ Richard Horsley,¹⁸ Daniel Finn,¹⁹ and Gary Dorrien.²⁰ This model is best described as (“Christian”) communitarian democratic socialism (or “market-socialism”),²¹ though all of these terms are strategically-avoided within the book.²²

Besides an affirmation of voluntary associations and traditional social institutions (family, business, etc.), of virtue, and a critique of consumerism and the neoliberalism behind it, the proposed model therefore amounts to a central, democratic state that undertakes

¹⁴ Luke Bretherton, *Resurrecting Democracy* (Lanham: Cambridge University Press, December 2014).

¹⁵ Max Stackhouse, Peter Berger, Dennis McCann, and M. Douglas Meeks, *Christian Social Ethics in a Global Era* (Nashville: Abingdon, 1995).

¹⁶ Douglas Meeks, *God the Economist: The Doctrine of God and Political Economy* (Minneapolis: Fortres Press, 1989).

¹⁷ Cornel West, *Democracy Matters: Winning the Fight Against Imperialism* (New York: Penguin, 2005); *The Ethical Dimensions of Marxist Thought* (New York: Monthly Review Press, 1991).

¹⁸ Richard Horsley, *Covenant Economics: A Biblical Vision of Justice for All* (Louisville: WJK, 2009).

¹⁹ Finn, *Christian Economic Ethics*.

²⁰ Gary Dorrien, *Social Democracy in the Making: Political and Religious Roots of European Socialism* (New Haven: Yale University Press, 2019). Being more Marxist, Rieger, West, and Horsley are much more critical of markets and capitalism than Waters et. al. Horsley’s book has a bit different focus than the aforementioned volumes, being focused on the economic context of the Old and New Testament. Milbank’s “Christian socialism” and Dorrien’s view are a bit more nuanced. The same for Daly and Kersbergen, which sees Germany and Holland as a successful embodiment of Kuyper’s “sphere sovereignty” and the Catholic principle of “subsidiarity.” Finally, Finn’s views represent Catholic social thought, which are (in my view) conducive to democratic socialism, though this remains a bitter debate within Roman Catholic quarters.

²¹ See Dic Lo and Russell Smyth, “Towards a Re-Interpretation of the Economics of Feasible Socialism,” *Cambridge Journal of Economics* 28:6 (2004): 791-808, where “market socialism” is one of four types of socialism.

²² Rawls, Milbank, Dorrien, West, Rieger, Daly, and Bell are more forthright (and perhaps honest) by using “socialism” explicitly. However, given the sheer variety of socialisms and connotations, Waters’ choice to avoid the term “socialist/ism” in *Just Capitalism* is understandable.

“redistributing wealth and income” on behalf of “society” (pp. 199-201), subsidizes “state-sponsored...social capital” and education (p. 180), energy (p. 125), food (p. 125), enforces progressive taxation (p. 199) and regulations (e.g., building codes, workplace safety, etc., p. 172), ensures a theoretical economic minimum for all persons (pp. 179-180), and anything else that promotes the generic goal of “human flourishing.”²³ Many or most prices in the economy are determined by supply and demand, but markets are entirely overseen (and sometimes directly manipulated) by the political apparatus. Property-rights exist but are subordinate to the state since the state is more capable of establishing genuine social justice than “the market.”

The “communitarian” dimension, which has its roots in the movement of the early 1990s,²⁴ is also evident. Communitarianism significantly overlaps democratic socialism, emphasizing the family (workplaces should provide parental leave, benefits, etc. to that end),²⁵ reciprocity between people/families and the community,²⁶ participation in broader communal life so people can flourish,²⁷ a “social minimum of nurture,”²⁸ and “a more robust view of equal opportunity,”²⁹ meaning

²³ Cf. “common good.” Unlike Gutenson, Wallis, Sider, Rieger, Finn, and many others, Waters does not appear to support wage controls.

²⁴ See *The Responsive Community* journal (debuted in 1990), the “Responsive Communitarian Platform” (1991, <https://communitariannetwork.org/platform>), and Amitai Etzioni, ed. *The Essential Communitarian Reader* (Lanham: Rowman and Littlefield, 1998).

²⁵ “The Responsive Communitarian Platform,” xxvii.

²⁶ *Ibid.*, xxi-xxiv.

²⁷ Philip Selznik, in *Responsive Community* (1996) cited in Ashley Woodiwiss, “Christian Economic Justice and the Impasse in Political Theory,” 128-29.

²⁸ *Ibid.*

²⁹ *Ibid.*

community investment in "jobs, education, and opportunities for service."³⁰ These themes form the backbone of *Just Capitalism*.³¹

Similarly, Waters' proposal significantly overlaps Catholic social thought. One reads from the 1986 National Conference of Catholic Bishops that "All people have a right to participate in the economic life of society. Basic justice demands that people be assured a minimum level of participation in the economy...As Pope John XXIII declared, 'all people have a right to life, food, clothing, shelter, rest, medical care, education, and employment.'"³² This framework is essentially the same as the 1919 Catholic bishops' "Program of Social Reconstruction."³³ Along the same lines, Finn argues in his *Christian Economic Ethics* that "The needs of all must be met," that reciprocity (in contrast to contractual exchange and gifting) is essential, that the community through democracy should "provide protection for all of the unemployed," and that coercion is not concerning as long as it is "exercised with justice and prudence, serving the common good."³⁴ Finn also opposes "libertarianism" as extreme and a

³⁰ Ibid.

³¹ On the importance of family, see *Just Capitalism*, 37-38, 73-77, 115-16, 127, 145-147; on reciprocity, 103, 107, 111-113, 140, 145-149, 156-57, 164; on enabling participation in a global community, x, xi, 2, 8, 124, 170-71; on the "social minimum" or "safety net," 128, 145, 148-49, 170-80; on equal opportunity, 25, 76, 128, 139, 141, 191; on importance of social capital, 26-35, 61-66, 102-107, 157-158, 175-176, 193-96.

³² Cited in Stackhouse et. al., *Christian Social Ethics*, 111.

³³ The program "contained a set of immediate reforms, including the establishment of a legal minimum wage, public housing for workers, labor participation industrial management, and social insurance for illness, disability, unemployment, and old age, funded by a levy on industry....worker ownership of capital, universal living wages, and abolition and control of monopolies." Daly, *God's Economy*, xi.

³⁴ Finn, *Christian Economic Ethics*, 340-42; 360-62.

distraction.³⁵ Again, most of these sentiments are explicit and integral to *Just Capitalism*.³⁶

Just Capitalism's proposal of the "market-state" is indistinguishable from European market-socialism and/or a modified American interventionism. It creates the closest approximation to a social ideal by joining the wealth-producing abilities of the market and the justice-creating abilities of the state (73). In this arrangement, the driving ethic is consequentialism (i.e. "the ends justifies the means"); in Waters' words, "recourse to coercion may be required to establish just conditions" (188). And by "coercion" in statements such as these, Waters means not merely responsive force (i.e., capturing criminals), but the initiation of force against a person or their property in the name of a social good: "*It is just to require people to share, to a limited extent, the risks and benefits of competitive global markets*" (p. 191, emphasis mine). In short, the "state" side of Waters' "market-state" is more of a nanny or parent (that theoretically cooperates with her children) than a referee or umpire that operates as a neutral, third-party.

On the one hand, then, this nanny-state is synonymous with contemporary democratic socialist proposals (though the degree of political involvement may vary). On the other hand, it contrasts to Christian, anarchist, and Marxist socialisms, which are typically anarchist

³⁵ Nathaniel Finn, "Nine Libertarian Heresies Tempting Neoconservative Catholics to Stray from Catholic Social Thought," *Journal of Markets and Morality* 14:2 (2001): 487-503. Contrast with Thomas E. Woods, *The Church and the Market: A Catholic Defense of the Free Economy* (Lanham: Lexington Books, 2015; orig. 2005).

³⁶ Waters' ideology also seems to reflect the conflicted Burkean Republicanism of Theodore Roosevelt: "Paradoxically, [Roosevelt's] Burkean, republican commitment to restraining men's worst passions merged with his evolutionist affirmation of the corporate order of unbridled enthusiasm for expanding state power to push him in 1907 and 1908 along a path of reform both distinct from the insurgents and distinctly unconservative....[He proposed] the use the federal government to direct the corporate economy's evolution and stimulate a unifying surge of national feeling." Joshua David Hawley, *Theodore Roosevelt: Preacher of Righteousness* (New Haven: Yale University Press, 2008), 170. Cf. Waters, *Just Capitalism*, 154-160.

(anti-state) and stress the necessity for cooperative (i.e., “employee-owned”) business in a voluntarist society that values social justice. The nanny-state of democratic socialism also contrasts with minarchist libertarianism, which grants the legitimacy of the state but typically restricts its role to courts (contract enforcement), police (law enforcement), and military (national defense).

This democratic-socialist/“nanny-state” identity becomes more evident when *Just Capitalism* is situated within the larger conversation about globalization (of which there are endless new monographs being written).³⁷ Here, Waters is anything but alone in expressing concern and searching for better options. This is also true among Christian thinkers. For example:

1. Max Stackhouse of Princeton “hopes for a modified, democratic socialism.”³⁸
2. Daniel Bell, formerly of Lutheran Theological Southern Seminary, calls for a Christian “socialism.”³⁹
3. Gary Dorrien of Union Theological Seminary advocates “social democracy.”⁴⁰
4. John Milbank of University of Nottingham advocates “Christian socialism” and “a new paradoxical infusion” of democracy and “parentalism.”⁴¹

³⁷ Four notable volumes on this general topic include Branko Milanovik, *Global Inequality: A New Approach for the Age of Globalization* (Cambridge: Belknap, 2018); Jeffrey Frieden, *Global Capitalism: Its Fall and Rise in the Twentieth Century* (New York: W. W. Norton, 2006); Torben Iversen and David Soskice, *Democracy and Prosperity: Reinventing Capitalism through a Turbulent Century* (Princeton: Princeton University Press, 2019); Thomas Piketty, *Capital in the Twenty-First Century*, trans. Arthur Goldhammer (Cambridge: Belknap Press, 2014).

³⁸ Stackhouse, *Christian Social Ethics*, 14.

³⁹ Daniel Bell, *The Economy of Desire: Christianity and Capitalism in a Postmodern World* (Grand Rapids: Baker Academic, 2012); cf. Daniel Bell, *The Cultural Contradictions Of Capitalism: 20th Anniversary Edition* (New York: Basic Books, 1996, orig. 1976).

⁴⁰ Dorrien, *Social Democracy in the Making*.

⁴¹ Milbank, *The Future of Love*.

5. Lew Daly of Dēmos advocates a “Christian democracy”⁴² and Kees van Kersbergen of Aarhus University “Social Capitalism,”⁴³ as embodied in modern Germany and Holland.
6. Luke Bretherton of Duke University, calls on others to embrace a “Broad-Based Community-Organizing” (a “consociational democracy” which is also interfaith-supporting).⁴⁴
7. Philip Clayton at Claremont advocates “organic Marxism.”⁴⁵
8. Daniel Finn of Saint John’s University is one of many advocates of “Catholic social thought,” which “rests on the threefold cornerstones of human dignity, solidarity and subsidiarity” (John Paul II).⁴⁶

And then there is Brent Waters in *Just Capitalism*, advocating the “market-state,” which is, as many others concur, a “family affair” of government and economic justice.⁴⁷

We should note for the sake of contemporary debate that all of the aforementioned proposals share several key features. First, they share some of the same goals and complaints (e.g., we must deal with social inequities, consumerism, poverty problems, greed, concentrations of

⁴² Daly, *God’s Economy*.

⁴³ Van Kersbergen, *Social Capitalism*.

⁴⁴ Luke Bretherton, *Resurrecting Democracy* (Lanham: Cambridge University Press, December 2014). Bretherton, like his fellow Christian ethicists Waters and Milbank, proposes legislation that generally presume the political apparatus as society’s competent nanny.

⁴⁵ Philip Clayton and Justin Heinzekehr, *Organic Marxism: An Alternative to Capitalism and Ecological Catastrophe* (Claremont: Process Century Press, 2014).

⁴⁶ Amidst all these, also note Cornell West’s “democratic socialism.”

⁴⁷ See Stephen Mott and Ron Sider, “Biblical Justice,” in David Gushee, ed., *Toward a Just and Caring Society* (Grand Rapids: Baker, 1999), 43. Cf. 394, 498.

We might also mention others, such as the “front-porchers.” See Mark Mitchell and Jason Peters, *Localism in the Mass Age: A Front Porch Political Manifesto* (eugene: Wipf and Stock, 2018). Cf. Bruce Katz and Jeremy Nowak, *The New Localism: How Cities Can Thrive in the Age of Populism* (Washington D.C.: Brookings Institution Press, 2018), which points towards cities instead of the rural landscape as the site of renewal.

power and wealth, neoliberalism,⁴⁸ reductionist neoclassical economics, corporate control of government, etc.). Second, most share many of the same solutions (e.g., legislation, top-down regulation, redistribution of capital, more private integration with political apparatus, less secularism, more communal focus). Third, none seriously question the legitimacy of political authority or the modern-day nation-state (i.e., the crown, whether in the form of democracy, monarchy, or otherwise, is viewed as a “natural,” or at least permanent, fixed institution of society) or its functionality (i.e., the state is able to effectively act as a “neutral” or “disinterested” party); only those like anarchists, Marxists, democratic-confederalists, anarcho-capitalists, and anarcho-socialists question the

⁴⁸ Garrett Brown, Iain McLean, Alistair McMillan, *The Concise Oxford Dictionary of Politics and International Relations (Oxford Quick Reference)*, 4th ed. (New York: Oxford University Press, 2018), 368: “Here [neoliberal] is often linked to the so-called ‘Washington Consensus’ (privatization and deregulation; trade and financial liberalization; shrinking the role of the state; encouraging foreign direct investment) and to the structural adjustment programmes promoted by the IMF and World Bank. More recently, it has been used (for example, by the anti-globalization movement) to characterize the economic ideology behind capitalist globalization. Whilst all of these usages are related, the economic use of the term neoliberalism is somewhat general and imprecise.” Cf. Letitia Campbell and Yvonne Zimmerman, “Christian Ethics and Human Trafficking Activism,” in *Sex and Gender: Christian Ethical Perspectives*, ed. (Washington D.C.: Georgetown University Press, 2018), 191; Rieger, *No Rising Tide*, 12-13; Bell, *Economy of Desire*, 24: “‘neoliberalism’...has since become a common way of referring to the neoclassical vision of capitalism associated with the University of Chicago and especially Friedrich von Hayek and Milton Friedman. Politically, it is associated with the economic agendas of Ronald Reagan and Margaret Thatcher, as well as Bill Clinton and Tony Blair. At its most general level, neoliberal capitalism is about the complete marketization of life. In particular, it is about overcoming the obstacles to and inefficiencies introduced into the market by the Keynesian or welfare-state economics of the previous generation and increasing the integration of the entire globe into the capitalist market. Although it is frequently cast as ‘antigovernment’ by both its advocates and proponents, it is in fact fond of a lean, strong state that is ‘small’ with regard to its interference in market processes while nevertheless retaining and even enhancing its strength for the sake of security, particularly in the face of threats to the market.”

authority of the state.⁴⁹ Fourth, all address the intersection of Christian thought with economics, but noticeably few (with the exception of Finn) are writing as thinkers who are actually theologians/biblical scholars *and* economists.

In the end, then, despite some differences, these proposals are generally different versions of the same political and economic philosophy: “democratic-socialism” or “market-socialism.” All of this is to say that, while potentially useful in some contexts and well organized and written, *Just Capitalism* remains unoriginal.⁵⁰

III. ANALYSIS AND REFLECTION

As a theologian and economics professor, I generally enjoyed reading *Just Capitalism* and its attempt at solving popular problems in this intersection of disciplines. But, upon reaching the second half of the book, I felt somewhat tricked. The author used economic jargon in the first half in a way that showed some familiarity with basic free-market concepts. However, it became clear that a genuine understanding was lacking upon reaching the second half, when many of the principles in the first half were defenestrated in the same manner as popular pundits, and with the same kind of unoriginal solutions. (Hence my earlier remark about a surface-level “veneer.”)

More substantial are the internal problems of the book’s major proposals. The “market-state,” to use the author’s words, is supposed to combine the “best of both worlds” — the coercive, order-making function of the state and the wealth-producing abilities of capitalism. However,

⁴⁹ Cf. Michael Huemer, *The Problem of Political Authority: An Examination of the Right to Coerce and the Duty to Obey* (New York: Palgrave Mcmillan, 2012).

⁵⁰ This would not be a critique were it not for the almost entire lack of references to the aforementioned literature. Indeed, *Just Capitalism* communicates little to the audience that it is the continuation of arguments and sustained dialog within a particular ideological family. This tends to give readers a false impression about the originality of the “market-state” and other theses.

even if one grants this, the author does not appear aware of how market-socialism is (also) known to produce *the worst* of both worlds. All of the weaknesses of both politics and profit-making are present—if not compounded.

For example, early Marxist, socialist and anarchist critiques of capitalism (e.g., it’s exploitation of the working class, putting profit over people, the dangers of radical inequalities and centralizations of wealth, etc.),⁵¹ are largely unaddressed. In fact, Waters talks about the private sector as “geese laying golden eggs” (p. 192), systematically and faithfully exploited not by bourgeois employers (as in Marx), but by the state through taxation.

Similarly, the problems of crony-capitalism are thrown a bone (p. 124), but not seriously addressed. This is perhaps the most disconcerting aspect of the book because *the market-state is the ideal environment for cronyism to grow*: “cooperation” between the state and producers is encouraged and expected. The average citizen might voice their condemnation against the influences of war factories, Google, Amazon, and Big Pharma on the government, but the model of *Just Capitalism* practically requires that this kind of corruption and influence continue. It does no good to simply say “well only the *good* kind of cooperation between corporations and the state will occur.” There is no clear mechanism or concrete proposal for how this notorious problem will be effectively circumvented.

There is also the elephant-in-the-room of central banking. Readers might ask, for instance: How can any ethicist today reasonably justify a private bank maintaining a total monopoly over the credit and monetary system—especially given the catastrophic hazards that this has created in (for example) the Great Depression, Great Recession, and bailouts and monetary policy of early 2020 under Trump? Or justify a central bank’s

⁵¹ See the first half of E. K. Hunt and Mark Lautzenheiser, *History of Economic Thought: A Critical Perspective*, 3rd ed. (London: Routledge, 2011) and “Utopians and Socialists” on The Institute for New Economic Thinking’s *The History of Economic Thought* website: <https://www.hetwebsite.net/het/schools/utopia.htm>

ownership of over half the private equity market—as it currently stands for Japan? Is it *justice* for the poor to have to pay more and more for the same loaf of whole wheat bread due to monetary inflation? (The wealthy and middle-class can afford 5-10% increases each year and treat such rising prices as “life as usual,” but that is a luxury and privilege not everyone has.) Modern central banks wield far greater power than any politician and (usually) any government, and have only recently begun to receive the popular criticism they deserve during the Occupy Wall Street movement of 2011. And because the U.S. Dollar is the world reserve currency, the U.S. Federal Reserve has immeasurable power in the global economy; a discussion on ethics and economic globalism without a discussion of the Federal Reserve and its legitimacy has, for all practical purposes, already failed. In short, it is unfortunate that ethicists—especially Christian ethicists with images in their minds of Jesus tipping over tables in Jerusalem against the “temple-state,”⁵² and an inescapable concern for the oppression of the poor (e.g., via monetary inflation and fiat currency)—have only begun to explore the harm and unprecedented exercise of power that characterizes the postmodern financial sector.⁵³

While banks centralize and monopolize funding, governments through the state centralizes and monopolizes the actual performance of coercion—and *not all nannies are nice*. The nanny-state has been in existence for over a hundred years in various countries, and the results often look more like an abusive alcoholic father than a generous mother⁵⁴—the grotesqueries of state-created Native American reservations (e.g., third-world economic levels; record-setting teenage suicide rates; systemic racism in the courts and prisons), a failed “war on

⁵² See Horsley *Covenant Economics*.

⁵³ Cf. Kenneth Barnes, *Redeeming Capitalism* (Grand Rapids: Eerdmans, 2018) reviewed by Jamin Andreas Hübner in *Pro Rege* 47:4 (2019):41-43. This book and *Just Capitalism*, along with another, were helpfully reviewed by D. Glenn Butner, “A Chastened Defense of Capitalism,” in *Markets and Morality* 22:2 (Fall 2019): 407-422.

⁵⁴ Note that early formulations of the welfare state were intentionally characterized as “maternalism” instead of “paternalism.”

poverty” that was supposed to be won a half century ago, mass Medicare and Medicaid fraud, bankrupt social security, a notoriously dysfunctional education system that worsens with increased funding, failed veterans affairs programs that leaves soldiers traumatized and sometimes needlessly injured,⁵⁵ etc. This is not even to mention non-welfare-state abuses like police brutality and the murder of citizens,⁵⁶ wars and thousands of innocent lives lost on behalf of the oil industry, torture, indefinite detainment without trial, etc. Much of this kind of violence is unique to the modern-nation state, as individuals left to themselves could not produce such destruction. As historian Robert Higgs put it:

Defending the continued existence of the state, despite having absolute certainty of a corresponding continuation of its intrinsic engagement in robbery, destruction, murder, and countless other crimes, requires that one imagine nonstate chaos, disorder, and death on a scale that nonstate actors seem incapable of causing. Nor, to my knowledge, does any historical example attest to such large-scale nonstate mayhem. With regard to large-scale death and destruction, no person, group, or private organization can even begin to compare to the state, which is easily the greatest instrument of destruction known to man. All nonstate threats to life, liberty, and property appear to be relatively petty and therefore can be dealt with. Only states can pose truly massive threats, and the horrors with which they menace mankind come invariably to pass sooner or later.⁵⁷

⁵⁵ Despite all efforts of the U.S. welfare state, there has been minimal progress on substantially decreasing the alarming rate of veteran suicides (about one per hour). For an independent effort to make up for this failure, see Shawn Banzhaf and Jamin Andreas Hübner, *The Five Ls: A Practical Guide for Helping Loved Ones Heal After Trauma* (forthcoming).

⁵⁶ Over 1,000 citizens were shot and killed by police in the 2019 alone. See “Fatal Force: 2019 police shootings database” produced by the *Washington Post* (ongoing database).

⁵⁷ Robert Higgs, *Delusions of Power: New Explorations of the State, War, and Economy* (Oakland: Independent Institute, 2012), 36. Or, as Gustave de Molinari (1819-1912) is said to have remarked, “Anarchy is no guarantee that some people won’t kill, injure, kidnap defraud, or steal from others. Government is a guarantee that some will.”

Anarchists did not try to carry out genocide against the Armenians in Turkey; they did not deliberately starve millions of Ukrainians; they did not create a system of death camps to kill Jews, gypsies, and Slavs in Europe; they did not fire-bomb scores of large German and Japanese cities and drop nuclear bombs on two of them; they did not carry out a 'Great Leap Forward' that killed scores of millions of Chinese; they did not attempt to kill everybody with any appreciable education in Cambodia; they did not launch one aggressive war after another; they did not implement trade sanctions that killed perhaps 500,000 Iraqi children.

In debates between anarchists and statist, the burden of proof clearly should rest on those who place their trust in the state. Anarchy's mayhem is wholly conjectural; the state's mayhem is undeniably, factually horrendous.⁵⁸

One is also reminded of what Barry Goldwater (and others) poignantly said: "If the government is big enough to give you everything you want, it is big enough to take away everything you have."⁵⁹

This is not to discredit or dismiss what real poverty the welfare system may have alleviated. My point is simply to say that one must always be highly skeptical of any group of humans with a monopoly on systemic coercion—especially when this key bit of caution remains disturbingly absent in mainstream discourse on the entire subject of economics and ethics. Indeed, should we have time to explore, it could be easily argued that the well-worn (if not somewhat stale) proposals of state-empowering democratic socialism tend to (a) compromise key principles of Christian ethics (namely, peace and nonviolence, and loving one's neighbor as themselves), and (b) confound the meaning of justice in a way that renders

⁵⁸ Robert Higgs, facebook page. <https://www.facebook.com/robert.higgs>.568

⁵⁹ Quoted in Theodore H. White, *The Making of the President, 1964* (New York: Atheneum, 1965), 337.

persons today incapable of meaningfully condemning acts of violence—including the horrifying atrocities of our very recent past.

We live now in the wake of the most monstrously violent century in human history, during which the secular order (on both the political right and the political left), freed from the authority of religion, showed itself willing to kill on an unprecedented scale and with an ease of conscience worse than merely depraved. If ever an age deserved to be thought an age of darkness, it is surely ours....No cause in history—no religion or imperial ambition or military adventure—has destroyed more lives with more confident enthusiasm than the case of the ‘brotherhood of man,’ the postreligious utopia, or the progress of the race. To fail to acknowledge this would be to mock the memory of all those millions that have perished...⁶⁰

I would argue that to Hart’s list of “brotherhood of man,” “the postreligious utopia” and “the progress of the race” should be added another license for mass violence: “*to benefit the collective good of society.*” This excuse for violence, in fact, might even take first place among these other reductionist narratives. To the extent that such collectivism *has* led to the needless death of millions in the last century,⁶¹ this issue remains an important focal point for such reviews as this one. Why? Because it seems

⁶⁰ David Bentley Hart, *Atheist Delusions: The Christian Revolution and Its Fashionable Enemies* (New Haven: Yale University Press, 2009), 105-106.

⁶¹ Important books on this general topic might include Stéphane Courtois, Nicolas Werth, Jean-Louis Panné, Andrzej Paczkowski, Karel Bartošek, and Jean-Louis Margolin, *The Black Book of Communism: Crimes, Terror, Repression*, translated by Jonathan Murphy and Mark Kramer (Cambridge: Harvard University Press, 1999); Higgs, *Delusions of Power*; Olev Khlevniuk, *Stalin: New Biography of a Dictator*, translated by Nora Seligman Favorov (New Haven: Yale University Press, 2015); Andrew Waldner, *China Under Mao: A Revolution Derailed* (Cambridge: Harvard University Press, 2017); Alexandr Solzhenitsyn, *The Gulag Archipelago* (New York: HarperPerennial, 2007, orig. 1973).

to be part of the driving ethical principle behind and in front of works like *Just Capitalism*.⁶²

There should be no mistake here. Overarching goals like “human flourishing” are admirable and, like similar books on economics and ethics (e.g., the “moral consensus paradigm” in Claar and Forster’s *The Keynesian Revolution and Our Empty Economy*),⁶³ rightly designed to gather widespread, cross-cultural support in an age and planet that desperately needs them. This is, indeed, the right direction. But to make progress, a check on the mistakes of the progressive era must be in place for every century following, and that involves a check on the most positive and promising metanarratives. This is a dance between optimism and realism that all public intellectuals, scholars, and teachers must continue to learn.

IV. CONCLUSION

If readers are looking for more forward-looking solutions to political, social, and legal systems than what’s offered in *Just Capitalism*, they are better off looking at more voluntarist socialist and cooperative models. It may be particularly useful to peruse *Seasteading*,⁶⁴ *Algorithmic Governance*:

⁶² The theme (or at least the word-pair) of “human flourishing” is currently very trendy in Christian academia. It can be found the subject of books on eschatology (such as my colleague J. Richard Middleton’s *A New Heavens and a New Earth* [Grand Rapids: Baker Academic, 2015]), or in popular blog posts against libertarians by Southern Baptists, such as in Bruce Ashford, “The (Religious) Problem with Libertarianism,” *BruceAshford.com: Christianity for the Common Good* [December 5, 2018] <http://bruceashford.net/2018/the-religious-problem-with-libertarianism/>). And a number of universities have new centers/programs for “human flourishing” (King’s College, University of Oklahoma, University of Notre Dame, LCC International University, Harvard School of Public Health, Yale Divinity School, John Hopkins Medical School, University of Nottingham, Sarum College, etc.)

⁶³ Though, see Jamin Andreas Hübner, “Critical Reflections on Claar and Forster’s *The Keynesian Revolution and Our Empty Economy*,” *Faith and Economics* 75 (Spring 2020).

⁶⁴ Joe Quirck and Patri Friedman, *Sea Steading* (New York: Free Press, 2017).

Politics and Law in the Post-Human Era,⁶⁵ *Private Governance*,⁶⁶ *Your Next Government?: From the Nation-State to Stateless Nations*,⁶⁷ and Creative Common Law.⁶⁸ Representative democracy via the market-state is hardly “the best we can do.” On the contrary, it is surely outdated—and dying. There are countless more ways to decentralize power, enforce “the rule of law,” and facilitate sustainable human flourishing. I am not the only one to have wondered: Why must so few be willing to honestly, thoughtfully, and publicly explore them?

Just Capitalism is well-written, tackles a necessary challenge, and appeals to the sensibilities of several audiences. But in the end, *Just Capitalism* gets one and a half cheers, but not three.

⁶⁵ Ignas Kalpokus, *Algorithmic Governance: Politics and Law in the Post-Human Era* (Cham, Switzerland: Palgrave Pivot, 2019).

⁶⁶ Edward Stringham, *Private Governance: Creating Order in Economic and Social Life* (New York: Oxford University Press, 2015).

⁶⁷ Tom W. Bell, *Your Next Government?: From Nation States to Stateless Nations* (Cambridge: Cambridge University Press, 2017).

⁶⁸ www.creativecommonlaw.com.

BOOK REVIEWS

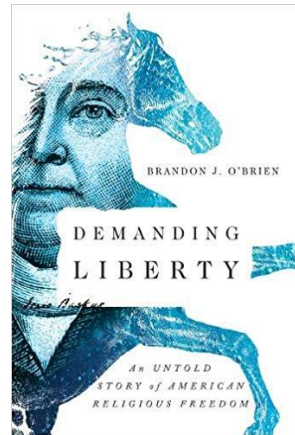
Brandon J. O'Brien. *Demanding Liberty: An Untold Story of American Religious Freedom*. Downers Grove, IL: InterVarsity Press, 2018. Pp. 1-173. ISBN 978-0830845286. Paperback \$17.00.

Isaac Backus is not a household name. But in Brandon O'Brien's telling, perhaps he should be. A Baptist minister who endured a long history of state repression, Backus ultimately became one of the foremost advocates for the religious freedom Americans have enjoyed since the Founding. And the achievement of this liberty, as O'Brien takes pains to establish, was by no means a foregone conclusion.

But O'Brien's project extends beyond simple history: at bottom, he's interested in offering an account of religious liberty that resonates with contemporary Christians (and, hopefully, others). That account, he argues, must be grounded in distinctly *Christian* principles rather than merely *American* ones. Backus' story, in turn, serves to illustrate this larger theme.

In O'Brien's telling, Backus' story began with the First Great Awakening—a period of intense religious fervor in America, frequently characterized by dramatic revival services and an emphasis on the Holy Spirit. Backus became a preacher himself after experiencing a call to the ministry, but quickly found himself at odds with existing churches over his narrow conception of church fellowship.

This was not Backus' only controversial theological stance: the practice of baptism figures prominently in O'Brien's account. For much of



his life, Backus vacillated between criticizing and defending infant baptism—the prevailing norm of his time—before finally repudiating the practice and formally identifying as Baptist. His conclusion had unexpectedly political implications: for Backus, infant baptism was inextricably linked to the state-established church. Under such a regime, the act of baptism necessarily conflated membership in the Kingdom of God with citizenship in the extant political order—which, for Backus, was theologically unacceptable.

Such a view was diametrically opposed to that of the “Standing Order”—a loose network of Congregationalist churches, staunchly committed to Reformed theology and closely intertwined with the existing governmental power. When confronted with critiques from Baptist and Quaker colonists, the Standing Order refused to cede its dominion quietly: colonial governments levied a punishing set of taxes on religious dissidents, ostensibly for the upkeep of the state-established churches.

With the American Revolution looming on the horizon, in 1773 Backus published his best-known work: *An Appeal to the Public for Religious Liberty*. He argued that civil government, insofar as it is necessarily composed of sinful human beings, cannot lead citizens into a state of pristine, Edenic liberty; true emancipation can come only through the redemptive work of Christ, as made manifest in the church. In more concrete terms, Backus took the view that the Standing Order’s conflation of temporal and spiritual authority tainted the work of the church with the often-sinful machinations of political power, keeping people from attaining the freedom offered by Jesus. For Backus, this poison could not be allowed to fester in the new American nation. Such a theological paradigm, in Backus’ view, necessarily formed the core of any case—political or otherwise—for religious liberty.

Backus’ stance is a compelling one—and, as O’Brien points out, it is a position infrequently articulated today. In the American popular consciousness, early colonial religious history frequently collapses into

ready stereotypes: the dour Puritanism of early New England, the humanism of the Framers, and so on. Those caricatures are precisely what O'Brien sets out to subvert: in his account, Backus was able to embrace fundamental principles of classical liberalism without forgoing his conservative theological views.

Might the modern church learn something from Backus' example? O'Brien, perhaps unsurprisingly, thinks so. As the director of content and distribution for Tim Keller's Manhattan church planting nonprofit, Redeemer City to City, O'Brien generally channels the optimistic ecumenism of those in Keller's orbit: for him, Backus is clearly a positive role model, an example of how contemporary Christians ought to comport themselves in a society wracked by conflicts over the nature and extent of religious liberty. The historical record reveals that Backus was theologically grounded, deeply principled, and politically insightful—exactly as contemporary Christians should be.

To the extent *Demanding Liberty* straightforwardly argues for the importance of its subject, the book is a great success. O'Brien has crafted a fascinating look at a largely unknown figure in American history, whose ideas have enjoyed an outsize impact and whose courage is worthy of admiration.

But the second element of O'Brien's thesis is rather more provocative: that religious liberty is best defended not through appeals to the *American* tradition, but to the *Christian* tradition in particular. In *Demanding Liberty's* telling, Backus' use of intrinsically theological resources allowed him to build out a stronger case for religious freedom than those circulating elsewhere within the marketplace of ideas.

But it is hard to avoid the conclusion that from a pragmatic standpoint, Backus' case for religious liberty only succeeds if governing authorities—or, at the very least, the general culture—operate from generally Christian philosophical premises. At one point, that was undoubtedly the case; the modern landscape, however, is profoundly different. Unlike the figures Backus confronted in his time, those figures

that presently hold power are unlikely to be moved by appeals to biblical and theological authority. Thus, an alternative discourse may be required in the public square.

Such alternatives have been readily forthcoming. As the one-time consensus afforded by American “civil religion” has broken down, many advocates for religious freedom have shifted their arguments to concentrate on nonsectarian “American” values—dignity, autonomy, diversity, and so forth. Others have revisited ancient questions of natural law and natural theology. A notable exemplar of this latter approach is Kevin Seamus Hasson’s *Believers, Thinkers, and Founders: How We Came to Be One Nation Under God*, which suggests that the need for religious liberty is rooted in the fundamental mystery of the “philosopher’s God” accessible to human reason. Both approaches sharply contrast with Backus’ strategy, but offer perhaps a surer political footing in an increasingly secular age.

Though O’Brien doesn’t emphasize it at great length, perhaps the most interesting takeaway from *Demanding Liberty* is a point Backus himself intuited: the fact that there is an essential tension between the practice of Christian baptism and the commitments of national citizenship. Such an argument was developed recently by James K.A. Smith in *Imagining the Kingdom: How Worship Works*. To be initiated into the Kingdom of God is to have one’s foundational loyalties reconfigured, to join with Jesus over Caesar if and when the two domains conflict.

Many contemporary readers—Smith among them—would likely argue that infant baptism is a far more “political” act than believer’s baptism, insofar as the former commits a child to a tradition and faith without their express consent. Interestingly, for Backus the reverse was true: infant baptism was necessarily bound up with uncritical assimilation into an existing socio-religious order. The underlying principle, however, is the same in both cases. To truly be *the church*, the church’s spiritual authority over its members must trump that of the state. The church is a counter-*polis*, an alternative community.

Isaac Backus clearly grasped that reality—and contemporary Christians would do well to heed his insights, even when they carry a painful cost.

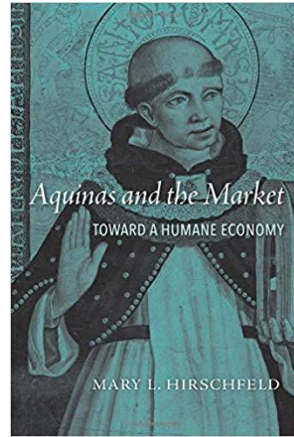
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Mary Hirschfeld. *Aquinas and the Market: Toward a Humane Economy*. Cambridge: Harvard University Press, 2018. Pp. xvii + 268. ISBN: 978-0674986404. Hardcover. \$45.00.

In 1998, noted economist and scholar of religion Laurence Iannaccone published an article titled, "Introduction to the Economics of Religion" in the prestigious *Journal of Economic Literature*. Iannaccone noted that scholarship on economics and religion fell into three categories: that which uses economics to interpret and explain religious behavior, that which assesses the effects of religion on economic outcomes, and that which interprets and critiques economic arrangements from a religious perspective.



This last category Iannaccone labeled religious economics. While he spends the rest of the article surveying research within the other two categories, Iannaccone spends less than a page at the beginning of the article discussing religious economics because "its literature is broad and far removed from the research and professional interests of most economists."¹ Whether the author intended it or not, this is a politic way of expressing the sad fact that religious economics, so defined, has not produced much noteworthy scholarship. The vast majority of it consists of theologians criticizing economic arrangements they do not understand, or economists criticizing religious doctrines they likewise do not understand. "Two ships passing in the night" is an apt metaphor, or would be if the ships were firing on one another as they sailed.

This unfortunate state of affairs may soon be remedied. An important first step has been taken with the publication of Mary Hirschfeld's *Aquinas*

¹ Laurence R. Iannaccone, "Introduction to the Economics of Religion," *Journal of Economic Literature* 36:3 (1998):1465-1495.

and the Market. Nobody can accuse Hirschfeld of being untrained in either economics or theology. Possessing Ph.D.'s in both subjects—her economics doctorate is from Harvard and her theology doctorate from Notre Dame—Hirschfeld is well positioned to bridge the gap between these two fields. Provided scholars of religious economics lay their cards on the table with respect to their priors, and approach both subjects with humility, there can be a productive exchange between two fields that do, in fact, have much to say to each other.

Since I just asserted the importance of disclosing one's priors, I will do so here, especially since the author and I approach these subjects differently. I am a convert to Eastern Orthodoxy (chrismated this past Pascha) whereas Hirschfeld is a convert to Catholicism. I am a libertarian, and while I do not know Hirschfeld's precise political beliefs, I am confident she is not. Finally, I approach questions of theology from a more 'mystical' perspective than Hirschfeld, who favors Aquinas and (presumably) the others in the Scholastic tradition. (However, since Aquinas himself cites Pseudo-Dionysius quite often, perhaps this difference in perspective is not so large.) It is probably because of these differences that I profited so much from reading Hirschfeld's book. Learning, in the sense of a genuine meeting of minds, is a hallmark of true scholarship, and I thank Hirschfeld for the opportunity to learn from her.

In brief, my opinion is that any scholar interested in topics at the intersection of religion and economics should have this book on their shelves. I recommend it wholeheartedly. In my review, I will first summarize her key arguments, and then go into one specific area where I think her claims can be challenged.

The first chapter concerns the domain of theological economics. The reason we need theological economics, as opposed to plain economics, is because "economics itself cannot provide a framework that orders economic flourishing to the higher ends economic flourishing should serve..." (p. 3). Ethical discourse rooted in theology can provide that framework. But this by itself suggests nothing for *how* economics should

relate to theology. We still need to know the proper methods and bounds of theological economics. Hirschfeld considers three possibilities: theology as the handmaid of economics, a division of labor between economics and theology, and theological critique of the premises of economics. She makes clear her intent is to “draw on the thought of Thomas Aquinas to offer a theological economics that combines the strengths of all three” (p. 22).

Chapter two is an overview of the orthodox rational choice model. Hirschfeld usefully summarizes the assumptions and content of the model, and also lists several challenges to that model that motivate her engagement of Aquinas in later chapters. She simultaneously explains and pushes back on several tenets that economists take for granted, such as the positive-normative distinction, the relationship between utility and well-being, the nature of rationality, and the plausibility of non-satiation. Although Hirschfeld is critical of aspects of rational choice, she also challenges arguments against rational choice made by non-economists, showing how several of the standard critiques misunderstand the nature of economics.

Thomas Aquinas enters the analysis explicitly in chapter three. Hirschfeld provides an overview of Aquinas’s theories of practical reason and the good life, stressing the similarities and differences from economists and the rational choice model. A passage from early in the chapter is worth quoting at length (p. 68):

Like economists, Aquinas believes that humans act for an end. Thomas calls that end happiness, while economists call it utility, but insofar as both Aquinas and economists believe that all human action is teleological, Aquinas’s economics does not simply talk past modern-day economists. That said, Aquinas’s understanding of that end differs substantially from the one envisioned by economists. In particular, Aquinas’s conception of happiness is centered on the notion of perfection of our beings.

The features of Aquinas that set him apart from economists is his dual insistence on the ethical aspect of all choices, as well as his commitment to an objective notion of the good, which serves as a standard against which human persons can judge their judgments. The chapter explores these facets of Aquinas's thought, as well as his theistic metaphysical commitments which give them meaning. The key to Aquinas on ethics and reason is the recognition that "human choice is not about efficiently getting what we want so much as it is about learning how to want what is genuinely good" (p. 84).

The fourth chapter turns from metaphysics to ethics. Although it is the book's shortest chapter, it is packed with insight. Hirschfeld introduces readers to the Aristotelian-Thomistic view of virtue and human happiness, as well as demonstrates how this account differs from the standard rational choice model in terms of the ontology of choice and the nature of happiness. A key insight is the appropriate view of wealth: "Material goods, are, indeed, good. But they are purely instrumental. It is not enough to be wealthy. Happiness requires that we deploy our wealth toward the worthy end of realizing our nature as fully as possible in lives ordered to God" (p. 97). True happiness thus entails acquiring the habits of excellence, which we call virtues, for the purposes of achieving true human flourishing. Practical reason (prudence) entails the appropriate selection of goods to pursue such that we acquire the virtues, which orient us to our ultimate end. But human reason, due to sin, can also direct us towards lower goods at the expense of the higher. True reason—that is, *right* reason—entails making choices that direct us to our objectively highest good. Here is where the gap between the rational choice model and the Aristotelian-Thomistic account becomes most apparent. A portion of the text at the end of the chapter (p. 117) contains, in my view, a wonderful statement of Hirschfeld's core argument:

On Aquinas's own account, we would expect much human behavior to be well described by the sort of constrained optimization economists

describe—because humans very often if not mostly act out of the lower form of reason that we share with animals and that does look like a series of optimization problems. The problem with the economic approach is that it identifies such decision making as rational. And with that comes a normative implication that permeates economic science, and indeed the public square. To wit, insofar as we think of the pursuit of happiness as an exercise in constrained maximization, it seems natural to focus one's attention on loosening those restraints. Economic growth and technological progress are embedded as ultimate goods, because they allow us to reach more desirable bundles of goods. Collectively, we seem to think that what it would take to have better paintings is more paint.

The fifth chapter contains much material that will be both interesting and contentious to those with an economics background. Hirschfeld shows how the paradigm she develops can be used to reinterpret many findings from market theory. Because Aquinas's framework presumes an objective final end for man, this end can be used to judge other intermediate ends, including the production and exchange of goods in the market. When judged in this light, many topics in economics, such as the nature of money, the relationship between preference satisfaction and well-being, and profit maximization, appear radically different. One particularly interesting concept is Aquinas's distinction between natural and artificial wealth, which bears some similarity to how economists think about the real economy and the nominal economy. But again, the ethically (as opposed to merely descriptively) teleological framework results in very different conclusions: "The artificial economy—money, prices, profits, and markets—has a proper role in a humane economy. But for that to work, participants in the market need to act out of Aquinas's basic principles. Natural wealth is desirable insofar as it meets genuine needs; instrumental goods are properly ordered to the ends they are meant to serve; and as social creatures we have an interest in making sure our exchanges are just" (p. 138).

Chapter six is the most institutionally focused, in that it considers the implications of Aquinas's arguments for property rights, markets, and economic justice. It is an engaging chapter, and the contrast between orthodox economics and Hirschfeld's reconstruction of Aquinas is full of fruitful tensions. Perhaps surprisingly, "Aquinas is a useful interlocutor for modern-day economists because he does argue that private property is legitimate, and not solely as a concession to fallen human nature" (p. 161). Aquinas anticipates modern economic arguments for the *coordinative* properties of private property and market exchange, which is valuable from a social-epistemic perspective even apart from any incentive-alignment considerations (see esp. pp. 165-167). However, there are dissimilarities between Aquinas's and modern economists' views on what ends property ownership and exchange properly serve. For Aquinas, "the right to private property extends only to the power to procure and dispense goods. With respect to their external use, external goods are to be held as 'common'" (p. 168). That is, a holder of private property may choose the productive task to which that property is assigned, and allocate the resulting income stream. But all have a just claim to the produce, especially the poor; it is impermissible to consume, even for someone who has a valid property right, beyond an amount commensurate to meet biological and social needs. Hirschfeld uses these insights to explore how we can know when we are consuming too much, and thus giving in to disordered desires. "The key here is that proper decision making involves looking at goods and services in a larger context, asking what role they play in constructing the shape of our lives" (pp. 177-178). She also makes important arguments relating Aquinas's framework to economic justice. Achieving economic justice, and in particular institutionalizing it, can be difficult because we frequently conceive of economic justice in purely material terms. Steps towards genuine economic justice requires "that when we think about economic justice in its various facets, we need to think more in terms of the ends material goods are meant to serve and less in terms of the material goods themselves." Overall, I found this the best

chapter in the book, in no small part due to the internal debate it provoked between my commitments to positive economics and my Christian concern for the dignity of the human person.

As is proper, the final chapter returns to big picture considerations. This chapter is both a recapitulation and an extension of the insights arrived at by juxtaposing orthodox economics with Thomistic economics. Hirschfeld argues that, while it is utopian to expect economic actors to orient themselves to the true good in both personal and institutionalized economic activities, Aquinas's framework can still offer much to both exhortatory and explanatory social science. Hirschfeld critiques economists for strongly insisting in the positive-normative distinction, while simultaneously treating efficiency as an unobjectionable policy goal. She also recognizes as suspect the discipline's claim to scientific insularity from value judgments while that discipline tries to inculcate a specific worldview (the economic way of thinking) to students. She concludes by reaffirming that economics, informed by Aquinas, has a meaningful place in the interdisciplinary public conversation on justice, virtuous living, and the good society.

Having summarized the book, I now want to conclude by exploring one of its most interesting meta-arguments in greater depth, namely those concerning the proper domain of religious economics and the relationship between positive and normative analyses in the social sciences. As Hirschfeld repeatedly notes, economists insist strongly on the validity of the positive-normative distinction, and are convinced that they are, as economists, engaging purely in value-free social science. Whatever the status of the positive-normative distinction—whether it should be interpreted ontologically, epistemologically, as a mere disciplinary convention, or discarded altogether—it is important that economists often fail to adhere to it in practice. This is nowhere more obvious than in how economists deal with economic efficiency. Because efficiency in economics is defined with respect to agents' subjective values, many economists do not see themselves as engaging in normative analysis when they use

efficiency as an evaluative criterion. (Economists think they are simply helping people get what they want. Of course, whether people should get what they want is itself a controversial normative position.) Hirschfeld is thus absolutely correct that economists “treat efficiency as a desirable property and that much policy analysis depends on a social belief that policies should promote efficiency. This term is employed in a normative fashion, however much economists might like to deny that claim” (p. 214). This becomes even clearer when economists do policy studies that employ cost-benefit analyses. “Although economists see themselves as generating knowledge for its own sake, the prestige of the discipline is tied up with their ability to offer advice to policymakers on how to regulate markets to pursue various goals” (p. 200). Economists simply fail to realize that many normative assumptions are built into their belief that (a) a proper evaluative metric for policy is cost-benefit analysis, (b) the distributional effects of policy are ultimately less relevant than whether the policy creates additional benefits on net, and (c) if a policy change entails net benefits, it can be meaningfully asserted that the policy makes people better off on the whole (cf. Klein et al. 2017).²

What should be done about this? One possible approach is taken by Hirschfeld in her book: adopt a teleological account of human activity with an explicit metaphysical assumption of a *summum bonum*, meaning there is no longer a qualitative distinction between positive and normative statements. Because value in an economic framework founded upon Aquinas is both agent relative *and* objective, there can be a single evaluative criterion by which we evaluate how economic life works, and how it ought to work. But this is not the only possible solution. Another

² Daniel B Klein, Jason, Briggeman, William L. Davis, and Abigail Devereaux, “Are So-Called Normative Statements the Same as Suitably Formulated So-Called Positive Statements? Evidence from a Survey of Economics Professors.” GMU Working Paper in Economics No. 17-33 (2017). Available online at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3050034

is to reconsider the second of the three possible ways theology can relate to economics: a complete separation between the two, such that economics is entirely relegated to explanatory social science, with no room to make normative judgments of any kind. This approach is implicit in the style of economics practiced by great economists such as Gary Becker and George Stigler, and assumes as an analytic starting point that all situations are economically efficient. While Hirschfeld cites Becker, and some other economists who take this approach, I do not think she has specifically critiqued this possibility.

It may be objected that exploring the social world with the assumption that everything that is is efficient makes efficiency a worthless tautology. I freely admit it is a tautology, but deny that it is worthless. Steven Cheung (1998, p. 518),³ an able practitioner of this kind of economics, argued in favor of it along the following lines:

My reinterpretation of Pareto optimality renders the condition worthless in welfare economics, but significantly enhances its role in positive analysis. In specifying constraints to derive testable propositions, whenever the Pareto condition fails to hold we would immediately know that some constraints are missing: it would then be up to us to decide whether the omitted constraints are relevant to the observations we are seeking to explain.

In other words, coming to the problem scenario with a commitment to analyze it as an efficient equilibrium forces the analyst to make sense of it in terms of maximizing behavior under conditions of scarcity, no matter how bizarre or irrational the situation seems (cf. Leeson 2017, 2018).⁴ What is the relationship of this way of thinking to religious economics? What

³ Steven S. Cheung, "The Transaction Costs Paradigm," Presidential Address, Western Economic Association, published in *Economic Inquiry* 36:3 (1998): 514-521.

⁴ Peter T. Leeson, *WTF? An Economic Tour of the Weird* (Stanford: Stanford University Press, 2018); *idem.*, "Logic is a Harsh Mistress: Welfare Claims for Economists," Working paper. Available at request from author.

initially seems to be a narrow debate about the nature and the applicability of the rationality postulate actually contains much more far-reaching implications. Those committed to the efficiency-always framework often contend that one of its benefits is protecting economics from facile ethical objections. But this works both ways. *It also protects ethics, including theologically informed ethics, from facile economic objections!* Since the economist must treat everything as efficient, efficiency can no longer be used as a benchmark of any kind, and thus cannot be sloppily used, in the manner critiqued by Hirschfeld, to sneak in normative analysis through the back door, disguised as positive analysis.

I believe I have identified another feasible solution to the problem that Hirschfeld has correctly diagnosed. To recap: the problem with orthodox economics is it often fools its practitioners into making unexamined value judgments. Hirschfeld contends that this is due to economists taking the economic way of thinking too seriously. But perhaps the problem is that economists do not take the economic way of thinking seriously enough (Albrecht et al. 2018)!⁵ Instead of economists simultaneously being economists, and ethicists, and theologians, perhaps the solution is to adopt an economic framework that constrains economists from wearing more than one hat at a time.

Ultimately the domain of theological economics will have to be hashed out in the actual practicing of theological economics. These reflections can help those who wish to contribute to the field to orient themselves, but I doubt that *a priori* boundary drawing will do much good either way. Hirschfeld's volume is an excellent contribution to this literature, and one that was much needed. If economists and theologians come to understand each other better because of her work, the book will have performed a great service. Of course we should not overlook the more obvious benefit of the volume: it says much that is true. Again, I

⁵ Brian C. Albrecht, Joshua Hendrickson, and Alexander William Salter, "Evolution, Uncertainty, and the Asymptotic Efficiency of Policy," Working paper (2018). Available online at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3251917.

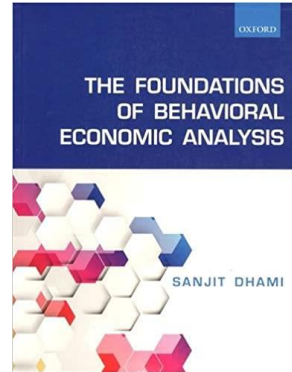
recommend it without reservation to anybody interested in consuming or producing research at the intersection of economics and religion. I look forward to Hirschfeld's future work on the subject.

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Sanjit Dhami. *The Foundations of Behavioral Economic Analysis*. New York: Oxford University Press, 2016. Pp. xxxiii + 1764. ISBN 978-0198715535. Paperback \$55.00.

Every discipline evolves. Economics is no exception. As soon as the neoclassical synthesis became comfortable in the mid to late twentieth century, the influence of psychology and sociology upon economics became apparent. “Behavioral economics” was born. However, (a) behavioral economics still hasn’t caught on as it should, and (b) contrary to what one might believe, this development was the result of *more empiricism*, not less—at least according to Sanjit Dhami’s massive tome, *The Foundations of Behavioral Economic Analysis*.



Indeed, “My personal hope,” he writes, “is that behavioral economics ceases to exist as a separate field within economics, and this becomes the normal way in which we do economics.” In his view, “behavioral economics is an enhancement of neoclassical economics to take account of more empirically supported evidence on human behavior, not its antithesis. Second, there is no paradigmatic battle between behavioral economics and neoclassical economics” (p. 2). Dhami emphasizes this in the introduction because behavioral economics has challenged many of the fundamental premises of neoclassicalism—from rational choice theory, to probabilistic decision making, efficient market hypothesis, etc. so much that some contend a paradigm shift is underway. Neoclassicalism, in its attempt to achieve credibility in its early phase by pulling economics from the social sciences into the natural sciences, cut itself off from reality—that is, from what we actually observe in the world of human behavior. Complex human beings became rationalist consumption machines that behaved according to clear axioms on paper. But that’s just it: Dhami passionately argues that the data contradicts the

neoclassical axioms so predictably that there is no excuse for continuing the enterprise as it has been conducted.

Two factors contributed to the gradual elimination of psychology from economics. First, around the turn of the twentieth century, there was “a distaste for the psychology of their period, as well as the hedonistic assumptions of Benthamite utility” (Camerer and Loewenstein, 2004). The second was the revealed preference approach popularized by Paul Samuelson that emphasized the observation of *choice behavior* rather than the psychological foundation for choice behavior (Bruni and Sugden, 2007). An important catalyst for the development of behavioral economics was the decline of the behavioralist school in psychology, and the emergence of cognitive psychology. (p. 3-4)

After summarizing a number of other economists expressing similar discontents, he concludes that “many of the contemporary methodological views in economics are retrogressive and a license to engage in defensive methodology to protect that status quo” (p. 7). As a case in point, he argues that some of the most revolutionary publications and studies in the field could never even be published today:

Kahneman and Tversky (1979) is the second most cited paper in all of economics, the foundation for the Nobel Prize to Kahneman, and the source of prospect theory, which is currently the most satisfactory decision theory under risk, uncertainty, and ambiguity. Yet the paper is based on hypothetical, non-incentivized, lab experiments. Any guesses if it would have been published in an economics journal today? (p. 19)

In short, the establishment has made little room for game-changing theories—or even modifications to existing models. Neoclassicalism is biased against the use of surveys precisely because its faulty methodology precludes their importance, but it is precisely such studies that would correct the faulty methodology. Economic orthodoxy suffers from many such vicious circles.

On a different note, Dhimi notes that because of economics' status as a social science, many traditional economists relax their empirical standards. He believes this is unjustified:

A common view in economics (shared unfortunately by some behavioral/experimental economists, I must add) appears to be that there is something rather difficult and unique about testing economic theories, relative to the natural sciences. So, at least implicitly, the argument goes, one needs to accord a "special" status to economic theories....

The view that testing of theories is somehow easy or easier in the natural sciences, as compared to economics, must surely be deeply offensive and insulting to experimenters in the natural sciences...Astronomers who dealt with the question of the distance of earth from distant objects, or the chemical composition of stars that are millions of light years away, did not also seek a special status for their subject. They got on with the difficult job of seeking relevant measurements, often using indirect evidence and clever implications of theory. They were eventually successful after several decades of work. Are economists seriously arguing that their measurement problems are more difficult than the problems in the natural sciences?...The process of discovery, measurement, and of testing the theory, can be a long and arduous one; seeking a special status for the subject is defeatist and put bluntly, lazy. (p. 9)

This argument seems straightforward enough; is human behavior really more complicated than quantum mechanics? On the other hand, I feel uneasy about this argument mainly because it presumes a simplistic view of the world and the nature of human knowledge. Let us grant, for the sake of the argument, that economics can and should be treated as a natural science. Why stop at the social sciences? What would be Dhimi's reasoning for not applying the same methods to every domain of human knowledge, including the humanities? Why shouldn't empiricism dominate philosophy, theology, linguistics, and the fine arts? It seems,

then, that we're dealing with a classic case of modernist empiricist reductionism, which does not clearly acknowledge how and why quantifiable languages (like math) are inherently superior to gaining knowledge and understanding. Dhami's perspective could use a macro-sized dose of post-modernism; different types of knowledge require different methodologies—lest we end up beating the world with a hammer thinking everything looks like a nail.

The content of the book itself involve all the models and arguments of behavioral economics. Because of its angle, there is particular emphasis on mathematical representation. Indeed, I cannot see how the book is less than upper graduate or doctoral level because of the amount of technical knowledge required. In terms of sheer space, perhaps around 50% of the book are equations. For those who are looking for this type of approach, a feast is in order. For those who want more qualitative analysis, there is much that can be skipped.

Part 2 outlines all the major issues and models surrounding behavioral economics. Two particular case studies are highlighted as particularly important for the whole book and discipline: prospect theory's (a) loss aversion and (b) non-linear probability weighting. Both originate in the work of Daniel Kahneman and Amos Tversky, which "may be identified as the beginning of modern behavioral economics" (p. 26). The first is "Figure 1: The power form of the utility function under prospect theory," and the second, "Figure 2: A plot of the Prelec function for $\beta = 1$ and $\alpha = .05$."

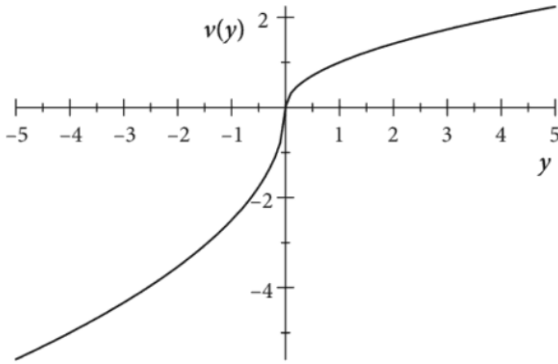


Figure 1 The power form of the utility function under prospect theory.

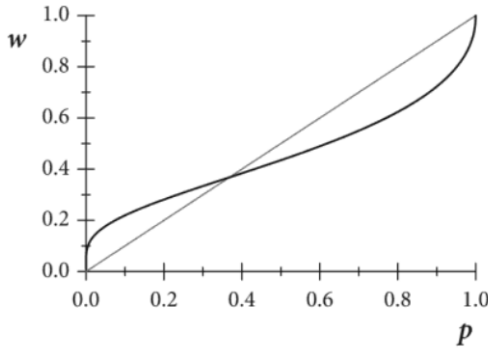


Figure 2 A plot of the Prelec function for $\beta = 1$ and $\alpha = 0.5$.

The first figure visualizes how people experience gain (top right quadrant) versus loss (bottom left quadrant). As it is evident, the line is steeper in negative territory than in positive territory. This Prospect Theory (PT) illustrates *loss aversion*, which contradicts the predictions of Expected Utility Theory (EU).

PT is a *descriptive* theory of choice that strives to explain actual human behavior not just risk, but also for uncertainty and ambiguity. Like many behavioral theories, it also has rigorous axiomatic foundations. PT not only accounted for the known violations of EU, it helped to successfully

predict and explain a range of new phenomena....PT gives a rich account of the difference in human behavior in the domain of losses. A key idea that drives many results in behavioral economics is *loss aversion*, i.e., losses bite more than equivalent gains. Kahneman and Tversky (1979) report media figure of loss aversion of 2.25. So, for instance, assuming linear utility, a monetary gain of 100 feels like a utility gain of 100, while a monetary loss of 100 feels like a utility loss of 225 under PT; under EU a loss of 100 would just feel like a utility loss of 100. Loss aversion is empirically very robust, and it may help some of us to understand our own past behavior. (p. 26-27)

The second figure illustrates non-linear probability weighting. In EU, people should weigh options according to their actual probabilities (that's the straight line in the figure). But that isn't the case—as the curved lines indicate. People predictably weigh different probabilities differently; they regularly overweight small probabilities and underweight large probabilities. For example, as Dhami notes, Sydnor (2010) argues that the over-weighting of small probabilities explains the fact that decision makers over-insure their homes against modest-scale risks. Scholars continue to debate what evolutionary/beneficial purpose this misperception may have.

In any case, prospect theory is many times superior to EU and current models and established credibility but for some reason have yet to become accepted. “A non-economist reading this introduction would surely think PT must be the main decision theory taught in microeconomics courses. Wrong! Most of the standard texts in microeconomics either omit any mention of PT, or only refer to it in passing...Incredibly, it is still possible to get a degree in economics in many universities without having undertaken a study of prospect theory, or even a course in behavioral economics” (p. 29).

Part 2 looks at all the different models under the category of “other-regarding preferences.” Part 3 looks at models on “time discounting,” Part 4 on “Behavioral Game Theory,” Part 5 on “Behavioral Models of

Learning,” Part 6 on “Emotions,” Part 7 on “Bounded Rationality,” Part 8 on “Behavioral Welfare Economics,” and Part 9 on the infant field of “Neuroeconomics.”

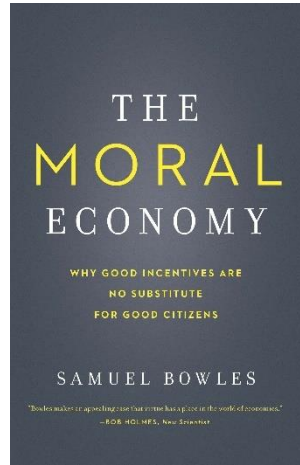
For anyone who is interested in the intersection of psychology and economics, or just interested in how neoclassical theory needs serious revision to live up to its own standards, *The Foundations for Behavioral Economics* is a must. It will likely remain the standard textbook of the field for many decades to come.

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Samuel Bowles. *The Moral Economy: Why Good Incentives Are No Substitute for Good Citizens.* New Haven, CT: Yale University Press, 2016. Pp. xiii-272. ISBN 978-0300163803. Hardcover \$27.50.

Depending on one’s perspective, Samuel Bowles’ *The Moral Economy* is either an unambitious book, or a very ambitious one indeed. On its face, the volume is a kind of how-to manual for policymakers of a technocratic disposition. Its central argument—a resounding, data-driven critique of approaches to public policy that stress purely financial incentives—is thoroughly explicated and engagingly presented. But *The Moral Economy* is also, in its way, a work of political theory. It repeatedly gestures toward far deeper questions about the role of the state in the lives of its citizens, culminating in some startlingly bold theoretical stances.



In the simplest terms, Bowles argues that human patterns of moral reasoning are more than balance sheets. Perhaps the best illustration of this theme is the “case of the Haifa daycare”—an example introduced early on in the book, to which he consistently returns. As the story goes, the daycare adopted a policy imposing fines on parents who were late to collect their children. This new policy was driven by the daycare’s frustration with parents who had become increasingly lax about punctuality. The policy, however, had the *opposite* of its intended effect: more parents than before collected their children late, simply opting to pay the fine. It was clear the daycare parents viewed the fine not as a penalty—a punishment for failing to live up to their end of the bargain—but as simply the monetary price of tardiness. And sometimes, depending on the circumstances, that price was worth paying.

As Bowles sees it, this reflects a fundamental problem with the way governments often try to promote certain behaviors. Financial incentives, stemming from a view of human beings as *homo economicus*—fundamentally self-interested and money-motivated—often fail to secure desired outcomes. To support this claim, Bowles provides what amounts to a meta-analysis of behavioral science research in the area, summarizing and evaluating their findings. (This discussion constitutes much of the body of the book.) At bottom, this research reduces down to a straightforward insight: individuals are motivated by more than money, such that money is not a motivational *lingua franca* capable of promoting any behavior one might imagine.

In that spirit, most of *The Moral Economy* makes largely uncontroversial claims. Here it bears mention that it is not clear anyone actually subscribes—or *ever* has subscribed—to the stripped-down, ultra-reductionistic account of incentives that Bowles criticizes. The economic literature is replete with discussions of how nonmonetary values drive individual behavior. Yet Bowles obviously conceives of his book as an critique of *something*—perhaps the *homo economicus* assumptions he believes underpin too much public policy.

And it is here that *The Moral Economy* becomes far more intellectually interesting: it relies heavily on a foundational, yet virtually unexamined, premise that the contemporary state must be the start and end of meaningful analysis in this domain. That assumption trenches on one of the most important disputes in twentieth-century political theory: the clash between the celebrated John Rawls and Robert Nozick.

Rawls began his political analysis from the “top down.” His famous “veil of ignorance” thought experiment—the zero point of his political philosophy—*presumed* a certain concept of sovereignty, and worked backwards from that to build out a theory of distributive justice. By contrast, Nozick stressed the importance of thinking politically “from the ground up,” conceiving of political theory as an account of development from individuals to tribes to organized confederations. Any other

paradigm, Nozick warned, would find itself unmoored from empirical reality, leading to theories unreflective of how human beings actually behave. (The title of his most prominent work—*Anarchy, State, and Utopia*—reflects the conceptual progression at the heart of his study: out of anarchy, a society emerges, which then moves in turn towards optimization.) To its core, *The Moral Economy* embraces Rawls’ framing—and it regularly finds itself constrained by that framing’s default assumptions.

In particular, Bowles follows Rawls in assuming an analytical “zero point” that lacks an obvious real-world correlate. Where (in his telling) too many policymakers begin by assuming that human beings are reducible to *homo economicus*, Bowles substitutes his own vision of *homo plasticus*, where humans are essentially moral blank slates awaiting tutelage by the state. This is, at the very least, a fraught position.

To begin with, Bowles provides a fairly thin account of moral formation itself. In stressing the priority of public policy, *The Moral Economy* largely ignores the centrality of mediating institutions—homes, schools, houses of worship, and so forth—in cultivating habits of virtue. This omission is a large one: governmental appeals to citizens’ deepest principles must necessarily assume a shared underlying moral grammar, about which the Rawlsian “veil of ignorance” is remarkably silent. And on a still deeper level, the book has next to nothing to say about the anthropology of moral reasoning—that is, how individuals’ deepest commitments emerge and cohere in the first place. To name but one example, Jonathan Haidt’s Moral Foundations Theory, which would seem to have important implications for Bowles’ project, is nowhere discussed.

These types of questions are far more cognizable on a Nozickian theoretical account. By beginning with the choices and values of individuals, such a model helps tease out the philosophical presuppositions and compromises underlying the modern liberal state. From that perspective, one can more accurately assess a given regime’s success or failure in light of its underlying principles—principles that

reflect the preferences of its citizenry. Historically speaking, those preferences shape the character of the state, not the other way around.

To be sure, Bowles is not unaware of this “problem of preferences.” In perhaps the book’s most original and distinctive discussion, Bowles unpacks the problem of the “legislator’s trilemma”: the inability of any liberal economy to (1) attain Pareto efficiency, while simultaneously (2) allowing economic participation to be voluntary and (3) maintaining neutrality with regard to the preferences of individuals. If the state adopts principles (2) and (3) and does nothing, voluntary market participants will not engage in maximally efficient trade and exchange. If the state adopts principles (1) and (3) and intervenes to promote efficiency, but without addressing individuals’ preferences, those individuals’ market participation must be compelled (the 2018 volume *Radical Markets*, by Eric Posner and Glenn Weyl, advocated this approach). If the state adopts principles (1) and (2) and intervenes to promote efficiency, but without forcing all individuals to participate in the market, its efficiency-promoting measures must take the form of social policies calculated to shape individuals’ preferences.

To resolve this trilemma, Bowles is willing to jettison preference neutrality. He favors, that is, concrete actions by the state to form citizens’ moral sensibilities. But this leads to some provocative consequences—none of which, unfortunately, the book chooses to engage. For one thing, it would seem that where individuals’ profoundest commitments—those values that are in essence, *theological*—stand in tension with the efficiency goals of Bowles’ hypothetical state, that state cannot stand idly by. Instead, it must catechize its recalcitrant citizens to “voluntarily” rethink their stances. Under such a regime, freedom of conscience may remain a formal guarantee, but the state may freely identify and stigmatize beliefs that are deemed undesirable.

It is difficult not to see echoes here of the “illiberal liberalism” probed by conservative thinkers like Patrick Deneen, Adrian Vermeule, and others. And in practical terms, a mushrooming role for the state risks

eroding the local and familial settings within which moral education occurs—those contexts through which the actions of a virtue-promoting government become intelligible. In short, it seems that if extended beyond a very narrow context, Bowles' theory risks slipping into a self-destructive snare of its own devising.

But perhaps this bleak reading takes Bowles' position too far. As a fairly narrow account of policymaking optimization within a Rawlsian frame, *The Moral Economy* does provide useful insights. Bureaucrats seeking to promote some particular end or another should probably think beyond their citizens' pocketbooks. And so understood, the book's argument succeeds.

As a robust argument against *homo economicus*, however, it does not. It is no critique of markets, or of market-based policies, to assert that human preferences are complex and multifaceted, and that in many cases a nonfinancial incentive may prevail over a financial one. A concept of *homo economicus* that moves beyond caricature allows for this understanding.

The preference hierarchies of individuals are undoubtedly complex, unstable, and ever-shifting things. The real question posed by *The Moral Economy* is not about how and whether those preferences drive individual behavior, but whether the state should seek to modify them. That latter may carry a rather high cost.

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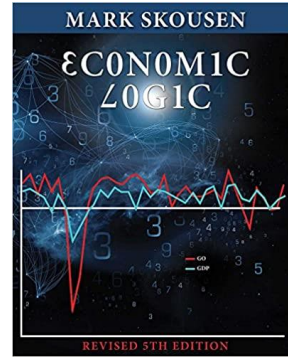
Mark Skousen. Washington D. C.: Capital Press, 2017. Pp. 715. ISBN 978-1621577706. Paperback \$79.99.

The fifth edition of Mark Skousen's *Economic Logic* textbook has recently become available in a solid 700-page paperback volume. Dedicated to Friedrich Hayek and Milton Friedman, the book has a particularly neoclassical, neoliberal, and libertarian orientation that is primarily aimed at undergraduate students.

For the past two years, I used the textbook as a supplement to my main course textbook (David Colander's *Economics*, 11th ed.). Because of Skousen's background in the business world and entrepreneurship, the book has a set of helpful graphs, charts, and images that generally aren't found elsewhere. This was particularly true for the earlier chapters on production, and commentary throughout the book about globalism, international trade, and the interaction between national economic forces (e.g., p. 644-65 on "the rise of state capitalism"). Skousen also argues for the superiority of adjusted Gross Output (GO) over GDP when it comes to measuring the economy. As he summarizes at the end of a chapter on "Measures of Economic Activity, Income, and Wealth": "GO is the proper way to measure economic activity (transactions) in the production of new goods and services" (p. 361).

The book is structured like virtually any other principles textbook: basic ideas first, followed by microeconomics and then macroeconomics. Each chapter ends with summary points, terms, problems to ponder, recommended reading, and an "influential economics" section that looks at the contributions, strengths, and weaknesses of a major economic figure. The book covers 27 such figures in each of the 27 chapters.

While helpful and historically-grounding, the representation and biographies of such figures does lack some balance. And there are obvious



blindspots regarding contemporary movements, such as the various applications of Marxist thought today, the rise of cooperatives and organizations supporting them, and the many theorists and figures of the 1900s that were fully socialist and fully anarchist (anti-state). There was also no chapter on the many advances of behavioral economics, or discussion regarding the impending problems of (a) global crony-capitalism and state-capture by private sector corporations, and (b) the growing dissent of neoclassical orthodoxies (rational choice and *homo-economicus*, expected utility theory, etc.). Nevertheless, for a book with substantial ideological commitments, the author does a fair job at maintaining nuance and objectivity for most of the material, and more critical perspectives on central banking and shameless mass manipulation of the economy and financial sector are always welcome. In any case, hopefully future editions will reflect the dramatic changes in both the economy and in economic theory (but this may be difficult because of its essentially 1970s-1990s framework; it may simply need a re-write).

While the book is unfortunately riddled by distracting typos and formatting problems (often characteristic of texts that have undergone so many revisions) and retains a fairly bland black and white interior, *Economic Logic* is a valuable contribution that many will find useful in balancing out different perspectives with solid and relevant information. Similar to the spirit of Robert Murphy's high-school textbook *Lessons for the Young Economist*, *Economic Logic* also provides students with a taste of libertarian and/or neoliberal economics in clear language, appropriate teaching level, coherent presentation, and thorough research.

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