

Critical Comment on Klein and Clark on Direct and Overall Liberty

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1. Introduction

Daniel Klein and Michael Clark's "Direct and Overall Liberty" is a welcome addition to the libertarian literature.¹ These authors force more traditional libertarians² to rethink their political economic philosophy and to delve more deeply into it than they would have in the absence of this article. Its main contribution is the distinction between what they call direct and overall liberty. Direct liberty is a "feature" or "facet" of a given act itself (p. 46). To put this into my own words, an act has or encompasses direct liberty insofar as, or to the degree that, it conforms to the Non-Aggression Principle (NAP), coupled with private property rights based on homesteading,³ along

¹ Daniel B. Klein and Michael J. Clark, "Direct and Overall Liberty: Areas and Extent of Agreement," *Reason Papers* 32 (Fall 2010), pp. 41-66.

² I count myself as belonging to this category. For a tremendously important statement of this position, see David Gordon, "Must Libertarians Be Social Liberals?" *LewRockwell.com*, September 2, 2011, accessed online at: <http://www.lewrockwell.com/gordon/gordon91.1.html>.

³ See Walter Block, "Earning Happiness Through Homesteading Unowned Land: A Comment on 'Buying Misery with Federal Land' by Richard Stroup," *Journal of Social, Political, and Economic Studies* 15, no. 2 (Summer 1990), pp. 237-53; Walter Block, "Homesteading City Streets: An Exercise in Managerial Theory," *Planning and Markets* 5, no. 1 (September 2002), pp. 18-23; Walter Block, "On Reparations to Blacks for Slavery," *Human Rights Review* 3, no. 4 (July-September 2002), pp. 53-73; Walter Block and Richard Epstein, "Debate on Eminent Domain," *NYU Journal of Law & Liberty* 1, no. 3. (2005), pp. 1144-69; Walter Block and Guillermo Yeatts, "The Economics and Ethics of Land Reform: A Critique of the Pontifical Council for Justice and Peace's 'Toward a Better Distribution of Land: The Challenge of Agrarian Reform'," *Journal of Natural Resources and Environmental Law* 15, no. 1 (1999-2000), pp. 37-69; Per Bylund, "Man and Matter: A Philosophical Inquiry into the Justification of Ownership in Land from the Basis of Self-Ownership" (n.d.), accessed online at: http://perbylund.com/academics_polsci_msc.pdf; Hans-Hermann Hoppe, *The Economics and Ethics of Private Property: Studies in Political Economy and*

with legitimate (voluntary) types of title transfer, such as trade, barter, gifts, gambling, etc.⁴ What then do they mean by “overall” liberty? This consists of direct liberty plus indirect liberty, and the latter, here, involves “any other effect that comes in the train of the reform” (p. 46), or, as I would more generally interpret this, “any other effects that come in the train of the act, whether ‘reform’ or not.”

Klein and Clark offer a splendid example to illustrate this crucial distinction of theirs:

In the case of raising the minimum wage from \$7.00 to \$9.00 per hour, the *direct* facets are the inherent coercive features of the reform and its concomitant enforcement. Indirect effects consider any other effects that come in the train of the reform. In the case of raising the minimum wage, it might be the case, for example, that if the government as currently composed failed to raise the minimum wage, voters would “punish” the sitting politicians, altering the composition of government and bringing new coercive incursions. An intervention such as raising the minimum wage, then, might be liberty-reducing in its direct features but, in relation to what would otherwise happen, liberty-augmenting in its indirect effects. (p. 46)

And why is this distinction so important? Because there is a possibility that a given act, “reform,” or change in the law, might be directly compatible with the NAP, while indirectly not. If so, there is a tension, not to say an utter incompatibility, between direct and overall liberty. In such cases, what stance should the libertarian take? This would depend upon whether or not direct or indirect liberty exerted the more powerful force.

I have two main difficulties with Klein and Clark’s article. First, I think that their concept of indirect liberty, and hence, overall liberty (which equals direct plus indirect liberty), although highly creative on their part, and even brilliantly so, is a snare for libertarian philosophy. Overall liberty,

Philosophy (Boston, MA: Kluwer, 1993); Hans-Hermann Hoppe, “Of Private, Common, and Public Property and the Rationale for Total Privatization,” *Libertarian Papers* 3, no. 1 (2011), pp. 1-13, accessed online at: <http://libertarianpapers.org/articles/2011/p-3-1.pdf>; Stephan N. Kinsella, “A Libertarian Theory of Contract: Title Transfer, Binding Promises, and Inalienability,” *Journal of Libertarian Studies* 17, no. 2 (Spring 2003), pp. 11–37; John Locke, *An Essay Concerning the True Origin, Extent, and End of Civil Government*, in *Social Contract*, ed. E. Barker (New York: Oxford University Press, 1948), pp. 17-18; Ellen Frankel Paul, *Property Rights and Eminent Domain* (Piscataway, NJ: Transaction, 1987); Murray N. Rothbard, *For a New Liberty* (New York: Macmillan, 1973); Michael S. Rozeff, “Original Appropriation and Its Critics,” LewRockwell.com, September 1, 2005, accessed online at: <http://www.lewrockwell.com/rozeff/rozeff18.html>.

⁴ Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974).

paradoxically, fatally weakens the power of the NAP, which I see as the essence of the freedom involved in libertarianism.⁵ Since I regard libertarianism as the last best hope for attaining a civilized order, I cannot with any equanimity regard a weakening of it in a positive light. Second, these authors and I disagree, sometimes sharply, as to what constitutes direct liberty itself.

With this introduction, I am now ready to launch into a detailed critique of Klein and Clark's article. I regard their article as important enough⁶ to employ the technique used by Henry Hazlitt⁷ in his refutation of John Maynard Keynes⁸: an almost line by line, certainly paragraph by paragraph, critical commentary and refutation. Section 2 is devoted to a criticism of Klein and Clark's views on positive and negative rights. In Section 3, I attempt to undermine their analysis of what I characterize as their liberty calculus. The burden of Section 4 is to counter their misdiagnosis of the libertarian who "would not kill an innocent person even if the survival of humanity depended upon it" (p. 45). I then look askance in Section 5 at their claim that "sometimes coercion is our friend" (p. 45). In Section 6 I comment on several of the cases in point offered by them to illustrate their findings. I offer some concluding remarks in Section 7.

2. Positive and Negative Rights

Klein and Clark begin by announcing that their voice is that of the "Smith-Hayek liberal" (p. 41). I have no objection to their use of the word "liberal." I am an enthusiastic supporter of their attempt to wrest back this nomenclature from the leftists who stole it from us in the first place. Indeed, they commendably use this word as a synonym for "libertarian." However, in view of devastating critiques launched at the libertarian credentials of Hayek⁹

⁵ Along with first ownership based on homesteading, and further property rights predicated upon licit title transfer.

⁶ Given the eminence of the authors in the libertarian movement, and the creativity of their thesis.

⁷ Henry Hazlitt, *The Failure of the "New Economics"* (Auburn, AL: Mises Institute, 2007 [1959]).

⁸ John Maynard Keynes, *The General Theory of Employment, Interest, and Money* (New York: Harcourt, Brace and World, 1964 [1936]).

⁹ Walter Block, "Hayek's Road to Serfdom," *Journal of Libertarian Studies* 12, no. 2 (Fall 1996), pp. 327-50; Milton Friedman and Walter Block, "Fanatical, Not Reasonable: A Short Correspondence Between Walter Block and Milton Friedman (on Friedrich Hayek's *Road to Serfdom*)," *Journal of Libertarian Studies* 20, no. 3 (Summer 2006), pp. 61-80.

and Smith,¹⁰ I fail to see how any libertarians can use these two at best fellow-traveling scholars of liberty as emblematic of this philosophy.

Klein and Clark quite properly, from their perspective, start their article by mentioning the “limitations of the classical liberal principle of liberty” (p. 41). I cannot accept, however, that they have laid a glove on this viewpoint. Another remark of theirs deserves a stern rebuke. They of course distinguish between (so-called) positive and (legitimate) negative rights. The former consist of the presumed “right” to other people’s property, of “welfare rights,” health “rights,” etc. The latter are the opposite side of the coin of the NAP: the right not to have your person, or your rightfully owned property, invaded. However, no sooner do these authors correctly identify positive and negative rights, but they proceed to undermine this vitally important distinction:

The distinction between positive and negative can be dissolved, however, by playing with “your stuff.” If you are deemed to have an ownership share in the collection of resources of the polity, the social life at large, the collective consciousness, or a divine spirit, then positive and negative liberty might dissolve into a muddle. Subscribers of positive liberty can defend, say, tax-financed government schooling by saying: No one is messing with *your* stuff, the people are simply using their appointed officers, government officials, to manage *their* stuff. No one is forcing you to remain within the polity. You are free to leave. (pp. 41-42)

A charitable interpretation of Klein and Clark would be that in this example they are merely underscoring the crucial importance of property rights. Yes, if we all own everything together (including our own bodies, which are tossed into the common pool) in some sort of ideal socialist commune, then the distinction between positive and negative rights does indeed “dissolve into a muddle.” And, perhaps, this is what they are trying to say, in a convoluted way. However, this still leaves uncorrected that hoary fallacy, “you are free here, since you may legally depart from the country.” But just because no one is preventing me from leaving does not mean that no one is messing with my “stuff.” I move to Harlem. Rents are cheap there. I am, however, mugged every day. Yet, I do not move out, even though I am “free to leave.” But, surely, the fact that I am robbed daily while in residence

¹⁰ Spencer Pack, “Murray Rothbard’s Adam Smith,” *The Quarterly Journal of Austrian Economics* 1, no. 1 (1998), pp. 73-79; Murray N. Rothbard, “Adam Smith Reconsidered,” *Austrian Economics Newsletter*, Fall 1987, pp. 5-7; Murray N. Rothbard, “The Celebrated Adam Smith,” in Murray N. Rothbard, *Economic Thought Before Adam Smith: An Austrian Perspective on the History of Economic Thought*, Vol. 1 (Brookfield, VT: Edward Elgar Publishing Company 1995), pp. 433-74.

there demonstrates that “my stuff” is indeed being “messed” with even though I remain there.

In the real world the claim that my property rights are being respected despite the fact that when I remain in the country I am forced to pay taxes, is subject to the fatal flaw of circularity. This argument assumes the very point at issue: that for some reason or other the state, composed entirely of human beings, none of whom has any more rights than I do, is justified in subjecting me to its taxation. How can this be? Not a mere majority, nor even a supermajority, would logically imply that it would be proper to override the rights of the individual.¹¹

Right now, if there are 100 individuals in society, there are 100 separate owners of each of these 100 bodies therein. Each person is the sole owner of his own body. According to Klein and Clark, however, if we apply their theory to the human person, and why ever should we not,¹² since this is by far our most important “stuff,” then the previous ordering is no longer the case. Rather, all 100 of “us” in Klein and Clark’s socialist nirvana group together own all 100 bodies, and are the rightful disposers of all of them. “We,” each of us individuals, are each in effect the owners of 1% of everyone in the group, including (what used to be considered) “ourselves.” But this is not only practically preposterous, it is also a logical impossibility. It is impractical because we would all surely die, and pretty quickly too. “We” (so to speak)¹³ would have to have endless committee meetings before “we” could undertake even the simplest of actions, to say nothing of more complex ones. What is worse, on logical grounds, it is downright *impossible* for “us” to engage in any human action, at least while conforming to libertarian principle, because, in order to do any such thing, “we” would have to give consent. But how could any of “us” do so, even if “we” all wanted to signify approval of any course of action. Ordinarily, back in the real world, we consent by verbal, written, or bodily indications (raising our hands). But under Klein and Clark’s scenario, “we” have no *right* to engage in any such action¹⁴ since “we” own only 1% of “ourselves,” of the bodies “we” inhabit, and it would be impermissible for “us” to use the other 99% of “our” bodies without the consent of at least 51% of “ourselves.” But, everyone else is in the same exact position as “we” are; they, too, logically, cannot give “us” permission to do

¹¹ Hitler came to power through a democratic process. This hardly justifies anything he did, let alone everything.

¹² The *reductio ad absurdum* is still a legitimate logical tool for determining truth and falsity.

¹³ As there are no longer any rights-bearing individuals, hence there really is no “we” either, because “we” depicts a group of *individuals*, and “we” no longer qualify.

¹⁴ We would have no right to engage in *any* action, for to do so would be to do so with other people’s “stuff.”

anything, either. So, “we” all die, for what right do we have even to inhale and exhale? The only way out of this quandary is for each of us once again to seize control of ourselves.¹⁵ But this implies that the entire scenario must be obviated. That is, we must jettison the model where the distinction between positive and negative rights collapses into a “muddle” because we cannot own our “stuff.”

Do you have a moral obligation to pay people you have not agreed to pay, just because they say they confer some benefits on you? Klein and Clark would answer in the positive, but this conclusion seems difficult to sustain, at least if we are to adhere to the tenets of the NAP. Anyone can *say* that they confer benefits on others. It is even possible that some of them actually *do* this. But it is exceedingly difficult to reconcile with the NAP any legal obligation to pay such people for these benefits. I take a shower. I undoubtedly improve the welfare of all those who come within smelling distance of me.¹⁶ But this hardly justifies my going to them, at gunpoint, and demanding payment for soap, hot water, towels, etc. Murray Rothbard’s *reductio ad absurdum* of this argument from external economies is as follows: “A and B often benefit, it is held, if they can force C into doing something. . . . [A]ny argument proclaiming the right and goodness of, say, three neighbors, who yearn to form a string quartet, forcing a fourth neighbor at bayonet point to learn and play the viola, is hardly deserving of sober comment.”¹⁷

3. The Liberty Calculus

For Klein and Clark, liberty is not a simple matter; it is highly complex. To determine whether an act is pro- or anti-liberty, we must consider *all* of its effects, and some of these may incline in one direction, others in the other. In their view:

Taxing people to wage war and dropping bombs on others are liberty-reducing in their direct aspect, but if the war topples dictators like Saddam Hussein, it might be liberty-augmenting in its larger aspect. Thus, again, we have ambiguity about whether the action is liberty-augmenting. This ambiguity arises not from ambiguity in any local fact of the action, but in “summing” over the facets . . . [W]hen some facets are reductions and some are augmentations, then it might be very difficult, even impossible, to assess the action in terms of overall liberty. (p. 43)

¹⁵ I shall drop the use of scare quotation marks around “we,” “us,” and “ourselves.”

¹⁶ Well, with the exception of those who don’t enjoy this particular odor.

¹⁷ Murray N. Rothbard, “Toward a Reconstruction of Utility and Welfare Economics,” in Murray N. Rothbard, *The Logic of Action One: Method, Money, and the Austrian School* (Cheltenham: Edward Elgar Publishing, 1997), pp. 211-54.

A sees B, who is a four-year-old boy. A takes B's candy. Then, for good measure, A kills B. For traditional libertarians, this seems to be an open-and-shut case. Indeed, it would be difficult to come up with more of a paradigm case of NAP violation. A is a thief and a murderer, and ought to be punished to the full extent of the law. According to Klein and Clark, though, A may well legally escape punishment, since B might possibly have become the next Hitler.¹⁸ If so, A may actually be a contributor to liberty, not someone who diminishes it. Therefore, A should be declared innocent, as it would be impossible to demonstrate clearly that A has diminished liberty. A is innocent until proven guilty, and there is no way that A can be *proven* guilty once we allow indirect and overall liberty to enter into the courtroom. Surely, it is not impossible that the child that A just murdered would have grown up into a Hitler.

Consider another case. C rapes D. It is somehow determined that had C not raped D, D would have been hit by the proverbial bus, and killed. According to traditional libertarian theory, C is a rapist, and this act of his was liberty-reducing, since rape is a violation of the NAP. In the view of Klein and Clark, however, all of this is turned around. C's invasive act is now liberty-augmenting, if we make the not-unreasonable stipulation that death is worse than rape. That is, D, if she had a choice between C's raping her and being hit and killed by the bus, would choose the former over the latter. One difficulty with Klein and Clark's view is that we are never in a position to know about contrary-to-fact conditionals of the sort "What would have happened to D had C not raped her?" Another problem is that justice delayed is justice denied: Just how long of a time frame do we have to take into account in order to determine whether a given act was compatible with liberty or not? Is our time horizon five minutes, hours, days, weeks, months, years, decades, centuries, millenia? There is nothing in Klein and Clark's theory that would be of help in answering this question. For example, when A killed baby boy B, we would have to wait for about fifty years or so to see whether this child turned into a Hitler¹⁹—that is, *if* we could avail ourselves of contrary-to-fact conditionals, which we cannot.²⁰

¹⁸ To insert a modicum of reality into this discussion, had the U.S. not entered World War I, that conflagration might well have ended up in a stalemate. If so, Hitler would have been a (particularly eloquent) house painter. But the U.S. did enter WWI (more bonds in the U.K. than in Germany); the Allies won. They imposed the punitive Treaty of Versailles. This led, indirectly, to the 1933 German hyperinflation, and to the rise of the Nazis. Then and only then was it that Hitler became Hitler.

¹⁹ On grounds articulated by Klein and Clark, it by no means follows that killing Hitler as a baby would promote liberty in its indirect manifestation, for there are worse mass murderers than he. Hitler, after all, was responsible for only some eleven million murders. Stalin at twenty million gets almost twice as much "credit," and Mao, who weighed in with some sixty million, almost six times as much. Possibly, the twenty-second century will bring forth a mass murderer who would put all three into the

We can endlessly multiply these weird cases. E is about to commit suicide. F saves her from this death. Later, E gives birth to, you guessed it, our man Hitler. Should F be punished for violating libertarian law? There would appear to be a case for this, since F's act of mercy reduced liberty. The authorities execute murderer G, but had they not, G would have gone out and done away with E, the mother of Hitler, who now engages in mass murder. So, were the authorities wrong in executing G, who would have performed the heroic role of ridding us of Hitler? Should these authorities, then, be punished by a libertarian court? It seems difficult to avoid these challenges, once we accept Klein and Clark's premises.

Another difficulty with all weighting systems of the sort proposed by Klein and Clark is that there are no units of measurement of liberty or freedom.²¹ Utilitarianism, too, shares this shortcoming, as there are no units of measurement of utility or happiness. In sharp contrast, there are units of measurement of height, weight, speed, distance, etc. Without an objective measure for "liberties," though, Klein and Clark's notion of indirect liberty must be seen as incoherent.

This is the practical problem with Klein and Clark's thesis. Criminals now have very unique and inventive defenses that are not open to them under classical libertarianism. They can always claim that, in terms of *direct* liberty, their act amounted to a heinous crime. However, as long as

shade. For data on these death tolls, see Robert Conquest, *The Harvest of Sorrow* (New York: Oxford University Press, 1986); Robert Conquest, *The Great Terror* (Edmonton, Alberta: Edmonton University Press, 1990); Stephane Courtois et al., *The Black Book of Communism: Crimes, Terror, Repression*, trans. Jonathan Murphy and Mark Kramer (Cambridge, MA: Harvard University Press, 1999); Thomas DiLorenzo, "Death by Government: The Missing Chapter," LewRockwell.com, November 22, 2006, accessed online at: <http://www.lewrockwell.com/dilorenzo/dilorenzo114.html>; R. J. Rummel, *Democide: Nazi Genocide and Mass Murder* (Piscataway, NJ: Transaction Publishers, 1992); R. J. Rummel, *Death By Government* (Piscataway, NJ: Transaction Publishers, 1994); R. J. Rummel, *Statistics of Democide: Genocide and Mass Murder Since 1900* (Piscataway, NJ: Transaction Publishers, 1997).

²⁰ What we would need would be two universes, otherwise identical, except that in one of them A murdered B, and in the other one A refrained from this act. Then, if the B in the second universe turned into a Hitler, then the A in the first universe would have been justified in murdering him (but perhaps it would not be murder, according to Klein and Clark, since murder is unjustified killing, and in their view, the killing of the boy in universe one would have been justified).

²¹ When I said above that it is worse to be murdered than to be raped, I was not employing measurements of liberty or freedom; I was merely stating that this is our estimate of the view of most people. It of course cannot be denied that some few individuals instead would be guided by the aphorism "death before dishonor." They would actually prefer to be killed than to be raped. Surely, though, that is a minority position.

indirect liberty points in the other direction, and outweighs the first consideration, their crime actually amounts to promoting liberty.

The bottom line is that Klein and Clark's thesis amounts to extreme skepticism. Under this theory, it is impossible ever to determine, at least at present, whether any act is a crime or not. If we take this perspective seriously, we cannot know anything at all about criminal activity until the end of time, whatever that means, for there will always be subsequent reverberations. An act that is criminal in the twenty-first century may be shown to be liberty-enhancing in the twenty-second century, liberty-reducing in the twenty-third century, etc.

Let us consider some more realistic cases. If we repeal rent control, housing values will rise, and with them so will real estate tax revenues, but the government might do evil things with its additional funding. If we legalize drugs, the state will be able to tax these substances, and perhaps violate rights with the extra financing. If we are above the Laffer point, a fall in tax rates will boost statist revenues, again to no good end. So, should libertarians oppose, or even think twice about, ending rent control, decriminalizing addictive materials, and reducing tax rates? This is Klein and Clark's very point, but as traditional libertarians, we need not fall into any such trap. Rather, we can maintain that engaging in libertarian policies is an unmitigated enhancement of freedom. And if the government uses its extra revenues to reduce liberty, as is its wont, well, that is an entirely separate act, which can then be condemned by libertarians.

4. Misdiagnosing the Libertarian Fundamentalist

In this section I attempt to counter Klein and Clark's misdiagnosis of the libertarian who "would not kill an innocent person even if the survival of humanity depended upon it" (p. 45). They are clearly appalled that any libertarian in his right mind would be such a libertarian fundamentalist.²²

The situation is a bit more complicated, however, than a pure nose-counting utilitarianism would suggest. A utilitarian simply calculates the fewest number of people who would be killed by some action. And surely, all of humanity outweighs, by far, any one innocent person.

How would a libertarian properly analyze this issue? Suppose that all-powerful Martians beam down a message to us Earthlings: Either one of us murders innocent person, E, or the Martians will blow us all up. Suppose the following response: Individual F steps up to the plate and murders E. At this point in time we hold a ticker-tape parade in praise of murderer F, who, after

²² For a critique of "market fundamentalism," see Bryan Caplan, *The Myth of the Rational Voter: Why Democracies Choose Bad Policies* (Princeton, NJ: Princeton University Press, 2007). For a defense of this position, see Walter Block, "The Trouble with Democracy: Review of Brian Caplan's *The Myth of the Rational Voter*," LewRockwell.com, August 25, 2007, accessed online at: <http://www.lewrockwell.com/block/block84.html>.

all, saved the entire Earth from destruction, whereupon we execute F,²³ who full well knows that this will be his fate; that is why he is a bit different from the ordinary murderer. Here, we can have our utilitarian cake at the same time as we eat our deontological pastry. That is, the libertarian NAP will be adhered to, given that F is voluntarily complying with it. Here, we interpret the NAP not as a prohibition of murder, but in terms of libertarian punishment theory. Libertarianism is interpreted not as the Kantian categorical imperative, “Thou shalt not murder,” but rather, as a hypothetical imperative, “If you murder, you will be subjected to libertarian punishment.” Now, it is true, the Martians can beam down a second message at us hapless Earthlings: “If you touch a hair on the head of murderer F, or in any way honor him, we will renew our threat to end the days of the third planet, and all who reside upon it.” If the Martians do this, then, of course, we are presented with the stark choice that Klein and Clark use to weaken the NAP. We can no longer attain both considerations: safety for the human race and treating murderers according to libertarian principles. However, it takes rather fickle Martians to attain this goal.

There is also a theoretical difficulty with Klein and Clark’s thesis: it misconstrues libertarianism. Let us consider the famous fifteenth-floor flagpole case. A man, call him G, falls from the balcony of the twenty-fifth floor. Fortunately for him, he lands on a flagpole at the fifteenth floor, and starts a hand-to-hand movement down to that deck, so as to get back to his initial starting position ten floors above. Unfortunately, there is the proverbial little old lady, H, on the fifteenth floor with a shotgun, who orders G to get off her property. We may assume that she was raped a week ago by a man who looks eerily similar to G. The erroneous question is, “Should G obey this demand, and drop to his death?” It is mistaken to look at the matter in this way, because there is nothing in the NAP that vouchsafes us any answer to this query. Rather, the proper question, the only licit one in this scenario, is, “If H shoots G, is she guilty of murder, or is she merely exercising her rights of self-defense over herself and her private property (the flagpole in this case)?” When put in these terms, it is clear that H is entirely within her rights, no matter how unfortunate this is for G. It is *her* property, after all. In like manner, libertarianism is simply not set up to address the question, “Should

²³ Or impose upon him whatever the proper libertarian punishment is for murder; on this issue, see Stephan Kinsella, “Punishment and Proportionality: The Estoppel Approach,” *The Journal of Libertarian Studies* 12, no. 1 (Spring 1996), pp. 51-74; Stephan Kinsella, “A Libertarian Theory of Punishment and Rights,” *Loyola L.A. Law Review* 30 (1997), pp. 607-45; Murray N. Rothbard, “Punishment and Proportionality,” in *Assessing the Criminal: Restitution, Retribution, and the Legal Process*, ed. R. E. Barnett and J. Hagel, III (Cambridge, MA: Ballinger Publishing Co., 1977), pp. 259-70; Roy Whitehead and Walter Block, “Taking the Assets of the Criminal to Compensate Victims of Violence: A Legal and Philosophical Approach,” *Wayne State University Law School Journal of Law in Society* 5, no. 1 (Fall 2003), pp. 229-54.

someone kill an innocent person if the survival of humanity depended upon it?” Rather, the only legitimate query is, “If someone does this, what is the proper response of the forces of law and order?” And, as we have seen, the answer is that he should be dealt with like any other murderer (apart from first holding a party in his honor, in this weird case).

Before ending this section, I have a word about Klein and Clark’s ploy of placing the lives of all of humanity in the balance against the NAP. Two can play that game. For example, suppose that the entire human race would perish if Klein and Clark’s thesis were true. Should they withdraw it? Well, maybe. But would this prove it to be false? Of course not. In like manner, even if the last vestige of our species would become extinct should we adopt “direct” libertarianism, that does not by one whit render this philosophy specious.

5. “[S]ometimes [C]oercion [I]s [O]ur [F]riend”

It would be difficult to come across a more curious statement than Klein and Clark’s claim that “sometimes coercion is our friend” (p. 45). Perhaps this proves that libertarianism is a *very* big tent. They offer this claim in their critique of Rothbard, who they correctly characterize as thinking “that moral and ethical truth always favors liberty over coercion” (p. 45). But nothing could more accurately reflect the libertarian enterprise than this keen insight of Rothbard’s.

Klein and Clark call upon Randy Barnett in order to buttress their view (p. 45), and in this they are very astute. Barnett, another self-proclaimed libertarian, is on record as favoring the 2003 U.S. invasion of Iraq.²⁴ Among the grounds chosen for his view is that this war really constituted defense on the part of the U.S.²⁵ Barnett need not have gone so far out on a limb as to adopt what I regard as an obviously erroneous position. Instead, just as Klein and Clark rely on Barnett’s notion of “presumptions,” Barnett could borrow a leaf from them. He could concede, if only *arguendo*, that insofar as direct liberty is concerned, the U.S. attack on Iraq was indeed a violation of “direct” liberty, but that indirect liberty is entirely a different matter. Who knows? Perhaps the U.S. invasion of Iraq and the killing of many of its citizens succeeded in eliminating a Hitler. Is this possible? Of course. And, could a twenty-first century Iraqi Hitler devastate humanity? Of course he could. Therefore, we may conclude that, at least on grounds set out by Klein and Clark, Barnett was in the right in claiming that Ron Paul’s opposition to the Iraq War cannot speak for all libertarians.

²⁴ Randy Barnett, “Libertarians and the War: Ron Paul Doesn’t Speak for All of Us,” *Wall Street Journal*, July 17, 2007.

²⁵ For a critique of Barnett, “Libertarianism and the War,” see Walter Block, “Randy Barnett: Pro War Libertarian?” LewRockwell.com, July 23, 2007, accessed online at: <http://www.lewrockwell.com/block/block79.html>.

Klein and Clark also call upon David Friedman to buttress their thesis, who claims that libertarian principles “are convenient rules of thumb which correctly describe how one should act under most circumstances, but that in sufficiently unusual situations one must abandon the general rules and make decisions in terms of the ultimate objectives which the rules were intended to achieve.”²⁶ But what are “the ultimate objectives which the rules were intended to achieve”? Surely, it is not the inability to cast judgment on *any* act, an implication of Klein and Clark’s thesis, since it is impossible to know what will be the indirect effects of anything. Nor is it the utilitarian type of calculation of “liberty” that they offer us, since the libertarian literature is replete with devastating critiques of utilitarianism.²⁷ The “purpose,” if there be any such thing, of libertarian law is to offer us a way to reduce and, hopefully, end conflict. And, certainly, using coercion to kill innocent people is no way to attain this.

Couldn’t Klein and Clark (and Friedman) offer a rejoinder by claiming that the purpose of a libertarian legal system is *in part* to eliminate quarrels over who may do just what with which property, but it *also* includes protection against threats to the entire human race? After all, if we all perish, the issue of our conflict over property rights will scarcely arise. Yes, this is a reasonable point, and may certainly be employed by Klein and Clark (and Friedman) at this juncture. However, their objection is of *very* limited value. It only applies to fickle Martians (or madmen who control enough weaponry to blow up the Earth) who purposefully want to drive a wedge between the NAP and the survival of our species. That is to say, the only defense at their disposal is this entirely implausible case.

But am I not being unfair to Klein and Clark? Is it really possible to employ such wild-eyed *reductios ad absurdum* against them? No, because I find that one of their main examples (noted above in Section 1) provides its own *reductio*:

In the case of raising the minimum wage from \$7.00 to \$9.00 per hour, the *direct* facets are the inherent coercive features of the reform

²⁶ David Friedman, *The Machinery of Freedom: Guide to a Radical Capitalism* (La Salle, IL: Open Court, 1989), pp. 172-73, cited in Klein and Clark, “Direct and Overall Liberty,” p. 46. See, though, Walter E. Block, “David Friedman and Libertarianism: A Critique,” *Libertarian Papers* 3, accessed online at: <http://libertarianpapers.org/2011/35-block-david-friedman-and-libertarianism/>.

²⁷ For example, the “utility monster,” who derives more pleasure from murdering all of us than we do from staying alive. For a critique of utilitarianism, see Hans-Hermann Hoppe, *A Theory of Socialism and Capitalism* (Dordrecht: Kluwer, 1989), chap. 7; Murray N. Rothbard, “Value Implications of Economic Theory,” in Rothbard, *Logic of Action One*, pp. 255-65; Murray N. Rothbard, *The Ethics of Liberty* (New York: New York University Press, 2002); Murray N. Rothbard, “Justice and Property Rights: The Failure of Utilitarianism,” *Mises.org*, January 25, 2010 [2000], accessed online at: <http://mises.org/daily/4047>.

and its concomitant enforcement. Indirect effects consider any other effects that come in the train of the reform. In the case of raising the minimum wage, it might be the case, for example, that if the government as currently composed failed to raise the minimum wage, voters would “punish” the sitting politicians, altering the composition of government and bring new coercive incursions. An intervention such as raising the minimum wage, then, might be liberty-reducing in its direct features but, in relation to what would otherwise happen, liberty-augmenting in its indirect effects. (p. 46)

Who knows which effect will swamp which? Raising the minimum wage *might* be liberty-reducing in its direct features? Can we not even make a definitive statement in this regard? Evidently, libertarians are precluded from so doing. Surely, if we cannot make a clear judgment about the libertarian credentials of embracing this pernicious legislation, let alone raising its level in this paradigm case of coercion, then we cannot draw *any* conclusions as to how *any* act affects liberty. If so, it would appear that libertarianism entirely disappears, since its function is to distinguish that which promotes liberty from what tears it down.

On a practical note, libertarians have sufficient difficulty agreeing on *direct* liberty with regard to such contentious issues as voluntary slavery, abortion, immigration, just to name a few—and this is in the entire absence of any worry about indirect effects. Were those taken into account as well, it would eliminate any last vestige of a coherent libertarian philosophy.

6. Cases

In this section I comment on several of the cases offered by Klein and Clark to illustrate their thesis.

a. Thoreauvian coercion

Klein and Clark state their support of the 1960 protest against racial discrimination practiced by Woolworth’s in Greensboro, North Carolina: “[S]uppose that the protesters were trespassing on private property. But their sit-in grew enormously, and the practice spread widely—surely, much of it against owners’ objections—and helped overturn governments’ coercive Jim Crow laws” (pp. 50-51).

There are some problems here. First, what is it with this opposition to “coercive” Jim Crow laws? Is not coercion at least sometimes “our friend”? If so, why not here? That is, how are we to explain Klein and Clark’s opposition to Jim Crow, and support for the protestors against these laws? Why do they not take the opposite stance? There is nothing in the foregoing incompatible with such a viewpoint. Second, why not clearly acknowledge that these sit-ins most certainly *did* take place on private property, and thus amounted to a clear and present trespass? Third, how do they know whether the Jim Crow laws promoted or reduced overall liberty? Yes, of course, at least on the libertarian grounds Klein and Clark are so anxious to reject, *direct* liberty was infringed

by Jim Crow, but what about the *indirect* aspects? Since there is no way to tell for sure what these are, on their own grounds they may not do so. Klein and Clark, moreover, do not follow their own strictures, in the sense that they completely ignore the deleterious effects of violating property rights that stem from such sit-ins. Nowadays, people sit-in for all sorts of illegitimate things, such as welfare rights and (public-sector) union rights.²⁸

Klein and Clark also support the 1971 May Day vehicular sit-in, or traffic blockade in Washington, DC. They seem to think that this violates direct liberty in that this action constitutes a trespass rights violation of “the rules the government sets for *its* property.” They continue: “If the government owns the streets and parks, and they order demonstrators to disperse, is it coercion on the part of the demonstrators not to disperse? Are they not treading on the government’s liberty-claims . . .?” (p. 51). Here again they raise an unwarranted (on their grounds) attack on “coercion.” For the libertarian, the state’s ownership of the streets is by no means a foregone conclusion.²⁹ And even for the minarchist, such a “government’s liberty-claims” would be a serious fallacy. (Klein and Clark’s claim that when the state “order[s] demonstrators to disperse” it is within its [direct] rights, does not hold up so well at this current time when demonstrators all throughout the Arab world are heroically defying exactly such demands.)

b. Coercive hazard

Klein and Clark liken “coercive hazard” to “moral hazard” (p. 52). In the latter, more-well-known phrase, this refers to the enhancement of risk-taking that stems from insurance. The former applies when the “insurance,” as in a government bailout, is extracted from tax payers. On this basis they aver that such programs and institutions as National Flood Insurance, the Small Business Administration, gambling restrictions, the welfare system, immigration, and seat belt and helmet laws, come under the rubric of their analysis. In many, if not all of these cases, they say, “the pluses (of liberalization) for overall liberty far outweigh the minuses” (p. 52). The problem is, with their skepticism, it is unclear how *any* such determination can be made.

c. Disarming or defusing private coercion

If the state imposes a curfew (which directly reduces liberty) during rioting conditions, it may well, at least sometimes, enhance freedom. Here,

²⁸ On the recent labor sit-ins in Wisconsin, see Walter E. Block, “Tapeworm versus Tapeworm: Public Sector Unions in Wisconsin,” LewRockwell.com, March 1, 2011, accessed online at: <http://www.lewrockwell.com/block/block173.html>; Walter E. Block, “The Battle of Wisconsin,” LewRockwell.com, March 9, 2011, accessed online at: <http://www.lewrockwell.com/block/block174.html>.

²⁹ See Walter Block, *The Privatization of Roads and Highways: Human and Economic Factors* (Auburn, AL: The Mises Institute, 2009).

once again, Klein and Clark come out against “coercion.” Presumably, it is no longer “our friend.” They support John Lott’s contention of “more guns, less crime,” and “think that the disagreements between direct and overall liberty in this area tend to be overestimated” (p. 55). But how do they *know* any such thing? Let us stipulate that Lott is correct,³⁰ that is, gun legalization will reduce crime. But will that enhance liberty? It all depends. On Klein and Clark’s open-ended perspective, it is possible that *more* crime will be “good” for society, for example, if some of this criminal behavior ends up with the demise of, say, the next Hitler. If Klein and Clark are going to offer their theory for serious consideration, they must accept its logical implications, which are radically skeptical.

d. Controlling pollution

On the matter of pollution, Klein and Clark state: “In some ways, a tailpipe spewing pollutants is like a shotgun spewing pellets. Restrictions on activities and technologies that have the potential to generate pollution probably ought to be deemed coercive, and the would-be pollution might also be deemed coercive. Thus again, direct coercion might augment overall liberty” (p. 55).

There are several errors in this quotation. It is not true that, “in some ways,” a tailpipe’s spewing pollutants constitutes an invasion of property rights. Rather, just like firing a gun, these pollutants constitute a paradigm case of trespass. Thus, pollution should not “probably” be considered “coercive”; it should *definitely* be considered so.³¹ If so, abstracting from the possibility of this sort of coercion’s being “our friend,” in a libertarian society such an activity would be looked upon as an uninvited border crossing. But, if I understand Klein and Clark, *stopping* this rights violation is *also* deemed “coercive.” How can this be? It is as if we were to say that rape is coercive, and so is stopping this foul practice by bashing the rapist while he is in the midst of his depredation. Surely, Klein and Clark cannot mean that the direct coercion of *pollution* might augment overall liberty. The only other option is that the direct coercion of *stopping* pollution might augment overall liberty. It is curious to find the word “coercion” being used to depict both criminal behavior, and the prevention of this self-same criminal act.

A proper analysis of pollution would be as follows:

At its root all pollution is garbage disposal in one form or another.
The essence of the problem is that our laws and the administration of

³⁰ For a deontological libertarian analysis of weapons, see Walter Block and Matthew Block, “Toward a Universal Libertarian Theory of Gun (Weapon) Control,” *Ethics, Place, and Environment* 3, no. 3 (2000), pp. 289-98.

³¹ Subject to the reservations mentioned by Murray N. Rothbard, “Law, Property Rights, and Air Pollution,” *Cato Journal* 2, no. 1 (Spring 1982), pp. 55-99.

justice have not kept up with the refuse produced by the exploding growth of industry, technology and science.

If you took a bag of garbage and dropped it on your neighbor's lawn, we all know what would happen. Your neighbor would call the police, and you would soon find out that the disposal of your garbage is your responsibility, and that it must be done in a way that does not violate anyone else's property rights.

But if you took that same bag of garbage and burned it in a backyard incinerator, letting the sooty ash drift over the neighborhood, the problem gets more complicated. The violation of property rights is clear, but protecting them is more difficult. And when the garbage is invisible to the naked eye, as much air and water pollution is, the problem often seems insurmountable.

We have tried many remedies in the past. We have tried to dissuade polluters with fines, with government programs whereby all pay to clean up the garbage produced by the few, with a myriad of detailed regulations to control the degree of pollution. Now some even seriously propose that we should have economic incentives, to charge polluters a fee for polluting—and the more they pollute the more they pay. But that is just like taxing burglars as an economic incentive to deter people from stealing your property, and just as unconscionable.

The only effective way to eliminate serious pollution is to treat it exactly for what it is—garbage. Just as one does not have the right to drop a bag of garbage on his neighbor's lawn, so does one not have the right to place any garbage in the air or the water or the earth, if it in any way violates the property rights of others.

What we need are tougher clearer environmental laws that are enforced—not with economic incentives but with jail terms. What the strict application of the idea of private property rights will do is to increase the cost of garbage disposal. That increased cost will be reflected in a higher cost for the products and services that resulted from the process that produced the garbage. And that is how it should be. Much of the cost of disposing of waste material is already incorporated in the price of the goods and services produced. All of it should be. Then only those who benefit from the garbage made will pay for its disposal.³²

Martin Anderson's analysis of pollution does not suffer from the indeterminateness of Klein and Clark's analysis. Pollution is an invasion, period. The way to deal with it is as with any other trespass.

³² Martin Anderson, "Pollution," *The Christian Science Monitor*, January 4, 1989, p. 19.

e. Restrictions to prevent rip-offs

Adam Smith counseled laws against small-denomination bank notes on the ground that people would be careless with regard to them, which would lead to fraud.³³ As a matter of direct liberty, of course, these sorts of laws would be ruled out of court. There is nothing, *per se*, in violation of the NAP to issue a note, say, for one millionth of a penny. Klein and Clark accept Smith's argument, in principle, that people would indeed not be very careful with such penny ante currency (p. 56). They demur from Smith's conclusion, though, that such notes should be legally banned on the ground that "There is a great deal of research" which indicates that such "consumer protection" laws do not work. This of course cannot be denied, but the true libertarian position would be, "Research be damned: it matters not one whit whether we would be careful or not with such bank notes. The sole concern of the law should be whether or not creating such notes violates the NAP, and, clearly, it does not."

Klein and Clark conclude this section as follows: "We believe that the direct coercion of such policies (consumer protection of whatever variety) is by no means redeemed by any indirect pluses for overall liberty" (p. 56). First, even if statist consumer-protection schemes reduce fraud, carelessness, or whatever, and thus promote wealth, this is entirely irrelevant to *liberty*. Second, with their skeptical theory, they are in no position to pronounce judgment as to whether or not liberty, in the overall sense, will increase or decrease by *any* action. Who knows which of them will be summoned forth as the result of *any* action?

f. Subsidizing against coercive taboos

Klein and Clark claim that "[a]llowing stem-cell research is in line with liberty" (p. 57). They seem to be unaware of the fact that stem cells are (potentially) alive human beings, and that it can be argued that "research" on them amounts to no less than their murder.³⁴ However, whatever the status of this practice, while "[g]overnment subsidization of stem-cell research could help to overcome cultural resistance" (p. 57), this would surely denote a diminution of liberty, at least directly. How about indirectly? According to Klein and Clark, this might not be necessary, since relaxing prohibitions of this practice might wean the public away from viewing it as a taboo. But even assuming, *arguendo*, that "research" on these potential human beings is compatible with libertarianism, it is surely offensive to that philosophy for the

³³ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, ed. R. H. Campbell and A. S. Skinner (Indianapolis, IN: Liberty Fund, 1976 [1776]), II.ii.94, p. 324.

³⁴ For a libertarian analysis of this practice, see Walter Block, "Stem Cell Research: The Libertarian Compromise," LewRockwell.com, September 3, 2001, accessed online at: <http://www.lewrockwell.com/block/block5.html>; Walter Block, "A Libertarian Perspective on the Stem Cell Debate: Compromising the Uncompromisable," *Journal of Medicine and Philosophy* 35 (2010), pp. 429-48.

government to force taxpayers to support it. Whether this will do any good in the long run, of course, is all but impossible to say. So again, Klein and Clark's concept of indirect liberty is of no help in determining which institutions will enhance or decrease liberty.

Klein and Clark argue against subsidization on the ground that it "can put us on a path that leads ultimately to a future with less liberty . . . because the subsidization will bring governmentalization—supervision, certifications, privileges, special interests" (p. 57). But what is wrong with that, at least if we faithfully follow their line of reasoning? Perhaps "governmentalization" will lead to a reduction in the production of Hitlers. If Klein and Clark can argue that increasing the minimum wage may lead to more liberty, I can maintain, with the same logic, that "supervision, certifications, privileges, special interests" will also have this effect.

g. Taxing to fund liberal enlightenment

Klein and Clark offer us a very insightful critique of school-voucher proposals: "The basis for an (educational) institution's financing tends to affect the values and philosophy of the institution. We recognize that occasionally the government pays the piper and calls for a liberal tune,^[35] but the tendency seems to be for the government to call for other tunes" (p. 58). But this is marred by their timidity: "Liberal edification is *probably* best left to civil society and liberal means," and again: "During the eighteenth and nineteenth centuries, many liberals hoped that the right curriculum would serve to advance liberal enlightenment. . . . In hindsight, *quite arguably*, the hope was misplaced" (p. 58, emphasis added). This timidity is unwarranted, after over a century of failure of government education, except for its ability to instill statism in the populace and play havoc with math and reading skills. Here, once again, their radical skepticism disallows them from reaching virtually *any* definitive conclusion. If they cannot unambiguously reject government education as a putative libertarian institution, it is extremely unlikely that they can do so for *anything*.

h. Coercively tending the moral foundations of liberty

Klein and Clark's response to the claim that "too much liberty will lead to licentiousness and dissoluteness" is:

Regarding the conservative concerns about vice, we just don't buy this argument, at least not in the context of modern, relatively liberal^[36] societies like the United States. The mechanisms by which

³⁵ They mean by this phrase a pro-liberty tune.

³⁶ Klein and Clark use the word "liberal" throughout their article as a synonym for "libertarian." However, in this case, they appear to be using it in its modern, leftist, socialist, mixed-economy sense, for surely, they cannot believe that the modern U.S. is now a libertarian society.

allowing people to engage in “vice” leads them to cherish liberty *less than they otherwise would* never seem to be explained well. (p. 59)

One problem with their response is that the clear implication is that this is a good argument for countries that are not as progressive as the U.S. However, this means that for the backward parts of the world, Klein and Clark *do* “buy this argument,” and, thus, would favor laws prohibiting sinful behavior. Such prohibitions already exist in these nations, and with a vengeance. It is strange to find authors such as Klein and Clark supporting them. However, it can hardly be a libertarian argument that sexual, drug-related, and other capitalist acts between consenting adults should be proscribed by law in these areas of the world, or, indeed, anywhere on the planet, since they contravene the NAP.

This, moreover, is an argument cast in terms of what Charles Johnson has characterized as “thick libertarianism”³⁷: we should be concerned not only with libertarianism in its narrow or thin interpretation (the NAP, homesteading, etc.), but also with seemingly irrelevant antecedents that nevertheless promote or denigrate liberty. Right-wing libertarians fear that “sex, drugs and rock and roll,” although *part* of liberty, will nevertheless undermine it, and these freedoms should thus be curtailed, and in the name of liberty. Left wing libertarians are frightened that profit maximization, price gouging, undercutting, cartels, etc., although again *aspects* of liberty, will in any case lead to a diminution of freedom.

In contrast, I am a “thin” libertarian—very much so. I care not one whit about the antecedents of liberty.³⁸ My entire focus, as a theoretician of this philosophy, is on liberty in and of itself. Indeed, I go so far as to characterize as heroes those who both left and right “thick” libertarians see as enemies of this perspective.³⁹

Klein and Clark, in contrast to thick libertarians,⁴⁰ are not so much concerned with the preconditions of liberty. They are, in contrast, if we can

³⁷ Charles Johnson, “Libertarianism through Thick and Thin,” *The Freeman* 58, no. 6 (July 2008), accessed online at: <http://www.thefreemanonline.org/featured/libertarianism-through-thick-and-thin/>.

³⁸ Perhaps this is put too extremely. I *care* about these issues, but not to the extent of jettisoning liberty, or confusing the causes of liberty with liberty itself.

³⁹ Walter Block, *Defending the Undefendable* (Auburn, AL: The Mises Institute, 2008 [1976]).

⁴⁰ See Johnson, “Libertarianism through Thick and Thin”: “Clearly, a consistent and principled libertarian cannot support efforts or beliefs that are contrary to libertarian principles—such as efforts to engineer social outcomes by means of government intervention.” And here I agree not with the thickness of Johnson’s libertarianism, but rather, with his implicit critique of Klein and Clark.

coin a word, focused on the post-conditions: whether what occurs *subsequently* to an admittedly libertarian act⁴¹ will *also* be libertarian. And if not, will these subsequent non- or anti-libertarian acts outweigh, on the liberty scale, the initial act? In this section of their article, they concern themselves with right-wing (thick) libertarian issues—with vices such as gambling, drugs, and sex.

Are Klein and Clark correct in their argument that acts feared by conservative libertarians will lead to a lack of freedom? They express themselves on this matter as follows: “We are more inclined to believe that liberty, dignity, and individual responsibility are of a piece, and that restricting liberty in sex, drugs, and culture tends to reduce, not augment, overall liberty” (p. 59).

But this really will not suffice. Klein and Clark give the game away when they concede that “restricting liberty in sex, drugs, and culture *tends* to reduce, not augment, overall liberty” (emphasis added). This not-at-all-unreasonable statement logically implies that allowing *some* people direct freedom undermines this goal, while allowing it to others does not. If they want to be true to their thesis, namely, promoting not direct but overall liberty, they must acquiesce in the notion that sex, drugs, etc., must be limited *only* to those individuals who will not reduce overall liberty. They logically must support the prohibition to all others, but they have no inclination to do this.

Klein and Clark’s treatment of immigration is likewise unsatisfactory. They state:

While one must acknowledge that *some* of the indirect effects of liberalizing immigration are minuses for overall liberty, we are inclined to think that those facets are clearly outweighed by other facets that are pluses for overall liberty. Whether the pluses would continue to outweigh the minuses if immigration were liberalized drastically, or the borders were thrown open, might be another story. (p. 59)

What we expect from libertarian theoreticians is either support for or rejection of the right to immigrate. And indeed, (conservative) libertarians have ranged themselves on both sides of this issue.⁴² Klein and Clark are

⁴¹ In the direct sense of that word.

⁴² For opposition to fully open and free immigration, see Peter Brimelow, *Alien Nation: Common Sense about America’s Immigration Disaster* (New York: Random House, 1995); Hans-Hermann Hoppe, “The Case for Free Trade and Restricted Immigration,” *Journal of Libertarian Studies* 13, no. 2 (Summer 1998), pp. 221-33; Hans-Hermann Hoppe, *Democracy, the God that Failed: The Economics and Politics of Monarchy, Democracy, and Natural Order* (Piscataway, NJ: Transaction Publishers, 2001), pp. 159-60; Stephan Kinsella, “A Simple Libertarian Argument Against Unrestricted Immigration and Open Borders,” LewRockwell.com, September 1, 2005, accessed online at: <http://www.lewrockwell.com/kinsella/kinsella18.html>; Jared

perhaps unique in that they sit squarely on the fence on this important and challenging issue. But this is a necessary concomitant of their emphasis on indirect and overall liberty, as opposed to direct liberty. The debate over immigration between libertarians has to do with its implication for direct liberty. It is no accident that when Klein and Clark lose sight of the fact that direct liberty is liberty, period, they once again enter the thicket of indecision.

i. Logrolling for liberty

Klein and Clark come out neither in favor of nor against logrolling, but the NAP constitutes a clear clarion call against this odious practice. The NAP is unambiguous about this matter: do not violate rights (i.e., direct rights), period. If a bill includes good and bad elements, such as the so-called Civil Rights act of 1964, libertarians must oppose it. Klein and Clark correctly note that this law “had two primary features: the banning of voluntary discrimination and the extinguishing of forced discrimination. The first feature reduced direct liberty while the second augmented it” (p. 60). This clearly implies that libertarians cannot support this bill. Perhaps the politician who best exemplifies the freedom position on this issue is Congressman Ron Paul. Throughout his career he has steadfastly refused to logroll.⁴³

Pure libertarianism, as distinguished from “overall liberty,” garners support from logic. If a statement is partially true and partially false, then it is counted as false. If *any* part of it is incorrect, then, overall, it is incorrect. Consider these complex sentences, each consisting of two statements: Y: “2+2=4; 2+3=17.” Z: “The sun is a ball of flame; the moon is a ball of flame.” In both Y and Z, there is a true and a false statement. Therefore, both Y and Z, taken in their entirety, are false, and in like manner, so is the Civil “Rights” Act of 1964 incompatible with liberty. Private discrimination, whether odious or not, is compatible with the NAP; the governmental counterpart is not.⁴⁴

Taylor, *The Real American Dilemma: Race, Immigration, and the Future of America* (Oakton, VA: American Renaissance, 1998). For support of fully open and free immigration, see Walter Block, “A Libertarian Case for Free Immigration,” *Journal of Libertarian Studies* 13, no. 2 (Summer 1998), pp. 167-86; Walter Block, “The State Was a Mistake: Book Review of Hans-Hermann Hoppe, *Democracy, The God that Failed: The Economics and Politics of Monarchy, Democracy, and Natural Order*,” Mises.org, May 25, 2004, accessed online at: <http://www.mises.org/fullstory.asp?control=1522>; Walter Block and Gene Callahan, “Is There a Right to Immigration? A Libertarian Perspective,” *Human Rights Review* 5, no. 1 (October-December 2003), pp. 46-71; Albert Esplugas and Manuel Lora, “Immigrants: Intruders or Guests? A Reply to Hoppe and Kinsella,” *Journal of Libertarian Studies* 22 (2010), pp. 185-218; Anthony Gregory and Walter Block, “On Immigration: Reply to Hoppe,” *Journal of Libertarian Studies* 21, no. 3 (Fall 2007), pp. 25-42; Jesús Huerta de Soto, “A Libertarian Theory of Free Immigration,” *Journal of Libertarian Studies* 13, no. 2 (Summer 1998), pp. 187-97.

⁴³ It is not for nothing that he is known far and wide as “Dr. No.”

⁴⁴ For once, Klein and Clark focus on direct liberty in this regard, and analyze it

Since the law proscribes both, by analogy, it is false. From the point of view of libertarian law, it must be rejected. Anyone who favors the law because of its admittedly pro-liberty aspects, acts against (direct) liberty on this occasion.

j. Stabilizing the second best

God forbid that the U.S. should be “plunge[d] . . . into anarchy.”⁴⁵ Better that we should “appease public foolishness” by having “government supply . . . employment, when the people are so ignorant as to demand it” (p. 61). Klein and Clark characterize the minimum wage law as “public foolishness,” but still have no warrant to do so. According to them, “If liberal politicians try to achieve the ‘first best,’ they may fail to stabilize the second best, and end up with the third best” (p. 61). In this way, all sorts of anti-libertarian policies may be justified, such as minimum wages, government employment, etc.

Another problematic statement of Klein and Clark’s is: “We live in a stable liberal democratic polity” (p. 62). This is curious in that they throughout use “liberal” as a synonym for “libertarian”; was the U.S. in 2010 really a stable *libertarian* polity? This seems to be at least a major exaggeration. Yes, Rand Paul was elected to the U.S. Senate, and, as of the time of this writing, Ron Paul has an outsider’s chance of becoming the next President of the U.S., but one or even two swallows a summer does not make.

Consider Klein and Clark’s following claim: “Maybe the best way to advance liberalism is to affirm the norm that governmental power is not to be used to push people around” (p. 63). I confess that I am not all that interested in *advancing* liberty, at least not until we are clear as to what this *is*. But, no “maybes” about it: the best way, the *only* way, to promote libertarianism, is to affirm precisely this norm.⁴⁶ It is greatly to be regretted that Klein and Clark’s

correctly. Had they not, had they pointed to the indirect or overall liberty effects of this law, they would not have been able to reach any definitive conclusion, as is their wont on such matters.

⁴⁵ Klein and Clark, “Direct and Overall Liberty,” p. 61, quote Henry Buckle on this matter; see Henry Thomas Buckle, *Introduction to the History of Civilization in England* (London: George Routledge and Sons, 1904), p. 807.

⁴⁶ Of course, government *per se* “pushes people around.” It subjects them to (coercive) taxes and forbids any other institution to compete with it in this regard. On this issue, see Terry Anderson and P. J. Hill, “An American Experiment in Anarcho-Capitalism: The *Not So Wild, Wild West*,” *Journal of Libertarian Studies* 3 (1979), pp. 9-29; Bruce L. Benson, “Enforcement of Private Property Rights in Primitive Societies: Law Without Government,” *Journal of Libertarian Studies* 9, no. 1 (Winter 1989), pp. 1-26; Bruce L. Benson, “Customary Law with Private Means of Resolving Disputes and Dispensing Justice: A Description of a Modern System of Law and Order without State Coercion,” *Journal of Libertarian Studies* 9, no. 2 (1990), pp. 25-42; Walter Block, “Anarchism and Minarchism: No Rapprochement Possible: Reply to Tibor Machan,” *Journal of Libertarian Studies* 21, no. 1 (Spring 2007), pp. 91-99; Thomas J. DiLorenzo, “The Culture of Violence in the American West: Myth versus Reality,”

focus on indirect and overall liberty is incompatible with this brilliant insight of theirs.

k. Military actions, etc.

Klein and Clark reveal themselves as war-mongering libertarians of the David Boaz and Barnett stripe.⁴⁷ It would appear that there is hardly an instance of U.S. militarism abroad (i.e., imperialism) that does not meet with their approval. They applaud U.S. interventionism in World War II, not even mentioning the alternative theory that U.S. participation in World War I led to the rise of the Nazi regime.⁴⁸ They also support the U.S. involvement in the

The Independent Review 15, no. 2 (Fall 2010), pp. 227–39; Gil Guillory and Patrick Tinsley, “The Role of Subscription-Based Patrol and Restitution in the Future of Liberty,” *Libertarian Papers* 1, no. 12 (2009), accessed online at: <http://libertarianpapers.org/2009/12-the-role-of-subscription-based-patrol-and-restitution-in-the-future-of-liberty/>; John Hasnas, “The Myth of the Rule of Law,” *Wisconsin Law Review* 199 (1995), accessed online at: <http://faculty.msb.edu/hasnasj/gtwebsite/MythFinalDraft.pdf>; Robert Higgs, “Why We Couldn’t Abolish Slavery Then and Can’t Abolish Government Now,” LewRockwell.com, August 20, 2009, accessed online at: <http://www.lewrockwell.com/higgs/higgs128.html>; Hans-Hermann Hoppe, “Reflections on the Origin and the Stability of the State,” LewRockwell.com, June 23, 2008, accessed online at: <http://www.lewrockwell.com/hoppe/hoppe18.html>; Seth King, “Daily Anarchist Interviews Walter Block,” LewRockwell.com, September 9, 2010, accessed online at: <http://www.lewrockwell.com/block/block165.html>; Stephan Kinsella, “The Irrelevance of the Impossibility of Anarcho-Libertarianism,” StephanKinsella.com, August 20, 2009, accessed online at: <http://www.StephanKinsella.com/2009/08/20/the-irrelevance-of-the-impossibility-of-anarcho-libertarianism/>; Roderick Long, “Libertarian Anarchism: Responses to Ten Objections,” Mises.org, 2004, accessed online at: <http://mises.org/etexts/long/anarchism.pdf>; Stefan Molyneux, “The Stateless Society: An Examination of Alternatives,” 2008, accessed online at: <http://www.mailarchive.com/libertarianenterprise@yahoo.com/msg02056.html>; Robert P. Murphy, “But Wouldn’t Warlords Take Over?” Mises.org, July 7, 2005, accessed online at: <http://mises.org/story/1855>; Rothbard, *For a New Liberty*; Rothbard, *The Ethics of Liberty*; Edward Stringham, ed., *Anarchy and the Law: The Political Economy of Choice* (Piscataway, NJ: Transaction Publishers, 2007); Morris Tannehill and Linda Tannehill, *The Market for Liberty* (New York: Laissez-Faire Books, 1984 [1970]); Patrick Tinsley, “With Liberty and Justice for All: A Case for Private Police,” *Journal of Libertarian Studies* 14, no. 1 (Winter 1998-1999), pp. 95-100.

⁴⁷ See David Boaz, “Save America—Bring Back Bill: Now I Have a Hazy Memory of the Clinton Years as a Sort of Golden Age,” *National Post*, January 12, 2010, accessed online at: <http://network.nationalpost.com/np/blogs/fpcomment/archive/2010/01/12/save-america-bring-back-bill.aspx>; Barnett, “Libertarians and the War.” For a critique of the former, see Walter Block, “David Boaz Is No Libertarian,” LewRockwell.com, January 14, 2010, accessed online at: <http://www.lewrockwell.com/blog/lewrw/archives/47525.html>; for a critique of the latter, see Block, “Randy Barnett: Pro War Libertarian?”

⁴⁸ For revisionists on World War II, see Harry Elmer Barnes, “A. J. P. Taylor and the

Causes of World War II,” *New Individualist Review* (Spring 1966), pp. 3-16; Harry Elmer Barnes, ed., *Perpetual War for Perpetual Peace: A Critical Examination of the Foreign Policy of Franklin Delano Roosevelt and Its Aftermath* (Westport, CN: Greenwood Publishing Group, 1966); Harry Elmer Barnes, *Pearl Harbor After a Quarter of a Century* (New York: Arno Press, 1972); Charles A. Beard, *American Foreign Policy in the Making, 1932-1940: A Study in Responsibilities* (New Haven, CT: Yale University Press, 1946); Charles A. Beard, *President Roosevelt and the Coming of the War, 1941: A Study in Appearances and Realities* (New Haven, CT: Yale University Press, 1948); Barton J. Bernstein, *Towards a New Past: Dissenting Essays in American History* (New York: Pantheon Books, 1968); John Charmley, *Churchill's Grand Alliance: The Anglo-American Special Relationship, 1940-1957* (New York: Harvest Books, 1996); Joseph S. Davis, *The World Between the Wars, 1919-39: An Economist's View* (Baltimore, MD: Johns Hopkins University Press, 1975); John V. Denson, ed., *The Costs of War: America's Pyrrhic Victories* (Piscataway, NJ: Transaction Publishers, 1997); Justus D. Doenecke, “Edwin M. Borchard, John Bassett Moore, and Opposition to American Intervention in World War II,” *Journal of Libertarian Studies* 6, no. 1 (Winter 1982), pp. 1-34; Justus D. Doenecke, “The Literature of Isolationism, 1972-1983: A Bibliographical Guide,” *Journal of Libertarian Studies* 7, no. 1 (Winter 1983), pp. 157-84; Justus D. Doenecke, “Explaining the Antiwar Movement, 1939-1941: The Next Assignment,” *Journal of Libertarian Studies* 8, no. 1 (Winter 1986), pp. 139-62; A. Whitney Griswold, *The Far Eastern Policy of the United States* (New York: Harcourt Brace, 1938); B. J. Klein, *Germany's Economic Preparation for War* (Cambridge, MA: Harvard University Press, 1969); William R. Lewis, ed., *The Origins of the Second World War: A.J.P. Taylor and His Critics* (New York: John Wiley & Sons, 1972); Leonard P. Liggio and James J. Martin, eds. *Watershed of Empire: Essays on New Deal Foreign Policy* (Colorado Springs, CO: Ralph Myles, 1976); James J. Martin, *American Liberalism and World Politics, 1931-1941: Liberalism's Press and Spokesmen on the Road Back to War Between Mukden and Pearl Harbor, 2 Vols.* (New York: Devin-Adair Publishers, 1963); James J. Martin, “Pearl Harbor: Antecedents, Background and Consequences,” in James J. Martin, *The Saga of Hog Island: And Other Essays in Inconvenient History* (Colorado Springs, CO: Ralph Myles, 1977); C. Wright Mills, *Causes of World War II* (Westport, CT: Greenwood Press, 1976); Simon Newman, *March 1939: The British Guarantee to Poland* (Oxford: Oxford University Press, 1993); Murray Polnar and Thomas E. Woods, eds., *We Who Dared to Say No to War: American Antiwar Writing from 1812 to Now* (New York: Basic Books, 2008); Ralph Raico, “Review of the book *Promised Land, Crusader State: The American Encounter with the World since 1776* by Walter A. McDougall,” *The Independent Review* 3, no. 2 (Fall 1998), pp. 273-78; Ralph Raico, *Great Wars and Great Leaders: A Rebuttal* (Auburn, AL: The Mises Institute, 2010); Sidney Rogerson, *Propaganda in the Next War* (London: Geoffrey Bles, 1938); Esmonde M. Robertson, *The Origins of the Second World War* (New York: St. Martins, 1971); Paul Schroeder, *The Axis Alliance and Japanese-American Relations, 1941* (Ithaca, NY: Cornell University Press, 1958); John L. Snell, ed., *The Outbreak of the Second World War: Design or Blunder?* (Lexington, MA: D. C. Heath, 1962); Viktor Suvorov, *Icebreaker: Who Started the Second World War* (New York: Viking, 1990); A. J. P. Taylor, *The Origins of the Second World War* (New York: Simon & Schuster, 1996 [1965]); Kemp Tolly, *Cruise of the Lanikai: To Provoke the Pacific War* (Annapolis, MD: Naval Institute Press, 2002); Jonathan Utley, *Going to War With Japan, 1937-1941* (Knoxville, TN: University of Tennessee Press, 1985).

Korean War, the U.S. invasion of Grenada, and Abraham Lincoln's war against the South as moves in the direction of overall liberty. Unhappily, they do not criticize, let alone even mention, a very large literature pointing in the opposite direction.⁴⁹

Klein and Clark do ameliorate their pro-war position, somewhat: “[T]he characteristic judgment of classical liberalism and modern libertarianism—strong presumption against militarism—is probably the right one for overall liberty. But there’s no denying that in certain circumstances military action can be both a dreadful reduction in direct liberty and a huge augmentation in overall liberty” (p. 66). But it is hard to discern any such perspective in their treatment of this subject. Their substantive treatment of all of these sorry historical episodes veers strongly in the pro-war direction.

7. Conclusion

According to Klein and Clark, “The possibility that direct and overall liberty disagree should not send classical liberals/libertarians to try to find ways around the problem. Instead, they should embrace the ambiguity as part of the movement” (p. 66). However, it seems to me that they have not so much offered limitations to the libertarian perspective as tossed libertarianism under the wheels of the oncoming bus. Although they might deny it, it is clear that there are no definitive statements a libertarian of Klein and Clark’s stripe could make. Rather, all is “ambiguity.” Even the murder of a child, which one would have thought to be a paradigm case of the violation of rights, is no such thing for them, at least not necessarily. I hope and trust they will forgive me

⁴⁹ For revisionists on Lincoln's war of Northern aggression, see Charles Adams, *When in the Course of Human Events: Arguing the Case for Southern Secession* (Lanham, MD: Rowman & Littlefield, 2000); Thomas J. DiLorenzo, “The Consolidation of State Power via Reconstruction: 1865-1890,” *Journal of Libertarian Studies* 16, no. 2 (Spring 2002), pp. 139-61; Thomas J. DiLorenzo, *The Real Lincoln: A New Look at Abraham Lincoln, His Agenda, and an Unnecessary War* (Roseville, CA: Prima Publishing, 2002); Thomas J. DiLorenzo, *Lincoln Unmasked: What You're Not Supposed to Know About Dishonest Abe* (New York: Crown Forum, 2006); Stanley L. Engerman, “Review of the Book *Emancipating Slaves, Enslaving Free Men: A History of the American Civil War* by Jeffrey Rogers Hummel,” *The Independent Review* 2, no. 1 (Summer 1997), pp. 129-32; David Gordon, ed., *Secession, State, and Liberty* (Piscataway, NJ: Transaction Publishers, 1998); Jeffrey Rogers Hummel, *Emancipating Slaves, Enslaving Free Men: A History of the American Civil War* (Chicago, IL: Open Court, 1996); John S. Rosenberg, “Toward A New Civil War Revisionism,” in *Interpretations of American History*, Vol. 1, ed. Gerald N. Grob and George Athan Bilias (New York: The Free Press, 1972), pp. 459-79; Joseph Stromberg, “The War for Southern Independence: A Radical Libertarian Perspective,” *Journal of Libertarian Studies* 3, no. 1 (1979), pp. 31-54; Mark Thornton and Robert B. Ekelund, *Tariffs, Blockades, and Inflation: The Economics of the Civil War* (Wilmington, DE: Scholarly Resources, 2004); Thomas E. Woods, *Nullification: How to Resist Federal Tyranny in the 21st Century* (New York: Regnery, 2010).

for not taking their advice to “embrace the ambiguity.” Rather, this comment has been an attempt “to try to find ways around the problem.”

Klein and Clark note that “liberty makes for a grammar with holes and gray areas” (p. 66). Nothing could be more true. Consider one “hole” in libertarianism, the solution of which has so far eluded me. I strive, with every fiber of my being, to find a way to justify violence against those who torture animals for the pure pleasure of doing so, as opposed to doing legitimate medical research. I realize that in a free society such moral depravity would be more severely punished with boycotts. However, I yearn, so far in vain, for a libertarian justification that would allow the forces of law and order to far more sternly rebuke such ethical monsters.

And, yes, too, there are gray areas. Let us consider the justification of statutory rape laws. We know that a five-year-old girl is incapable of giving consent to sexual intercourse, and that a twenty-five-year old woman certainly is, but what about a fifteen-year-old girl? No matter what the cut-off point, there will always be females under that age more mature than some above it.

However, such holes and gray areas are simply no reason to give away the entire libertarian store, as do Klein and Clark. At least the Rothbardian version of libertarianism, the one rejected by Klein and Clark, can unambiguously say that such perversions as the minimum wage law are a clear and present violation of the NAP. In contrast, the libertarianism of these authors is an ultra-skeptical one, where *nothing* can be said clearly and unambiguously, if we are to take them at their word.

Having unburdened myself about the negative aspects I find in Klein and Clark’s article, allow me to end this critique on a positive note. We do not have to take them at their word. They are better libertarians than the strict logical implications of their thesis imply. For example, take the minimum wage law again. Strictly speaking, Klein and Clark can have absolutely *no* view as to whether this law promotes their concept of overall liberty. It causes unemployment and it is coercive, but it is so popular with the ill-informed electorate,⁵⁰ that any administration that lowers its level, let alone eliminates it entirely, and *certainly* not any that wants to incarcerate those responsible for it, would face immediate expulsion through recall, likely ushering in, as Klein and Clark correctly say, something even worse. It is just about impossible to foretell *all* of the resulting reverberations of such a free-market policy. Strictly speaking, Klein and Clark should have no view of the liberty implementations at all, but to their great credit, they do—and these are all *negatives*, as we would expect from good libertarians with expertise in economics, such as these authors. So, happily, when push comes to shove, they embrace Rothbardian libertarianism, and find it impossible to uphold their own highly problematic thesis.

Klein and Clark also enrich our understanding of liberty. Their focus on indirect and, thus, on total liberty adds a new dimension to the classical

⁵⁰ See Caplan, *The Myth of the Rational Voter*.

libertarian concentration on direct liberty. Moreover, they challenge the analytic framework of those such as Rothbard who defend the direct NAP. For this they are to be congratulated. However, I cannot think that they have achieved their goal of casting libertarianism in an entirely new direction. But, their hearts are in the right place. Klein and Clark strive to understand and to expand the scope of liberty; their failure is one of means, not ends.

