

REASON PAPERS

A Journal of Interdisciplinary Normative Studies

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Vol. 28

Spring 2006

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Reason Papers Vol. 28 was made possible by a generous grant from a donor who wishes to remain anonymous.

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Editorial

In contrast to the relative uniformity of opinion among classical liberals and libertarians on issues like censorship and protectionist tariffs, war is an issue on which there is much intra-liberal dispute. This issue of *Reason Papers* is primarily devoted to exploring war, terrorism, and liberty. Putting it together was almost entirely the work of guest editors Carrie-Ann Biondi and Irfan Khawaja, and I am impressed with the product. The issue begins with a symposium on Angelo Codevilla's new book *No Victory, No Peace*. It includes contributions from Khawaja, Roderick T. Long, and the mononymic Spengler. (We hope to run a reply by Codevilla in a future issue.) Following that is the proceedings of the December 2003 meeting of the American Association for the Philosophical Study of Society, which was a symposium on War and Liberty. The panelists were Long, and myself. The final war-oriented article is an essay on the civil war, by Timothy Sandefur.

This issue also features Part Two of a two-part essay by Walter Block which began in vol. 27, and a comprehensive discussion/review by Steven M. Sanders of Stephen Hicks' new book on postmodernism, as well as book reviews: Art historian Brenda Molife reviews Roger Kimball, and Roderick Long completes an RP trifecta with a review of Hilary Putnam.

Content for vol. 29 is already in the pipeline, so that should be available by the end of the year. Meanwhile, I hope you'll visit our website at <http://www.reasonpapers.com>. Thanks for reading *Reason Papers*, and thanks for thinking.

Aeon J. Skoble
Bridgewater State College
Editor-in-Chief

Symposium:
Angelo Codevilla's *No Victory, No Peace*

Victory: Means and End

Irfan Khawaja

John Jay College of Criminal Justice, City University of New
York

I've been reading Angelo Codevilla's writings on warfare now for more than a decade. I'll confess that some of what he says frankly provokes me to incredulity and horror, but too much of it has the ring of truth to be dismissed or ignored.

I had the good fortune of meeting Codevilla in the fall of 2003 at Princeton University, where I was at the time a lecturer in the Department of Politics, and he had just arrived from Boston University as Visiting Professor of Politics, care of the James Madison Program in American Ideals and Institutions. The idea for the present symposium on his book *No Victory, No Peace* originated in his undergraduate course at Princeton, "War and Peace," for which I served as teaching assistant (and, in the spirit of *formations permanentes*, as overgrown student).¹ During that semester, as might be expected, we worked our way through the standard issues of warfare and international relations—soft power, coercive diplomacy, economic statecraft, intelligence, strategy, and all the rest.

But it was the manuscript of *No Victory*—originally written as a series of essays for *Commentary*, *The American Spectator*, and the *Claremont Review of Books*—that stopped our students in their tracks. It was one thing to read Thucydides, Clausewitz, or Machiavelli in the library, and then sedately to discuss their theoretical or historical claims in a seminar room. It was quite another thing to be confronted with a real-live advocate of a Machiavellian-Clausewitzian approach to war arguing for the application of Clausewitzian principles to current events—and to be obliged to reflect on all of this as the body bags came home on a daily basis from Afghanistan and Iraq.

That unique (if unspeakably tragic) set of circumstances served to focus minds in a way I've rarely encountered in a classroom, or anywhere else

¹ Angelo M. Codevilla, *No Victory, No Peace* (Rowman and Littlefield, 2005).

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for that matter. I sometimes wish I had the power to impose the same circumstances on the whole country, if only to rouse my fellow citizens from the dogmatic slumbers that currently pass for discourse on the subject of war and peace. I don't have that power, of course, but my hope is that this symposium will function as at least a faint approximation of wish-fulfillment.

The symposium consists of three contributions, one of my own, one by "Spengler" of *Asia Times*, and one by Roderick Long of the Department of Philosophy at Auburn University. My own contribution below begins with a brief synopsis of Codevilla's book, followed by a critique of his account of the enemy and of his conception of victory. The second essay, by Long, draws on Aristotelian and libertarian normative theory to reject Codevilla's basic premises, arguing that his prescriptions, unmoored by moral constraints of any kind, simply go too far. The third essay, by Spengler, agrees with the basic premises of Codevilla's analysis but wonders—drawing on the wartime reflections of William Tecumseh Sherman—whether Codevilla has accurately reckoned the costs of his prescriptions for the present war. Codevilla will respond to the symposium in a future issue of *Reason Papers*.

In a decade of reading, writing, and teaching about the uses of force in political life, I've rarely encountered a writer quite as intransigently independent in orientation and lucid in formulation as Angelo Codevilla, and *No Victory, No Peace* is Codevilla in top form. Whether I've agreed or disagreed with him, I've profited from the confrontation with his ideas. I hope you will, too.²

1. Codevilla's Argument: The Teleology of War

"Every art and every investigation," writes Aristotle in the famous opening lines of the *Nicomachean Ethics*, "and similarly every action and pursuit, is considered to aim at some good. Hence the Good has been rightly defined as 'that at which all things aim'." Distinguishing activities and products, he continues:

Since there are many actions, crafts and sciences, the ends turn out to be many as well; for health is the end of medicine, a boat of boat building, victory of generalship, and wealth of household management.³

² I'd like to offer heartfelt thanks to Aeon Skoble and *Reason Papers* for the opportunity to run the symposium, and to the participants for agreeing to take part. A special thanks to Carrie-Ann Biondi, who did the bulk of the editing both on the symposium and on the issue as a whole.

³ Aristotle, *Nicomachean Ethics*, I.1.

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The passing reference to generalship and victory is as easy to miss as it is pregnant with significance. If victory is the end of generalship, and by implication of military science, victory is the aim for the sake of which those activities exist, and the norm that determines the nature of the activity as such. Armies fight, then, for the sake of victory—and no less than that.

It sounds plausible enough, but what, if anything, does it imply for the conduct of warfare? More specifically, what might it imply for the conduct of what we've come, *circa* 2006, to call "the war on terrorism"?

These questions, and the teleological principle that prompts them, set the agenda of Angelo Codevilla's *No Victory, No Peace*. Codevilla's basic argument is Aristotelian, indeed drawn from the just-cited passage (p. 89). Since victory is the natural goal of warfare, the issue we face in warfare is conceptually simple but psychologically demanding. We must first decide whether or not to go to war. If we elect to go to war, victory automatically becomes our goal, and we are obliged both to get clear on what the goal requires of us and then to satisfy its requirements. If we find ourselves unclear about its requirements or unwilling to bring it about, then rationality demands that we abjure war altogether. A war that aims at less than full victory is not worth fighting at all. By contrast, a war that aims at victory can be worth fighting even at colossally high cost—as witness the U.S. Civil War or World War II, paradigm examples of justifiable wars fought by the classical conception of victory. The failure to heed the mutually exclusive options we face in warfare—to blur the relevant distinctions, gloss over inconvenient facts, or exaggerate or understate the consequences of action or inaction—is the thin wedge of defeat, and in the worst cases, of catastrophe and annihilation. Warfare, like all meaningful human activities, has a logic we ignore at our peril.

Suppose, then, that we decide to go to war. In that case, having taken on the burdens of victory, we're obliged to identify our enemy and that enemy's center of gravity. The enemy, according to Codevilla, consists of those individuals and institutions whose destruction or subjugation would bring about our preferred peace. In the present case—as in most cases—the enemy is best identified with a "regime," which we might equate with what Ayn Rand calls a "social system": "a set of moral-political-economic principles embodied in a society's laws, institutions, and government, which determine the relationships, the terms of association, among the men living in a given geographical area."⁴ An enemy, then, is a social system along with the practitioners of its principles.

⁴ Ayn Rand, "What Is Capitalism?" in *Capitalism: The Unknown Ideal* (New American Library, 1967), p. 18. The equation of "regimes" and Randian "social systems" is my idea, not Codevilla's. Though the idea of a "regime" is broadly Straussian in

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In the present "war against terrorism," the enemy, according to Codevilla, consists of a cluster of specifically Arab regimes (pp. 3-7). Contrary to both popular and elite opinion, the enemy is not fundamentally identifiable with "Al Qaeda," or even with "Islamism" or "Islamic fundamentalism." These latter three phenomena are on Codevilla's analysis epiphenomena of Arab anti-Americanism, a phenomenon that has its roots in Nasserite and Ba'ath socialism and Palestinian nationalism. It is our failure to deal with the secular roots of the problem that has given rise to its contemporary religious manifestation.

The preceding analysis yields both evaluative and prescriptive implications. Evaluatively, it implies that Americans and Europeans have for decades systematically misunderstood the right way of dealing with Arab terrorism, and so have enacted self-defeating policies against it. Prescriptively, it implies that we should junk the current administration's approach to fighting the war (as well as the past several administrations') and target the regimes that are our real enemy: directly, those of Iraq, Syria, and the Palestinian Authority; indirectly, that of Saudi Arabia. Since terrorism is fundamentally an instrument of regimes—in this case state-guided regimes—the destruction of the relevant regimes would discredit and demoralize terrorists across the board. Were we to destroy them, we would achieve victory in the classical sense, namely, the restoration of the way of life we enjoyed before the outbreak of hostilities.

There is, in my view, much in Codevilla's analysis with which to agree. There is, first and foremost, the emphasis on victory and on the need for clarity in identifying the purpose of a war as well as the criteria for success in bringing it about. There is also the salutary insistence that we look for the root causes of the problem we face rather than to settle on slogans of either the flag-waving or guilt-inducing variety. There is, finally, the unorthodox and tough-minded critique of many of the problematic features of the current war.

But having expressed this basic agreement with Codevilla, I find myself unpersuaded on two fundamental points. On the one hand, in my view, he misidentifies the enemy we face; on the other hand, he subtly misdescribes the nature of victory. The result is a set of prescriptions for the current war that would, if followed, achieve too little for us at too high a price.

2. Who Is the Enemy?

One of the lessons one learns from Codevilla in this book and elsewhere is that the principles of warfare are timeless and applicable to all wars *qua* war: the principles that apply to and help us understand the

provenance, Codevilla offers no explicit definition of the term, and I am not certain where Strauss discusses it.

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Peloponnesian War will perforce apply to and help us understand the Crusades, the U.S. Civil War, World War II, and so on.⁵ If so, Codevilla reasons, our current war should be no different. If in the past terrorism has been an instrument of state-guided regimes, then twenty-first century Islamic terrorism should be the same. Consequently, if terrorism is essentially state-sponsored, we should target the states that sponsor it. If we do that, we win: deprived of the support of states, and specifically Arab states, Islamist terrorists will wither on the vine.

Let's grant that the principles of warfare are timeless, and applicable to all wars as wars. Still, it is perfectly consistent with that—and perfectly possible—that novelty might emerge in a given case. The basic principles of warfare may well apply to all wars, but some features of some wars may differ from most features of previous wars. The current war, after all, is a specific phenomenon in space and time, not a replica of events chronicled in the pages of Thucydides, Livy, Machiavelli, or even Nasser. As Seabury and Codevilla write in their magisterial book *War: Ends and Means*, "Historical analogies, as warnings, as solace, and as practical advice can be powerful stimuli to policies; like prescription drugs they may help to cure, but they can also be deadly when taken in excess or as a remedy for the wrong affliction."⁶

This precept seems relevant to Codevilla's flat denial throughout *No Victory* that Islamic fundamentalism of the Al Qaeda variety is a genuinely novel phenomenon, or even at the heart of the problem we face. Factor out Al Qaeda, he tells us, and we face the very same terrorist problem as we face given their existence (pp. 5, 47-49). Al Qaeda is less "the engine, the artificers, the *sine qua non* of terrorism than" its banner (p. 7). Thus Codevilla insists that, despite official attempts to make Al Qaeda seem autonomous of states, the organization is in fact their instrument. But for Arab regimes, there would be no Al Qaeda. What power Al Qaeda has, it derives from those regimes.

Codevilla is certainly right to draw attention to the relationship between Al Qaeda and its partners in various states, but I think—influenced too heavily by past experience with fascism, communism, and Christian heresy—that he exaggerates it.

For one thing, we need not appeal to states in order to explain the initial *attractions* of Islamist ideology: Islamist ideology arose from the intellectual efforts of non-state actors (e.g., Abul Ala Mawdudi, Sayyid Qutb,

⁵ Cf. Codevilla, *No Victory*, "Introduction," and Paul Seabury and Angelo Codevilla, *War: Ends and Means*, 2d ed. (Basic Books, 1990).

⁶ Seabury and Codevilla, *War: Ends and Means*, p. 60.

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Abdullah Azzam, Osama bin Laden) who attracted their followings in defiance of the Arab regimes Codevilla discusses.

Nor do we need to appeal to states in order to explain the *motivation* to engage in terrorism given an allegiance to this ideology. The motivation is a direct consequence of a commitment to Islamist ideology, which conceives any challenge to Islamist hegemony over the world as a "grievance" to be rectified by divinely sanctified slaughter. The inspiration for that ideology comes not from states, but from a theological-political conception that finds resonance wherever disaffected Muslims reside—be it in Jidda, Jakarta, or Jersey City. Osama bin Laden's (immensely popular and remarkably well-crafted) speeches are no more encouraged by contemporary Arab regimes than David Koresh's interpretation of Revelation was encouraged by Bill Clinton's Protestantism.⁷

Nor, finally, must we appeal to states in order to explain the *logistics* of particular terrorist operations. The *9/11 Commission Report*, for instance, offers a perfectly plausible, cogent, and evidentially sound account of the 9/11 attacks, while denying any significant role to state actors in their implementation. I don't dispute that the Commission's treatment of state actors is occasionally odd and inconsistent; many of Codevilla's criticisms of the going wisdom on this subject are good ones. But those criticisms do not add up to a case that obliges us to ascribe states the role that Codevilla ascribes them.⁸

⁷ See Bruce Lawrence, ed., *Messages to the World: The Statements of Osama bin Laden* (Verso, 2005). The back cover quotes Princeton Orientalist Bernard Lewis: "A magnificent piece of eloquent, at times even poetic Arabic prose...."

⁸ See *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States*, authorized ed. (Norton, 2004), chs. 5-8.

The report denies (in section 5.4 [pp. 169-73] and pp. 228-29) significant state sponsorship of the 9/11 attacks. But Codevilla is right to draw attention in *No Victory* to holes in the Commission's view. Consider five of them (my examples, not his): (i) The report describes Khalid Sheikh Muhammad as "the principal architect of the 9/11 attacks," but makes inconsistent claims about his relation to Al Qaeda, and by implication about Al Qaeda's role in the attacks (cf. pp. 149-50 with p. 154). (ii) The report relies heavily on Muhammad's testimony, but offers inconsistent accounts of his veracity, and never credibly explains why it is that he chose to speak to American authorities in the first place (see p. 146; p. 215 denies his credibility, while p. 229 affirms it). (iii) The report's discussion (pp. 228-29) of the notorious Atta-Ani meeting in Prague is internally inconsistent. (iv) The report mentions significant operational connections between Al Qaeda and Iraq in passing without rebutting them (pp. 128, 134). (v) The report's denial of state sponsorship in the 9/11 attacks is in tension with its discussion of a connection between Al Qaeda and Iran (pp. 240-41).

These anomalies, while significant, still do not add up to the strong claims that Codevilla makes in *No Victory*.

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Codevilla finds it hard to believe that contemporary Islamic fundamentalism might arise from Muslims' sheer belief that God commands *jihad* to revive the ancient caliphate. He finds it equally difficult to believe that people would "give their lives for lost causes"; such people, he claims, "exist more in novels than in reality" (p. 100). He insists that once we get rid of Iraq, Syria, and the Palestinian Authority, Islamists will give up their war against us, too demoralized to fight. "[W]hat reason," he asks, "would any Arab inclined to Islamism or radical nationalism have to believe that such causes would stand a chance of success? . . . For whom, in short, would they soldier" (p. 54)?

But it seems to me that David Tucker is right in saying that, on these issues, Codevilla "misunderstands and underestimates our enemies" (p. 82). For one thing, Codevilla's skepticism can, I think, easily be answered: Islamists fight *fi sabil ilah* (in the path of God), and a person who fights from that motive doesn't worry about the sort of "success" Codevilla has in mind. Nor do such people exist merely in novels; they exist in sufficient numbers in sick societies like those throughout the Islamic world, where life is cheap, self-deception is ubiquitous, and murderous simpletons have charge over young and impressionable minds. Nor, in the minds of the practitioners, can the cause ever be "lost": its success, after all, is in God's hands.

Codevilla refuses to take seriously the possibility that contemporary Islamic fundamentalism is precisely what it claims to be: not the cynical work of Arab regimes pursuing worldly interests, but a sincere rebellion, motivated by religious belief, for supremacy over an ignorant (*jahil*) world (p. 53). He claims that intra-Muslim theological debates "are not terribly relevant" to fighting the war (p. 53). In fact, those debates define the very identity of the enemy—his worldview, his strategy, his tactics, and even his sexual, dietary, and lavatory habits. To ignore the debates is to ignore the very identity of the enemy.⁹

Codevilla is right to say that regimes do play a role in generating terrorism, and to that extent we must combat them. It is true, as he argues, that we cannot afford to sit back and play defense against terrorism. That means, as he says, that we must seek out battlefields of our choosing and go on the offensive. Iraq is one such battlefield, Afghanistan another.

I do not see, however, that Codevilla has made a case for taking the war to Syria or Palestine. The Syrian and Palestinian regimes are sick and ugly ones, to be sure, but that doesn't by itself make them fountainheads of terrorism, and I think Codevilla greatly underestimates the costs of trying to destroy them. Putting aside the strictly military and economic costs, there are

⁹ See Appendix A.

the moral ones to consider: If as he says, we lack the right to *rule* Arab regimes (p. 50), it is far from clear that we have the right to inflict invasions on them simply because a few thousand people in their midst espouse anti-American ideologies. If any one country deserves to be invaded on that basis, it is Pakistan, and yet almost anyone would say that such a cure would be worse than the disease.¹⁰ So it is, I think, with Codevilla's prescriptions for war with Syria and Palestine.

As for the threat we'll face *after* we prevail in Afghanistan or Iraq (assuming we do prevail), contrary to Codevilla, that really *is* a matter of defensive anti-terrorism. For contrary to Codevilla, offensive action abroad will hinder the enemy but not destroy him or make us as safe as we deserve to be. The terrorist threat that remains (and if I'm right about its nature, some *will* remain) is something we'll have to leave to the CIA, FBI, INS, and Homeland Security—not to mention the local police department's network of Muslim informants.¹¹ Contrary to Codevilla's exaggerated critique of Homeland

¹⁰ Codevilla insists throughout the book that our enemies are specifically *Arab* regimes (pp. 3, 65). Oddly, he says nothing about an obvious non-Arab regime: Pakistan. But consider: (i) Pakistan's Inter-Services Intelligence agency is widely known to have had explicit connections to al Qaeda and to closely-related terrorist groups; (ii) Pakistani religious institutions are home to a major school of terrorist ideology, derived from the works of Abul Ala Mawdudi; (iii) Pakistan has atomic weapons, and its nuclear scientists (e.g., Abdul Qadir Khan) appear to have few scruples about giving nuclear material to terrorists (e.g., Muammar Qaddafi); and (iv) Pakistanis (or their proxies) have engaged in major terrorist actions around the world (e.g., the attack on the Indian parliament in December 2001, the anti-French suicide bombing in Karachi of May 2002, the notorious murder of Daniel Pearl, the London bus/subway attack of July 2005, and of course Khalid Sheikh Muhammad's role in the 9/11 attacks).

Surely, these facts make Pakistan more of a problem for the United States than either Syria or the Palestinian Authority. In stressing the Arab role, Codevilla also ignores several major terrorist attacks by non-Arab Muslims, e.g., Richard Reid's bombing attempt in December 2001; the Bali bombing, engineered by Indonesians (October 12, 2002); and the Chechen attack on the Dubrovka theater in Moscow (October 23, 2002). Finally, in describing suicide bombings as essentially tied to Arab regimes, he ignores the fact that the technique originated with the Tamil Tigers in Sri Lanka, a non-Arab, non-regime-based terrorist movement.

¹¹ See, e.g., William K. Rashbaum, "Detective was 'Walking Camera' Among City Muslims, He Testifies," *The New York Times*, May 19, 2006, pp. B1, B6. This police investigation is supposed to have foiled a plot to blow up Herald Square in Manhattan. See also the description of the foiling of the so-called Millennium Plot by the INS in the *9/11 Commission Report*, pp. 176-80, and generally ch. 12.

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Security (pp. 41-43, 128-32), it has an important role to play, and we have no choice but to rely on it.

3. What Is Victory?

At this point Codevilla might respond that a war that stops at Iraq and Afghanistan is a mere half-measure—a war fought on the cheap that stops short of victory, concedes too much to security bureaucrats, and thus lacks a real point. Such a war, I suspect he would say, violates the Aristotelian precept mentioned at the outset: either fight to victory or don't bother.

Codevilla complains that his critics typically skirt any serious discussion of the nature of victory (p. 83). I hereby propose to remedy that. "*To move successfully*," Codevilla writes, "*one must understand the state of rest to which one must come. To tailor operations for a victory worthy of the name, one must understand the peace that victory is to produce, and what stands in the way*" (pp. xii-xiii). I agree. But what is the state of rest? What counts as a victory worthy of the name?

Throughout *No Victory*, Codevilla writes as though the term "victory" has an obvious meaning, and that given this obvious meaning, the choices we face in the current war are either to aim at victory as he conceives of it—or to be defeated. But there are two significant and unaddressed problems here.

There is first the problem of feasibility. Victory, we are told, is peace on our terms. Since Codevilla understands "liberty" in such a way as to be incompatible with Homeland Security (along with gun control and SWAT teams), he thinks that a liberty-loving peace implies the abolition of Homeland Security. Peace, then, is the restoration of the *status quo ante bellum*—indeed, the status quo of forty years ago. Queried as to the feasibility of this goal, Codevilla simply equates it with victory, then questions his critics' commitment to victory (pp. 89-93).

But isn't it legitimate to wonder whether military victory—indeed, whether any human action—can literally turn the clock back forty years? It is one thing to say that victory is the destruction of the enemy's center of gravity. It is another thing to treat military victory as so utterly decisive as to eradicate the terrorist threat entirely from the face of the earth simply by demoralizing its practitioners. If the threat is as I've described it in the previous section, we are facing an enemy that is encouraged by victory but not discouraged by defeat. These are people who by their own admission lust for death. Military victory will cripple but never entirely demoralize them.

Nor is the preceding claim inconsistent with a wholehearted commitment to the classical conception of victory. Consider by way of analogy the U.S. Civil War, a paradigm case of a war fought (by the Union) to victory in the classical sense. It is true that the peace negotiated at Appomattox Court House was peace on the Union's terms. It was also a peace

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that heralded the destruction and/or subjugation of the Confederate enemy. And yet victory was insufficient to neutralize the relevant threat. For after the war came the Klan and its decades-long "festival of violence."¹² What was the Klan but a terrorist group, and what was the federal government's decades-long campaign against it and its heirs (compare Little Rock 1957) but a large-scale police action—a version of Homeland Security? The lesson: military victory, even in the classical sense, does not resolve political problems as decisively as Codevilla suggests.

Closely related to the problem of feasibility is the problem of cost. We've had four years to see the cost of an offensive military strategy in Afghanistan and Iraq—thousands of casualties, but merely halting progress (if that) toward victory. Codevilla suggests that Iraq and Afghanistan are just the beginning: If we want victory, there is more warfare to come; if we aren't up for more warfare, it means that we must not want victory all that badly. But the thought of wars beyond Iraq and Afghanistan causes vertigo. Codevilla criticizes the Bush Administration for launching an indefinitely long war, but how would Codevilla's preferred war strategy prove any shorter or less costly?

In response to such a query, Codevilla asserts that the cost-benefit calculation is obvious: "Killing these regimes would be relatively easy, would be a favor to the people living under them, and is the only way to stop terrorism among us" (p. 55). But that seems too good to be true. Apart from whether regime-destruction really stops terrorism, our experience in Iraq suggests that it *isn't* easy. And if Codevilla thinks we should invade, destroy, and leave—as opposed to occupying—it is far from clear that the ensuing chaos is really a "favor" to the people living in the countries we invade. That chaos seems less like victory for us than an engraved invitation to the world's *mujahidin* to take up residence in the subsequent chaos and form a new base, that is, a new "*qaeda*."

Like Codevilla, I agree that victory is the natural aim of warfare, and that we should aim at victory against our current enemy. We disagree, then, on how victory is to be understood. How to resolve this dispute? Perhaps by taking a closer look at the nature of victory.

Codevilla's preferred analogue for understanding warfare is medicine (pp. 24, 37, 61-62). An enemy's belligerence, he repeatedly tells us, is like a disease. Intelligence gives us a diagnosis of the cause of the disease, while victory cures it. It's worth noting that in every case where Codevilla likens military victory to a medical cure, he has in mind a very specific kind of disease, etiology, and therapy. The maladies he has in mind are always a matter of life and death, and the therapies either save the patient or kill him.

¹² See Stewart E. Tolnay and E. M. Beck, *A Festival of Violence: An Analysis of Southern Lynchings, 1882-1930* (University of Illinois Press, 1995).

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Warfare, on this understanding, is analogous not to medicine as such, but to the medicine of the emergency room or intensive care unit.

I wonder whether this analogy isn't the heart of the problem with Codevilla's conception of victory. For *pace* Hobbes (compare the Introduction to *Leviathan*), our commonwealth is not analogous to a body, nor are our enemies really analogous to diseases. More to the point, generals and armies aren't analogous to doctors and medical personnel, and warfare isn't analogous to medical treatment. Medicine is an interpersonal activity; warfare is not. Warfare operates by force; medicine does not. Furthermore, doctors exercise a sort of control over the environments that generals can never have. In any case, outside of emergency contexts, medicine often involves trade-offs that are incompatible with Codevilla's conception of victory. On Codevilla's account, victory in warfare is an all-or-nothing matter. In medicine, by contrast, it can often be rational to accept a partial cure in preference to suffering an untreated malady.

A closer analogue to war, I would have thought, is not medicine but that other use of weaponized force in human life—domestic law enforcement's response to crime. Here, too, we have a conception of victory involving the restoration of a broken peace, but the relevant conception is a complex one, involving trade-offs between distinct values, for example, incapacitation, deterrence, retribution, and compensation. I find it unfortunate in this light that Codevilla's attitude toward domestic law enforcement is so consistently derisive. Are there no important lessons to be learned about warfare from our everyday encounter with those who, in Locke's words, put themselves in a state of war with us?

Having made these criticisms, however, let me end by recording a debt of gratitude to Codevilla for having raised the issues in the first place. To paraphrase John Adams, I suppose I've learned from Codevilla the unpalatable truth that I'm obliged to study the nature of victory in war so that I may someday have the chance to go back to studying philosophy without having to think about war again.¹³ I am not sure that that day will ever come. But victory is the only route to it.

Appendix A

Perhaps this is the place to note a few other factual problems, not directly related to the issues in the text, but still relevant:

¹³ John Adams, "I must study politics and war, that my sons may have liberty to study mathematics and philosophy . . . ," quoted in Seabury and Codevilla, *War: Ends and Means*, p. 3.

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(i) In criticizing the Bush Administration's conduct of the Iraq war, Codevilla asserts that Iraq had no weapons of mass destruction (WMD) (p. 16). But in a somewhat cryptic passage later in the book, he asserts that "of course" they had them (p. 117). Codevilla's first claim is rebutted by the final report of the Iraq Survey Group (ISG). Iraq may have lacked stockpiles of WMD, but according to the ISG report, it certainly had capacities to generate them. Possession of these capacities by Iraq was prohibited as per clause 8 of UN Resolution 687. It follows from these facts and the wording of the clause that as of March 2003, Iraq *did* have WMD.

(ii) Codevilla repeats the oft-made claim that the Clinton Administration's 1998 missile attack on the Al Shifa Pharmaceutical Factory turned out to be an attack on "an innocent medicine factory" (p. 47). This charge is thoroughly rebutted in Daniel Benjamin and Steven Simons's book *The Age of Sacred Terror: Radical Islam's War Against America* (Random House, 2003), pp. 351-63, especially p. 355. At the very least, we can say that the evidence that Benjamin and Simon present in favor of nerve gas production capacity at Al Shifa is stronger than the evidence Codevilla offers throughout his book for an operational connection between Mohammed Atta and the Iraqi intelligence services (e.g., p. 46).

(iii) Codevilla claims that the Taliban's connection to bin Laden was merely tribal, and that, if pressured, the Taliban would have given up bin Laden to American authorities (p. 48). But this claim is impossible to reconcile with the fact that between August 1998 and October 2001 the Taliban were repeatedly pressured by the U.S. government into giving up bin Laden, and refused to do so. See the chronology of events in Ahmed Rashid's *Taliban: Militant Islam, Oil, and Fundamentalism in Central Asia* (Yale Nota Bene, 2001), Appendix 3, pp. 231-35.

(iv) On p. 112, Codevilla claims that as of summer 2003, U.S. intelligence was utterly ignorant of Saddam Hussein's intentions and whereabouts. But this claim is difficult to reconcile with Saddam's capture just a few months later by American forces. It is also difficult to reconcile with the efforts of the CIA's ISG and the Pentagon's United States Joint Forces Command's report of the Iraq Perspectives Project (USJFC-IPP), both underway when Codevilla's essay was published. The now-published ISG and USJFC-IPP reports (both available online) answer many of the questions Codevilla poses in the book about Saddam's strategic intentions, and suggest that U.S. intelligence was better off than his (Codevilla's) criticisms suggest.

(v) On p. 180, Codevilla describes the Sunni-Shia split in Islam as having come into existence in the eighteenth century. (I suspect that this is a typographical error.) In fact, the split came into existence in the seventh century, sometime between the so-called Ghadir Khumm incident (632 A.D.) and the battle of Karbala (680 A.D.).

A Florentine in Baghdad: Codevilla on the War on Terror

Roderick T. Long
Auburn University

1. Introduction

If the soul of Machiavelli, “flown beyond the Alps,” could return to comment on the United States’ current “war on terror,” he might write a book very much like Angelo Codevilla’s *No Victory, No Peace*.¹

I mean that observation both as a compliment and as a complaint. Codevilla’s book shares many of the virtues of Machiavelli’s writings, including keen political analysis and a genuine, if rather narrowly defined, love of liberty. (The similarities are not coincidental; Codevilla often quotes Machiavelli, and has penned a translation of *Il Principe*.) But *No Victory, No Peace* also shares what from my own perspective (Aristotelian in ethics, libertarian in social theory) are the two chief shortcomings or limitations of Machiavellian political analysis; the result is a book that is an almost perfect fifty-fifty mix of *bonum* and *malum*.²

¹ Angelo M. Codevilla, *No Victory, No Peace* (Rowman & Littlefield, 2005).

² This may be the appropriate point at which to note two minor errors: More than once, Codevilla advises the U.S. to imitate the dog’s method of distinguishing friend from foe, as described by Plato in the *Republic* (II. 375d-376c). I think Codevilla cannot have read this passage very carefully; for in Plato’s text—indeed, in the very excerpt that Codevilla quotes (p. 121)—it is quite clear that the dog distinguishes friend from foe *not* on the basis of whether someone is beneficial or harmful to its interests, but instead on the basis of whether someone is familiar or unfamiliar. Thus, says Plato, the dog treats harmless strangers as enemies, and familiars who mean it no good as friends—presumably not a policy that Codevilla would recommend for the United States. (Though it does sound rather like the policy the U.S. has actually followed for much of the past century—and Codevilla’s own recommended policy of treating all neutrals as enemies [p. 122] seems equally suicidal.) Plato is commending the dog’s attitude as a model for obedient soldiers, *not* for the philosopher-kings—and it is the *latter* who set foreign policy and thereby decide who shall be treated as friends or as foes. (Plato’s description of the dog’s attitude as “philosophical” is meant as a *joke*; hostility toward whatever one does not know may express love of the *known*, but it does not express, nor would Plato have thought it expressed, love of *knowledge*—

2. The Limits of Machiavellianism

The first flaw in the Machiavellian approach is, famously, its amorality: its willingness to sacrifice principle to expediency, to “let the end justify the means.” As we shall see, Codevilla unfortunately shares this approach; he seeks the moral high ground, however, by quoting not Machiavelli but Aristotle on its behalf: “Aristotle defines prudence as the application of means most apt to achieve the good end” (p. 89). But Aristotle, unlike Machiavelli, draws the all-important distinction between *instrumental* and *constitutive* means; the former are related externally, the latter internally, to the end sought. In fact, the *Nicomachean Ethics* opens with this distinction: “A certain difference appears among ends; for some *are* the activities, while others are certain products *beyond* these” (*NE* I, 1094a4-6). And like Plato in the *Republic*, Aristotle argues that morality is a constitutive rather than a merely instrumental means to the good life; it follows that any attempt to sacrifice principle to expediency must be self-defeating, since nothing will count as the desired end unless it is sought through virtuous means. As Aristotle explains later in the *Ethics*: “Pleasures are choiceworthy, but not if obtained from these sources, just as wealth is choiceworthy, but not if gained through betrayal, or as health is choiceworthy, but not if produced through eating no matter what” (*NE* X, 1173b25-28).³ Likewise, in the *Politics* Aristotle considers whether it could be permissible to seize power by unjust means in order to position oneself to promote the good more effectively; his answer is that such a project depends on the *false* assumption that “the most choiceworthy of things really can come about for those who rob and use force.” In fact, the end no longer counts as good if achieved by unjust means; thus, “he who transgresses could by no means make right, later on, the amount by which he has already deviated from virtue” (*Pol.* VII, 1325a34-b7). Aristotelianism and Machiavellianism are not a viable combination.

The second, less famous flaw in the Machiavellian approach is its failure to understand the relationship between state or military power and the civil order which it governs. Machiavelli, like most thinkers outside the libertarian and antistatist traditions, views power as *creative*; he fails to grasp the essentially *parasitic* and *epiphenomenal* nature of power—because he had so little understanding of the nature of the self-organizing civil and voluntary order *upon* which power is parasitic and epiphenomenal. (His grasp of economic phenomena, for example, is appallingly limited in comparison with

rather the opposite.) On a lesser note, Condoleezza Rice’s name is misspelled throughout the book.

³ Presumably, Aristotle is thinking of cannibalism.

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that of his contemporaries, the Scholastics of Salamanca).⁴ Hence, despite his keen insights into *how* power operates, Machiavelli never really saw his way into *what* power essentially *is*, and so he missed the *radical dependence* of power on the civil and voluntary order. That is why, for all Machiavelli's brilliance, the greatest political thinker of the sixteenth century was not Machiavelli but La Boétie.⁵

Codevilla's analysis, as we'll see, shares the limitations of Machiavelli's in this regard. For Codevilla military violence is "the *ultima ratio*, the decisive argument, on earth. Mankind's great questions are decided by war" (p. 58). Yet on a libertarian analysis military power, far from being "ultimate," is causally *downstream* from most of the decisive factors. As Isabel Paterson reminds us:

The head of power lies back of the dam. It is not in the army but in the nation, for it consists of surplus production, in both personnel and materials. An army in being is withdrawn from production, and can function only on a continuous supply from the civil life of the nation. It is an end-appliance. . . . Military science as such considers only the action of the end-appliance, and is at a loss when armies become ineffective. . . . Military theory is largely meaningless because it deals with the conduct of armies in being, regardless of the civil order from which they are drawn.⁶

These two Machiavellian errors—one about the relation between means and ends, the other about the relation between power and civil order—will unfortunately prove to vitiate much of Codevilla's analysis.

3. Codevilla: Enemy of the State

But let's start with what Codevilla gets right. A large portion of the book is devoted to a trenchant dissection of the Bush administration's (actually both Bush administrations') many foreign policy blunders; Codevilla makes a persuasive case for the conclusion that the United States' "war on terror," like the first Gulf War a decade earlier, has been waged with little or

⁴ See Murray N. Rothbard, *Economic Thought Before Adam Smith: An Austrian Perspective on the History of Economic Thought, Volume I* (Edward Elgar, 1995), ch. 4; and Alejandro Chafuen, *Faith and Liberty: The Economic Thought of the Late Scholastics* (Lexington, 2003).

⁵ Étienne de la Boétie, *The Politics of Obedience: The Discourse of Voluntary Servitude*, trans. Harry Kurz (Black Rose, 2003).

⁶ Isabel Paterson, *The God of the Machine* (Transaction, 1993), pp. 262-65.

no attention to such questions as *what* the ultimate intended outcome is and *how* the government's measures are supposed to bring that outcome about. There's little to say about this aspect of the book besides "amen."⁷

Codevilla's policy proposals, both foreign and domestic, are also informed to a surprising extent by libertarian insights: he understands that legalizing drugs would (and formerly did) reduce street violence (p. 127), that allowing airline passengers to carry firearms would (and formerly did) reduce the threat of hijacking (pp. 42, 129), and that economic sanctions against a dictatorship hurt only its subjects and not the dictator (p. 174); he recognizes, and deplores, the fact that, under the so-called "Patriot Act," the government is empowered to "designate any organization or association as 'terrorist,'" and "does not have to justify its designation to anyone" (p. 131); and his discussion of the relation between religious heresy and political totalitarianism (Appendix B) reads like straight Murray Rothbard.⁸ Codevilla does not succumb to the illusion of top-down social engineering: "Native regimes may change cultures over generations, but the notion that foreigners who cannot even speak the language can do it in a few years is a pipe dream" (p. viii). He sees that the "democratization" of Iraq would mean only the oppression of minority factions by the majority faction (p. 155), and so he instead favors the libertarian remedy for factional strife: devolution and partition (p. 56); these proposals could have come from Frances Kendall and Leon Louw,⁹ or from Hans-Hermann Hoppe.¹⁰ Likewise, in good libertarian fashion he (apparently) rejects imperialist, colonialist, and nation-building adventures: "[C]reating liberal democratic mentalities is beyond the capacity of any foreign power," and that in any case "America's peace does not require that foreigners be like us in any way" (p. 11). For Codevilla, "our peace, our victory, does not require that the peoples of Afghanistan, the Arabian Peninsula, Palestine, or indeed any other part of the world become democratic, free, or decent," nor does it depend on "any two foreign

⁷ I am skeptical, though, concerning Codevilla's claim that the Bush administration was for a long time irresolute about whether it wanted to invade Iraq. Administration officials may have dithered in the meetings Codevilla describes, but the direction of national policy is rarely determined in those sorts of meetings.

⁸ Rothbard, *Economic Thought Before Adam Smith*, pp. 146-64; and Murray Rothbard, *Classical Economics: An Austrian Perspective on the History of Economic Thought, Volume II* (Edward Elgar, 1995), pp. 299-368.

⁹ Frances Kendall and Leon Louw, *After Apartheid: The Solution to South Africa* (ICS Press, 1987).

¹⁰ Hans-Hermann Hoppe, *Democracy—The God That Failed: The Economics and Politics of Monarchy, Democracy, and Natural Order* (Transaction, 2001).

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governments being at peace with each other,” nor yet on “the existence of friendly regimes in any country whatsoever”—luckily, he adds, the United States has “neither the power nor the right” to bring such desiderata about, and so must instead find a way to live peacefully in “a world of alien regimes and religions” (pp. 50-51).

Alas, all this makes Codevilla’s approach sound less interventionist than it is—but more on that anon.

Codevilla’s libertarian impulses again come to the fore when discussing the United States’ domestic security response to the 9/11 attacks. Despite his remarkable claim that “William F. Buckley Jr. has been more correct about more things than any person alive” (p. 84), Codevilla evidently does not share the sentiment of Buckley’s famous pronouncement that “we have to accept Big Government for the duration—for neither an offensive nor a defensive war can be waged given our present government skills except through the instrumentality of a totalitarian bureaucracy within our shores.”¹¹ Quoting the Department of Homeland Security’s description of terrorism as “an inescapable reality of life in the twenty-first century,” and “a permanent condition to which America and the entire world must adjust” (p. 128), Codevilla responds:

Common sense says that victory means living without worry that some foreigners might kill us on behalf of their causes, but also without having to bow to domestic bureaucrats and cops It means not changing the tradition by which the government of the United States treats citizens as its masters rather than as potential enemies. . . . The Homeland Security office’s vision of the future for ourselves and our children and our children’s children involves identification cards for all, with biometric data and up-to-the-minute records of travel, employment, finances, etc., to be used to authorize access to places that are vulnerable to terrorist attack. This means that never again will the government simply trust citizens to go into a government office, a large building, a stadium, an airplane, or for that matter merely to walk around without what the Germans call *Ausweis*—papers. (pp. 40-41)

As Codevilla points out, suspending such ordinary liberties for an *indefinite* future presupposes that “the enemy will never be defeated” (p. 41).

He also rightly sees post-9/11 curtailments of liberty as the continuation of a pre-9/11 trend:

¹¹ William F. Buckley, Jr., “A Young Republican View,” *Commonweal*, January 25, 1952.

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The militarization of police [has gone] hand in hand with what might be called the securitization of America, and the near-outlawing of guns in the hands of private individuals. People younger than forty have no memory of an America in which anyone could enter and roam public buildings at will, where security codes and badges were unknown The nightly news and the movies inured a generation of Americans to squads of fatigue-clad masked-men sporting the word “Police” or “Federal Agent” on their backs, shouting “go, go, go!” to one another as they rushed into “situations.” It has become routine, and almost acceptable, for such people to shoot unarmed citizens because “I thought he might have a gun.” . . . None of this had made America safer. . . . The Bush team’s response to September 11 was not to question the trends of the previous quarter-century, but to accentuate them. (p. 130)

Yet not only are security measures largely ineffective, but such measures “actually magnify the effects” when, for example, they “shut down airports on receipt of threats or merely on the basis of technical glitches in the security system itself” (p. 42).

The Bush Administration, Codevilla charges, has not offered “a reasonable plan for victory, for returning the country to the tranquility of September 10,” but has instead “asked Americans for indefinite tolerance of restrictions on their freedom” (pp. 49-50). For Codevilla, this amounts to a confession of American defeat: it is the losers, not the winners, who “have to change the way they live” (p. 3). An American victory, by contrast, would mean “living a quiet and peaceable life, if possible even less troubled by the troubles of other parts of the world, even freer from searches and sirens”; all government policies on terrorism should be “judged by how they relate to that end” (p. 50). “The minimum definition of the peace America sought by war was safety from terrorism” (p. 17). “The sign of victory over terrorism will be the removal of security measures” (p. 58).

What Codevilla says here is to be applauded; yet I think there is a certain naïveté in Codevilla’s facile conflation of victory for the American *people* with victory for the American *government*, under the package-deal notion of victory for something called “America.” The growth of intrusive security measures represents a defeat for a nation’s civilian population, but it is most decidedly a *victory* for the nation’s government—since every government is in a sense at war with its subjects¹² and so tends to seek greater

¹² As Locke explains (*Second Treatise* III, sec. 17), any government not resting on free consent is in a state of war with those it governs. And as Lysander Spooner shows (*No*

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coercive control over their activities. Certainly, the U.S. government has in many respects proceeded incompetently since 9/11—unsurprisingly, given the perverse informational constraints that any monopoly faces (Libertarianism 101)—but the move to boost searches and surveillance is not a symptom of that incompetence, but rather an eagerly sought opportunity. (After all, monopolies generate perverse *incentival* constraints as well: again, Libertarianism 101.)

Codevilla does note that government officials have “enjoyed the new powers for their own sake” (p. 122), as part of a “reality that many are too happy to accept” (p. 128). Well, yes; as Robert Higgs reminds us, state power grows by a ratchet effect: governments increase their powers during crises—wars, depressions, natural disasters—but rarely decrease their powers, at least to the same level, once the crisis has passed.¹³ Or in Randolph Bourne’s concise phrase, “War is the health of the state.”¹⁴ Yet to the extent that Codevilla recognizes this dynamic, he seems to treat it not as a characteristic feature of state power throughout known history, but as something novel: “America fought Nazi Germany, Imperial Japan, and the Soviet Union without treating the public as potential enemies” (p. 41). Oh, really? Has Codevilla never heard of the Japanese-American internment camps?¹⁵ The McCormack-Dickstein and Dies committees? The House Un-American Activities Committee (HUAC)? The U.S. Counter Intelligence Program (COINTELPRO)? Later in the book Codevilla himself admits—with evident approval!—that “at the time of World Wars I and II American society, with the government’s help, required the German American community to cleanse itself of sympathizers with Germany” (p. 131). How was this shameful episode not a case of government treating its citizens, its alleged “masters,” as potential enemies?

With regard to the “war on terror,” Codevilla rightly maintains that pursuing a specific organization like al-Qaeda is unlikely to produce a significant increase in U.S. security. “Evidence of its central role in anti-

Treason No. VI: The Constitution of No Authority[1870]), no government rests on free consent.

¹³ Robert Higgs, *Crisis and Leviathan: Critical Episodes in the Growth of American Government* (Oxford University Press, 1987).

¹⁴ Randolph S. Bourne, “The State,” p. 71, in Bourne, *The War and the Intellectuals: Collected Essays, 1915-1919*, ed. Carl Resek (Hackett, 1999), pp. 65-104.

¹⁵ Less famously, there were German-American and Italian-American camps, too. See Karen E. Ebel and Arthur D. Jacobs, “Justice Should Not Be War’s Final Casualty,” available online at <http://www.foitimes.com/internment/Justice.html>.

American terror was always weak,” and “neither it nor any other organization is the source of hate and contempt for America” (p. 134). In any case, he convincingly argues, terrorism is so easy that it is virtually impossible to guard against it so long as terrorists have the will to attack. Hence, the U.S. must instead address the root cause of such attacks.

This is fine so far. But it is in his identification of this root cause, and in his prescription for dealing with it, that Codevilla’s analysis begins, as I see it, to succumb to the two fatal flaws of the Machiavellian approach.

4. Codevilla: Master of War

For Codevilla, terrorist organizations cannot be effective except insofar as they receive support from like-minded regimes. Thus Codevilla identifies the governments of Syria, Palestine, and quondam Iraq as “the effective cause of global terrorism” (p. 54), occasionally adding the nominally “friendly” Saudi regime as well.¹⁶ (While he insists that by “regime” he means something broader than “government,” in practice he seems to use the terms interchangeably, and his examples of the components of “regimes” are almost invariably governmental.) Thus Codevilla supported the U.S. invasion of Iraq, and favors similar treatment for Syria and Palestine.¹⁷

The object of military action should be the destruction of the regime itself. Codevilla opposes indiscriminate killing of the civilian population—less for moral than for prudential reasons: far from undermining support for the Nazi regime, he notes, “carpet-bombing German cities . . . was the only thing that persuaded ordinary Germans that they and the Nazis were in the same boat” (p. 55). The target should thus be not the populace generally, but the ruling elite at the top, those who constitute the regime—and “killing regimes means killing their members”:

¹⁶ God forbid that he should expand the list; still, I’m as puzzled as Norman Podhoretz (p. 79) and David Tucker (p. 82) are as to why Iran isn’t included—surely its connections to terrorism are more robust than Iraq’s were. Afghanistan also gets a free ride; why is it only *Arab* (rather than, say, Islamic) countries that make it into Codevilla’s crosshairs?

¹⁷ Declaring war against Syria, Codevilla assures us, “would most likely produce a palace coup in Damascus—by one part of the regime eager to save itself by selling out the others” (p. 57). But why didn’t this happen in Iraq? As for Palestine, Codevilla blithely suggests that Israel cut off the Palestinian government’s access to “electricity . . . telecommunications, water, food and fuel” (p. 57). Despite Codevilla’s concern for targeting the rulers, it’s hard to see how this wouldn’t constitute waging war against Palestine’s civilian population.

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Each of the regimes consists of some 2,000 people. These include officials of the ruling party, officers in the security forces down to the level of colonel, plus all the general officers of the armed forces. These also include top government officials, officials of the major economic units, the media, and of course the leaders of the party's "social organizations" (labor, youth, women's professional, etc.). (p. 55)

A page later he adds that once a regime's leader and his "subordinates" are captured, "it is essential that all be denounced, tried and hanged The list of people executed should follow the party-government's organization chart as clearly as possible" (p. 56).

Is Codevilla including his entire two thousand regime members—including those in "economic units," "the media," and "labor, youth, [and] women's professional" organizations—among the "subordinates" to be butchered? He doesn't clearly say so, but that certainly seems to be the implication: "[U]ndoing an enemy regime means the dramatic demise of the several thousand people who give a country its character at any given time" (p. 3). Just as Codevilla here slides into a Machiavellian confusion about means and ends in his willingness to inflict such a disproportionate response on such relatively tenuous accessories,¹⁸ so he simultaneously slides into a Machiavellian confusion about the nature of power in supposing that the character of an entire country could seriously be determined by a few thousand people, as though these few thousand were supermen who could overpower unwilling millions by their own personal might. La Boétie's lesson should never be lost sight of: The governing few do not, because they cannot, determine the character of the societies they rule; rather, it is the reverse.

Nor will Codevilla's recommended bloodshed necessarily even be confined to his ruling two thousand; while describing the "commitment to spare innocent civilians" as "admirable," Codevilla maintains that such a commitment has "inadvertently created a safety zone for would-be enemies." Hence he concludes that, all "admirable" considerations apparently aside, "war against a regime must be fearsomely indiscriminate," so as to "cause even its committed members . . . to run away from it"¹⁹ (p. 160; I note that

¹⁸ For an Aristotelian libertarian case against punishment of any sort, see Roderick T. Long, "The Irrelevance of Responsibility," *Social Philosophy and Policy* 16, no. 2 (Summer 1999), pp. 118-45.

¹⁹ For a critique of such "collateral damage," see Roderick T. Long, "The Justice and Prudence of War: Toward a Libertarian Analysis," elsewhere in this issue.

“indiscriminate” killing has gone from imprudent on p. 55 to necessary on p. 160).

5. No Justice, No Peace

Codevilla’s analysis suffers, as I’ve said, from both of the two chief limitations of Machiavellian political theory. First is the amoralist refusal to take into account any relation between means and ends other than the instrumental. For example, Codevilla favors military action to “ensure that nothing broadcast or printed in the Arab world incite[s] to terrorism” (p. 159), and includes the television network *al-Jazeera* as a problem demanding a military solution. (I *think* he advocates targeting the governments that influence such media outlets, rather than targeting the media outlets directly, but it’s not clear.) Codevilla grants that “[m]aking war to shut down TV stations and newspapers may sound extraordinary,” but replies that “what is proper in war depends on what the problem is that the war addresses” (p. 59).

Well, yes, according to Machiavelli, Hobbes, and those of like mind; but according to the natural law tradition of Aristotle, Aquinas, and their modern successors, what is proper in war depends also on the inherent, not just the instrumental, character of the means. Moral considerations such as freedom of speech are not a luxury, to be tossed aside when serious considerations arise; they *are* the most serious consideration.

The fundamental divide between the Machiavelli-Hobbes tradition, on the one hand, and the Aristotle-Aquinas tradition, on the other, lies in whether success is defined in purely worldly terms or not; for the former it is, for the latter it isn’t. This issue has relatively little to do with whether one believes in a personal afterlife: Aquinas did, Aristotle didn’t, but they were on the *same* side of the divide that concerns us here. What’s at stake, rather, is the character of success in *this* life. Are moral considerations *part* of the human good, or something external to it? If the latter, as the Machiavelli-Hobbes view maintains, then such considerations will inevitably be embraced only when they promote, and quickly rejected whenever they hinder, the achievement of this thinly conceived good. But on the Aristotle-Aquinas view, with its thicker conception of the good, the requirements of virtue are essential constituents of a successful life, and the suggestion that moral considerations might hinder practical success is as unintelligible as the suggestion that lack of corners might hinder circularity.²⁰ Codevilla seems to feel some pull toward both the Machiavelli-Hobbes and the Aristotle-Aquinas traditions; but a man cannot serve two masters.

²⁰ For further discussion, see Roderick T. Long, *Reason and Value: Aristotle versus Rand* (Objectivist Center, 2000).

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Moreover, Codevilla's recommendations are vulnerable not only to moral objections, but to purely pragmatic ones as well. His proposal to fight terrorism by destroying Arab governments depends crucially on the assumption that private terrorism requires state support. But does it? Codevilla finds it absurd that "a private organization could freely organize worldwide mayhem from Arab police states without being one of their tools" (p. 66). But mightn't this judgment be symptomatic of the second Machiavellian flaw—the tendency to exaggerate the effectiveness of state power and to underestimate the effectiveness of nongovernmental cooperation? Codevilla offers some evidence (p. 70) for thinking that the 9/11 hijackers must have received state support, but he also quotes equally plausible contrary arguments (pp. 81-82) from defense analyst David Tucker. In any case, even assuming that they *in fact* received such support, if terrorism is as easy as Codevilla maintains, then such support hardly seems *necessary*. Indeed, what 9/11 demonstrated above all was the tremendous power available to ordinary individuals (terrorists, on the one hand, passengers, on the other) and the relative impotence of the state apparatus.

Sometimes Codevilla argues that the most crucial support that terrorists receive from regimes is not material assistance but *inspiration*:

No one argued that the Soviet Union recruited every Communist, pulled every string on Communism's behalf throughout the world. It did not have to, any more than the sun has to reach down and turn every sunflower to make it follow its path. . . . Communists and Nazis everywhere ceased to be a problem when the regimes that inspired them died. (p. 98)

Maybe so; but communism and Nazism were political faiths, explicitly bound up with the destinies of particular governmental institutions, while Wahhabism, for example, is not; nor, I might add, did communism and Nazism offer their martyrs much in the way of a glorious afterlife. In any case, how would Codevilla explain the nineteenth century's robust history of bombings and assassinations carried out by dedicated communists and socialists, in Russia and elsewhere, in the absence of any favorable state to provide either material assistance or inspiration?

If Codevilla is mistaken about the dependence of private terrorism on state sponsorship, then his proposal to invade Arab countries and carry out a Bloodbath of the Bureaucrats would simply give private terrorists *more* grievances, provoking rather than dispiriting them, and would thus make the world a more, not less, dangerous place.

Why do so many people in the Islamic world hate the United States enough to give their lives in terrorist acts against it? Are their grievances

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legitimate or illegitimate?²¹ And to whatever extent their grievances *are* legitimate, would redressing those grievances make the U.S. safer by defusing such hatred, or less safe by emboldening its enemies?

Codevilla seems to give every possible answer to these questions. “Why do people hate?” he asks, and replies:

Sometimes, because they have suffered what they consider to be wrongs. America’s Founders counseled us to have as little political intercourse as possible with foreign peoples, not to interfere with their affairs, precisely because we have little control over what others will consider offenses. (p. 98)

Here Codevilla acknowledges—rightly, I would say—the possible role of U.S. foreign policy in provoking terrorism (though his tone and wording tend to suggest that it’s some sort of *quirk* of these inscrutable foreigners to take offense at being invaded, exploited, bombed, or starved).²² But then he takes it back:

Mostly however, people hate not because of anything others do . . . but because they tend to blame others for their own unhappiness. . . . [S]uch attitudes are the problems of the people who have them. We can’t change them. . . . Muslim rage . . . comes from resentment of their own failures, and is very much their problem. (pp. 98-99)

Indeed, he goes so far as to suggest that to the extent that the U.S. and other Western powers bear responsibility for Arab anti-Americanism, it’s by being too *nice*: Terrorism, Codevilla maintains, is the result of the mistaken beliefs on the part of “Western elites” that “colonialism is wrong” and “war is passé” (p. 59). Codevilla seems of two minds about colonialism, advising against it in some portions of his book and longing nostalgically for its return in other portions. But the claim that Western elites have rejected colonialism and war is fantastic: The United States and most other Western countries have troops all over the world, intervene militarily in country after country, and constantly

²¹ It should be unnecessary to say that a terrorist’s grievances may be legitimate even if his terroristic response to them is not.

²² This tendency to trivialize Arab grievances rears its head more than once. While properly critical of the brutal treatment of prisoners at Guantanamo and Abu Ghraib, for instance, Codevilla downplays its seriousness by calling it “slight mistreatment” (would it seem so slight if it had befallen him or his loved ones?) and seems more exercised over its tactical and strategic than over its moral shortcomings (pp. 147-48).

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strive to maintain or expand their spheres of influence. *Colonialism and war are what Western elites are all about.*²³

Yet elsewhere in the book, by contrast, Codevilla is suddenly happy to acknowledge that, after all, the Arabs *do* have legitimate grievances and that redressing those grievances *would* help to defuse anti-American sentiment:

Americans can do more to abate the hate that comes from political contact with the Arab world. Since mid-twentieth century, regimes that ape Western ways and are somehow supported by Western powers, especially by the U.S., have worsened the Arabs' miseries. The rise of political Islam against these regimes has prompted Westerners, and especially Americans, to increase that support—and that misery. . . . The way to reduce hate is to practice arms' length diplomacy (pp. 157-58)

So Codevilla says in *this* passage. But he also says the following:

True, we had something to do with establishing those very regimes. To that extent, Arabs have a legitimate beef against us. But we cannot do anything that would force them to hate us less. Even if, God forbid, we were to fulfill their most strident demand—turn ourselves into raging Jew-haters, and destroy Israel for them—we would earn not less hate but even more contempt. (p. 99)

For Codevilla, “the easiest way to encourage terrorism is to attempt to deal with ‘the root causes of resentment against us’ by granting some of the demands of our enemies” (p. 58).²⁴

So what *is* Codevilla's view about the role of the U.S. in provoking anti-American hatred and terrorism in the Arab world? Apparently, he holds all of the following views:

²³ See, e.g., Joseph R. Stromberg, “The Role of State Monopoly Capitalism in the American Empire,” *Journal of Libertarian Studies* 15, no. 3 (Summer 2001), pp. 57–93, available online at http://www.mises.org/journals/jls/15_3/15_3_3.pdf; and Joseph Stromberg, “Sovereignty, International Law, and the Triumph of Anglo-American Cunning,” *Journal of Libertarian Studies* 18, no. 4 (Fall 2004), pp. 29-93, available online at http://www.mises.org/journals/jls/18_4/18_4_2.pdf.

²⁴ But what if—as Codevilla seems to acknowledge—some of these enemies' demands are *just*, are measures that Americans are morally obligated to take anyway? Should the U.S. flout its moral obligations for reasons of expediency?

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1. The U.S. bears no causal responsibility for the hatred.
2. The U.S. has provoked the hatred by being too non-interventionist.
3. The U.S. has provoked the hatred by being too interventionist and
 - 3a. can diminish it by redressing grievances.
 - 3b. can only increase it by redressing grievances.

At this point, I confess, my hermeneutical skills give out.

My own view is closest to (3a); perhaps there would still be anti-American resentment in the Arab world in the absence of U.S. military involvement there, but it's a big step from merely feeling resentment to being willing to blow oneself up, and it's hard to believe that bombing and invading Muslim countries has no significant tendency to move Muslims across that gap. If there were no U.S. troops on the soil of any Muslim country and no U.S. involvement anywhere in the Middle East, then how much success would terrorist recruiters have in getting young Muslims ready to kill and die just because some country on the other side of the globe is pretty rich and treats its women like people? Sure, there'd be a few; there are always a few such fanatics anywhere: I remember from my days in Ithaca, New York, the fundamentalist Christian who rammed his truck into a local movie theater—injuring only himself—to protest the showing of *The Last Temptation of Christ*.²⁵ But destroying Arabic governments isn't going to get rid of the super-fanatics either.

Codevilla apparently sees the attempt to restrain U.S. power as a “leftist” and “anti-American” phenomenon (p. xi). I would remind him that precisely this attempt lies at the traditional *core* of free-market Americanism—unless Henry David Thoreau, Mark Twain, William Graham Sumner, E. L. Godkin, Frank Chodorov, and Rothbard were anti-American leftists.²⁶

²⁵ He later said that he had done it on a sudden pious impulse, and that the possibility of wrecking his truck or injuring himself simply hadn't occurred to him. The mills of Darwin grind slowly

²⁶ Henry David Thoreau, “Resistance to Civil Government,” *Aesthetic Papers* 1 (1849); Mark Twain, *The War Prayer* (Harper, 1984); William Graham Sumner, “The Conquest of the United States by Spain,” in Sumner, *War and Other Essays*, ed. Albert Galloway Keller (Yale University Press, 1919), pp. 295-334; E. L. Godkin, “The Eclipse of Liberalism,” *The Nation*, August 9, 1900; Frank Chodorov, *Fugitive Essays: Selected Writings of Frank Chodorov*, ed. Charles H. Hamilton (Liberty Fund, 1980); Murray N. Rothbard, *For a New Liberty: The Libertarian Manifesto* (Collier Macmillan, 1978); Murray Rothbard, *The Ethics of Liberty* (New York University Press, 1998).

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Codevilla often writes as though, whatever may have been true in the past, the only choice facing the United States *now* were one between different flavors of interventionism—between siding with Israel and siding with Palestine, for example. But Israel and Palestine are both terrorist states. Why should the U.S. be siding with either of them? (Of course, the United States has sponsored its share of terrorism, too; taking seriously Codevilla’s call to “kill the regimes—the ruling classes—of countries that are in any way associated with terrorism” [p. 100] would require making the streets of Washington and Wall Street run with blood. Codevilla’s concern with state-sponsored terrorism is curiously selective.) More broadly, why not follow a consistent policy of strategic disengagement—heeding President Washington’s advice to avoid “entangling alliances”? Codevilla opines, plausibly enough, that America makes itself a target of terrorism through its “*peculiar combination of intrusiveness and fecklessness*” (p. 13). But he seems more interested in addressing the fecklessness than in undoing the intrusiveness.²⁷

Some of Codevilla’s remarks suggest he may think that although disengagement might have been an option *once*, and may with luck be so again down the road, given that violence has begun, only a violent solution will end it:

Once blood is spilled, the previously existing order, the previous peace, is broken forever. What peace will prevail in the end depends on who, by killing and willingness to be killed, can force the other to accept his version. (p. 141)

It is perhaps in this spirit that Codevilla quotes, without commentary, Pericles’ advice that “to recede is no longer possible . . . For what you hold is, to speak somewhat plainly, a tyranny; to take it perhaps was wrong, but to let it go is unsafe” (p. 143). Against this (moral considerations aside) I would quote Codevilla’s own excellent advice in another context: “When in a hole, the beginning of wisdom is: stop digging” (p. 155).

²⁷ For a compelling case for U.S. disengagement, see Jonathan Kwitny, *Endless Enemies: The Making of an Unfriendly World* (Viking, 1986); and John Denson, ed., *The Costs of War: America’s Pyrrhic Victories* (Transaction, 1999).

Angelo Codevilla and William Tecumseh Sherman

Spengler
Asia Times

Angelo Codevilla advises the United States to destroy anti-American regimes throughout the Islamic world by the exercise of external military pressure, and, more importantly, provision of support to the enemies of those regimes, with little regard to the political, territorial, or humanitarian outcome. Under the rubric, "What is to be done?" he writes:

In short, the regimes whose death would give us peace have enemies who are eager to kill them. . . . Democracy may not be part of their agenda, and liberalism surely will not be. That is their business. It is enough for our peace that there be people who have their own reasons for destroying the people and culture—the regimes—that are the effective causes of violence against us. U.S. military operations can and should make it possible for them to do it. (p. 138)

Those who agree with him, including this writer, must ponder our marginalization within the foreign policy and intelligence communities. Codevilla's admonitions over the years, collected in this volume, have had the accuracy of a Cassandra, but also, sadly, the reception of Cassandra as well. The reception of Codevilla's view recalls the opprobrium heaped upon William Tecumseh Sherman, whose career was nearly destroyed in 1861 by his public insistence that victory in the U.S. Civil War required "that the present class of men who rule the South must be killed outright."

Codevilla has no qualms about killing the enemies of the United States, writing:

[T]he dictatorial regimes of the Arab world consist of some 2,000 men, while the Saudi regime is perhaps twice that size. In such places, where regimes exist by brutalizing opponents, changes in regime necessarily involve the bloody settling of bloody scores with those numbers of people. (pp. 135-36)

This statement seems to imply that the demise of perhaps 30,000 enemies of the United States would solve the problem. The question of how many enemies of the United States must perish in order to have peace,

however, is far from trivial. How much death will the West have to inflict upon its enemies before it achieves a lasting peace?

Sherman famously predicted 300,000 southern casualties at the outset of the war. Even after taking Atlanta he insisted, "I fear the world will jump to the wrong conclusion that because I am in Atlanta, the work is done. Far from it. We must kill 300,000 I have told you of so often, and the further they run the harder for us to get them." George F. Will quoted these words in a December 27, 2001 column, in support of his recommendation that "as far as is consistent with the rules of war and the husbanding of the lives of U.S. military personnel, U.S. strategy should maximize fatalities among the enemy, rather than expedite the quickest possible cessation of hostilities."¹

Sherman's forecast of 300,000 enemy casualties came uncannily close to the final tally of 258,000. That is, three percent of the South's nine million people died in uniform. For the sake of argument, suppose that George F. Will's analogy applies in a literal sense, and that three percent of the current population of the Arab world plus Iran would become casualties before peace could be achieved. Given their combined population about of 360 million, that would be ten million casualties.

It is just as reasonable to assume that the number of deaths required for victory in the War on Terror would reach ten million as it is to assume 30,000. Compared to the civilizational wars of the twentieth century, ten million deaths does not represent a large number; communism alone killed 100 million. Between one and two million people died in the Iran-Iraq war of the 1980s. A combination of civil wars and regional wars in the Persian Gulf well might produce a casualty total comparable to that of the U.S. Civil War.

Codevilla compares the twenty-first century to the fifth century B.C., that is, to the Peloponnesian War of 431-404 B.C.:

To move successfully, one must understand the state of rest to which one must come. To tailor operations for a victory worthy of the name, one must understand the peace that victory is to produce, and what stands in its way. This is as true in the twenty-first century A.D. as it was in the fifth century B.C. (pp. xii-xiii)

The analogy, though, raises a related question, namely, how rapidly peace might be achieved. The Athens-Sparta war shows that even at an elevated rate of killing, some conflicts cannot be resolved quickly. It is interesting that several of the most important historical conflicts lasted for thirty years, for example, the Peloponnesian War of 431-404 B.C., the Thirty

¹ George F. Will, "Gen. Sherman's Advice," available online at <http://www.jewishworldreview.com/cols/will122701.asp>.

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Years War of 1618-1648, and Europe's Great War of 1914-1945. To fight this sort of war to its conclusion, the victorious side first must kill the fathers, and then kill their sons once they come of military age. Why did Athens launch the disastrous expedition against Sicily in the seventeenth year of the Peloponnesian War? Thucydides remarks that "It was all the easier to provide everything as the city had just recovered from the plague and the years of continuous war, and as a number of the young men had grown to manhood." Gunnar Heinsohn observed in a recent essay for *Die Zeit* that the Germany of 1914 had 160 newborn sons for every 10,000 inhabitants, four times as many as today. The baby boom of the years preceding World War I produced a new generation of German soldiers for World War II.²

What sort of wars are these that first kill the fathers, and then the sons? They are the contention of one people against another people for interests so vital that the young men of a people will die rather than concede them. Christians and pagans both have fought such wars. Why should not Muslims? We might call such wars "existential" rather than "civilizational," for some of the most terrible of them have been fought within a single civilization rather than between civilizations. Athens and Sparta were prepared to fight to exhaustion for their respective empires. The seventeenth-century Austrian Empire had no qualms about fighting to preserve the principle of Catholic Empire until nearly half of German-speaking Europe had perished, a decision made easier by the French policy of keeping the war going so as to weaken Germany.

Muslim terrorists already have, or soon will hold, the dubious record of committing the largest number of suicides in history in pursuit of a military goal. Although suicide bombers may represent the extreme tail of the distribution of Muslim opinion, the bunching of data points at the distribution's tail should tell us something about the character of the distribution as a whole. No other population in history has harbored sufficient hatred and fanaticism to persuade so many of its young people to take so extreme an action. That is, the extreme anti-Americanism of Arab regimes to which Codevilla refers must reflect extensive support for extremism among their populations.

It is hard to gauge opinion in unfree societies. To the extent that Arab (or Persian voters) have had the opportunity to express their views at the polls during the past year, however, they have tended to support Islamic extremists such as Muslim Brotherhood in Egypt, Hamas in the West Bank of the Jordan, Hizbollah in Lebanon, the Shia religious parties in Iraq, and perhaps most importantly, Mahmud Ahmedinejad in Iran against more pragmatic opponents. Although Iran's presidential election of June 2005 was anything

² Gunnar Heinsohn, "Finis Germaniae?" available online at http://www.zeit.de/feuilleton/kursbuch_162/1_heinsohn.

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but fair, the overwhelming support for Ahmedinejad in rural and poorer urban districts cannot be dismissed as mere poll-rigging.

Everything that we observe in the Arab-Iranian sphere suggests that future conflicts are likely to be prolonged and embittered. Not only does a large part of the population subscribe to extreme positions, but also a higher percentage of the population than any other population in history is prepared to make the ultimate sacrifice in furtherance of these positions. How much damage must the extremists suffer, and how long will it take to inflict such damage, in order to reach a “state of rest”? In order to answer these two questions, we first must inquire as to the sources of the extremism.

There are two dimensions to Iranian extremism: one is demographic, and the other is ideological. I will examine these in turn before offering a tentative answer to my own questions.

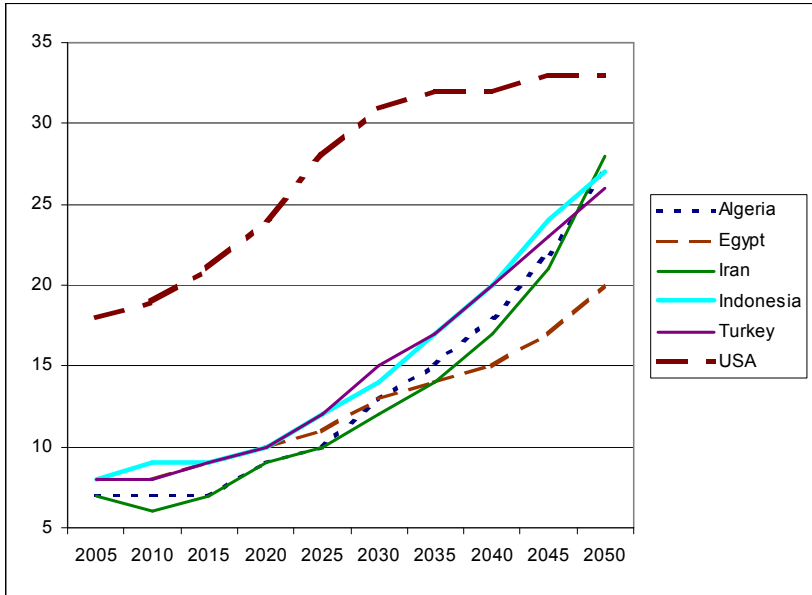
We first need to understand the demographic crisis in the Muslim world. Extremists come to the fore when the ambient population finds itself under extreme duress. A great deal has been written about the Iranian president’s penchant for apocalyptic mysticism, but very little about the conditions which make an apocalyptic outlook appeal to a wider population. Within a generation Iran will encounter demographic and economic conditions that threaten social breakdown, I believe, and it is in anticipation of a coming crisis that the Iranian population has chosen an extremist leader.

Aging populations will cause severe discomfort in the United States and extreme pain in Japan and Europe by mid-twenty-first-century. But the same trends will devastate the frail economies of the Islamic world, and likely plunge many countries into social chaos. By 2050, elderly dependents will comprise nearly a third of the population of some Muslim nations, notably Iran’s, converging on America’s dependency ratio at mid-century. But it is one thing to face such a problem with America’s per capita GDP of \$40,000, and quite another to face it with Iran’s per capita GDP of \$7,000—especially given that Iran will stop exporting oil before the population crisis hits. The industrial nations face the prospective failure of their pension systems. But what will happen to countries that have no pension system, where traditional society assumes the care of the aged and infirm? In these cases it is traditional society that will break down, horribly and irretrievably so.

Iranian President Ahmedinejad has taken pre-emptive action in the face of the impending crisis to the inevitable depopulation of rural Iran. In a program made public August 15, 2005, Ahmedinejad revealed a response worthy of Hitler or Stalin to the inevitable unraveling of Iran’s traditional society. He proposes to reduce the number of villages from 66,000 to only 10,000, relocating 30 million Iranians.

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Exhibit 1: Elderly Dependent Ratio, Selected Muslim Countries vs. USA

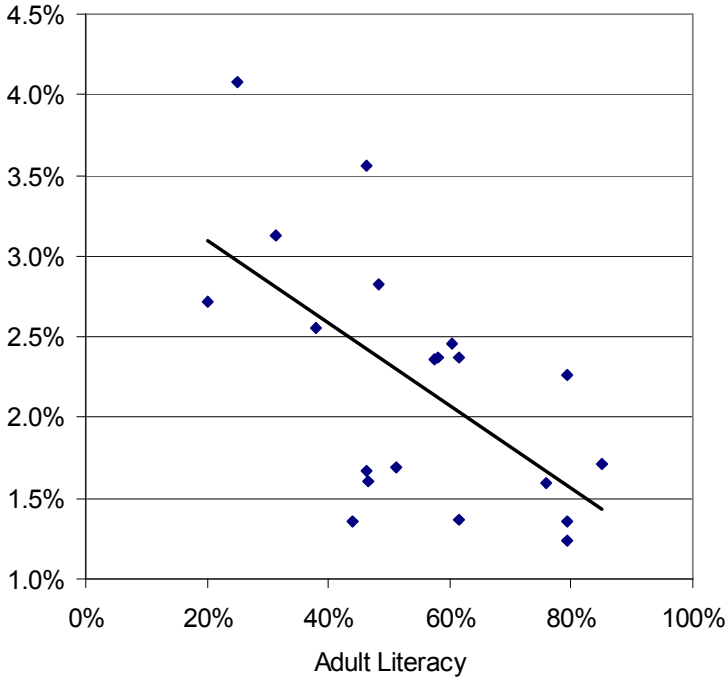


Source: United Nations

What is killing the fertility rate in the Muslim world? There really is no such thing as a “Muslim” fertility rate, but rather a wide spectrum of fertility rates that express different degrees of modernization. Where traditional conditions prevail, characterized by high rates of illiteracy (and especially female illiteracy), the fertility rate remains at the top of the world’s rankings. But where the modern world encroaches, fertility rates are plummeting down to levels comparable to the industrial world. No single measure of modernization captures this transformation, but the literacy rate alone explains most of the difference in fertility rates among Muslim countries. Among the 34 largest Arab countries, just one factor, namely, the difference in literacy rates, explains sixty percent of the different in the population growth rate in 2005.

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Exhibit 2: 2050 Literacy Rate vs. Population Growth Rate among 34 Largest Arab Countries



Source: United Nations

The population of Somalia, where only a quarter of adults can read, is growing at an enormous four percent per year. At that rate, the number of Somalis will double in just eighteen years. But in Algeria, where sixty-two percent of adults can read, the population growth rate is only 1.4 percent per year. At that rate it would take fifty years for the population to double. Qatar, with a literacy rate close to eighty percent, has a population growth rate of just 1.2 percent. The modern crisis of faith that eroded traditional society in the West over centuries is hitting the Islamic world within the compressed time frame of a single generation.

The second dimension of extremism has to do with the religious propensity for self-sacrifice. Modern Islamism as a movement began as a response to this crisis of faith, and Islamist leaders like Ahmedinejad are energized by a profound sense of the fragility of Islam in the modern world.

With the ascendance of the Shia current in Islam under these conditions, Shia leaders incline as a matter of history and ideology to an apocalyptic stance.

All religion in some sense is about blood, because all religion is about life. Shia Islam, though, displays an affinity for real blood that disturbs the West. On their holiest day, the Feast of Ashura, Shia cut themselves until they bathe in their own blood. Spurting blood is the preferred symbol of Iran's Islamic revolution. Fountains shooting red dye at Tehran's Behesht-e-Zahra cemetery recalled the blood of the young Iranians interred there, who fell in the Ayatollah Ruhollah Khomeini's suicide battalions during the Iran-Iraq war of the 1980s. This turns Western stomachs, despite the universal presence of blood symbols in Western religion, as we observe in the Eucharist as well as the blood sacrifices of the Hebrew Bible. Catholics drink Christ's blood literally (according to the Catholic doctrine of transubstantiation) and Protestants symbolically in order to attain eternal life, while lambs' blood kept the Angel of Death from the doors of the ancient Hebrews on the eve of their exodus.

One dies a vicarious death in order to secure eternal life. Unlike Christians or Jews, whose religions are based on vicarious sacrifice, Islam demands the self-sacrifice of its adherents, in keeping with its essentially militant character. Revealed religion puts blood at a distance; Abraham sacrifices a ram and spares his son Isaac, and God sacrifices his own son in order to spare humankind. Unlike Christianity or Judaism, Islam has no ritual of sacrifice, only ancillary sacrificial customs. Nor does it need one, for as Muslim authorities teach, the sacrifice that Islam demands is that of the Muslim himself. That is the secret of Ashura.

Unlike Christians, Muslims require no ritual of rebirth, for in their doctrine they already are the descendants of Abraham, through the supposed true line of Ishmael, the favored son of the patriarch whose heritage was usurped by the crafty descendants of Isaac—the Jews and their emulators the Christians. Allah sent prophets to all the nations of the world, but the Jews falsified the message of the prophets so as to favor their ancestors at the expense of the true successor of Abraham. In the revolt against the usurpers, all the tribes of the world enjoy the equality of the horde.

Revolt against usurpation, the revenge of the pure life of traditional society against the corrupt mores of the metropole, is the heart of Islam. The Muslim rejects the supposed chosen people of God as usurpers, and defends traditional society against the crucible of peoples that is the Christians' New Israel. But Islam also forms a new people, the *umma*, the collective of Muslims to which the individual must submit. In the pagan world the young men of each tribe march out to fight their enemies, and delay the inevitable moment when their tribe will be overwhelmed and its memory extinguished. Islam summons the tribes to unite against the oppressive empires to its west, to march out together and fight until its enemy, the *Dar-al-Harb*, exists no

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more.

Islam has no ethnicity; it is not an Arab movement; it is a new people, but a people defined first of all by militancy. The individual Muslim does not submit to traditional society as such, no matter how many elements of traditional society might be incorporated into Muslim doctrine; he submits to the movement of the tribes. That is why *jihad* is the most authentic form of Muslim religious activity, and why the blood rituals of Ashura the most authentic form of Muslim worship.

Shia are predisposed to self-sacrifice by belief and ritual, and sense that their backs are to the wall as traditional society erodes in the face of globalization. Under these circumstances, it seems probable that Shia militancy against the West will be prolonged and bloody. It is not merely regimes composed of a few thousand people, but armies composed of millions that may fight to the death. The West is no more prepared psychologically for the scale of carnage that may ensue than the United States was prepared for the severity of its civil war. Perhaps that is a good thing, for men well might lay down their burden, knowing how difficult is the road ahead. Nonetheless, somewhere, and at some time, the terrible discussion of the cost of establishing a Clausewitzian peace must take place.

Symposium: War and Liberty

War and Liberty

Aeon J. Skoble
Bridgewater State College

It's a cliché of the left that "business ethics" is an oxymoron. That is a tired cliché not only because it is so old as to be entirely devoid of humor, but also because it actually is not true. On reflection, it's perfectly obvious that commerce may be practiced ethically or unethically, that people engaged in business make decisions with moral content as often as many others. To the extent that it was ever funny, the cliché would have depended for its humor on the presupposition that there is something *prima facie* wrong with business, a Marxian suspicion that all businessmen are corrupt profit-maximizers. More reasonable analysis reveals that ethical people may engage in commerce, and so business ethics is a legitimate concept after all. Analogously, some, not all on the left, scoff at the allegedly oxymoronic notion of "just war theory," and I'll be arguing that here too there is some legitimacy to the concept, although it may not correspond to the traditional model of just war theory.

Actually, the similarities to business ethics continue, and are illustrative. In addition to the critique of business ethics that stems from an opposition to capitalism, one might also criticize the idea of business ethics on the grounds that in a dog-eat-dog, competitive world, one has to be realistic and do what is necessary to get ahead, that there is no room for high-minded moralism in the cost-benefit analysis. Cynics might think in terms of the explanation from *Fight Club* (1999): "A new car built by my company leaves somewhere traveling at 60 mph. The rear differential locks up. The car crashes and burns with everyone trapped inside. Now, should we initiate a recall? Take the number of vehicles in the field, A, multiply by the probable rate of failure, B, multiply by the average out-of-court settlement, C. A times B times C equals X. If X is less than the cost of a recall, we don't do one." Similarly, proponents of a just war theory will face skepticism from two points of view. One is the position generally known as "military realism"—"*inter arma silent leges*" (in times of war the laws are silent)—which is the

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view that there are no rules (and, hence, no standards of justice) in war, and that there shouldn't be, on the grounds that the only important thing is to win by any means necessary. The other point of view is pacifism, which is the position that war is inherently unjust, so just war theory really *is* an oxymoron. It is this latter position to which I'll be primarily speaking today.

Pacifism may take on different shades. Some oppose war on the grounds that war entails violence, and since violence is bad, war must be bad also. This argument fails because of the falsehood of the second premise: violence is not always bad—in self-defense or defense of a helpless third party, violence may be justified. As Dirty Harry (*Magnum Force*, 1973) put it, “there's nothing wrong with shooting as long as the right people get shot.”

A more sophisticated argument for pacifism might be that wars are fought between states, and states use war to enhance their power, or, as Robert Higgs has demonstrated,¹ ratchet up the scope of their power. So wars tend to serve state purposes and violate human rights. Hence, they must be unjust. One variation on that argument that we might hear from anarcho-libertarians is that wars are fought between states, and since states are illegitimate, *ergo* wars are illegitimate. While I have some sympathy for these last two arguments, I think they are defeasible. I will sketch a theory on which, even from a libertarian framework, wars may be defensible under certain circumstances, but that some of the traditional components of just war theory need to be revised to accommodate the priority of individual liberty and autonomy.

Just war theory refers to a set of proposed moral constraints on warfare. Traditionally,² there are two parts to just war theory: *jus ad bellum* and *jus in bello*. *Jus ad bellum*, “justice of war,” assesses the reasons given for the choice to go to war in a particular context, while *jus in bello*, “justice in war,” assesses the means a nation or individuals employ when fighting. The *jus ad bellum* criteria have generally been taken to be: just cause, just intentions, legitimate authority, reasonable costs, and last resort. But these have traditionally been interpreted in terms of states as sovereign actors, with an inviolate realm of autonomy. I want to argue, on the one hand, that the conception of political legitimacy thus invoked fails to take into account liberal conceptions of human rights, and that therefore the theory cannot reliably provide justice. But, on the other hand, the anarcho-libertarian pacifist argument also fails to produce justice. So I'm going to argue that just war theory can be defended against anarcho-libertarian pacifism, but that only with the modifications I suggest will this work.

¹ Robert Higgs, *Crisis and Leviathan* (Oxford University Press, 1987).

² I would say “canonically,” but the puns would be too easy.

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What follows is a discussion of a major problem with just war theory as traditionally conceived, and how I suggest it be remedied. Traditional just war theory views states as actors. Historically, this is based on the monarchist idea that the monarch is rightly in complete control. But then we see the root of some of the tenets of just war theory—for example, the idea that there has to be some reasonable chance of success is meant to prohibit kings from treating soldiers as cannon-fodder just to keep up appearances. The idea of just cause means that a king can't start a war, for instance, to avenge a personal slight. Seen from this historical perspective, these principles are quite helpful in terms of protecting individuals from being abused by rulers. Just war theory is, in that sense, historically a limitation on state power. But, of course, in the context of democratic republics, it makes less sense to think of states as actors, and this way of categorizing can lead people to reify the state, as exemplified by Mussolini's claim that the state is a "living, ethical entity" which expresses "the real essence of the individual."

Part of the historical context that underlies this is the idea that all kings are moral equals. This is essential for the notion of sovereignty which informs just war theory. Since kings (and, hence, states) are moral equals, it would be wrong for one to violate the sovereignty of the other. So France cannot simply invade Holland because it would like to have canals. In its historical context, this is a plus: it emphasizes peace and discourages aggression.

The problem is that the notion of state sovereignty in the modern era leads to a view of the moral equivalence of all states—Communist China is then no different from Republican Switzerland—and this is detrimental to human rights, because it means that a tyrannical state is immune from outside pressures to liberalize. Michael Walzer³ goes some of the way in this direction, but not to the ultimate conclusion. The argument is that sovereignty needs to be based in service to people, that is, protecting their rights, so illegitimate regimes don't have sovereignty at all. There's a Lockean component here also: If rights are conceptually prior to the state, then state sovereignty must derive from a theory of legitimacy which is based on protection of rights rather than from a theory of moral equality of all states. The rights component gets lost when we adopt a "realist" model of legitimacy, such as actually holding power or being "recognized" by the UN.

Now, what are the causes which might count as "just cause"? Least controversial is defense against aggression. The right to respond to force with force seems fairly straightforward, although in a moment I will indicate why it might not be for some. A bit less obvious is defense of another. If B is invaded by A, B might have the right to repel the invasion, but utterly lack the

³ Michael Walzer, *Just and Unjust Wars* (Basic Books, 1977).

power to do so. C's assistance would be justified on the grounds that B was unjustified in aggressing against A in the first place. C's right to use force against A follows from B's right.⁴ More controversial still are interventions; for example, taking sides in a civil war or preventing a genocide or removing a tyrant. It might seem as though only in this last case does it even matter what model of legitimacy we adopt. If A is attacked, isn't A's right of self-defense absolute regardless of whether it is attacked by a republic or a tyranny? Traditional just war theory would answer yes, but I think it actually does matter. Since tyrannical states have no legitimacy, if they are attacked by free states,⁵ they cannot claim that their sovereignty is being violated. In other words, intervening to protect rights against a tyrant is *not* a violation of sovereignty—at least not any kind of sovereignty worth defending. (Nevertheless, the attack would have to satisfy other justice conditions, e.g., it would have to be intended to liberate oppressed people or prevent a genocide rather than to seize raw materials or to acquire territory.)

Some will argue that a free society has no business interfering in other societies' internal politics. But this is, ironically, or paradoxically, a holdover from the old monarchist mindset. The old order on which traditional just war theory is based, and on which sovereignty is the paramount value in international relations, depends on a moral equivalence between states which is derived from a statist view, not an individualist view. On a non-statist, individualist view, *individuals*, not states, have rights. States may have powers, but the just powers derive from the consent of the governed. The putative right of any state to sovereignty thus is a function of its protection of the rights of the people in its domain. So a free society may very well have some business "interfering" in tyrannical or genocidal states—namely, the business of protecting life and liberty. The very language—that this is "interference" in a state's own affairs—implies that the state has some right of action which is presumptively respected, and again, this can only be justified by old-order thinking, not by liberal thinking. (I am not here arguing that they are obliged to do so, only that they are permitted to do so, or that they do no wrong by doing so.)

Now, one anarcho-libertarian pacifist objection is that since there's really no such thing as a free state, no state may attack another under the rubric I've outlined. But some private group in an anarchist society could presumably seek to liberate oppressed people. And it's true that some states

⁴ I say "right," not duty, here. I am not committed to the claim that helping a defenseless third party is an obligation—it might be, but for now I'll settle for its being permissible.

⁵ I realize the oxymoronic nature of this expression from a radical-libertarian perspective—substitute "mostly free" or "minarchist," if you prefer.

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are more free than others. So it's not clear why an imperfectly free state would be acting unjustly in similar circumstances. For example, the U.S. is not completely free, but I fail to see why that would make it unjust for the U.S. to have intervened to prevent the Rwandan genocide.

Note that judging an action to be permissible is not to judge it to be prudent, which is why I stop short of arguing that such interventions are obligatory. There may be some cases in which it would be permissible, but imprudent, to send in the troops. Recall the standard principle of traditional just war theory about when there is relatively little or no chance of success. So, for example, the Chinese government is tyrannical, and their unjust occupation of Tibet is *ceteris paribus* cause for intervention, but they're also a nuclear power with inter-continental missiles. That's a good reason *not* to intervene in Tibet, even though the Chinese would have no right to complain if they were dislodged. Clearly, too much military adventurism will hamper the primarily self-defensive role of the military, as well as being prohibitively expensive, but to say that is not to say anything about the propriety of any particular action. Also, neither of these objections would apply if armed conflict were not solely the province of the state.

A different sort of objection is that the military uses coercion in order to operate. This argument had a great deal more merit in the case of conscript armies. I think it is clear enough that conscription is tantamount to slavery. But in the context of an all-volunteer army, this is not a factor. However, the military is nevertheless an example of the state using coercion, namely, coercively obtained funding, so while it may not violate the rights of foreign tyrants or its own soldiers, it violates the rights of people in the society who are obliged to pay for it. It thus enhances government power in objectionable ways. The government steals money from us, and then uses it however it wants to, including the funding of activities to which we might not consent, including some military operations. But, of course, *everything* the state does it does with confiscated funds. The fire department is operated with confiscated tax dollars, but that doesn't mean putting out fires is immoral in and of itself. To argue that the state ought not to provide a particular good or service is not to argue that the provision of that good or service is intrinsically evil. The state ought not to operate fire departments, but fire departments are themselves good things. The state ought not to operate schools, but schools are themselves good things. If a state-run fire department were doing something immoral, such as failing to respond to alarms in minority neighborhoods, we might argue that this is an unethical way of operating a fire department, and we might be led by that discussion into a discussion of why it would be preferable to privatize that service. But it would be a mistake to argue on the basis of a particular unethical use of a service to the idea that the service itself is unethical. In the case of the military, I would expect the radical-libertarian view to be that this too ought to be privatized, not that it

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shouldn't exist. When my house catches fire, I will call the state-run fire department, even though I think the state ought not to be in that business. Why? Because they *are* in that business. So the relevant practical question becomes, what moral guidelines ought to govern that profession and its administration? Some uses of it might be ethical, others unethical. Some military operations are ethical, others unethical. It would be a mistake to argue from the immorality of some to the immorality of all.

What's evil is the state's using coercion to accomplish certain ends, but not all of those ends are themselves evil. Between a coercively funded state-run military force averting a genocide and a privately funded and operated military force averting a genocide, the latter is preferable. What is wrong with the former is not what it is trying to do. Let us go back to the fire department example: It is wrong for the state to grant itself a monopoly on the provision of this service, and to steal to fund it, but there is nothing intrinsically wrong with the mission or activity of the fire department inasmuch as they are performing their proper function of fighting (and to some extent preventing) fires. So, too, with the army: defending against a hostile invader is morally right, so even if the state should not use coercive practices to fund this activity, the activity itself is not wrong. Surely libertarian theory provides for engaging agents in one's defense. So the more tricky question is, is it morally appropriate to use force to help another defend against aggression from a third party? It may depend on the circumstances, but surely it is right at least some of the time. Would it have been morally right to have helped the Poles defend against German aggression in the 1930s? To put the point more abstractly: If it's right for me to do X, then it is permissible for me to appeal for help doing X. If it's right for you to do X, then it is permissible for me to help you do X. Oppressed populations have a right to overthrow tyrannical regimes, but may lack the power to do so. Coming to their assistance is at least permissible (and again, I am not here arguing that it is obligatory). What makes it seem objectionable is the fact that coercively obtained funds are being used to do it. But that is an argument against the state's involvement in such activities as a whole, not an argument against the propriety of doing that particular thing. A privatized, Lincoln-Brigade-style operation to liberate the Kuwaitis would have been preferable to the first Gulf War, but that would have been illegal. Given that the state does run the military, the relevant practical question is when is it using the military justly and when is it not. If it would have been permissible for a private force to liberate Kuwait, then it was permissible for the U.S. military to do so, even though we may also think that this (like everything else) ought to be privatized. Even though the state should not coercively monopolize the fire department, when they put out a fire, they are acting rightly. When I teach my classes, I am acting rightly. When a U.S. soldier liberates an oppressed person from a tyrant, he is acting rightly. The military is not intrinsically

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immoral. It is a useful service which need not and ought not be a state enterprise, but is.

We agree that it's bad that the state runs fire departments, but as long as they do, I'd argue that it's right for them to come and put out a fire. I see this as analogous to saying that it's bad that the state runs a large military force, but as long as they do, it's right for them to engage in justified fighting. Of course, it's more problematic in the latter case what counts as justified fighting, but *that's my point*: Traditional just war theory can go some of the way toward illuminating that, but it requires modification to allow for greater consideration of individual rights against the putative sovereignty of tyrannical regimes.

This brings me to the most troublesome objection, famously identified by Higgs,⁶ that states tend to exploit crisis situations, especially military ones, so as to expand the scope of their own power and then, ratchet-like, rarely relinquish the new powers once the crisis has been averted. It doesn't require too much imagination to see ways that the state might even manufacture a crisis, *1984*-style, in order to keep hold on its power. But, first of all, this can't be helped in one sense: If we're going to have states at all, and I'm not saying we should, then this is likely an inescapable fact of life given the nature of the state, and we see it in areas other than military actions. We see it in domestic social issues, from drug policy to wealth redistribution to pornography. As long as we have a state, we will see the Higgs effect. Second of all, our best hope for mitigating this in the context of military affairs is to elevate individual liberty to paramount status in just war theory, as I have suggested. This would have the effect of keeping liberty in the forefront of popular thinking, reducing the appeal of other, less savory rationales for war-fighting. Also, elevating protection of individual liberty to the forefront of just war theory would help reinforce it as the paramount value in politics generally. If we could regulate military affairs so as to prioritize individual liberty over the rights of states, then this would go a long way in the domestic sphere.

⁶ In Higgs, *Crisis and Leviathan*.

The Justice and Prudence of War: Toward A Libertarian Analysis

Roderick T. Long
Auburn University

1. Introduction

The morality of warfare is an issue that has long divided libertarians. The spectrum of libertarian opinion on the subject ranges all the way from Leonard Peikoff, who defends the use of nuclear weapons against civilian targets,¹ to Robert LeFevre, who denies the legitimacy of all violence, even in self-defense.² Needless to say, most libertarians fall at various points between these two extremes—though the divisions have become sharper since the 9/11 attacks. (One of the more ironic manifestations of these divisions is that French libertarians are far more likely to support current U.S. foreign policy than American libertarians are; perhaps anti-government thinkers tend to be more attracted to whatever position their *own* government opposes.)

What view of warfare is most consistent with libertarian principles? Here I shall distinguish between libertarianism as a normative ethical theory—a theory of justice—and libertarianism as a descriptive social theory. Libertarians disagree with one another as to the extent of the former's dependence on the latter; utilitarian libertarians profess to believe the dependence total, while natural-rights libertarians profess to believe it nonexistent, but in practice both groups tend to treat the dependence as *partial*, and so will I.³

2. Deontological Considerations

The non-consequentialist core of libertarian ethical theory is an *egalitarian* commitment; specifically, it is a commitment not to

¹ See articles written by Leonard Peikoff, available online at <http://www.peikoff.com/essays>; and endorsed by him, available online at <http://www.aynrand.org/medialink>.

² Such at any rate is LeFevre's reputation; I have not read enough of his work to confirm it.

³ For a defense of this approach, see my "Why Does Justice Have Good Consequences?" available online at <http://www.Praxeology.net>.

socioeconomic equality, but to equality in *authority*. Indeed, libertarians' lack of enthusiasm for socioeconomic equality stems precisely from their concern that it can be achieved only at the cost of this, for libertarians, more fundamental form of equality.⁴ The libertarian "non-aggression principle" expresses the conviction that forcibly to subordinate the person or property of another to one's own aims is to assume an unjustifiable inequality in authority between oneself and the other. And it is because this equality in authority likewise holds between private citizens and public officials that governments are forbidden to exercise any powers not available to people generally; libertarianism requires not just equality *before* the law, but also equality *with* the law. It follows that a consistent libertarian theory of warfare must apply the *same* prohibitions and permissions to governments and private individuals alike. In this respect it will be radically different from nonlibertarian theories, which typically grant government actors more latitude in the use of violence than private actors; a libertarian theory must be equally permissive—or equally restrictive—with both. A consistent libertarian cannot, for example, accept a mere apology as sufficient recompense when the U.S. military accidentally bombs the wrong target and kills fifteen children in Afghanistan,⁵ unless she is prepared to be equally tolerant when Uncle Zeke's backyard bazooka target practice accidentally takes out a passing school bus. It can make no difference whether the perpetrator is or is not an agent of the government; nor can it make any difference whether the victims are or are not citizens of *that* government.

The non-aggression principle rules out the use of initiatory force, but says nothing about retaliatory force one way or the other. One might argue, then, that any and all positions on retaliatory force are equally compatible with libertarianism so long as they are applied consistently. Nevertheless, I believe that some of these positions cohere better with libertarianism than others.⁶

⁴ See my "Equality: The Unknown Ideal," available online at <http://www.Praxeology.net>; and my "Why Libertarians Believe There Is Only One Right" (unpublished).

⁵ I refer to incidents of public record occurring on December 5th and 6th, 2003.

⁶ For fuller discussion of the points that follow, see my "Abortion, Abandonment, and Positive Rights: The Limits of Compulsory Altruism," *Social Philosophy and Policy* 10, no. 1 (Winter 1993), pp. 166-91; and my "The Irrelevance of Responsibility," *Social Philosophy and Policy* 16, no. 2 (Summer 1999), pp. 118-45. My analysis is also indebted to Murray N. Rothbard, *The Ethics of Liberty* (New York University Press, 1998).

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Let's first consider whether force is justified in self-defense—or, more broadly, in defense of the victims of aggression, whether oneself or others or both. For pacifist libertarians, the answer is no; the non-aggression principle is seen as a specific application of a more general nonviolence principle. Let me point out some countervailing considerations.

Libertarians like to think of themselves as defenders of *rights*. But not all moral claims are rights; I have a moral claim against you that you not be rude to me during the question period, but I surely have no such *right*. What distinguishes rights from other moral claims is that rights are legitimately *enforceable*. But for the pacifist libertarian, *no* claims are legitimately enforceable; hence, a libertarian cannot recognize any such things as rights. I don't claim that this is a decisive consideration, but it is certainly awkward; libertarianism without rights does seem rather like *Hamlet* without the prince.

To put the point somewhat differently: It seems natural to think of the non-aggression principle as erecting boundaries around people. I have authority over what's in my boundary—namely, myself and my peacefully acquired possessions—but my sphere of authority stops where yours starts: I have no business extending my authority to your person or property except by your consent. In Overton's words, I "may write myself no more than myself . . . every man by nature being a king, priest and prophet in his own natural circuit and compass, whereof no second may partake but by deputation, commission, and free consent from him whose natural right and freedom it is."⁷

But then what happens when you aggressively invade my boundary? We might think of this as a case where you *enter* my sphere of authority and so through your invasion become, to that extent, subject to my authority; this would license defensive action. But the pacifist libertarian must instead think of this as a case where my authority *shrinks* in response to your invasion.

⁷ Richard Overton, *An Arrow Against All Tyrants and Tyranny, Shot from the Prison of Newgate into the Prerogative Bowels of the Arbitrary House of Lords, and All Other Usurpers and Tyrants Whatsoever; Wherein the Original, Rise, Extent, and End of Magisterial Power, the Natural and National Rights, Freedoms and Properties of Mankind are Discovered and Undeniably Maintained; the Late Oppressions and Encroachments of the Lords over the Commons Legally (By the Fundamental Laws and Statutes of This Realm, As Also By a Memorable Extract Out of the Records of the Tower of London) Condemned; the Late Presbyterian Ordinance (Invented and Contrived by the Diviners, and By the Motion of Mr Bacon and Mr Tate Read in the House of Commons) Examined, Refuted, and Exploded, As Most Inhumane, Tyrannical and Barbarous*, by Richard Overton, *Prerogative Archer to the Arbitrary House of Lords, Their Prisoner in Newgate, for the Just and Legal Properties, Rights and Freedoms of the Commons of England* (1646).

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Previously I was free to move my arm as I wished, but now that you have grabbed it, my freedom to move my arm is diminished, since I cannot control its movement without exerting force against your use of it, and the pacifist libertarian cannot countenance such a use of force. But there seems something deeply un-libertarian about attributing to an aggressor the moral power to decrease her victim's legitimate sphere of authority over her own person and property.

I conclude that libertarianism supports a right to use force in self-defense. From here it is not a far step to the conclusion that one may employ force in defense of *others*, assuming that (a) whatever one is morally free to do oneself one is *ceteris paribus* morally free to delegate to an agent, and (b) in emergency situations people in need of help may reasonably be assumed, until proven otherwise, to implicitly grant potential helpers the right to act as agents on their behalf.

If libertarianism justifies the defensive use of force, then to that extent it justifies defensive warfare. But this justification's scope remains to be determined. How far beyond direct defense may the use of force legitimately go? I think the additional use of force to secure *restitution* is permitted, since restitutive force counts as an *extension* of defensive force.

Consider the following three cases.

Case 1: I break into your house.

Here I am clearly trespassing on your property, and you have the right to use coercion to get me to leave, since your home falls within your sphere of authority.

Case 2: I break into your house, and slip your radio into my knapsack.

In this case, you may do more against me than simply kicking me out of your house, because I, by retaining an item of your property on my person, have failed to vacate your sphere of authority. Hence, you may use coercion to get the radio back. I remain under your authority until you recover your property.

Case 3: I break into your house, and smash your radio with a hammer.

The fact that your radio no longer exists does not alter the fact that I remain under your authority until the radio (or its equivalent in value) is restored to you. Thus, I may legitimately be coerced into compensating you for your loss.

Note that this justification of defensive coercion has nothing to do with the aggressor's responsibility for his or her actions. If I have been hypnotized into attacking you, you still have the

right to fight me off. If a wind blew me onto your property against my will, you still have the right to remove me. And likewise, if I accidentally destroy your property, I still owe you compensation. What matters is that I have entered your sphere of authority and so may be coerced into leaving it; whether I got into your sphere voluntarily or involuntarily is irrelevant. Thus it seems to me that a libertarian concept of rights favors a strict-liability approach: that is, people are liable for the damage they cause, regardless of whether they caused that damage deliberately or accidentally.⁸

The extent to which either defensive or restitutive uses of force should be supervised by or delegated to an impartial third party, in order to prevent the familiar Lockean problem of judgment in one's own case, will depend on the availability of such third parties and the urgency of the need for a forceful response. But whatever restrictions are appropriate here will have to apply to governments and private individuals equally; the notion that government, the wealthiest and most powerful organization in society, should be exempt from the prohibition on self-judgment that it imposes on others does not pass libertarian muster. Hence, the notion of a "highest authority" or "final arbiter" in society is un-libertarian; libertarian principles call rather for an egalitarian network of individuals and organizations serving as third-party arbiters for one another.

It seems doubtful, however, that retaliatory uses of force beyond defense and restitution can be justified on libertarian grounds. If a coercive response is justified only in response to invasion, then any coercive response that *exceeds* what is necessary to end the invasion departs from the spirit of the non-aggression principle; if what justifies my using force against you is that you have trespassed into my sphere of authority, then once I have successfully expelled you from my sphere of authority I have no warrant to continue further coercion against you. Hence, retributive punishment is unjustified. And so is deterrent punishment; one may imprison aggressors to deter *them* (this counts as defensive if the aggressor constitutes an ongoing threat), but not merely to deter *others*. (Using force against A to defend against aggression from B may count as defensive force against B, but it is aggression against A; we may call this the *privity of defense*.)

Not only are defensive and restitutive uses of force the only ones that can be justified, but even they are subject to a proportionality requirement. Suppose that for some reason the only way to prevent a toddler from treading

⁸ See my "Punishment vs. Restitution: A Formulation," *Formulations* 1, no. 2 (Winter 1993-94), available online at <http://www.libertariannation.org/a>.

on my toe is to blow her away with my bazooka. (I'll leave the construction of such an example to readers.) A defensive response so grossly disproportionate to the severity of the threat seems to violate the spirit of the non-aggression principle, the whole point of which is to *balance* licit force against illicit force. Hence, any legitimate use of force must pass three tests: (a) it must be purely *defensive*, either directly or restitutively; (b) it must respect *privity* of defense; and (c) it must not be *disproportionate* to the moral seriousness of the aggression it counters.

What about violence against innocents? The privity-of-defense requirement rules out the direct targeting of innocents as a means of pressuring enemy governments, as in the bombing of Hiroshima and Dresden in World War II or the blockade of Iraq during the past decade. Defensive force against innocent threats, on the other hand, is *not* ruled out; if you invade my boundary because you've been hypnotized by Dr. Sivana into doing so, then the fact remains that you're in my sphere of authority and may be forcibly ejected. I would stress, however, that because threats from innocents and threats from non-innocents arguably differ in (one dimension of) moral seriousness, the proportionality requirement raises the bar somewhat for justifying force against innocent threats.

A more difficult question is the treatment of innocent shields, a category into which civilian casualties are often argued to fall. It's not obvious how to apply the privity-of-defense requirement here. I think the use of force can be justified against innocent shields—but, for proportionality reasons, not nearly so easily as defenders of the policy of “collateral damage” require.

Suppose Eric straps a baby to his chest and then starts shooting at me. I can't shoot him back without hitting the innocent baby. Yet although it's too bad about the baby, it seems plausible to say that I still have the right to defend myself against Eric, and if the baby gets killed, the blame should lie not with me but with Eric, for bringing the baby into the situation in the first place. By the same token, it is argued, innocent deaths that result as a byproduct from attacks on hostile targets should be blamed on the hostile targets, not on the attackers.

But the moral legitimacy of collateral damage in the Eric case seems to depend importantly on four factors: first, the relatively small extent of the collateral damage (just the one baby); second, the high probability that shooting at Eric will actually stop him; third, the great extent of the contribution (total, as described) that stopping Eric will make to ending the threat; and fourth, the absence of any alternative way of stopping Eric that would be less dangerous for the baby. The case for

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collateral damage grows weaker as we alter any of these four variables. If Eric is shielded not just by one baby but by a whole city of babies; or if there's some doubt as to whether Eric is actually even in the city; or if Eric is just one cog in a military machine, his individual contribution to the total threat being fairly small; or if there are ways of taking Eric out without bombing the city—to the extent that any or all of these are true, the case for the legitimacy of collateral damage is correspondingly weakened. As these variables move away from the Eric paradigm, the moral difference between collateral damage and direct targeting of civilians becomes more tenuous—as does the case for treating the two as morally different. Since in most real-world cases of collateral damage in warfare, most or all of these variables are shifted pretty far away from the Eric paradigm, I conclude that a general military policy of comfort with collateral damage is without justification.⁹

[I should add that] my condition (1) is concerned with smallness of extent, not smallness of ratio. Not being a utilitarian, I don't think extent of badness can be ascertained by dividing lives lost by lives saved.¹⁰

To put the point another way: Numbers matter for proportionality of moral seriousness, but they're only one dimension of moral seriousness, not the whole deal.

A libertarian analysis of war must take into account not only the actual conduct of warfare, but also the means of supplying the war machine. Under libertarian equality, funding a military through taxation is ruled out, as is manning it with slave labor. Conscription is obviously incompatible with libertarian principles; but even ordinary military contracts violate the inalienable right to quit one's job at will.

So far I've focused on deontological rather than consequentialist considerations. But I've already admitted that consequences matter, even if they aren't all that matters. What happens when all of the deontological restrictions I've placed on the conduct of warfare are viewed through a consequentialist lens? Given the importance of defending liberty against foreign aggressors, don't governments need a freer hand in military matters?

⁹ See my "Thinking Our Anger," *Formulations* no. 30 (Summer 2001), available online at <http://www.Praxeology.net>.

¹⁰ See my blog entry for 11/16/2002, available online at <http://www.Praxeology.net>.

Don't consequentialist considerations tend, at least somewhat, to override the deontological niceties I've been describing?

3. Consequentialist Considerations

Here is where our focus must shift from libertarianism as a normative ethical theory to libertarianism as a descriptive and explanatory social theory. The central insight of libertarian social theory is that monopolistic coercive systems are at systematic disadvantage relative to decentralized competitive systems when it comes to solving the *informational* and *incentival* problems faced by such systems. The very prevalence of warfare can be laid at the door of the perverse incentives that characterize the State:

[G]overnments face different incentives from those faced by private individuals. Under a government, the people who make the decision to go to war are not the same people as those who bear the greatest burden of the costs of the war; and so governments are much more likely than private individuals to engage in aggression. Thus it's a mistake to model a nation-state as if it were a single individual weighing costs against benefits. It's more like a split personality, where the dominant personality reaps the benefits but somehow manages to make the repressed personality bear the costs.¹¹

In weighing the costs of military intervention, a libertarian must include that system of interlocking political, economic, and cultural forces which the nineteenth-century industrial-radical libertarians called "militancy"¹² and which Randians today call "neofascism."¹³ According to libertarian class analysis, which traditionally identifies capitalists as the chief

¹¹ See my "Defending a Free Nation," *Formulations* 2, no. 2 (Winter 1994-95), available online at <http://www.libertariannation.org/a>.

¹² The principal figures here include Benjamin Constant, Augustin Thierry, Charles Dunoyer, Charles Comte, Gustave de Molinari, and Herbert Spencer; see David Hart's essays on the industrial-radical tradition, available online at <http://www.homepage.mac.com/dmhart>. Cf. also William Graham Sumner's 1899 address "The Conquest of the United States by Spain," available online at <http://www.libertystory.net/LSDOCSUMNERCONQUESTUS.htm>.

¹³ See Chris Matthew Sciabarra, "Understanding the Global Crisis: Reclaiming Rand's Radical Legacy," *Free Radical* 56 (May/June 2003), pp. 16-22, available at <http://www.solohq.com/Articles/Sciabarra>; and Arthur Silber, "I Accuse: To Those Who Pave the Way for the New Fascism," available online at http://www.coldfury.com/reason/comments.php?id=P801_0_1_0.

enemies of capitalism, there is a mutually reinforcing dynamic between corporate pressure politics, foreign imperialism, and domestic oppression; the business lobby drives military adventurism, which leads at home to the mobilization and regimentation of society and the erosion of civil liberties, as government assumes emergency powers that are never fully undone after the emergency. As Herbert Spencer pointed out, “the exercise of mastery inevitably entails on the master himself some form of slavery,” since “unless he means to let his captive escape, he must continue to be fastened by keeping hold of the cord”¹⁴—as the U.S. is currently fastened down in Iraq.

Insulation from market competition not only gives governments the incentive to engage in an aggressive foreign policy, but also deprives them of the information they need to do so effectively. If top-down planning of domestic matters runs up against the Hayekian knowledge problem, it’s not surprising that top-down planning of foreign policy should face the same difficulty. Critics of a non-interventionist foreign policy often point to the “Lesson of Munich.” But as David Friedman points out, since the countries responsible for the failures of Munich all *had* interventionist foreign policies, an equally plausible moral is that governments cannot be relied on to manage their interventionist policies particularly well.¹⁵ The fact that Manuel Noriega, Saddam Hussein, and Osama bin Laden are all former U.S. clients suggests that governments have not gotten any better at managing interventionist foreign policies since Munich.

Are the prohibitions on tax-funded militaries and most collateral damage intolerable constraints on a viable defense? Since a libertarian polity’s quarrel is with enemy *regimes*, not enemy *peoples*, it should adopt a strategy of covert operations and assassinations—as a *substitute* for, not a supplement to, conventional warfare. And if libertarian economic theory is right, then there is no “public goods problem,” and so the inability to fund military action through taxation is not a serious restriction, especially given the lower costs of a purely defensive military policy.

Ludwig von Mises used to argue that a market economy regulated by governmental intervention, hailed by many as a middle path between socialism and *laissez-faire*, is an inherently unstable system: each additional interference with private commerce distorts the price system, leading to economic dislocations that must be addressed either by repealing the first intervention or by adding a second, and so on *ad infinitum*.

¹⁴ Herbert Spencer, *Facts and Comments* (D. Appleton, 1902), p. 158.

¹⁵ David Friedman, “Is There a Libertarian Foreign Policy?” in *The Machinery of Freedom* (Open Court, 1989).

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I'm reminded of Mises' argument every time the boosters of America's current rush to empire tell us: "Well sure, maybe you dovish types are right when you say that the 9/11 attacks could have been avoided if we'd pursued a less provocative Middle East policy. But it's too late to debate that issue now. We can't turn back the clock; we have to deal with the situation as it currently exists. Given the threat we face *now*, we have to pursue that threat and eliminate it."

The problem with this argument is that it's timeless. Hawks were saying things like this long before 9/11, about the threats that we faced *then*. Every time America goes off on one of its bombing or invading romps, resentment grows among the bombed and invaded. From this resentment sprout new threats to America's security. To protect against these threats, America engages in further bombing and invading, which creates still more resentment, which breeds still new threats, prompting still more bombing and invading, and so on *ad infinitum*.

Mises' insight that interventions breed more interventions is as true in foreign policy as it is in domestic economy. And just as the logical endpoint of the cycle of economic interventions is complete socialism, so the logical endpoint of the cycle of military interventions is world conquest. In both cases, the only way to avoid the goal is to stop the cycle.¹⁶

What, in any case, is a libertarian polity to do after it has defeated and conquered a foreign country in a conventional war? Abandoning the country after having wrecked its infrastructure seems both immoral (surely the innocent inhabitants are owed restitution) and imprudent (abandonment will encourage resentments to fester). But occupying the defeated country in order to rebuild it seems a bad bargain as well. Nation-building is the sort of central planning for which libertarian social theory predicts inevitable failure. And how are the exorbitant costs to be defrayed, if not from taxes, which—apart from the ethical objections libertarians have to them—counterproductively divert resources from the accountable and efficient to the unaccountable and inefficient sector? From a libertarian point of view, an interventionist foreign policy is a dead end, both on deontological and on consequentialist grounds; libertarians must continue to be economic and cultural internationalists, but political and military isolationists.

¹⁶ See my blog entry for 10/10/2002, available online at <http://www.Praxeology.net>.

How Libertarians Ought to Think about the U.S. Civil War

Timothy Sandefur
Pacific Legal Foundation

1. Introduction

For decades, outspoken libertarians have seen the U.S. Civil War not only as a historical calamity, but as a political calamity as well. According to many libertarians, the Union victory in the Civil War and the presidency of Abraham Lincoln in general represented a betrayal of the U.S. Constitution and of the fundamental principles of American political philosophy.

This interpretation rests on two major arguments as well as a variety of more minor concerns. The more minor concerns include specific critiques of the policies of the Lincoln Administration or of the conduct of the war by Union forces. For example, many libertarians condemn the Union for instituting a military draft or for suspending the writ of *habeas corpus*. There are many of these specific criticisms, which deserve detailed discussion that cannot be provided here.¹ Suffice it to say that some of these criticisms are well-founded; indeed, libertarians deplore war precisely because it tends to give rise to such evils.

Understanding the Civil War as a matter of political philosophy, however, requires a systematic, two-step analysis: First, does a state have the legal authority under the U.S. Constitution, to secede unilaterally? If the answer to this question is yes, then the analysis is at an end; if states have the right to secede, then the Union was in the wrong to put down the Confederacy. If, however, the answer is no, then we must proceed to a second step: Even illegal acts, like the American Revolution, are justified by the right of revolution, so even if the Constitution does prohibit secession, the people of the southern states had the right to rebel against the Union, if their act was a legitimate act of revolution. It is essential to keep in mind the distinction between *secession* and *revolution*. As Lincoln wrote, "It might seem, at first thought, to be of little difference whether the present movement at the South be called 'secession' or 'rebellion.' The movers, however, well understand the

¹ For example, it ought to be noted that the Confederacy instituted a military draft as well, and did so before the Union did. J. McPherson, *Battle Cry of Freedom* (Ballantine, 1988), p. 427.

difference.”² Was, then, the Confederate rebellion a legitimate act of *revolution*?

The prevailing libertarian answers to these questions are, first, that states have the constitutional right to secede, and that Abraham Lincoln violated the Constitution by leading the nation into war against the seceding states. This argument is based on the “compact theory” of the Constitution. Second, the prevailing libertarian argument holds that the rebellion represented a legitimate act of revolution. This argument is based on the concept of “self-determination.”³ These premises, however, are wrong, as are the prevailing libertarian conclusions. In fact, states have no constitutional authority to secede unilaterally from the union. Nor were southern states engaged in a legitimate act of revolution, because they initiated force rather than act in defense of individual rights.

2. Do States Have the Legal Right to Secede?

a. Three interpretations of union

There are at least three ways of looking at the nature of the federal union under the Constitution. First, the “compact theory” of the Constitution holds that it is much like a treaty between essentially independent states. This theory found its first major expression in the Kentucky and Virginia Resolutions, drafted by Thomas Jefferson and James Madison, respectively, as a protest to the Alien and Sedition laws in 1798.⁴ In the 1830s, South Carolina Senator John C. Calhoun based his theory of nullification on these resolutions—despite Madison’s repudiation of nullification—and thereby laid the intellectual foundation for secession thirty years later.⁵ According to the compact theory, each state is a sovereign entity which is bound to the other states only by a compact which it may break whenever the compact imposes unbearable burdens on the state—just as a country may decide to break a treaty. Under the compact theory, the federal union contains no inherent element of sovereignty—it is a league of sovereign states. In Calhoun’s view,

² Abraham Lincoln, *Collected Works of Abraham Lincoln*, ed. R. Basler, 8 vols. (Rutgers University Press, 1953), 4:432.

³ See, e.g., J. Livingston, “A Moral Accounting of the Union and the Confederacy,” *Journal of Libertarian Studies* 16, no. 2 (2002), pp. 57-101.

⁴ D. Mayer, *The Constitutional Thought of Thomas Jefferson* (University Press of Virginia, 1994), p. 201.

⁵ D. McCoy, *The Last of the Fathers: James Madison and the Republican Legacy* (Cambridge University Press, 1989), pp. 132-62; L. Banning, *The Sacred Fire of Liberty* (Cornell University Press, 1995), pp. 387-95.

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the Constitution “is the government of States united in a political union, in contradistinction to a government of individuals socially united . . . the government of a community of States, and not the government of a single State or nation.”⁶

Opposed to the compact theory are two theories that we may call the “weak-union” and the “strong-union” views. According to these views, the federal Constitution is not a treaty, but a law, and the federal union contains at least *some* element of *sovereignty*; the federal union is not seen as a league of sovereigns, but as the government of a single state or nation.

According to the strong-union view, most famously espoused by Daniel Webster, and later adopted by Abraham Lincoln, Charles Sumner, and even Lysander Spooner,⁷ the union of states predates the Constitution itself: It was created by the Declaration of Independence, and the sovereignty of the states was itself a consequence or product of *national* sovereignty. This view has much to commend it; the Declaration of Independence, for instance, was issued in the name of the “thirteen *united* States of America,” who, as “*one people*,” were breaking their former political bonds and declaring that “these *united* colonies are free and independent states.” It then goes on to describe what “free and independent states may of right do”—things like carrying on foreign policy—none of which was actually done by the states. In fact, at the 1787 Philadelphia Convention, Delegate Rufus King explained:

The states were not “sovereigns” in the sense contended for by some. They did not possess the peculiar features of sovereignty,—they could not make war, nor peace, nor alliances, nor treaties. Considering them as political beings, they were dumb, for they could not speak to any foreign sovereign whatever. They were deaf, for they could not hear any propositions from such sovereign. They had not even the organs or faculties of defence or offence, for they could not of themselves raise troops, or equip vessels, for war If the states, therefore, retained some portion of their sovereignty [after declaring independence], they had certainly divested themselves of essential portions of it.⁸

⁶ John C. Calhoun, *A Disquisition on Government and Selections from the Discourses*, ed. C. Post (Bobbs-Merrill, 1953), p. 86.

⁷ L. Spooner, *The Unconstitutionality of Slavery* (Bela Marsh, 1860), pp. 56, 78-79.

⁸ J. Elliott, ed., *Debates in the Several State Conventions on the Adoption of the Federal Constitution*, 5 vols. (Elliott, 1836), 5:212-13. This argument formed a central point in Justice Sutherland’s interpretation of federal foreign policy power in *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936). See J. Eastman and H. V.

James Wilson (a signer of the Declaration) agreed, saying that he “could not admit the doctrine that when the colonies became independent of Great Britain, they became independent also of each other. He read the Declaration of Independence, observing thereon, that the United Colonies were declared free and independent states, and inferring, that they were independent, not individually, but unitedly, and that they were confederated, as they were independent states.”⁹ Consequently, the Constitution of 1787 did not purport to *create* the union, only to make it “more perfect.” Jefferson and Madison called the Declaration of Independence “the fundamental act of union of these States,”¹⁰ and even at the South Carolina Ratification Convention, when one delegate claimed that “[t]he [1783] treaty of peace expressly agreed to acknowledge us as free, sovereign, and independent states . . . [b]ut this new Constitution at once swept those privileges away, being sovereign over all,” Charles Cotesworth Pinckney answered that “[t]he separate independence and individual sovereignty of the several states were never thought of by the enlightened band of patriots who framed this Declaration; the several states are not even mentioned by name in any part of it,—as if it was intended to impress this maxim on America, that our freedom and independence arose from our union, and that without it we could neither be free nor independent.”¹¹

There are ambiguities, however, which undermine the strong-union view. Section two of the Articles of Confederation, for example, did acknowledge the separate sovereignty of the American states: “Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled.” This seems inconsistent with the view that the union was created by the Declaration. And the fact that the Continental Congress carried out foreign policy only shows that the *federative* power,¹² which is only part of the national

Jaffa, “Understanding Justice Sutherland as He Understood Himself,” *University of Chicago Law Review* 63 (1996), p. 1352 n. 17.

⁹ Elliott, *Debates in the Several State Conventions*, 5:213.

¹⁰ Thomas Jefferson, *Jefferson: Writings*, ed. M. Peterson (Library of America, 1984), p. 479.

¹¹ Elliott, *Debates in the Several State Conventions*, 4:287, 301.

¹² In his *Second Treatise*, Locke explains that the “federative power” is that part of the executive power which deals with foreign relations. See John Locke, *John Locke’s*

sovereignty, was vested in the national government. The nature of federal sovereignty at the time of the American founding was at least ambiguous¹³—surely one reason that the union needed to be made more perfect eleven years later.

The “weak-union” view was most famously espoused by James Madison. According to it, the Articles of Confederation did indeed acknowledge the separate sovereignty of the American states—and that was exactly the problem. Alexander Hamilton put it well in a sentence which is the theme of the entire *Federalist*: “The great and radical vice in the construction of the existing Confederation is in the principle of LEGISLATION for STATES or GOVERNMENTS, in their CORPORATE or COLLECTIVE CAPACITIES, and as contradistinguished from the INDIVIDUALS of which they consist.”¹⁴ The new Constitution would solve this problem by creating a new kind of government—one of “divided sovereignty,” partly national and partly federal, in which all of the people of America would vest the national government with a *part*—limited and enumerated—of their sovereignty. The national sovereignty would therefore be *totally separate* from the sovereignty of the states. This is why Madison insisted that the Constitution be ratified not by state legislatures, but by special ratification conventions: To make it clear that the states were not parties to the Constitution—thus it would “be then a government established by the thirteen States of America, not through the intervention of the Legislatures, but by the people at large . . . [a] distinction . . . [which] is very material.”¹⁵ Thus, contrary to the strong-union view, the sovereignty of the states did not depend on the creation of the federal authority; they were two wholly independent systems, in which the federal power was supreme within its limited sphere—and nonexistent outside of that sphere. One might analogize divided sovereignty to a homeowner who receives separate bills from the electric company and the gas company. An American citizen is separately a citizen of the state and of the federal union, and neither of these types of citizenship is superior to or inferior to the other.

Two Treatises of Government, ed. P. Laslett, rev. ed. (Oxford University Press, 1963), pp. 409-12.

¹³ Justice Chase pointed out some ambiguities in his opinion in *Ware v. Hylton*, 3 U.S. (3 Dall.) 199, 224-25, 231-32 (1796).

¹⁴ Alexander Hamilton, James Madison, and John Jay, *The Federalist*, ed. C. Rossiter (Signet, 1961), p. 108; see also James Madison, *Madison: Writings*, ed. J. Rakove (Library of America, 1999), p. 69.

¹⁵ B. Bailyn, ed., *Debate on the Constitution* (Library of America, 1993), 2:619.

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Under either the weak-union view or the strong-union view, states have no unilateral power to secede. Thus, in addressing whether the Confederacy had the constitutional authority to secede, it is unnecessary to resolve the question of whether the union was created by the Declaration of Independence or not, because ratification resolved the fundamental point: The federal union was an agreement between the *people*, not the *states*. The Constitution's fundamental premise of divided sovereignty—respected by both the weak-union and strong-union views—means that the people of America are bound together as one people for certain purposes, and therefore a state may not *unilaterally* secede.

b. What divided sovereignty means¹⁶

Because the sovereignty of a state is distinct from that of the union, a state can no more absolve its people of their allegiance to the federal government than the gas company can absolve a customer from paying her electric bill. The people, who adopted the Constitution, may decide to allow the people of a state to leave the union—through congressional action (according to the weak-union view) or by adopting a constitutional amendment (according to the strong-union view). But unilateral secession is unconstitutional.

“In the compound republic of America,” said Madison, “the power surrendered by the people is first divided between two distinct governments . . .”¹⁷ But “[t]he main [fallacy] of nullification,” he later explained,

is the assumption that sovereignty is a unit, at once indivisible and unalienable; that the states therefore individually retain it entire as they originally held it, and, consequently, that no portion of it can belong to the U.S. . . . [W]here does the sovereignty which makes such a Constitution reside[?] It resides not in a single state but in the people of each of the several states, uniting with those of the others in the express & solemn compact which forms the Constitution. To the *extent* of that compact or Constitution, therefore, the people of the several States must be a sovereign as they are a united people That a sovereignty should have even been denied to the States in their united character, may well excite wonder, when it is recollected that the Constitution which now unites them, was announced by the convention which formed it, as dividing sovereignty between the Union & the States; that it was presented under that view, by contemporary expositions recommending it to the ratifying

¹⁶ Obviously, in the following, I refer only to the U.S. Constitution as it existed before the Fourteenth Amendment, which changed the nature of state and federal sovereignty.

¹⁷ Hamilton, Madison, and Jay, *The Federalist*, p. 323.

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authorities; that it has proved to have been so understood by the language which has been applied to it constantly¹⁸

Divided sovereignty (also called “dual sovereignty”) was the principal innovation of the Constitution. While the strong-union view saw ratification as simply an overhauling of the union, to the weak-union view ratification reformed the sovereignty of the states as well as of the federal government. But according to both views, federal sovereignty is independent of the sovereignty of the states.

Even Anti-Federalists acknowledged that ratifying the Constitution meant redefining American sovereignty. “Cincinnatus,” for instance, complained that “[s]uch is the anxiety manifested by the framers of the proposed constitution, for the utter extinction of the state sovereignties, that they were not content with taking from them every attribute of sovereignty, but would not leave them even the name.—Therefore, in the very commencement they prescribe this remarkable declaration—*We the People of the United States*.”¹⁹ The “Federal Farmer” wrote that “when the people [of each state] shall adopt the proposed . . . it will be adopted not by the people of New Hampshire, Massachusetts, &c., but by the people of the United States”²⁰ “Brutus” opposed ratification of the Constitution precisely on these grounds: He admitted that “if it is ratified, [it] will not be a compact entered into by the States, in their corporate capacities, but an agreement of the people of the United States as one great body politic. . . . It is to be observed, it is not a union of states or bodies corporate; had this been the case the existence of the state governments might have been secured. But it is a union of the people of the United States considered as one body, who are to ratify this constitution, if it is adopted.”²¹ Indeed, at the Virginia Ratification Convention, Patrick Henry challenged James Madison on this point: “Who authorized [the Constitutional Convention] to speak the language of *We the people*, instead of *We, the States*? States are the characteristics, and the soul of a confederation.”²² Madison replied that the authority of the Articles of

¹⁸ M. Meyers, ed., *The Mind of the Founder: Sources of the Political Thought of James Madison*, rev. ed. (University Press of New England, 1981), pp. 436-38.

¹⁹ Bailyn, *Debate on the Constitution*, 1:118-19.

²⁰ *Ibid.*, 1:275.

²¹ P. Kurland and R. Lerner, eds., *The Founders' Constitution* (Liberty Fund 1987), 4:237.

²² Bailyn, *Debate on the Constitution*, 2:596-97.

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Confederation had been “derived from the dependent derivative authority of the legislatures of the states; whereas this [Constitution] is derived from the superior power of the people.”²³ The Constitution did not consolidate the states entirely, but “[s]hould all the States adopt it, it will be then a government established by the thirteen States of America, not through the intervention of the Legislatures, but by the people at large.”²⁴

Opponents of the Constitution, therefore, were well aware that the Constitution would create not a league of essentially independent sovereignties, but a new nation, retaining its own sovereignty for certain limited purposes. The Federalists explicitly defended this fact. For most purposes, they explained, the people of the states would find their state citizenship unchanged, but for a specified list of other purposes, the whole people of America would now agree, as a single political unit, to invest the union with sovereignty directly, *not* through any intermediary step of state authorities. The federal and the state sovereignty travel, as it were, on parallel rails. State sovereignty connects the sovereignty of the people of a state to their state capital; federal sovereignty joins all the people through its national network, to arrive at Washington, D.C. James Wilson, signer of both the Constitution and the Declaration, told the Pennsylvania Ratification Convention that

the sovereignty resides in the people, they have not parted with it; they have only dispensed such portions of power as were conceived necessary for the public welfare In order to recognize this leading principle, the proposed system sets out with a declaration, that its existence depends upon the supreme authority of the people alone When the principle is once settled, that the people are the source of authority, the consequence is, that they may take from the subordinate governments with which they have hitherto trusted them, and place those powers in the general government, if it is thought that they will be productive of more good I have no idea, that a safe system of power, in the government, sufficient to manage the general interest of the United States, could be drawn from any other source, or rested in any other authority than that of the people at large, and I consider this authority as the rock on which this structure will stand.²⁵

²³ Ibid., 2:619.

²⁴ Ibid.

²⁵ Ibid., 1:820-21.

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So while the states would, for the most part, retain their sovereignty, ratification meant that the whole people of the United States would now agree to vest their inchoate power to engage in, for example, foreign policy, exclusively in the federal government, which would be supreme for the limited, enumerated purposes of the federal union; otherwise, wrote Hamilton, the Constitution would “be a mere treaty, dependent on the good faith of the parties, and not a government, which is only another word for POLITICAL POWER AND SUPREMACY.”²⁶ For Hamilton, the reason for a new Constitution was precisely to end the notion that the union was a league of sovereigns. One of the “infirmities” of the Articles of Confederation, he wrote, was

that it never had a ratification by the PEOPLE. Resting on no better foundation than the consent of the several legislatures, it has been exposed to frequent and intricate questions concerning the validity of its powers, and has, in some instances, given birth to the enormous doctrine of a right of legislative repeal. Owing its ratification to the law of a State, it has been contended that the same authority might repeal the law by which it was ratified. However gross a heresy it may be to maintain that a *party* to a *compact* has a right to revoke that *compact*, the doctrine itself has had respectable advocates. The possibility of a question of this nature proves the necessity of laying the foundations of our national government deeper than in the mere sanction of delegated authority. The fabric of American empire ought to rest on the solid basis of THE CONSENT OF THE PEOPLE. The streams of national power ought to flow immediately from that pure, original fountain of all legitimate authority.²⁷

One argument against the principle of divided sovereignty is that the Constitution was adopted by the members of distinct states rather than by a national referendum. But Chief Justice John Marshall (who had been a delegate to the Virginia Ratification Convention) answered that in *McCulloch v. Maryland*:

[The Constitution] was submitted to the people. They acted upon it in the only manner in which they can act safely, effectively, and wisely, on such a subject, by assembling in Convention. It is true, they assembled in their several States—and where else should they have

²⁶ Hamilton, Madison, and Jay, *The Federalist*, p. 204.

²⁷ *Ibid.*, 152.

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assembled? No political dreamer was ever wild enough to think of breaking down the lines which separate the States, and of compounding the American people into one common mass. Of consequence, when they act, they act in their States. But the measures they adopt do not, on that account, cease to be the measures of the people themselves, or become the measures of the State governments.²⁸

This was not only the opinion of High Federalists like Marshall. As Madison explained (long after his break with the Federalists), the Constitution was formed

by the people in each of the States, acting in their highest sovereign capacity Being thus derived from the same source as the Constitutions of the States, it . . . is as much a Constitution, in the strict sense of the term, within its prescribed sphere, as the Constitutions of the States are within their respective spheres; but with this obvious & essential difference, that being a compact among the States in their highest sovereign capacity, and constituting the people thereof one people for certain purposes, it cannot be altered or annulled at the will of the States individually, as the Constitution of a State may be at its individual will.²⁹

These sources reveal how well understood was the central fact that the Constitution was a government of *the whole people of the United States*, not a league or treaty of states in their corporate capacities, as the compact theory would have it. Contrary to Calhoun's later claim that "the States, when they formed and ratified the Constitution, were distinct, independent, and

²⁸ *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 403 (1819). See also *Chisolm v. Georgia*, 2 U.S. (2 Dall.) 419, 435 (1793) ("The powers of the general Government . . . do for the most part [if not wholly] affect individuals, and not States: They require no aid from any State authority. This is the great leading distinction between the old articles of confederation, and the present constitution"); *ibid.*, 470 (Jay, C.J.) ("the people, in their collective and national capacity, established the present Constitution"); *Respublica v. Corbbet*, 3 U.S. (3 Dall.) 467 (1798); *Hylton v. United States*, 3 U.S. (3 Dall.) 171, 178 (1796) (per Paterson, J.); *ibid.*, 181 (per Iredell, J.); *Ware v. Hylton*, 3 U.S. (3 Dall.) 199, 236 (1796) (per Chase, J.); *Banks v. Greenleaf*, 10 Va. 271, 277-78 (1799) ("the general government derives its existence and power from the people, and not from the states, yet each state government derives its powers from the people of that particular state. Their forms of government are different, being derived from different sources; and their laws are different").

²⁹ Madison, *Madison: Writings*, p. 843.

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sovereign communities,”³⁰ the reality is that, in Marshall’s words, federal sovereignty

proceeds directly from the people; is ‘ordained and established’ in the name of the people. . . . It required not the affirmance, and could not be negated, by the State governments. The constitution, when thus adopted, was of complete obligation, and bound the State sovereignties. . . . The government of the Union, then . . . is, emphatically, and truly, a government of the people. In form and in substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit [T]he government of the Union, though limited in its powers, is supreme within its sphere of action.³¹

As Justice Anthony Kennedy recently put it, “The Framers split the atom of sovereignty. It was the genius of their idea that our citizens would have two political capacities, one state and one federal, each protected from incursion by the other . . . with its own direct relationship, its own privity, its own set of mutual rights and obligations to the people who sustain it and are governed by it [T]he National Government, the mark of its legitimacy, is that it owes its existence to the act of the whole people who created it.”³² The federal government is *directly* vested with sovereignty of the whole people of the United States. Secession is not, therefore, like a person who chooses to cancel his membership in a club—because the states are not in the “club” to begin with. Only “We the People” are members of the federal club, and only the “people” which created it can change it, by altering the contours of that “people” through amendment, or a new Constitutional Convention. So, while the whole people may allow a state out of the union, or may even dissolve the Constitution entirely, a state cannot claim on its own the authority to withdraw from the union. Lincoln put it with dry understatement when he noted that advocates of secession were “not partial to that power which made the Constitution, and speaks from the preamble, calling itself ‘We, the People.’”³³

These sources reveal that in 1787, both the Federalists and Anti-Federalists recognized that the U. S. Constitution was just that—a constitution

³⁰ Calhoun, *A Disquisition on Government and Selections from the Discourses*, p. 91.

³¹ *McCulloch v. Maryland*, 403-5.

³² *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 838-39 (1995).

³³ Lincoln, *Collected Works of Abraham Lincoln*, 4:437.

for a nation, not a league of sovereign states. And, if these sources are not enough, as Akhil Reed Amar points out, “no major proponent of the Constitution sought to win over states’ rightists by conceding that states could unilaterally nullify or secede in the event of perceived national abuses. The Federalists’ silence is especially impressive because such a concession might have dramatically improved the document’s ratification prospects in several states.”³⁴ “[I]f a more explicit guard against misconstruction was not provided,” wrote Madison in 1831, “it is explained . . . by the entire absence of apprehension that it could be necessary.”³⁵

Some of those who defend the constitutionality of secession claim that it was foreseen, and that several states that ratified the constitution did so with explicit reservations of the right to secede.³⁶ This claim, however, is seriously exaggerated. The only state which passed such a “reservation” while ratifying, and which later seceded, was Virginia. That state’s “reservation” read: “The powers granted under the Constitution being derived from *the People of the United States* may be resumed by *them* whenever the same shall be perverted to their injury or oppression.”³⁷ These phrases nowhere mention any right to unilateral secession or any unconditional right to revolt for any reason the state sees fit. Instead, the “reservation” is simply a restatement of the right to revolution, which we will consider below. Moreover, it is made in the name not of the people of Virginia, but of “the People of the United States,” and it makes the unremarkable assertion that *the latter* have the right to change their government.

It is also frequently argued that another set of resolutions, the Virginia and Kentucky Resolutions, reveal the true nature of the Constitution as a league of sovereign states, and that Madison’s later repudiation of the compact theory was an instance of intellectual dishonesty. The facts, as usual, are more complicated. Jefferson, whose Kentucky Resolutions unequivocally endorsed the compact theory, sent a draft to Madison for his review. Madison was somewhat startled by Jefferson’s argument, and he replied, “Have you ever considered thoroughly the distinction between the power of the *State*, & that of *the Legislature*, on questions relating to the federal pact[?] On the supposition that the former is clearly the ultimate Judge of infractions, it does

³⁴ A. Amar, “Of Sovereignty and Federalism,” *Yale Law Journal* 96 (1987), p. 1462 n. 162.

³⁵ Madison, *Madison: Writings*, p. 853.

³⁶ T. DiLorezno, *The Real Lincoln: A New Look at Abraham Lincoln, His Agenda, and an Unnecessary War* (Prima Publishing, 2002), p. 91.

³⁷ Emphases added.

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not follow that the latter is the legitimate organ especially as a convention was the organ by which the Compact was made.”³⁸ Madison’s Virginia Resolutions were somewhat more guarded, and, he insisted, never endorsed the compact theory of the Constitution. Decades later, writing furiously to oppose Calhoun’s doctrine of nullification, Madison explained, just as he had at the Philadelphia and Richmond conventions, that the Constitution was binding on the people, not on the states, and the states had no right to nullify the laws:

[T]he characteristic peculiarities of the Constitution are 1. The mode of its formation, 2. The division of the supreme powers of Govt between the States in their united capacity and the States in their individual capacities. 1. It was formed, not by the Governments of the component States, as the Federal Govt. for which it was substituted [i.e., the Articles of Confederation] was formed; nor was it formed by a majority of the people of the U.S. as a single community in the manner of a consolidated Government. It was formed by the States—that is by the people in each of the States, acting in their highest sovereign capacity; and formed, consequently, by the same authority which formed the State Constitutions. Being thus derived from the same source as the Constitutions of the States, it has within each State, the same authority as the Constitution of the State, and is as much a Constitution, in the strict sense of the term, within its prescribed sphere, as the Constitutions of the States are within their respective spheres, but with this obvious & essential difference, that being a compact among the States in their highest sovereign capacity, and constituting the people thereof one people for certain purposes, it cannot be altered or annulled at the will of the States individually, as the Constitution of a State may be at its individual will.³⁹

In any case, what Jefferson and Madison wrote in 1798, in a series of resolutions adopted by two state legislatures, cannot change the nature of the federal Constitution as adopted in 1787: It is a binding government of the whole people of the United States. No state may unilaterally leave the union.

C. Other constitutional provisions barring unilateral secession

We have seen that the nature of federal sovereignty under the Constitution makes unilateral secession illegal. Since the Constitution is a

³⁸ Madison, *Madison: Writings*, p. 592.

³⁹ *Ibid.*, pp. 842-43.

law binding the People, and not a league of states, states have no authority to intervene between the people and the national government. If the people of a state wish to leave the union, they may not do so unilaterally, but must obtain the agreement of their fellow citizens—or they must rebel in a legitimate act of revolution.

Several other clauses of the Constitution are consistent with this view, and would be inconsistent with any interpretation allowing a state to leave the union unilaterally. The Constitution guarantees to every state a republican form of government (Art. IV, sec. 4), prohibits states from entering into any compact with other states without congressional permission (Art. I, sec. 10), guarantees the privileges and immunities of citizens when they travel interstate (Art. IV, sec. 2), prohibits states from entering into any “Treaty, Alliance, or Confederation,” even *with* Congressional approval (Art. I, sec. 10), preserves every state’s right to two senators (Art. V), is the supreme law of the land (Art. VI, sec. 2), and requires state officeholders to take an oath to support the Constitution of the United States (Art. VI, sec. 3). These clauses are inconsistent with the theory that secession is a constitutional prerogative of state government. Consider, for example, the republican guarantee clause: If a state could unilaterally secede, then any group of criminals might declare themselves the “rightful” government of a state, issue a proclamation of secession, and then leave the federal government unable to enforce the guarantee. Likewise, if states could leave the union at any time, it would make little sense to require state officials to take an oath to support the U.S. Constitution, since their allegiance to the federal union would depend wholly on whether their state decided to remain in the union or not.

One common argument is that the Tenth Amendment reserves to the states the power to secede from the union. But this claim begs the question, in two ways. The Amendment says that “[t]he powers not delegated to the United States by the Constitution, *nor prohibited by it to the States*, are reserved to the States respectively, or to the people.”⁴⁰ First, since the Constitution does prohibit secession, that power cannot be reserved to the states. And, second, the Amendment refers explicitly to “the people.” To what “people” does this refer? Not to the people of each state separately, but to a *single* people, that is, “We the People” who ratified the Constitution.⁴¹

⁴⁰ Emphasis added.

⁴¹ Believers in the “strong-union” view would argue that this is the same “one people” who dissolved their political bands with England. Also, according to one adherent of the strong-union view, one of the more sophisticated manifestations of the pre-constitutional origin of the union is found in the fact that the Constitution itself limits the degree to which the Constitution can be amended. No amendment, for instance, was permitted to change the date of the Importation Clause, and no amendment can deprive a state of its two senators. If the states had *created* the federal union, then

Under the compact theory, this clause would be surplusage, since no mere league of sovereigns has the authority to reserve nondelegated powers directly to the people of separate sovereignties, any more than the United Nations can “reserve” any rights to the people of the United States.

3. Was the South Engaged in Revolution?

The fact that states have no constitutional right to unilaterally secede does not end the inquiry, because people retain the right of revolution regardless. If the Confederacy represented a legitimate act of revolution, then the Union was still in the wrong to put down the rebellion. Madison never denied that all people retain the right to revolution, nor did Abraham Lincoln. Even in his First Inaugural Address, Lincoln acknowledged that “[i]f, by the mere force of numbers, a majority should deprive a minority of any clearly written constitutional right, it might, in a moral point of view, justify revolution—certainly would, if such right were a vital one. But such is not our case.”⁴² Even though the Constitution is a compact between the whole people of the United States, and thus is alterable by the whole people only, any individual or group retains an inalienable right to fight against tyranny.

Many libertarians defend the Confederate states’ secession on the grounds that it was engaged in a revolution consistent with the principles of the Declaration of Independence. Writing in 1920, H. L. Mencken claimed that “The Union soldiers . . . actually fought *against* self-determination; it was the Confederates who fought for the right of their people to govern themselves.”⁴³ More recently, Jeffrey Rogers Hummel has written that “as a revolutionary right, the legitimacy of secession is universal and unconditional. That at least is how the Declaration of Independence reads.”⁴⁴

The problem with this argument is that this is *not* how the Declaration of Independence reads. In fact, the libertarian principles of

these clauses would be self-contradictory, since there could be no higher sovereignty which could institute, let alone enforce, such a restriction on the power to amend. “A sovereign is by definition a source and not a subject of law,” so a compact between sovereigns can never be made unamendable. But, according to either the strong- or weak-union views, since the whole people of the union created the Constitution only to make that union more perfect, they could place limits on the degree to which the Constitution itself could be altered. H.V. Jaffa, *The Conditions of Freedom* (Claremont Institute Press, 2000), pp. 161, 172.

⁴² Lincoln, *Collected Works of Abraham Lincoln*, 4:267.

⁴³ H. L. Mencken, *A Mencken Chrestomathy* (Vintage 1982), p. 223.

⁴⁴ J. R. Hummel, *Emancipating Slaves, Enslaving Free Men* (Open Court, 1996), p. 351.

revolution enunciated in the Declaration do not justify the Confederacy's acts at all.

According to libertarianism, as espoused by John Locke, Thomas Jefferson, and others, the individual's right to own himself puts him on a par with all other individuals in a state of nature. Before government exists, each person has the equal right to run his own life as every other person, and this includes the right to self-defense. Since self-defense is difficult in the state of nature, however, people agree to join a social compact by delegating part of that right to the government, which is entrusted with the power to protect their lives, liberties, and estates. But government has no authority to violate their rights, because no individual in the state of nature has the right to violate another person's rights, and therefore cannot confer such a right to the government. "[T]he Legislat[ur]e," wrote Locke, "is not, nor can possibly be, absolutely *Arbitrary* over the Lives and Fortunes of the People. For it being but the joynt power of every Member of the Society given up to that Person or Assembly which is Legislator, it can be no more than those persons had in a State of Nature before they enter'd into Society. . . . For no Body can transfer to another more power than he has in himself; and no Body has an absolute Arbitrary Power . . . [to] take away the Life or Property of another."⁴⁵ Thus, if those appointed to govern "*endeavour to take away and destroy the Property of the People, or to reduce them to Slavery under Arbitrary Power . . . and . . . endeavour to grasp themselves, or put into the hands of any other an Absolute Power over the Lives, Liberties, and Estates of the People; By this breach of Trust they forfeit the Power, the People had put into their hands, for quite contrary ends, and it devolves to the People, who have a Right to resume their original Liberty . . .*"⁴⁶ The right to revolution, therefore, is an expression of the right to self-defense.

The right to self-ownership allows individuals to agree to a social compact, and the right of self-defense gives that compact its legitimacy. Any society which contradicts these fundamental premises—such as a society based on inequality and slavery—is therefore not a legitimate government; it is instead a criminal gang, and it cannot justify its robbery or enslavement by claiming that the people voted for these things, because the people have no right to enslave others in the first place.⁴⁷ Such a "government" lacks legitimacy and may rightly be overthrown. As Lincoln summarized it, "no man is good enough to govern another man, *without that other's consent*. I

⁴⁵ Locke, *John Locke's Two Treatises of Government*, p. 402.

⁴⁶ *Ibid.*, p. 461.

⁴⁷ A. Rand, "Man's Rights," in her *The Virtue of Selfishness* (Signet, 1964).

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say this is the leading principle—the sheet anchor of American republicanism.”⁴⁸

The Declaration of Independence enunciates these principles in what is almost a syllogism: “[A]ll men are created equal . . . endowed by their Creator with certain unalienable Rights . . . among these are Life, Liberty and the pursuit of Happiness . . . *to secure these rights*, Governments are instituted among Men, deriving their just powers from the consent of the governed . . . *whenever any Form of Government becomes destructive of these ends* . . . it is their right, it is their duty, to throw off such Government. . . .” This right and duty, however, may only be exercised after “a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce [the people] under absolute Despotism.”

The Declaration of Independence, therefore, far from recognizing any “unconditional” right of people to overthrow their government, places several important limits on rebellion: It is justified only by a collective act of self-defense, and even then, only after “a long train of abuses and usurpations.” And a rebellion which institutes a new government based not on securing individual rights, but on violating them (such as a revolution that consists of stealing people’s property), is not a legitimate revolution at all in the eyes of the Declaration’s libertarian theory; it would be merely a massive criminal act or coup.

These arguments are all essentially rewordings of libertarianism’s famous maxim against the initiation of force. Libertarian theory holds that political institutions are justified only insofar as they protect the freedom of the individuals who make up that society. A political society’s “right to self-determination,” therefore, is not a *fundamental* principle, according to libertarianism, but is a consequence and function of the self-determination of individuals who make up that society.

The non-initiation of force principle means that the distinction between a revolutionary act and a crime is that the former is a kind of self-defense, undertaken to protect individual rights, while the latter is an initiation of force, to violate the rights of others or protect the proceeds of some robbery. In the former case, libertarianism holds that it is legitimate to commit acts of physical force in retaliation against those who have initiated its use. The American Revolution, for instance, while illegal, was a legitimate act of revolution because Parliament had declared its right to “bind [the American colonies] in all cases whatsoever,” and had engaged in “a long train of abuses and usurpations.” Americans had the right to defend themselves by throwing off such government, even if doing so cost many lives.

⁴⁸ Lincoln, *Collected Works of Abraham Lincoln*, 2:266.

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Analyzing the alleged “revolution” of 1861 also requires understanding the purposes behind the act. *Why* did the Confederacy fire on Fort Sumter, and thus violate the supreme law of the land? Although several writers have tried to claim that the Civil War was not fought over slavery, but over issues of domestic economic policy,⁴⁹ these claims are highly exaggerated.⁵⁰ Mississippi’s declaration of secession, for example, stated unequivocally:

In the momentous step which our State has taken . . . it is but just that we should declare the prominent reasons which have induced our course.

Our position is thoroughly identified with the institution of slavery—the greatest material interest of the world. Its labor supplies the product which constitutes by far the largest and most important portions of commerce of the earth. These products are peculiar to the climate verging on the tropical regions, and by an imperious law of nature, none but the black race can bear exposure to the tropical sun [A] blow at slavery is a blow at commerce and civilization There was no choice left us but submission to the mandates of abolition, or a dissolution of the Union, whose principles had been subverted to work out our ruin.

Domestic economic policy (other than that relating to slavery) is nowhere mentioned in this document or in South Carolina’s declaration of secession, which focused only on “[t]he right of property in slaves” and complained that other states “have denied the rights of property established . . . have denounced as sinful the institution of slavery . . . [and] have encouraged and assisted thousands of our slaves to leave their homes.” Georgia’s declaration reiterated its “numerous and serious causes of complaint against [the] non-slave-holding . . . States with reference to the subject of African slavery,” and although it complained of the fact that northern economic interests had received federal protection (“they have succeeded in throwing the cost of light-houses, buoys, and the maintenance of their seamen upon the Treasury”), it did so only to protest that federal protection of slavery was inadequate. Texas’s declaration of secession complained that “[i]n all the non-slave-holding States . . . the people have formed themselves into a great sectional party . . . based upon an unnatural feeling of hostility to these

⁴⁹ See, e.g., Livingston, “A Moral Accounting of the Union and the Confederacy,” pp. 72-76.

⁵⁰ E. Volokh, “More on Secession and Slavery,” available online at http://volokh.com/2002_04_28_volokh_archive.html#76098962.

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Southern States and their beneficent and patriarchal system of African slavery, proclaiming the debasing doctrine of equality of all men, irrespective of race or color—a doctrine at war with nature, in opposition to the experience of mankind, and in violation of the plainest revelations of Divine Law.”⁵¹

These documents could hardly be clearer. The Confederate states, whatever their other reasons for seceding, were primarily moved by the desire to preserve their slave property from interference by the federal government, or, more accurately, in reaction against the election of a President who had pledged himself to halt the spread of slavery into the western territories.⁵² Although the Confederates phrased their arguments in terms of “freedom,” it was the “freedom to enslave” that they were defending. Indeed, the Constitution of the Confederate States of America unambiguously declared that “[n]o . . . law denying or impairing the right of property in negro slaves shall be passed” (sec. IX, clause 4). This clause demonstrates just how off the mark Mencken’s criticism of Lincoln really was. It was not true that “the Confederates . . . fought for the right of their people to govern themselves.”⁵³ The Confederates fought for the (literally absolute) right of *white people* to govern *black people*, without the black people’s consent.

Unlike present-day defenders of the South, the leaders of the southern cause realized that their cause could find no support in the Declaration of Independence. Thus, they rarely based their arguments on the Declaration, and in fact explicitly denounced it. “There is not a word of truth in it,” said John C. Calhoun.⁵⁴ The principle that all men are created equal, he said, was “inserted into our Declaration of Independence without any necessity. It made no necessary part of our justification for separating from the parent country, and declaring ourselves independent.” Others went

⁵¹ These declarations are available online at <http://www.yale.edu/lawweb/avalon/csa/csapage.htm>.

⁵² The Constitution, of course, barred the federal government from depriving southerners of their slaves, except possibly through condemnation in exchange for just compensation. But it did permit the Congress to bar slavery from the western territories, which would become states eventually. If they were admitted as free states, then this would mean that southerners would eventually find themselves outvoted in Congress, which could lead to the ultimate extinction of slavery. It was Lincoln’s insistence on forbidding slavery in the west—as enunciated in his Cooper Union speech, for example—that served as the proximate cause of the war. McPherson, *Battle Cry of Freedom*, pp. 51-72.

⁵³ Mencken, *A Mencken Chrestomathy*, p. 223.

⁵⁴ *Cong. Globe*, 30th Cong., 1st Sess. (1848), p. 875.

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farther. Senator Pettit of Indiana declared it a “self-evident lie.”⁵⁵ Governor Hammond of South Carolina—who had once said that “[s]lavery is . . . the greatest of all the great blessings which a kind Providence has ever bestowed upon our glorious region”⁵⁶—denounced the “much-lauded but nowhere accredited dogma of Mr. Jefferson that all men are created equal.”⁵⁷

Contrary, then, to the oft-repeated claim that the Civil War was not about slavery, the question of slavery answers the essential question which determines whether secession in 1861 was an act of revolution, on the one hand, or a criminal conspiracy, on the other hand. The secession of 1861 was not a legitimate revolution, because its “cornerstone” rested on “the great truth that the negro is not equal to the white man; that slavery—subordination to the superior race—is his natural and normal condition.”⁵⁸ As Lincoln had said before the war,

[w]e all declare for liberty; but in using the same word we do not all mean the same thing. With some the word liberty may mean for each man to do as he pleases with himself, and the product of his labor; while with others the same word may mean for some men to do as they please with other men, and the product of other men’s labor. Here are two, not only different, but incompatible things, called by the same name—liberty. And it follows that each of the things is, by the respective parties, called by two different and incompatible names—liberty and tyranny. The shepherd drives the wolf from the sheep’s throat, for which the sheep thanks the shepherd as a liberator, while the wolf denounces him for the same act as the destroyer of liberty, especially as the sheep was a black one. Plainly the sheep and the wolf are not agreed upon a definition of the word liberty.⁵⁹

The Confederacy, built upon the wolf’s definition of liberty, was an illegitimate government by the libertarian standards of the Declaration of Independence. When the Confederacy initiated force by firing on Fort

⁵⁵ *Cong. Globe*, 33rd Cong., 1st Sess. (1854), p. 214.

⁵⁶ W. L. Miller, *Arguing About Slavery*. (Knopf, 1988), p. 134.

⁵⁷ C. Merriam, *History of American Political Theories* (Kelly 1969), p. 230; see also, C. Oliver, “Southern Nationalism,” *Reason* (Aug.-Sep. 2001).

⁵⁸ A. Stephens, “Cornerstone Speech” available online at <http://www.pointsouth.com/csnet/greatmen/stephens/stephens-corner.html> (1861).

⁵⁹ Lincoln, *Collected Works of Abraham Lincoln*, 7:301-2.

Sumter, therefore, it became the responsibility of the President to “take Care that the Laws [including the supreme law of the land] be faithfully executed,”⁶⁰ by putting down the rebellion by force if necessary.

4. Why Libertarians Defend the South

Among the reasons that so many libertarians argue that the Confederacy was in the right in the Civil War is their perception that Union victory ushered in an era of federal expansion and control over the economy. It is certainly true that, in the late nineteenth century, the federal government intervened more and more in national economic policy. But blaming this on Union victory is problematic at best. For one thing, the argument partakes of the *post hoc* fallacy. While it is true that government manipulation of the economy increased in the years following the war, this had many causes, especially the rise of the Populist and, later, Progressive political movements. These can be only distantly connected to the Union cause. Moreover, while there was much to deplore in the culture of Yankee political economy, there was at least as much to deplore about the culture of the antebellum south.

More specifically, some libertarians argue that the Union victory caused an expansion of federal authority by destroying the political will of states to resist the expansionism of the federal government.⁶¹ After such a bloody experience, states were less willing to say no when the federal government proposed to step on state prerogatives. Although there is some truth to this argument, there are two mitigating thoughts that must be kept in mind. First, it did not entirely destroy the will of states to resist federal encroachment; as the Civil Rights era of the 1950s and 1960s revealed, southern states were still quite willing to resist what they perceived as federal encroachment, through the policy of “massive resistance” to integration. But, second, that experience shows that state resistance to federal authority is just as likely to be inimical to individual liberty as it is to redound to the benefit of individual liberty. State resistance, after all, is usually predicated not on protecting individuals from oppression, but on protecting the official dignity of state governments. For libertarians to venerate state government is therefore a risky enterprise. As Madison explained in the *Federalist*, the legitimacy of state governments is only valid so long as the states protect the freedom of Americans: “[I]s it not preposterous,” he asked,

to urge as an objection to [the Constitution] . . . that such a government may derogate from the importance of the governments

⁶⁰ U.S. Const., Art. II, sec. 3.

⁶¹ See, e.g., W. Williams, “The Civil War’s Tragic Legacy,” *Ideas on Liberty* (Jan.1999).

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of the individual States? Was, then, the American Revolution effected, was the American Confederacy formed, was the precious blood of thousands spilt, and the hard-earned substance of millions lavished, not that the people of America should enjoy peace, liberty, and safety, but that the government of the individual States...might enjoy a certain extent of power, and be arrayed with certain dignities and attributes of sovereignty? We have heard of the impious doctrine in the Old World, that the people were made for kings, not kings for the people. Is the same doctrine to be revived in the New . . . ? [T]he public good, the real welfare of the great body of the people, is the supreme object to be pursued; and . . . no form of government whatever has any other value than as it may be fitted for the attainment of this object. [A]s far as the sovereignty of the States cannot be reconciled to the happiness of the people, the voice of every good citizen must be, Let the former be sacrificed to the latter.⁶²

While state resistance to federal expansion may be helpful for protecting individual liberty, it has also often been inimical to it, and this was never more true than in the case of the Civil War.

Finally, I suspect that one reason libertarians are misled into embracing the Confederate cause is because of the formative event in the lives of many libertarians, as well as the Libertarian Political Party: the Vietnam War. The lessons that many Vietnam protestors drew from that experience were that war is *never* justified, and that it is simply “none of our business” what another country’s rulers do to the people of that country. If the Vietnamese “choose” to live under communism, then other nations must not interfere. Likewise, this argument goes, if southerners in the 1860s chose to enslave blacks, then that may have been wrong, but it was none of the Union’s business. Seeing the Confederacy through the lens of the Vietnam experience, however, is misleading. First, it ignores the fact that, unlike in foreign policy where a nation may choose whether or not to intervene in a conflict, the Constitution requires the president to faithfully execute the law, including the Constitution itself. Second, such a view obscures the ultimate values of libertarian political philosophy. Although it is true that Americans do not owe a *duty* to intervene when other nations’ rulers oppress their people, it is *not* true that other nations have the *right* to oppress their people. To say that another nation’s oppression of its people is “none of our business” is similar to what Lincoln described as the perverse notion “that ‘if one man would

⁶² Hamilton, Madison, and Jay, *The Federalist*, p. 289.

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enslave another, no third man should object.”⁶³ The United States (and every other nation) does have the right, though *not* the duty, to liberate oppressed peoples held captive by dictatorships. The federal government had the right, *and* the duty, to put down the Confederate rebellion.

War is a terrible thing. But libertarianism holds that it is justified at times, when undertaken in defense of individual liberty. As Jefferson said, “all men know that war is a losing game to both parties. But they know also that if they do not resist encroachment at some point, all will be taken from them It is the melancholy law of human societies to be compelled sometimes to choose a great evil in order to ward off a greater. . . .”⁶⁴ The Civil War was an awful conflict, costing hundreds of thousands of lives. But the right side did prevail in that war, and libertarians should stop doing themselves the great disservice of defending a cruel and oppressive slave society.

⁶³ Lincoln, *Collected Works of Abraham Lincoln*, 3:538.

⁶⁴ Jefferson, *Jefferson: Writings*, p. 356.

Radical Libertarianism: Applying Libertarian Principles to Dealing with the Unjust Government, Part II

Walter Block
Loyola University, New Orleans

This is Part II of an essay that attempts to trace out the implications of the libertarian philosophy for the proper relationship between an inhabitant of a country and its unjust government.¹ Part I of this essay included Section 2, which set the stage for addressing this challenging task, Section 3, in which the essence of the state was discussed, Section 4, in which libertarian punishment theory was introduced, the beginning of Section 5, in which the concept of the libertarian Nuremberg trial was explored, and Section 5a, wherein the assumption that all citizens are guilty of the crimes of the unjust state was rejected.

In Part II of this essay, we now begin with section 5b, which considers the possibility that all and only minions of the unjust state are guilty for its crimes, in a continuation of our libertarian Nuremberg trial analysis. Section 5c introduces libertarian ruling class theory. Section 6 traces out the proper relations between the subjects and the unjust government. Section 7 asks whether it is ever legitimate to disrupt such an institution, and we conclude in Section 8.

5b. All and only minions of the state are guilty

A second possibility is that all politicians, judges, bureaucrats, and any other type of government employee of the Nazi German state are guilty of crimes against freedom, and that this applies to no one else.

There are grave problems with this perspective as well. First, it is over-inclusive. It will capture in its net of guilt people at the very bottom of the statist pyramid of power: those who clean government cesspools, carry away the garbage, rake the leaves, deliver the mail door to door, wash the public toilets, etc. These people, surely, are more sinned against than sinning. As well, it includes anyone associated with a public university: professor,

¹ Part I of this paper appeared as Walter Block, "Radical Libertarianism: Applying Libertarian Principles to Dealing with the Unjust Government, Part I," *Reason Papers* 27 (Fall 2004), pp. 117-33.

student, administrator, grounds keeper, etc., and anyone involved in a state hospital: doctor, nurse, floor-sweep, etc. It will also declare guilty those who have striven mightily to overturn the evil system, but from a position within government. Take Ron Paul, for example.² Although he is a member of the U.S. House of Representatives, he is a libertarian in good standing. His congressional votes are all on the side of liberty.³ During any proper libertarian Nuremberg trial, he would be on the bench, not in the dock.

Second, it is under-inclusive. It gives a free ride to all those not officially part of the government who may have nevertheless played important roles in supporting the Nazi evil, for example, the businessmen who bankrolled Hitler into power not out of defensive motives, but for their own purposes,⁴ as well as the intellectuals who wove apologetics and defenses for the regime.⁵

c. Ruling class theory

A third perspective, which far better separates the innocent wheat from the guilty chaff is ruling class theory. It must be admitted at the outset that this sounds rather tinny to the libertarian ear since it is usually couched in Marxist rhetoric. According to Marxism, the ruling class is composed of those who employ labor and the victims are employees. The exploitation of the latter by the former occurs because of the labor theory of value. Workers are responsible for the total product; they receive it, but only when profits are subtracted. The difference between the entire GDP and labor's share of it, typically in the neighborhood⁶ of 75 percent, measures the level of exploitation.

² Whenever a person from the U.S. is mentioned, or from any country other than Cuba, North Korea, the U.S.S.R., or Nazi Germany, I am using him only as a hypothetical example. More specifically, in referring to Ron Paul, I have in mind the contrary-to-fact case of his equivalent in one of these four outlaw states.

³ Typically, whenever there is a 436 to 1 vote, it is Ron Paul who is in the minority.

⁴ Motive is not always unimportant. I argued that it should all but be ignored in the case of accidental murder, or in the shooting of an innocent person by a baby in the crib. However, motive can also determine membership in the ruling class, or not, as I shall discuss below.

⁵ We discuss below the difference between aiding and abetting evil, on the one hand, e.g., being a member of a criminal gang who himself commits no explicit violence such as the getaway car driver, and free speech, on the other hand.

⁶ Morgan O. Reynolds, *Economics of Labor* (South-Western College Publishing, 1995).

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But this is nonsense on stilts, apart from the fact that millions of people have been killed by communists under the banner of this philosophy, and millions more made to suffer economically because of it.⁷ Mud pies are worth far less than cherry pies, even if an identical amount of labor goes in to the creation of the two "products."⁸ A gold nugget lying on the ground in plain sight, big as a fist, is highly valuable, even though it takes no virtually no labor to pick it up. So much for Marxist class theory. But libertarian class analysis is entirely another matter. In this case, the exploiter is not the employer, nor the exploitee the employee. Very much to the contrary, the "bad guy" is the thief or murderer, and the "good guy" is the victim of this aggression against non-aggressors.

John C. Calhoun⁹ noted that the fiscal activities of the government—taxing and subsidizing—necessarily¹⁰ divided the populace into two groups of people: net tax-payers and net tax-consumers. Those who paid in more than they were reimbursed would be considered victims, and those who spent less than they took from the system would be victimizers. This is a reasonably good, but only first, approximation to the distinction between members of the ruled and ruling classes. If we could but ignore what I will below call the Ragnar Danneskjold phenomenon, there would be a perfect congruency between the two sets of concepts.

One group that would receive the attention of our libertarian Nurembergers is, of course, private criminals: purse snatchers, auto thieves, rapists, etc. There is nothing controversial here. But this also applies to all those responsible for government (for the libertarian anarchist) and excessive government (in the case of the minarchist); they would also and very properly be considered criminals. Government of this sort is the very embodiment of

⁷ Eugen Bohm-Bawerk, *Capital and Interest* trans. George D. Hunke and Hans F. Sennholz (Libertarian Press, 1959 [1884]); see particularly Part I, Chapter XII, "Exploitation Theory of Socialism-Communism."

⁸ The Marxist might reply that only "socially necessary" labor counts, and it has been applied to the cherry pie, not its mud counterpart. But this is circular, as the only way we can beforehand know that the one embodies socially necessary labor, and the other not, is by already having information as to the very different values of these two products. That is, there is no definition of socially valuable labor that is independent of markets and consumer demands, the real source of value.

⁹ John C. Calhoun, *A Disquisition on Government* (Liberal Arts Press, 1953), pp. 16-18.

¹⁰ Unless, of course, what each person pays into the government coffers, in the form of taxes, is exactly what he takes out of them in the form of subsidies. But this, in the words of Calhoun, "would make the process nugatory and absurd . . ." Ibid., p. 17.

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the violation of the libertarian non-aggression axiom. The state is systematic, organized, initiatory violence. The only difference between the two sources of brutalization is that the latter has achieved a modicum of legitimacy, based on the massive amounts of its very well invested money in suborning the academic, journalistic, religious and intellectual classes.

A word is needed about free speech. The right to *say* exactly what you please¹¹ is something near to the very core of libertarianism. This philosophy, indeed, takes a rather extremist position on free speech, championing such things as libel,¹² blackmail,¹³ even incitement¹⁴ to violence.

¹¹ On your own property, of course.

¹² Murray N. Rothbard, *The Ethics of Liberty* (New York University Press, 1998), pp. 126-28; Walter Block, *Defending the Undefendable* (Fox and Wilkes, 1991), pp. 59-62.

¹³ Eric Mack, "In Defense of Blackmail," *Philosophical Studies* 41 (1982), p. 274; Rothbard, *The Ethics of Liberty*; Murray N. Rothbard, *Man, Economy and State* (Mises Institute, 1993), p. 443 n. 49; Ronald Joseph Scalise, Jr., "Blackmail, Legality and Liberalism," *Tulane Law Review* 74 (2000), pp. 1483-1517; Walter Block, "The Blackmailer as Hero," *The Libertarian Forum* (December 1972), pp. 1-4; Walter Block, *Defending the Undefendable* (Fox and Wilkes, 1976), pp. 44-49; Walter Block and David Gordon, "Extortion and the Exercise of Free Speech Rights: A Reply to Professors Posner, Epstein, Nozick and Lindgren," *Loyola of Los Angeles Law Review* 19, no. 1 (November 1985), pp. 37-54; Walter Block, "Trading Money for Silence," *University of Hawaii Law Review* 8, no. 1 (Spring 1986), pp. 57-73; Walter Block, "The Case for De-Criminalizing Blackmail: A Reply to Lindgren and Campbell," *Western State University Law Review* 24, no. 2 (Spring 1997), pp. 225-46; Walter Block, "A Libertarian Theory of Blackmail: Reply to Leo Katz's 'Blackmail and Other Forms of Arm-Twisting,'" *Irish Jurist* XXXIII (1998), pp. 280-310; Walter Block and Robert W. McGee, "Blackmail from A to Z," *Mercer Law Review* 50, no. 2 (Winter 1999), pp. 569-601; Walter Block and Robert McGee, "Blackmail as a Victimless Crime," *Bracton Law Journal* 31 (1999), pp. 24-28; Walter Block, "Blackmail and Economic Analysis," *Thomas Jefferson Law Review* 21, no. 2 (October 1999), pp. 165-92; Walter Block, "Blackmailing for Mutual Good: A Reply to Russell Hardin," *Vermont Law Review* 24, no. 1 (Fall 1999), pp. 121-41; Walter Block, "The Crime of Blackmail: A Libertarian Critique," *Criminal Justice Ethics* 18, no. 2 (Summer/Fall 1999), pp. 3-10; Walter Block, "Replies to Levin and Kipnis on Blackmail," *Criminal Justice Ethics* 18, no. 2 (Summer/Fall 1999), pp. 23-28; Walter Block and Christopher E. Kent, "Blackmail," *Magill's Legal Guide* (Salem Press, 1999), p. 109; Walter Block, Stephen Kinsella, and Hans-Hermann Hoppe, "Second Paradox of Blackmail," *Business Ethics Quarterly* 10, no. 3 (July 2000), pp. 593-622; Walter Block, "The Legalization of Blackmail: A Reply to Professor Gordon," *Seton Hall Law Review* 30, no. 4 (2000), pp. 1182-1223; Walter Block, "Threats, Blackmail, Extortion and Robbery and Other Bad Things," *University of Tulsa Law Journal* 35, no. 2 (Winter 2000), pp. 333-51; Walter Block, "Blackmail Is Private Justice," *University of British Columbia Law Review* 34, no. 1 (2000), pp. 11-37; Walter Block, "Reply to Wexler:

And yet, in our analysis, we appear to be not only questioning this stance, but also actively attacking the free speech rights of Marxists, statists, and other opponents of libertarianism.

Nothing could be further from the truth. In the viewpoint being put forth here, communists are free to express themselves in any *private* venue they wish. However, when they take on a position at, say, a state university, now the expression of their ideas takes on a very different and far more ominous perspective. As part and parcel of the apparatus of the state, they are now not merely expressing an opinion; rather, they are now actively aiding and abetting in the rights violations of the multitudes of the people.

Take Hitler, himself, as an example. He may never have pulled a single trigger, nor directly killed anyone. Let us stipulate, only for the sake of argument, that he did not. Are we then to let him off the Nuremberg hook on the ground that he limited himself to an exercise of his free speech rights? Not a bit of it. His role was an instrumental one in the mass murder committed by the Nazi regime; indeed, he played a chief role in this regard. His is not to be interpreted merely as free speech. Rather, he gave orders, with implicit and explicit threats backing them up, which were part of the process of rights violation.

But the same can be said of the Marxist professor in a public university. His salary, too, is paid for out of compulsive levies. He, too, aligns himself with the evil empire, and, by the very nature of the enterprise, promotes his views through force.

Another way to tease out the implications of ruling class theory is to borrow a leaf from the European military practices of the eighteenth and nineteenth centuries. It was typical for each country to impress the common sailor or soldier, but to commission the officers. When captured, the officers were traded for their equivalents in the other army or navy, and given parole for the duration of imprisonment. Often, they were allowed to wear their

Libertarianism, Blackmail and Decency,” *University of British Columbia Law Review* 34, no. 1 (2000), pp. 49-53; Walter Block, “Toward a Libertarian Theory of Blackmail,” *Journal of Libertarian Studies* 15, no. 2 (Winter 2001), pp. 55-88; Walter Block, “The Logic of the Argument in Behalf of Legalizing Blackmail,” *Bracton Law Journal*, 33 (2001), pp. 56-80; Walter Block and Gary Anderson, “Blackmail, Extortion and Exchange,” *New York Law School Law Review* 44, nos. 3-4 (2001), pp. 541-61.

¹⁴ Rothbard, *The Ethics of Liberty*, p. 126; for a critique of this position, from a self-styled libertarian, see Frank van Dun, “Against Libertarian Legalism,” *Journal of Libertarian Studies* (forthcoming); for rejoinders, see Walter Block, “Reply to ‘Against Libertarian Legalism’ by Frank van Dun,” *Journal of Libertarian Studies* (forthcoming), and Stephan Kinsella, “Rejoinder to van Dun on Libertarian Legalism,” *Journal of Libertarian Studies* (forthcoming).

swords. A different fate awaited the commoners; they were impressed into the fighting forces of the country that captured them.¹⁵

The point of this analogy is to blame the officers of the government, but not the common soldiers. Just as the Nuremberg trials went after the general and colonels, not the privates and corporals, the libertarian authorities will make a similar distinction with respect to the minions of the state.

Well, then, who are the leaders of the modern state, or the officers, and who are the followers, or the common soldiers? There are no hard-and-fast conclusions; there are gray areas; there is a continuum, perhaps, between guilt and innocence; there are complications. Nevertheless, through the clouds and fog, there are principles that can help us shed light on the issue.

Let us first divide governmental activities into two categories: those things that are intrinsically evil, and those which would occur even in a free society, but which are improperly taken over by the bureaucrats. In the first case, for example, it is wrong, plain wrong, to incarcerate people for engaging in prostitution, drug sales, paying wages below legal minima, or charging more than allowed by a rent control law. Everyone, *everyone*, directly involved in such viciousness, without exception, would be considered guilty of a rights violation, and punished appropriately by a libertarian court. This includes, but is probably not limited to, the police who capture such people, the wardens who jail them, the attorneys general who prosecute them, the judges and juries who find them guilty, etc. However, it would *not* include people only indirectly involved in such activities, such as those who sweep the floors in the court houses which find guilty such innocent (but actual) violators of these unjust laws, nor in the jails which later house them.

Members of the coast guard and soldiers fighting in defensive wars would have nothing to fear from the libertarian court.¹⁶ Matters would be completely otherwise for those who have taken part in foreign wars of aggression, when there was no attack from them on the shores of the U.S. But members of the Federal Reserve System, that is, those from the professional "officer corps" and above certainly would, since there could be no such thing as a central bank in the pure free market.¹⁷

¹⁵ Similarly, when captured by barbarian forces, the common soldiers were sometimes impressed into the new army, while the officers were typically killed.

¹⁶ This applies to *both* anarchists and minarchists. For these are legitimate roles that would be filled in the free society.

¹⁷ See Murray N. Rothbard, (1994), *The Case Against the Fed* (The Mises Institute 1994); and Murray N. Rothbard, *The Mystery of Banking* (Richardson and Snyder, 1983).

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Now consider functions of government that are legitimate, or, rather, would be were they carried out by private enterprise, such as the provision of roads, libraries, schools, museums, post office, welfare (private charity), health, hospitals, etc. It would be only people at the very top of these institutions who would be considered as members of the ruling class. For example, the Postmaster General and but a handful of his top administrators would be deemed guilty of violating the libertarian edict against non-aggression. True, private enterprise equivalents would or could exist, but we cannot forget that these people have taken a leading role in managing what is an *illegitimate* enterprise, if only because it is in the public sector.

So, one general principle is that intrinsically evil government actions are to be penalized very heavily, reaching, down, for example, to the cop on the beat who busts a prostitute or drug dealer, but not to the handyman who fixes toilets in the police station, while for those functions that are not intrinsically evil (e.g., a government day care center) only those at the very top would be good candidates for membership in the guilty or ruling class. Another general principle is that the higher up you are placed in the hierarchy of government, the greater is the presumption that you are part of the ruling class.

Let us illustrate this with a three-by-three matrix, offering three choices on the two dimensions of intrinsically evil, intermediate, and not intrinsically evil, with high, medium, and low options.

<u>Evil:</u>	Yes	Intermediate	No
<u>Degree:</u>			
High	A	B	C
Medium	D	E	F
Low	G	H	I

Let us suppose that A is the judge or legislator who promulgates the policy of setting free murderers and rapists who are guilty beyond any doubt at all on the totally frivolous and spurious grounds that they were not Mirandized, or that the arresting officers had no ground to search the premises of the murderer,¹⁸ D is the police captain who orders his beat cop to carry out

¹⁸ Libertarians hold no brief with the thumbscrew school of interviewing prisoners. But if the police err in the enthusiasm of their interviewing techniques, then surely it is *they* who should be punished, proportionally to the crime committed. To allow a stipulated murderer or rapist to roam free as a result is surely a perversion of justice.

this malevolent plan, and G is the jailer who sets free the murderer.¹⁹ It is clear that A is by far the most guilty, D occupies an intermediate position, and that perhaps only a light penalty should be imposed upon G.

Anti-trust is an illegitimate law, since people are punished who did not initiate any violence or theft against anyone else.²⁰ Again, the legislators, judges, and top prosecutors responsible for this occupy the top position of guilt, or B, the assistant prosecutors position E, and the professionals who take part in this judicial travesty (e.g., legal aides, assistants, researchers) position H. But promoting murder and rape are far more serious crimes against humanity than is punishing economic non-crimes such as monopolization. Therefore, the guilt level of A would be the most serious; B and D might be roughly equal, as are E and G. The Librarian of Congress, call him the Chief Librarian of the country, would occupy position C, and would achieve a level of guilt similar to that attained by E and G. In other words, there is a rate of exchange between height in the hierarchy and evilness of the deeds.

A similar analysis would apply to several types of courts. If what a court is confined to doing is per se violations of human and property rights (e.g., courts upholding and promoting slavery in the pre-Civil War South, or

¹⁹ Remember that, under the libertarian code, a murderer owes a very heavy debt to the victim or his heirs. Anyone who allows him to escape is thus "stealing" from the latter.

²⁰ On this point, see William Anderson, Walter Block, Thomas J. DiLorenzo, Ilana Mercer, Leon Snyman, and Christopher Westley, "The Microsoft Corporation in Collision with Antitrust Law," *The Journal of Social, Political and Economic Studies* 26, no. 1 (Winter 2001), pp. 287-302; Dominick T. Armentano, *The Myths of Antitrust* (Arlington House, 1972); Dominick T. Armentano, *Antitrust and Monopoly: Anatomy of a Policy Failure* (Wiley, 1982); Dominick T. Armentano, *Antitrust Policy: The Case for Repeal* (The Cato Institute, 1991); Donald Armstrong, *Competition versus Monopoly: Combines Policy in Perspective* (The Fraser Institute, 1982); Walter Block, *Amending the Combines Investigation Act* (The Fraser Institute, 1982); Walter Block, "Austrian Monopoly Theory – A Critique," *The Journal of Libertarian Studies* 1, no. 4 (Fall 1977), pp. 271-79; Walter Block, "Total Repeal of Anti-trust Legislation: A Critique of Bork, Brozen, and Posner," *Review of Austrian Economics* 8, no. 1 (1994), pp. 35-70; Thomas J. DiLorenzo, "The Myth of Natural Monopoly," *Review of Austrian Economics* 9, no. 2 (1997), pp. 43-58; Donald J. Boudreaux, and Thomas J. DiLorenzo, "The Protectionist Roots of Antitrust," *Review of Austrian Economics* 6, no. 2 (1992), pp. 81-96; Jack High, "Bork's Paradox: Static vs Dynamic Efficiency in Antitrust Analysis," *Contemporary Policy Issues* 3 (1984-1985), pp. 21-34; Fred McChesney, "Antitrust and Regulation: Chicago's Contradictory Views," *Cato Journal* 10 (1991); Murray N. Rothbard, *Man, Economy, and State* (Nash, 1970); William F. Shugart II, "Don't Revise the Clayton Act, Scrap It!" *Cato Journal*, 6 (1987), p. 925; Fred L. Smith, Jr., "Why not Abolish Antitrust?" *Regulation* (Jan-Feb 1983), p. 23.

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landlord-tenant courts in a city with rent control), then guilt reaches further down into the hierarchy than for more ordinary courts, which combine legitimate functions (e.g., stopping crime with real victims) with illicit statist activity.

Another complication is that all of this can be used only to establish a refutable presumption. For example, suppose that a Nazi German equivalent of our Saint Ron Paul were to become chief librarian to the country, in category C. Would he necessarily have to pay the moderate penalty appropriate for that position? Not necessarily. If he could prove that he was really a "mole," or an enemy of the evil state, working behind "enemy lines," he would certainly save himself from such a fate. For example, if he contributed money surreptitiously (but not anonymously) to libertarian causes, this would certainly be evidence in his favor.

What about businessmen who are hand-in-glove with the apparatus of the state? According to Rand,²¹ businessmen are "America's Most Persecuted Minority." What with the modern level of regulations, there is no doubt at least some truth to this contention. But the issue is far more complicated than this. For there are also businessmen active in the dissolution of the free-enterprise system. They do so, presumably, for ideological reasons of their own, or in order to attain a short-run profit advantage.²² That is, they actively promote government intervention into the economy in general, and subsidies (and/or the reduction of competition against them) for themselves. The key element in guilt or innocence, unfortunately, is often motive. A ruling class businessman and an innocent one might undertake very similar or even the same acts (e.g., contributions to politicians, bribes to public officials, etc.). The difference is that the one is an initiator of the system, while the other only engages in such acts out of self-defense. How do we tell the difference between them?

Evidence for the difference consists, in part, of the publications and speeches of the business executives. If they are promoting regulations to handicap their competitors, then this is an indication of ruling class behavior. As a first approximation, if they oppose subsidies to firms in their industry, but fight for them if others are given them, then this is evidence in the other direction.²³ How about if they voluntarily contribute money to the

²¹ Available online
at <http://www.free-market.net/features/pageoftheweek/98spring.html>.

²² Gabriel Kolko, *Triumph of Conservatism* (Quadrangle Books, 1963).

²³ But see the discussion below of accepting government subsidies.

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government or to ruling class institutions such as Harvard²⁴ or Yale Universities? These acts would clearly support membership in the ruling class.

Bill Gates²⁵ is an anomaly in this regard. On the one hand, some of his own signed editorials are very much in keeping with the free market philosophy,²⁶ while others are not²⁷; on the other hand, his charitable giving seems directed toward Harvard University, surely no bastion of laissez-faire capitalist thinking, and other similar institutions beloved of the liberal left.

²⁴ I again remind the reader that the examples used in the text are *not* from the United States. Therefore, the names of the universities mentioned should be read as “the equivalent of Harvard and Yale in a country which has an illegitimate government, such as North Korea, Cuba, Nazi Germany, the USSR, etc.”

²⁵ Ditto. This should be read as “the equivalent of a Bill Gates character in a rogue country.”

²⁶ Available online at <http://home.labridge.com/~iicsla/politics/gates.htm>; <http://www.cato.org/gatesvisit.html>.

²⁷ Here is a question posed by the *Marin Independent Journal* (August 3, 1998), p. C5, followed by an answer from Bill Gates:

Q: “In a speech, you spoke of bringing citizens and the government into closer contact via a ‘digital nervous system.’ Don’t you think that this concept is contrary to what people want—distance from the government?”

A: “Government is pervasive, and most interactions people have with it are positive. Governments create order and provide services, including school and health systems.

“Even if you don’t personally reach out to the representatives of government, certain infrastructures and issues related to the rule of law are important to you. Nobody challenges the right of governments to issue a parking ticket, or to ask you to get a business license or a passport or to pay your real estate taxes.

“Because we agree these are legitimate functions of government, why not use technology to make government more efficient, for the benefit of the people it serves—you and me?

“As we make governments more efficient by equipping them with digital nervous systems, they’ll have new potential to gather and consolidate information about individuals and groups. This will give rise in many societies to explicit rules about what governments can or can’t do with the information they accumulate.”

The problem here, it should be clear to any libertarian, is that there is nothing here that couldn’t or wouldn’t be articulated by Hillary or Bill Clinton. This sort of thing will not save “a” Bill Gates from the libertarian tribunal.

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The foundation he has set up promotes almost entirely left-wing socialistic causes.

What is the dividing line between universities in the ruling class and those apart from it? A first approximation is that all public institutions of higher learning are illegitimate. This follows directly from the fact that education is not a proper role for the state. But what of private colleges? Some are, some are not; Hillsdale College, Grove City College, and Bob Jones University clearly fall outside of the realm of ruling class institutions. None of them accepts any government money whatsoever, not even scholarships directed at students. In that way, they are not subject to onerous rules such as those mandating affirmative action.²⁸

But ruling class status does not depend upon the amount of money received from the government, for, as we shall see below when we discuss Ragnar Danneskjold, it is *licit* for non- ruling class members to relieve the government of its ill-gotten gains. The criterion, then, must be something else, similar to that used to separate the business sheep from the business goats: principles espoused in speeches and publications on the part of the owners, boards of trustees, presidents, and other high officers of the establishment.

Thus, Harvard, Yale, Princeton, and other Ivy Leaguers are members of the ruling class in good standing *not* because they accept (scads of) government money, but rather, because they are diploma mills for the government. They weave apologetics for its rule; they are safe houses for out-of-work politicians; they provide vast armadas of professorial talent to the government²⁹ for programs not compatible with libertarianism.

University professors also furnish an interesting example with which to flesh out our theory. Those working at non-ruling class (non-public, and non-private but non-ruling class) institutions may profess on their own time and with their own private property anything they wish without falling afoul of libertarian sensibilities. The right of free speech, after all, protects them from violence no matter what they say. They can advocate the complete takeover of private initiatives if they wish, and libertarianism stands foursquare behind their right to mouth such platitudes.

However, the presumption of innocence vanishes when one enters the halls of a ruling class institution. Now, a bit more care needs to be taken. Publications and speeches no longer need be interpreted purely as a matter of

²⁸ All, however, were among the earliest to accept blacks and women as students and teachers.

²⁹ G. William Domhoff, *The Higher Circles: The Governing Class in America* (Vintage Books, 1971); G. William Domhoff, *Who Rules America?* (Prentice-Hall, 1967).

free speech. In this venue the professor is part of an apparatus that is engaged in a massive enterprise of rights violations. He indulges in his free speech only at his own risk. It is the difference between a Nazi scribbler on his own and as part of the public relations apparatus of the German regime. The role of "court historian" is a pivotal one, potentially a dangerous one.³⁰

What is proper behavior in the modern mixed economy? In a word, it is to act in such a way as not to invite the negative attention of the future libertarian Nuremberg tribunal.

If you want to go "behind enemy lines," so to speak, and become a bureaucrat, an advisor, a judge, a politician, or a general in the army, then clear it with at least one libertarian who stays "out" of the closet. Do this, or risk becoming indistinguishable from real anti-libertarians.³¹

Don't do anything evil per se. If you join the FBI, then don't shoot or fire-bomb innocent people at places like Waco or Ruby Ridge. Don't become a murderous bastard. Don't violate libertarian law in any way. If you are a prosecuting attorney, then don't take on drug cases. If you are a cop, then don't arrest prostitutes (or Johns). If you are a faculty member in a ruling class institution, then don't profess statism, unless it is on your own time, separate from any organized criminal behavior such as occurs at all state universities and most "private" ones (e.g., the ones that are part of the ruling class). In the free society, there will of course be policemen, prosecuting attorneys, and professors, but not ones who act incompatibly with the libertarian strictures of non-aggression.

6. Proper Relations between the Subjects and the Government

Let us consider a series of cases under the rubric set out in the previous subsection. Should the libertarian use the public sidewalks? At first glance, this would appear to be a trap for the follower of this philosophy. For in the ideal fully free society, there would be no such thing as socialized sidewalks. All would be privatized. It would appear, then, that for the libertarian who favors privatization to nevertheless utilize governmental

³⁰ Available online at <http://www.mises.org/fullstory.asp?control=1541>; <http://www.mises.org/blockonmnr.asp>; http://www.mises.org/misesreview_detail.asp?control=28&sortorder=issue.

³¹ At the risk of being overly repetitive, I again reiterate that the only countries under discussion for a future Nuremberg trial on libertarian principles in this essay are those with "bandit" governments, such as Mao's China, Stalin's Russia, Pol Pot's Cambodia, Hitler's Germany, and Castro's Cuba.

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amenities of this sort is the rankest of hypocrisy. "Why can't you act consistently with your own principles?" the critic might ask.³²

There are more than mere sidewalks at stake, here. For this problem applies to *everything* now provided by the state for the anarchist libertarian, and to everything except courts, armies, and police for the minarchist. Were the libertarian forced by the logic of his own premises to eschew everything from roads to libraries to schools to museums to baseball stadiums to welfare offices to social security benefits to unemployment insurance to use of U.S. fiat currency, he would be driven to lead a very narrow and constricted life, one, perhaps, of complete hermitage.

Unfortunately, the libertarian response to this challenge has been less than fully satisfying. For example, states Jane Shaw, "I cringe at the thought of well-off and able-bodied friends accepting unemployment compensation, but I generally accept the fact that there is no immorality in receiving what's available. I expect to receive Social Security. I do not think that we must all be as high-minded as Rose Wilder Lane and reject it."³³

There are problems here. If it is moral to accept government largesse, why the "cringing"? If it is "high-minded" to reject statist benefits, then there *must* be at least some immorality involved in accepting it. It would appear that there is more than just a little bit of ambivalence involved in this perspective.

The problem comes about, I contend, due to failure to perceive (excessive) government as a criminal activity. Once we realize that the state is nothing more than a puffed-up robber gang with great spin-doctors,³⁴ relations with it become clear.

Suppose that the local Mafia, or Blood, or Crips, or Jesse James Gang were to come around to your neighborhood, force you and all your neighbors to pay for sidewalks or a retirement plan, and then actually spend some small proportion of the "swag" on these amenities in your behalf.

³² For another reply, see Roy Whitehead and Walter Block, "Direct Payment of State Scholarship Funds to Church-Related Colleges Offends the Constitution and Title VI," *Brigham Young University Journal of Public Law* 14, no. 2 (2000), pp. 191-207.

³³ Jane Shaw, "Responsibility and the State," *Liberty Magazine* (September 1998), p. 10.

³⁴ All right. Give the devil his due. I refer to no less than the best public relations efforts in the history of the universe. Who else could fool the populace into believing that the institution that has murdered more innocents than any other is actually our friend? R. J. Rummel, *Death by Government* (Transaction, 1996), calculates the total number of noncombatants killed by their own governments during the twentieth century as 169,198,000.

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Would you have any reservations at all about accepting this largesse, which you had paid for in the first place? Not at all. It was theft, pure and simple, on their part. In allowing you to avail yourself of these programs, you are merely engaging in a bit of returning stolen property. You would have no compunctions about this at all. It would not at all be "high-minded" to refuse. "Cringing" would be the last thing on your mind. You might admire the audacity of the gang in thinking they could actually buy your good will by returning a small part of what they had stolen from you, but there would be absolutely no guilt involved on your part in accepting their largesse, which stemmed, originally, from your pocket.

But let us pursue this example further. Would you have any moral reservations about breaking into this gang's warehouse in the middle of the night, assuming that you could get away with it for sure, and relieve them of their ill-gotten booty? No more so than with any other gang, criminal conspiracy, or group of pirates. These people are the lowest of the low, and pretty much anything you do to or against them will be more than fully deserved.

We can also see that the proper reply to the question of why libertarians are justified in walking on public sidewalks even though they oppose them cannot be answered by resort to legality. That is, the fact that it is legal to traverse public sidewalks is no answer at all. For the law, as enacted, that is, *de jure* law, is what *they* have determined it should be. There is a *higher* law, libertarian law, and the laws of the land, particularly of rogue states such as Nazi Germany, Stalin's USSR, etc., are of no moment at all. Their doctrine is that of legal positivism, that is, whatever the law is, that is the correct law; this doctrine deserves to be consigned to the dust bin of legal theory. Were we to accord any credence to this theory at all, this would sound the death knell of the Nuremberg trials, whether on a libertarian basis or any other. For, according to legal positivism, whatever the law is, it is justified. So, too, would be the argument: "But I was only following (legal) orders." The real Nuremberg trials gave the back of their hands to this claim, and very properly so.

As it happens, the Nazis came to power not through a *coup d'etat*, but rather, as a result of *democratic elections*. So much, therefore, says the libertarian, for democratic elections. Merely because a majority of people can be fooled, or inspired, or convinced of anything at all, this does not make it right. Were democracy a good justification for anything, it could be used (horrors!) to defend Nazi depredations. Nor was there ever any prior

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agreement to be bound by ensuing elections, which would indeed lend them some much needed libertarian legitimacy.³⁵

But suppose that a stranger came to your neighborhood and passed by on the sidewalk. He had made no financial contribution to the creation of the sidewalk, since he did not live in the area under the control of the gang. Would he have any right to walk on this public property? Or, were he to be able to break into the gang's warehouse and take some of their stolen property, would he be in the right in doing so?

For the libertarian, these are questions it is easy to answer in the positive. For if there is anything clear, it is that the *gang* is the sole "bad guy" in this little scenario, and that anything done to them, up to and including exacting two teeth for a tooth from them, would be justified.

The point is that while "getting my own money back" is indeed a sufficient justification for relieving the state of its ill-gotten gains, it is by no means a necessary one. *Anyone*, whether stolen from by the government or not, is justified in taking from the public coffers.³⁶ Note my steadfast refusal to refer to taking from the government as "stealing." This is because, as a matter of logic, it is only possible to steal from the rightful owner. When one relieves the thief (e.g., the illicit government) of what it had itself stolen from the citizenry,³⁷ this is not theft, but a transfer of funds away from robbers. It is a logical impossibility, a veritable misuse of language, to describe taking from a thief as "robbery." Thieves are by the laws of logic prevented from stealing from those who are not the rightful owners; from them, they can only "liberate" or "transfer from," but never "steal."

But what of the original and rightful owners, those whose private property it was before the renegade government stole from them? Shouldn't the liberator of state property return what he has taken from governmental coffers to these people?

Let us put this in letter format. A stands for the rightful owner, B stands for the evil government which has stolen A's property through taxation,

³⁵ On this point, see Lysander Spooner, *No Treason* (Ralph Myles, 1966 [1870]); Roberta A. Modugno and Murray N. Rothbard, e l'anarco-capitalismo americano (Soveria Mannelli, 1998).

³⁶ The headline of the *U.S. News and World Report* of August 3, 1998, states: "Dirty Diamonds: How the FBI and some Honest Moscow Cops Broke Up a Ring that was Looting Tons of Gold and Gems from the Russian National Treasury." Had this applied to the evil empire U.S.S.R., then, according to the logic of this article, it would have been fully justified.

³⁷ Yet again, here is a reminder. We are now limiting our discussion to countries such as the old U.S.S.R., Cuba, North Korea, and Nazi Germany.

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and C depicts the heroic Ragnar Danneskjold,³⁸ who relieves B of its booty. One important question which arises is, Must C return the stolen property back to its rightful owner, A? And the libertarian answer to this question is, Yes, but

Yes, but what? There are several complications. First of all, let us get one thing straight. Even if Danneskjold does *not* return the property to the rightful owner,³⁹ the situation is far improved, from a libertarian point of view, compared to the one where he does not get into the act at all and the government, B, keeps the entire swag. Let us put this into hierarchical order.

I. The best case scenario: B steals money from A; C takes money from B and returns it to A.

II. The next best case: B steals money from A; C takes money from B and keeps it for himself.

III. The worst case: B steals money from A; C does nothing; B keeps its prize.

Yes, we do well to dwell on the fact that I is preferable to II from a libertarian perspective. However, let us spend a little time, also, in contemplation of the undeniable fact that II is also vastly preferable to III, which is the status quo in all too many cases. Surely, it is better that a *non-thief*, Danneskjold, end up with the valuables, than that a *thief*, the government, be placed in this position.

The second complication is as follows. How *much* of the stolen property that C just took from B does he have to return to A? At first glance, this seems simple. Why, all of it, is the easy response. A utilitarian consideration, perhaps not even worthy of mention, is that if C has to return all of A's losses to him, then he has no financial incentive to beard the den of B and relieve him of his improper enrichment. B, after all, is a powerful, evil government. It is no mean attainment to be able to break into (a non-U.S.) Fort Knox and transfer money out of that stronghold. If *all* of it must go back to A, only benevolence will be the motivator of this act in the first place. But we all know what Adam Smith⁴⁰ said about benevolence. Surely, we would

³⁸ Ayn Rand, *Atlas Shrugged* (Random House, 1957).

³⁹ We are, of course, now assuming that this rightful owner is not a member of the ruling class. If he is, then his claim over this property is greatly and perhaps fatally compromised.

⁴⁰ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (Modern Library, 1965 [1776]), pp. 26-27: "It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity but of their

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do well to consider, also, self-interest, particularly if we want to encourage relieving the state of its illegitimate gains.

But this, as I say, is merely a utilitarian consideration. More to the point, C is *owed* something for undertaking this Herculean task. There is a principled justification for allowing Danneskjold to keep part of what he returns. This is based on the law of the sea merchant, which is a part of the common law.⁴¹ When ships are lost at sea, the common practice, instituted throughout many centuries and thus entrenched in the common law, was for the salvager to keep one third of the value of what he turned over to the original owner. I suggest that we borrow a leaf from this tried and true practice, and apply it to the present situation. Accordingly, C would be compelled, on pain of violating libertarian law, to return only 2/3 to A⁴² of what he takes from the coffers of B.⁴³

advantages"; see also, Arthur Seldon and Ralph Harris, "Not from Benevolence: Twenty Years of Economic Dissent" (Institute for Economic Affairs, 1977).

⁴¹ Bruce L. Benson, "The Spontaneous Evolution of Commercial Law," *Southern Economic Journal* 55 (1989), pp. 644-61; Bruce L. Benson, *The Enterprise of Law: Justice Without the State* (Pacific Research Institute for Public Policy, 1990); Bruce L. Benson, "Customary Law as a Social Contract: International Commercial Law," *Constitutional Political Economy* 2 (1992), pp. 1-27; Bruce L. Benson, "The Impetus for Recognizing Private Property and Adopting Ethical Behavior in a Market Economy: Natural Law, Government Law, or Evolving Self Interest," *The Review of Austrian Economics* 6, no. 2 (1993), pp. 43-80.

⁴² I am unable to intellectually justify 2/3 as opposed to 1/2 or 3/4 or 4/5. This is in sharp distinction to the case of *two* teeth for a tooth.

⁴³ This case must be distinguished from another one with the same 1/3-2/3 split. During the epoch of U.S. slavery, white masters in effect stole labor from blacks, and used this to enhance the value of their holdings. Full justice at the end of the Civil War would have implied the application of "two teeth for a tooth" against the masters on behalf of their slaves. But what can be done at present, some 150 years later? The land that white grandfather W passed on to his son, W', which is now in the hands of the grandson, W'', should instead have been given to slave B, who, in the ordinary course of events would have bequeathed this to his son, B'. In justice, B'', the black grandson of the slave would now be in possession of this property.

The libertarian answer is to now change the present pattern of property titles so as to as closely as possible approximate what *would* have obtained were we able to promote justice at the earliest possible moment. What this means, specifically, is that the land which embodies the labor of B should be taken away from W'' and turned over to B'. W'' is himself innocent of the crime of slave holding (e.g., kidnapping); thus, this is not a *punishment* directed against him. But W'' is now sitting on property which, in justice, never should have been given to him in the first place. He must vacate it.

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Let us now consider an attempted *reductio ad absurdum* of the libertarian perspective on justice in property titles. I have been employed as a college professor for a governmental institution.⁴⁴ Let us suppose further that I came from another country,⁴⁵ and thus there was no question of getting my own money back, or that which my parents had spent in my behalf, from the state. You now approach me and demand 1/3 of my salary (your buddies wait behind you to also insist on their 1/3 of my rapidly decreasing funds). Have I a leg to stand on, or must I give in to your demands?

There are several possible responses. First, why don't you go and get your money directly from the criminals, not from those, such as myself, who are themselves acting in opposition to them? Under the theory of the enemy of my enemy is my friend, you are, in attacking me in this way, supporting the state. That is, you are removing my economic incentive to relieve the state of its illicit gains. Thus, you perhaps reveal yourself as a member of the ruling class.

Suppose that this land is worth \$1 million, but W" has erected a house on it with a value of one-half million dollars. He did so with his own rightful earnings. Who should get what? The answer is that W" should keep 1/3 of the total value, and B" 2/3. This familiar set of fractions does not emanate from salvage considerations, but merely from the accident of these numbers. For more on this point, see Murray N. Rothbard, "The Problem of Land Theft," in *The Ethics of Liberty* (New York University Press, 1998), pp. 63-67; see also 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.

Consider another complication. Suppose that 100 slaves worked on the plantation, but only one heir of any of them, B", can now be found. Does B" get the entire value of the landed estate (apart from the house), or only one percent of it. The answer is the latter. For possession is 9/10ths of the law. He who is the present land holder (W" in our case) is always deemed to be the proper owner, unless evidence to the contrary can be adduced. But the claim of B", stemming from the work of his grandfather, B, can at most encompass what *he*, B, that is, contributed to the enhancement of the value of the property. The other ninety-nine percent of the value of this land will remain with W", until and unless other grandchildren of slaves come forth with proof of parentage.

⁴⁴ It is full confession time. As it happens, during my career as an academic, I have been employed by the following fully public institutions: Stony Brook SUNY, Baruch College CUNY, Rutgers Newark, and the University of Central Arkansas. I have also been employed by Holy Cross College, which is clearly "ruling class" in terms of the present analysis, in that it takes anti-free-enterprise institutional positions.

⁴⁵ Or a different planet, as some of my detractors might suppose.

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Second, I owe at most only 1/3 of any property I took from the government, not a series of 1/3 of what I have remaining from this amount to all and sundry. Once I have paid this amount, I owe no more.

Third, while I owe 1/3 to *some* victim of state aggrandizement, it need not be *you*. I can if I wish choose the victim *I* wish to compensate. In the novel *Atlas Shrugged*, Danneskjold chose Hank Rearden as the person he first wished to compensate out of liberated funds. Surely, this choice would, similarly, be up to me, given that I am in this position.

Fourth, this consideration will only disrupt the financial incentive libertarian professors have in working for the state, given the assumption that the government has not all along been taxing them. It is only a possible *reductio*, that is, for those from another country—given no entangling relations between their host and original nations, which is another unlikely assumption.⁴⁶

7. Disrupting Government

a. Destruction

Is it legitimate to disrupt government, to destroy its property? Of course; remember that we are discussing such states as the USSR, Cuba, North Korea, and Nazi Germany. Why ever would it *not* be licit to interfere with these evil empires, and as much as ever possible?

Let us consider libraries, for the moment. Here, we are not discussing a libertarian borrowing a book, even though he opposes public libraries; we have already answered the possible charge of hypocrisy. Nor, yet, are we thinking about borrowing a book, not returning it, and somehow escaping the payment of a fine. We are asking whether it is legitimate to blow up the public library. And the answer must be in the affirmative for the libertarian, but subject to one constraint: no innocent persons must perish, or

⁴⁶ What of the argument that if the state taxes people, then it at least returns to them services which, by the very nature of things, are at best far more valuable than what was taken? If so, then there is no warrant to consider the government as a thief, nor that it has any "ill-gotten" gains of which it would be justified to relieve it.

This argument cannot be accepted, because the chief element in proving benefits is mutual agreement. That is, if I trade you my tie for your pen, then the outside economist is forced to conclude that I value your pen more than my tie (otherwise, why would I give up my tie for your pen?) and that you make the opposite evaluation. But if we were *forced* to make this trade, then no such conclusion would be warranted. As all dealings between government and individual are under duress, we can never conclude that they are beneficial.

even be (physically) harmed, as they were at the blowing up in 1995 of the Murrah Building in Oklahoma.⁴⁷

Let us consider a few objections to the foregoing view. First, it is one thing for Dannekjold to liberate government property, and to do so without destroying it; in this way, he could always, at least in principle, return it to its rightful owners. But when C destroys the property now in B's hands, which actually belongs to A, then the very possibility of return is destroyed as well. Therefore, it is never justified to destroy government property.

The problem with this objection is that it is *no longer* A's property; it is *now*, actually, the property of the *state*. Of course, it is still the legitimate possession of A; this can never change.⁴⁸ But that is entirely irrelevant to the point that, but for libertarian activity to the contrary, this bit of property will remain in state hands, presumably to be used for evil purposes. Surely, it is preferable that the property be destroyed rather than be used by the government to reduce human welfare.

Here is another case. Dannekjold is about to toss a hand grenade at a Nazi German Panzer tank, when along comes A, who argues, "No, don't do it! One thousandth of the value of that tank belongs to me. If you destroy the tank, you will be destroying *my* property, and I refuse you permission to do so."

There are difficulties with this objection, too. For A is taking the part of the ruling class, no matter how innocent he may have been of such a charge before his recent rash action of defending the tank against Dannekjold's onslaught. The point is that there is *not* here an option to melt down the tank into 1,000 bits of equal value and return them all to their rightful owners. Rather, the only options are to blow it up now or stand by and allow this implement of war to be used for nefarious Nazi purposes. If the owner still insists upon leaving the tank as is, so that it can be used to kill good guys, then he becomes converted, himself, into genus ruling class member, species Nazi bad guy. This is enough, more than enough, to override his initial claim as a legitimate property owner.

b. Seizure

Similarly, it would be quite within keeping of the libertarian philosophy for a group of citizens to go out and seize part of a public highway,⁴⁹ thus converting it to the private sector. This group could then

⁴⁷ Ayn Rand depicted, positively, a similar episode (i.e., blowing up a public housing project) in her novel *The Fountainhead*.

⁴⁸ There are no statutes of limitation on justice in libertarianism.

⁴⁹ This would not be justified under the doctrine of "just war" of Catholic social thought unless those who engaged in this activity were unable to achieve their just goals in a peaceful way, the gains were more than commensurate with the risks, etc.

charge tolls, improve the roadway, impose speed limits, penalize drunken drivers, etc., just like any other entrepreneur could manage his own property. Alternatively, they would be well within their rights to destroy any stretch of government highway they could put their hands on. There are several other sorts of seizure that come to mind. A libertarian could be a squatter in public housing, or could organize a "sit in" at a state museum or park.

And then there is the famous "bum in the library" controversy. Here, a smelly bum comes into a library, sits down, and starts reading a book. Due to his odoriferousness, however, no one else can sit comfortably within 100 feet of him. There are some commentators, such as Hans-Hermann Hoppe, who maintain that the bum should be thrown out on his rear end,⁵⁰ that, in effect, we should treat public property exactly as we do its private counterpart. Since no private library owner in his right mind would allow his establishment to be overrun with bums, this should apply as well to public libraries.

There are difficulties here, however. We may well agree with Murray Rothbard that, as a matter of managerial considerations, it is not at all good business practice to allow the bum access to one's premises. But this is pretty much beside the point. The real question is, Does the private owner have a *right* to admit bums to his place of business, whether or not it maximizes profits? The obvious answer is, "Yes, he does." If so, then it cannot be shown that putting public property on a business basis yields the conclusion that the bum must be tossed out. As well, Rothbard is on record in *opposing* for very good reason putting government commercial activities on a business basis. He states: "Government . . . has no checkrein on itself, i.e., no requirement of meeting a test of profit-and-loss or valued service to consumers . . ." ⁵¹ Why these considerations should not apply to the present case is unclear.

Another difficulty with this position emerges when we consider the ownership status of government property, that is, it is not being used for legitimate state purposes. Since both anarchist and minarchist libertarians

On this issue, see available online at <http://www.utm.edu/research/iep/j/justwar.htm>. Libertarianism, in contrast, is not bound in this manner.

⁵⁰ Hans-Hermann Hoppe, *Democracy—The God That Failed: The Economics and Politics of Monarchy, Democracy, and Natural Order* (Transaction Publishers, 2001), pp. 180-81.

⁵¹ Murray N. Rothbard, *Man, Economy, and State*, pp. 821-22. See, more generally, *ibid.*, "The Fallacy of Government on a 'Business Basis,'" pp. 821-25. See also, Murray N. Rothbard, "Government in Business," *Freeman* (September 1956), pp. 39-41, reprinted in *Essays on Liberty IV* (Foundation for Economic Education, 1958), pp. 183-87.

would agree that this applies to public libraries, the analysis is straightforward: The library is un-owned property, despite statist claims to the contrary. It is thus there for the taking. It would be licit for *anyone*, not himself a member of the ruling class, to seize this property. Surely, a bum qualifies in this regard. But if the bum may seize library property, then surely he may occupy it for a time.⁵²

c. "Cheating"

Is it okay to cheat on your income taxes? You bet it is. It is not quite a duty, that is, you are not required to resist acting under duress,⁵³ but it at least a virtue.⁵⁴ If you can evade road tolls, then this too is a good deed. The less money there is in the coffers of the criminal state, the better. This reasoning also holds with regard to bus fares. And, if you can manage it, this also goes for museum entry fees, paying for credits at state universities, sneaking into governmental recreation centers, etc.

What about cheating on exams in public schools? The same analysis applies. These are not legitimate institutions. Therefore, their rules may be disobeyed with moral impunity. Imagine the bloody cheek of a criminal band of thieves insisting upon virtue from those in their thrall. The state may have the de facto power to penalize you for any of these acts, and on pragmatic grounds you might do well *not* to act in this supererogatory manner, but that is entirely another matter. As far as *virtue*⁵⁵ is concerned, it is all on the side of resisting the power of the tyrant, not knuckling under to it. Of course, none of this applies to *private* institutions. To cheat on private school exams, or to steal from them (e.g., by evading their legitimate demands for payment), is the very paradigm case of violation of libertarian principles. The reason this does not apply in the case of the (rogue) government is that this institution is *itself* in violation of these norms of civilized behavior.

⁵² We need not (but will) add the proviso that we are limiting our discussion to public libraries in the U.S.S.R., Cuba, North Korea, and Nazi Germany.

⁵³ At least when it comes to paying taxes to rogue governments. However, if a marauder pulls a gun on you, and threatens to shoot you (or a loved one) unless you kill another innocent person in your sights, then libertarianism requires you to refrain (assuming these are the only options). If *he* kills someone, then that is on his head. *You*, as a libertarian, cannot do any such thing. If you do, then you cease to be acting as a libertarian.

⁵⁴ Let it be repeated here once again that we are discussing the U.S.S.R., Nazi Germany, North Korea, and Cuba, *not* the U.S., Canada, Great Britain, Australia, or any other country I might ever visit or reside in.

⁵⁵ For a very different view of virtue, see William Bennett, *The Book of Virtues* (Simon & Schuster, 1993).

Counterfeiting, too, is entirely justified⁵⁶ on these grounds. It is one thing to fraudulently substitute a fake currency for a real one, e.g., gold backed notes. But fiat currency is entirely a different matter.⁵⁷ Here, the government has *already* engaged in counterfeiting, in effect, in supplanting its own fake currency for the gold backed dollar. Thus, anyone who *now* comes along and counterfeits statist currency is actually counterfeiting *counterfeit* currency, which can be no crime—at least according to libertarian law.⁵⁸

We can borrow a leaf from warring governments in this regard. One of the many arrows in their quiver is to destabilize the country with which they are at war. There are records, for example, in the attempt of the allies and the axis powers to destabilize each others' economies by flooding their enemy with vast amounts of counterfeit currency.⁵⁹ If this is good enough medicine for one illegitimate government, then why not for others? And if this is justified when done by one state against another, then why not by disaffected libertarians within a given illicit country?

d. Political assassination

We have seen that in the libertarian philosophy, the death penalty is justified for those whose crimes rise to a sufficient degree of severity. Surely, there are heads of state whose evil deeds many times eclipse such a level. Thus, it would altogether be justified to end their lives by violence.

How many novels have been written with a motif of, What would have happened had Hitler been assassinated, during different epochs of his career? There is no doubt that the lives of Hitler, Pol Pot, Stalin, Lenin, Mao, Castro, etc. were morally forfeit, that it would have been the highest form of justice to end them.

Were there a case in Nazi Germany equivalent to Ruby Ridge or Waco and the Davidians, then, only those directly responsible for the murder of innocent civilians would be liable for the death penalty, not their fellow

⁵⁶ See Walter Block, pp. 109-20.

⁵⁷ On this, see Murray N. Rothbard, *What has Government Done to Our Money?* (Mises Institute, 1990); Murray N. Rothbard, "The Case For a 100 Percent Gold Dollar," in *In Search of a Monetary Constitution*. ed. Leland Yeager, (Harvard University Press, 1962), pp. 94-136. Reprinted as *The Case For a 100 Percent Gold Dollar* (Libertarian Review Press, 1974); Hans-Hermann Hoppe, Guido Hulsmann, and Walter Block, "Against Fiduciary Media," *Quarterly Journal of Austrian Economics* 1, no. 1 (1998), pp. 19-50.

⁵⁸ This case exactly parallels the fact that you can only steal from the rightful owner. You cannot steal from the thief; you can only liberate the property from him.

⁵⁹ See available online at <http://www.ess.uwe.ac.uk/documents/eight.htm>.

colleagues in arms.⁶⁰ It is simply not the case, for example, that *all* U.S. servicemen posted in Vietnam were responsible for the My Lai massacre. This applies only to those who actually pulled the relevant triggers. And, of course, this also applies to those who gave the orders, or "took responsibility" for these outrages. The Nuremberg trials quite properly focused attention on the generals who gave the orders, even in preference to those closer to the ground who were more directly responsible. If there were a Nazi German or Soviet Janet Reno who "took responsibility" for an abomination of this sort, then that person, certainly, would also fall under this purview.

8. Conclusion

Among the worst possible roles for the libertarian to play is that of being an efficiency expert for the state, under the guise of promoting economic and civil freedom. In many cases, this is all too easy a trap in which to fall. The government is so obviously inefficient. It is a matter of almost child's play to see the flaws in its operation, and to set them straight.

In what follows, I should like to defend myself against the possible charge of violating this edict. Starting in the 1980s, I published a spate of articles advocating the privatization of roads, highways, streets, sidewalks, and other pedestrian and vehicular thoroughfares.⁶¹ I made the moral case in behalf of this initiative, tried to show how it might function economically speaking, and defended it against possible objections. But, in so doing, I discussed why private road owners would be led by Adam Smith's "invisible hand" in the direction of making innovations that would improve safety records and other functioning of government highways. In this vein I made a number of specific suggestions—speculations, really—as to how entrepreneurial management might improve matters. For example, I maintained that road owners might well install peak load pricing in order to iron out demand over rush hour times, and impose electronic credit card charges, instead of utilizing the present very inefficient highway toll booths. I am not at all grandiose enough to think that these initiatives were and have been recently introduced because of my writings. Yet, there is some disquiet. Should I have kept silent, lest, inadvertently, I contributed to the better functioning of an enterprise that is at bottom illegitimate?

In my view, in order to answer this conundrum, we need to return to basic libertarian principles of non-aggression against non-aggressors. In

⁶⁰ Needless to say at this point, we are limiting our focus on countries such as the U.S.S.R., North Korea, Cuba, and Nazi Germany. As the U.S. government is not on this list, the cases in that country are mentioned for illustrative purposes only.

⁶¹ See my articles cited in note 13 above.

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trying to demonstrate the virtue of private ownership of highways by pointing out how entrepreneurs might improve matters, I violated no personal or private property rights. If the civil service managers of these amenities saw fit to adapt some suggestions made in this regard to their own nefarious purposes, then a commentator in my position is still blameless. It is as if Henry Ford invented the automobile, and a criminal utilized one as a getaway car from a robbery; we would hardly blame the automobile manufacturer for the robbery. But this is to be sharply distinguished from actually going out and advising governments⁶² with the goal of improving their management of that which they should not be managing in the first place.

⁶² See text associated with notes 14-16 above.

Stephen R. C. Hicks's *Explaining Postmodernism:
Skepticism and Socialism from Rousseau to Foucault:*
A Discussion

Steven M. Sanders
Bridgewater State College

1. Introduction

Readers of Stephen Hicks's *Explaining Postmodernism*¹ will find much to reflect upon and engage with in the pages of this lucid study of the background, themes, and consequences of postmodernist thought and practice. The book has already received lavish praise from *Reason Papers* founding editor Tibor R. Machan and it is easy to see why.² With clarity, concision, and an engaging style, Hicks exposes the historical roots and philosophical assumptions of the postmodernist phenomenon. More than that, he raises key questions about the legacy of postmodernism and its implications for our intellectual attitudes and cultural life.

Explaining Postmodernism is broad in scope, moving with ease from Rousseau and Kant to Derrida and Rorty. Hicks writes about modern European philosophy and the Anglo-American tradition with sophistication and an eye for the thought-revealing anecdote. In addition to tackling major thinkers, including Rousseau, Kant, Marx, Nietzsche, and Heidegger, Hicks gives us insightful glimpses into a number of second-tier figures who are still less widely discussed than perhaps they should be. The book is studded with clarifying distinctions and is written in a style that seamlessly integrates primary material into the narrative, making explicit the common themes underlying postmodernism in philosophy, politics, and the arts.

This is not a purely historical work. It is also a critique, and in many places it is vigorously polemical. Hicks makes a commendable effort to provide a balanced account of the philosophers he discusses, but his emphasis is clearly on aspects of their thought of greatest relevance to the development of postmodernism. In any case, it takes courage for a philosopher at an American university to say some of the things Hicks says in this book. One

¹ Stephen R. C. Hicks, *Explaining Postmodernism: Skepticism and Socialism from Rousseau to Foucault* (Tempe, AZ: Scholarly Publishing, Inc., 2004).

² Machan's review is posted on the Amazon website.

need only note the fate of Lawrence Summers to see how very risky it can be to transgress Left orthodoxy in the academy. As Steven Pinker reports, when the president of Harvard University had the temerity to raise the question of the possibility of innate sex differences at a conference on gender imbalances in science, eminent MIT biologist Nancy Hopkins stormed out of the room to avoid, she said, fainting or becoming physically ill—thereby, in the words of Harvey Mansfield, conforming to the traditional stereotype of women as “emotional” at the same time as she denounced it.³ The National Organization for Women called for Summers’s resignation and more than 100 Harvard faculty members signed a letter criticizing him. In a follow-up story on the controversy, Jason Zengerle makes it clear that left-leaning Harvard faculty had other grievances against Summers, including his paean to patriotism a month after the September 11th terrorist attacks, his decision to rescind a Sixties-era policy prohibiting students from citing ROTC service in their yearbook, his opposition to the campaign to force Harvard to divest its portfolio of companies that do business in Israel, and his confrontation with African-American studies professor Cornel West over the quality of West’s scholarship, a confrontation widely reported at the time to have led West to decamp to Princeton.⁴ Summers’s *mea culpas* in the aftermath of the response to his remarks were to no avail. At a meeting on March 15, 2005, the Harvard Arts & Sciences faculty passed a resolution declaring a lack of confidence in the president. With Summers’s recent announcement of his resignation, effective June 2006, it seems clear that faculty members hardly covered themselves in glory, and Hicks’s book helps us to understand why.

Hicks organizes his material with historical insight and analytical finesse around a central thesis: “*The failure of epistemology made postmodernism possible, and the failure of socialism made postmodernism necessary*” (p. i, emphasis in text). The six chapters that make up *Explaining Postmodernism* can be divided conveniently into two groups of three chapters, each group pivoting on a hypothesis about postmodernism. The articulation and defense of these hypotheses, together with a delineation of their implications for philosophy, science, politics, ethics, education, and the arts is the *raison d’être* of *Explaining Postmodernism* and the basis of its importance. In what follows I will discuss central themes in Hicks’s book (without claiming to do justice to the vast range of topics it takes up): Kant and postmodernist epistemology, postmodernist politics and the Left, and

³ Steven Pinker, “Sex Ed,” *The New Republic*, February 14, 2005, pp. 15-17; Harvey Mansfield, “Fear and Intimidation at Harvard,” *The Weekly Standard*, March 7, 2005, p. 10.

⁴ Jason Zengerle, “Harvard Coup,” *The New Republic*, March 7, 2005, pp. 11-14.

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postmodernist nihilism. First, however, let me say something about Hicks's view of postmodernism as a reaction to the Enlightenment project.

2. What Is Postmodernism?

The terms "postmodern," "postmodernism," and "postmodernist" are associated with disciplines as different as literary criticism, architecture, painting, and philosophy and have come into use in these disciplines at different times and for different purposes. It is therefore a matter of some dispute whether postmodernism is best described as an historical period stretching from the 1960s to the present; a mosaic of moods, motifs, and themes; a distinctive style, sensibility, or point of view; or all of these things. Even when we confine our attention to the terms as they show up in philosophical contexts, we find a multiplicity of uses. Philosophers have characterized postmodernism as a set of theses, as a "condition," in the words of Jurgen Habermas, in which there is "a crisis of modernity," and even as "an activist strategy." The great dangers, of course, are either to be so overwhelmed by the many forms postmodernism has taken that one is unable to offer a useful characterization at all or to make postmodernism appear more monolithic than it is. Fortunately, Hicks has largely avoided these extremes. Rather than try to settle controversies about its contested boundaries, he proceeds with an account of postmodernism as a comprehensive intellectual and cultural movement defined by certain fundamental metaphysical, epistemological, and ethical premises that brought together intellectual developments in the mid-twentieth century in many areas, including philosophy, politics, and the physical sciences (p. 21). Postmodernism is anti-realist in its metaphysics, for it denies that we can speak meaningfully of an independently existing reality. It is relativist if not skeptical in its epistemology, rejecting reason, or anything else, as a means of acquiring objective knowledge. It is collectivist and social-constructivist in its accounts of human nature, activist in its ethics and politics, and noisomely avant-gardist in its aesthetics.

Any family of views calling itself *post*-modernist positions itself historically and conceptually as a response to "modernism." In philosophy, the essential modernist figures are Bacon, Descartes, and Locke with their philosophical naturalism, confidence in reason, and individualism (p. 7). In Hicks's view, "The battle between modernism and the philosophies that led to postmodernism was joined at the height of the Enlightenment"—with its innovation and progress in science and technology, its liberal politics, and its free markets, which were all made possible by a confidence in the power of reason (pp. 22-23). Hicks's discussion of the epistemology and political philosophy of these paradigms of modernism helps us to identify what postmodernists see themselves as negating and transcending. Summarizing this discussion, Hicks writes:

Postmodernism's essentials are the opposite of modernism's. Instead of natural reality—anti-realism. Instead of experience and reason—linguistic social subjectivism. Instead of individual identity and autonomy—various race, sex, and class group-isms. Instead of human interests as fundamentally harmonious and tending toward mutually-beneficial interaction—conflict and oppression. Instead of valuing individualism in values, markets, and politics—calls for communalism, solidarity, and egalitarian restraints. Instead of prizing the achievements of science and technology—suspicion tending toward outright hostility. (pp. 14-15)

Postmodernism rejects, or is deeply suspicious of, truth, objectivity, and progress, and is characterized by a distinctive anti-science, anti-capitalist mentality. Postmodernists are united by both a shared philosophical history and a shared conception of human nature—or at least agreement about what our “core feelings” are: “dread and guilt” (Kierkegaard and Heidegger); “alienation, victimization, and rage” (Marx); “a deep need for power” (Nietzsche); and “a dark and aggressive sexuality” (Freud). As Hicks observes, postmodernists divide over the question whether these core feelings are socially or biologically determined, but “in either case, individuals are not in control of their feelings: their identities are a product of their group memberships, whether economic, sexual, or racial,” and since these vary, with no objective standards to which we can submit our alternative and conflicting perspectives, “group balkanization and conflict must necessarily result” (p. 82).

As Hicks makes clear, far from emerging fully developed from the work of a few Sixties-era French theorists, postmodernism has a distinguished lineage that can be traced back to Kant, Rousseau, and Marx. Its influence has been felt not only in philosophy, where its leading strategists include Michel Foucault, Jacques Derrida, Jean-Francois Lyotard, and Richard Rorty, but also in literary criticism and legal theory (Stanley Fish, Frank Lentricchia), psychology (Jacques Lacan), philosophy of science (Paul Feyerabend, Luce Irigaray), architecture (Charles Jencks, Robert Venturi, Michael Graves), and literature and the arts (Thomas Pynchon, Laurie Andersen, Cindy Sherman, Damien Hirst).

3. Kant and Postmodernist Epistemology

Hicks's first hypothesis about postmodernism is:

Postmodernism is the first ruthlessly consistent statement of the consequences of rejecting reason, those consequences being

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necessary given the history of epistemology since Kant. (p. 81, emphasis in text)

To understand Kant's significance as a precursor of postmodernism, Hicks looks at Kant's prominence on the broad horizon of the Enlightenment, whose most influential thinkers were sustained by the rationalist hope that the use of reason would be transformative of life. The advancement of science and the growth of knowledge were to lead to progress, prosperity, and perfectibility. Nowhere is this eighteenth-century optimism more dramatically shown to be problematic than in the writings of Rousseau. Hostile to the very science with which most of his contemporaries were infatuated, Rousseau challenged the faith in this wonderful engine of progress in a "Counter-Enlightenment" critique of reason that had an important influence on Kant (p. 24ff.). Not only do we not need all that we can obtain by dint of our reason, but the multiplication of wants in the wake of the application of our inventiveness leaves us dissatisfied and dependent, at odds with ourselves and incapacitated for living well. "As the conveniences of life increase and luxury spreads the virtues disappear; and all this is an effect of the sciences and the arts." Thus was Rousseau intent on showing the problematic features of living with the strategy of progress.⁵ It is a measure of his importance that this attitude remains with us today in that blend of influences from which postmodernism derives its peculiar appeal: Kant, Hegel, Marx, Nietzsche, and Heidegger.

Kant's is the paradigm case of rationalist epistemology, and its failure is the basis of the subsequent rejection of reason typical of postmodernist thinkers. Two of Kant's key assumptions are that "the knowing subject's having an identity is an obstacle to cognition" (p. 37), and that "abstractness, universality, and necessity have no legitimate basis in our experiences" (p. 38). These assumptions mark Kant as "the decisive break with the Enlightenment and the first major step toward postmodernism" (p. 39). Why is this? Because they amount to the idea that "reason is in principle severed from reality" (p. 41). According to Hicks, Kant decisively rejected objectivity. Once one thus separates reason from reality, "the rest is details—details that are worked out over the next two centuries. By the time we get to the postmodernist account, reason is seen not only as subjective, but also as incompetent, highly contingent, relative, and collective" (p. 42).

Postmodernism, thus, is the result of this Counter-Enlightenment assault on reason prefigured and brought to fruition preeminently in Kant's philosophy. Unlike those who take Kant to be a defender and advocate of reason, Hicks maintains that, according to Kant, "Reality . . . is forever closed

⁵ For this line of development and the quotation from Rousseau, see the charming essay by W. D. Falk, "The Age of Reason," in his *Ought, Reasons, and Morality* (Cornell University Press, 1986).

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off to reason, and reason is limited to awareness and understanding of its own subjective products” (p. 28). Moreover, Kant was convinced that “the failures of empiricism and rationalism had shown that objectivity is impossible” (p. 30). But this means that, on Kantian grounds, “science is cut off from reality itself” (p. 36). From Kant, then, we learn that “the mind is not a response mechanism but a constitutive mechanism”; that “the mind—and not reality—sets the terms for knowledge”; and that “reality conforms to reason, and not vice versa” (p. 39).

In the history of philosophy, Kant marks a fundamental shift from objectivity as the standard to subjectivity as the standard. . . .With Kant, then, external reality thus drops almost totally out of the picture, and we are trapped inescapably in subjectivity (pp. 39, 41)

“After Kant,” Hicks writes, “the story of philosophy is the story of German philosophy” (p. 42). The gap opened up by Kant between subject and object, reason and reality, was not to be closed, but rather “set the stage for the reign of speculative metaphysics and epistemological irrationalism in the nineteenth century” from Hegel to Nietzsche (p. 44). With Hegel, Nietzsche, and Heidegger come the formative influences of such Continental postmodernists as Foucault and Derrida, thinkers who gave expression to irrationalism in the twentieth century: “an agreement with Kant that reason is impotent to know reality; an agreement with Hegel that reality is deeply conflictual and/or absurd; a conclusion that reason is therefore trumped by claims based on feeling, instinct, or leaps of faith; and that the non-rational and the irrational yield deep truths about reality” (p. 57).

Hicks’s view that Kant is the decisive forerunner of postmodernism’s anti-realist, anti-reason posture may come as something of a surprise to those who see Kant not as initiating “the reign of . . . epistemological irrationalism in the nineteenth century” (p. 44), but rather as one who punctured the pretensions of the “pure” use of reason if only to emphasize the possibility of a universally valid rational method in philosophy. Moreover, it is a matter of some dispute whether Hicks is correct in his account of Kant’s religious motivation. He writes that Kant was so alarmed by “the beating that religion had taken at the hands of the Enlightenment thinkers” that he resolved to put reason “in its proper, subordinate, place” (p. 29). It is also open to dispute whether Kant was a kind of Kierkegaardian fideist, as he sometimes appears to be in these pages. Nevertheless, Hicks is clearly justified in calling into question Kant’s notion of noumenal reality—an idea as decisive for Kant’s philosophy as it is dubious. But I shall not take up these vexed questions of Kant exegesis and interpretation because even if Hicks were mistaken here, his account accurately reflects how Kant’s ideas have been *taken* by a great

many thinkers, and that is what is central to his purpose. For he means to sketch the historical background of philosophical and political ideas that yielded up postmodernism, and the answer to that question is presumably independent of the question whether everything in that background is itself false.

Here the curtain falls on what might be called Act One of Hicks's production, with Heidegger busily repudiating logic and reason, all the better to exalt emotion and feelings; with Foucault "reducing knowledge to an expression of social power"; with Derrida turning language via deconstruction into "a vehicle of aesthetic play"; and with Rorty gleefully chronicling the epistemological and metaphysical failures of the realist and objectivist tradition (p. 81).

4. Postmodernist Politics and the Left

Act Two (chapters four, five, and six) connects epistemology to politics, skepticism to socialism. Hicks observes that "Postmodernists are monolithically Left-wing in their politics" (p. 84), and moreover that those habits of reason, civility, tolerance, and fair play, so characteristic of "the modernist package of principles," have been "least practiced and even denounced" among the far Left—"particularly among those postmodernists most involved with the practical applications of postmodernist ideas or with putting postmodernist ideas into actual practice in their classrooms and in faculty meetings . . ." (p. 85). Given the absence of "a roughly random distribution of commitments across the political spectrum," it would seem that epistemology alone is not sufficient to explain postmodernism.

Enter postmodern politics. In a lengthy chapter on "the climate of collectivism," Hicks argues that four of socialism's major claims—that capitalism is exploitative; that socialism, by contrast, is humane and peaceful; that capitalism is less productive than socialism; and that socialist economies will usher in a new era of prosperity—have been refuted both in theory and in practice, throwing Left-socialist intellectuals into crisis (pp. 86-88). Hicks provides helpful discussions of Rousseau's collectivism and statism, Kant on collectivism and war, Herder on multicultural relativism, Fichte on education as socialization, Hegel on state-worship, and the rise of National Socialism. The upshot of these developments is that "the National Socialists and the collectivist Right were wiped out physically and discredited morally and intellectually. The new battle lines were simplified and starkly clear: liberal capitalism versus Left socialism" (p. 134). The stage is thus set for Hicks's discussion of Marx and the New Left, which picks up the threads of anti-reason, non-rational commitment, impatience, demoralization, rage, and calls for revolutionary violence (pp. 135-70).

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The rise of Left terrorism in nations other than those controlled by explicitly Marxist governments was a striking feature of the 1960's and early 1970's. Combined with the broader turn of the Left to non-rationalism, irrationalism, and physical activism, the terrorist movement made that era the most confrontational and bloody in the history of the Left socialist movements of those nations.

But the liberal capitalists were not entirely soft and complacent, and by the mid-1970's their police and military forces had defeated the terrorists, killing some, imprisoning many, driving others underground more or less permanently. (p. 170)

With the collapse of the New Left and the socialist movement generally, four figures in the postmodernist movement came into prominence: Foucault, Lyotard, Derrida, and Rorty.

All four of these postmodernists were born within a seven-year span. All were well trained in philosophy at the best schools. All entered their academic careers in the 1950's. All were strongly committed to Left politics. All were well aware of the history of socialist theory and practice. All lived through the crises of socialism of the 1950's and 1960's. And come the end of the 1960's and early 1970's, all four had high standing in the professional academic disciplines and high standing among the intellectual Left. (p. 172)

Accordingly, it was these four academic foes of capitalism, whose tactics and weapons were not those of the politician, activist, revolutionary, or terrorist, "who signaled the new direction for the academic Left" (p. 172).

In order to explain the connection between postmodernist epistemology and politics, it will be helpful to depart from Hicks's narrative long enough to matte in some context for postmodernist academic ideology and to illustrate this here and in the next section, adding a few examples of my own. Radical political trends in academic philosophy that emerged in the 1960s and 1970s did not wither away, but instead gathered force and continue to have dramatic practical effects that are still very much in evidence on campuses across the country. Thomas Kuhn's insistence on the subjectivity of scientific paradigms, Feyerabend's epistemological anarchism ("anything goes"), and Rorty's "philosophy as conversation" became rallying cries for a full-dress relativism. At the same time, colleges and universities began a regime of race and gender preferences in admissions and hiring under the guise of "diversity" and "representativeness"—an evasive rhetoric designed to cloak the diminished importance of intellectual mastery of a subject. Faculty hiring decisions became increasingly constrained by statistical grids. Goals and timetables (if not *de facto* quotas) became an indispensable part of the

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selection process, and a cadre of compliance officers swelled the administrative ranks as the great experiment became entrenched.

The problem is that once the university embraced the relativism of political radicalism and the distributive criteria of affirmative action, it was forced to accept the idea that *everything is permitted*. The distinction between argument and propaganda, between carefully marshaled evidence and inflammatory posturing was contested and finally abandoned. Now anything was intellectually respectable as long as it was “conversation”—and what could *not* be construed as conversation?—allowing all comers a place at the table or in the seminar room. Of course, far from welcoming all views, the academic Left had an agenda of intellectual and political orthodoxy as rigid and authoritarian as the “canon” of the white heterosexual male hegemony it so despised. One of the most inventive sections of the second half of Hicks’s book is his discussion of the “Kierkegaardian,” “Reverse Thrasymachean,” “Machiavellian,” and “Ressentiment” strategies postmodernist thinkers use to connect their relativistic epistemology and dogmatic political commitments. The first develops sophisticated epistemological strategies for attacking the reason and logic which led to problems with the socialist vision of society (p. 180). The second involves marshaling subjectivist and relativist arguments to support the postmodernist claim that justice is the interest of the weaker and historically oppressed groups (p. 183). The third uses relativistic epistemology as a rationalization or rhetorical political strategy to throw opponents off-track (p. 186). I discuss the fourth strategy, “ressentiment” postmodernism, in Section 5 below.

As the pendulum swung to the Left, the intellectual and cultural life of the university became destabilized. Hicks does a good job of exposing the irony of those who (as I would put it) insisted that you were not to disassociate yourself from those to whom you felt no particular sympathy, but who also insisted that you *must* disassociate yourself from those who offended *their* sensitivities—the “dominant powers,” which meant the usual suspects: the Department of Defense, the “oppressor state” of Israel, the business community, the wealthy, recruiters associated with the military and the intelligence community, conservative think tanks, and anyone else who went against the grain of Left political engagement. Sometimes these strictures took on a vaguely comic aspect. The author of a text I once assigned for an undergraduate course in philosophy of mind insisted on putting ‘they’ and ‘their’ in place of singular impersonal pronouns because he regarded the use of the masculine pronoun in impersonal contexts as “pernicious.” Accordingly, he adopted the plural pronoun throughout his text even when strict grammar required a singular. The habit of thought, you see, comes to be as automatic as that, with no concern for the sweeping generalization, as if all uses of the masculine pronoun in impersonal contexts were injurious and the

simple expedient of alternating ‘he’ and ‘his’ with ‘she’ and ‘hers’ was not available.⁶

More often, however, the antagonisms were of vastly greater consequence, and the second half of Hicks’s book, which deals with postmodern political and educational strategies, amplifies and illustrates his second hypothesis about postmodernism:

Postmodernism is the academic far Left’s epistemological strategy for responding to the failures of socialism in theory and in practice.
(p. 89, emphasis in text)

Why, then, has the Left—and, I should add, not just “a leading segment of the political Left,” as Hicks puts it, but much of the intellectual and cultural Left generally—“adopted skeptical and relativist epistemological strategies” (p. 174)? Hicks’s answer is that if “postmodernism is born of the marriage of Left politics and skeptical epistemology,” then we should not be surprised to find that “confronted by the continued flourishing of capitalism and the continued poverty and brutality of socialism,” Left thinkers of the 1950s and 1960s would “stick to their ideals and attack the whole idea that evidence and logic matter” (p. 90).

5. Academic Noir: Postmodernist Nihilism

In a stunning final section, Hicks concedes that his explanations of postmodernism’s relativism and subjectivism, its Left politics, and the connection between them, do not come to grips with “a psychologically darker streak” running through postmodernism. This requires an explanation that goes beyond treating postmodernism as “a response to skepticism, a faith-response to the crisis of a political vision, or as an unscrupulous political strategy” (p. 191).

The situation is best illustrated in the context of recent academic controversy. As the opportunities to hire new faculty waxed and waned, the

⁶ A more balanced attempt at “handling the issue of gender equity” is made by Nicholas Rescher: “I propose to treat an otherwise undifferentiated *someone* as male,” he writes, “but an otherwise unidentified *person* or *agent* or *individual* as female. ... And I shall try to employ these two sorts of locutions in roughly equal proportions.” Nicholas Rescher, *Luck: The Brilliant Randomness of Everyday Life* (New York: Farrar, Straus and Giroux, 1995), p. 216 n. 9. But old stereotypes die hard, and despite his genuine effort to “achieve fairness while nevertheless averting the barbarism of a constantly repeated his or her” (ibid.), this does not prevent Rescher from referring to the “confidence man” and “con man”—instead of the more neutral “con artist” or “confidence trickster”—who dupes the unwary female out of her life savings (ibid., p. 28).

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university became the main repository of postmodernist influence, and the alienated and disaffected, the irresponsible and preposterous, came and went, affecting the thought and practice even of those who would not normally be characterized as postmodernists themselves.

Let us consider some inconsistencies. Most academics believe, or would say they believe, the theory of evolution, for by their own account they are scientifically up-to-date. (Many are, for good measure, resolutely irreligious.) But they distance themselves from the theory of evolution when what is at issue is whether there is a biological basis for attitudinal or behavioral differences between men and women, as Lawrence Summers learned to his dismay. More tellingly, many in the academy believe that the mass of people are prone to false consciousness, rationalization, wishful thinking, and other cognitive disabilities that badly distort their politics and their capacity for free choice in the marketplace, even as they repudiate the very notions of truth and objectivity. A third case is that despite paying lip-service to equality and diversity, many Leftists think nothing of invoking cultural stereotypes to denigrate white Southern males generally, whom they call “rednecks” and “cowboys.” Of course, the same people are censorious when others fail to uphold the requisite gender, race, class, and sexual-disposition sensitivities. Hicks provides additional examples of this pattern of inconsistency: “all cultures are equally deserving of respect, but Western culture is uniquely destructive and bad”; “values are subjective, but sexism and racism are evil”; “technology is destructive and bad, and it is unfair that some have more technology than others” (p. 184). Hicks also supplies examples of contradictions between postmodernist theory and historical fact: “the West is deeply racist”—but the West ended slavery, and only in places where Western ideas are on the ascendancy are racist ideas in decline; “the West is deeply sexist”—but women in the West were the first to get suffrage, contractual rights, and opportunities that most women in the rest of the world utterly lack; “Western capitalist countries are cruel to their poor”—but the poor in the West are far better off than the poor anywhere else in the world (p. 185).

How are we to explain the postmodernist oscillation between subjective relativism and dogmatic absolutism illustrated in these inconsistencies (not to mention the contradictions between postmodernist theory and fact)? As Hicks asks, is the relativism primary and the absolutist politics secondary? Are the absolutist politics primary, advanced by the rhetoric of relativism? In the end, Hicks suggests that “both the relativism and the absolutism coexist in postmodernism, but the contradictions between them simply do not matter psychologically to those who hold them . . . because for them ultimately *nothing* matters” (pp. 186, 192, emphasis in original).

Nihilism, never refuted but subdued for so long that it was not thought necessary to take it seriously, has returned with a vengeance and now

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has its defenders even among—especially among—academics. Hicks brings Act Two to a striking climax with an apocalyptic revelation: *postmodernism is a nihilism*.

Hicks supports this thesis with verve and imagination, quoting postmodernists to convict them out of their own mouths. In a fitting irony, he uses the nihilists' own Saint Nietzsche against them, applying Nietzsche's concept of *ressentiment* as a diagnostic tool for explaining postmodernist strategies. Nietzsche, of course, used *ressentiment* in his account of master and slave morality. It is worth quoting Hicks at length:

Slave morality is the morality of the weak Weaklings are chronically passive, mostly because they are afraid of the strong. As a result, they cannot get what they want out of life. They become envious of the strong, and they also secretly start to hate themselves for being so cowardly and weak. But no one can live thinking he or she is hateful. And so the weak invent a rationalization—a rationalization that tells them they are the good and the moral *because* they are weak, humble, and passive. . . . And, of course, the opposites of those things are evil—aggressiveness is evil, and so is pride, and so is independence, and so is being physically and materially successful. (p. 193)

In our time, “Socialism is the historical loser,” and socialists “will hate that fact, they will hate the winners for having won, and they will hate themselves for having picked the losing side. Hate as a chronic condition leads to the urge to destroy” (p. 194). But they will not limit their rage to political failure:

Postmodern thinkers hold that not just politics has failed—*everything* has failed. Being, as Hegel and Heidegger taught us, really has come to nothing. Postmodernism, then, in its most extreme forms, is about driving that point home and making nothing reign. (p. 194)

Hicks makes it clear that Leftist acrimony is a deeply burnished feature of the postmodernist armory. “In the modern world,” he writes, “Left-wing thought has been one of the breeding grounds for destruction and nihilism” (p. 192). Its rage is barely concealed, aesthetically as well as politically, which is why when Hicks comes to central themes in twentieth-century art, he writes (alluding to the motto of the Dada movement, “Art is shit”) that “postmodernism is a generalization on Dada's nihilism. Not only is art shit, everything is” (p. 197).

The thesis that postmodernism engaged and succumbed to nihilism is illustrated in Hicks's discussion of Marcel Duchamp's version of the *Mona Lisa*, with the cartoonish moustache added by Duchamp, and Robert

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Rauschenberg, who “took Duchamp a step further. Feeling that he was standing in the shadow of Willem de Kooning’s achievements, he asked for one of de Kooning’s paintings—which he then obliterated and then painted over” (pp. 198-99). Hicks says that these works made the statements “Here is a magnificent achievement that I cannot hope to equal, so that instead I will deface it and turn it into a joke” and “I cannot be special unless I destroy your achievement first,” respectively (pp. 198-99). No wonder deconstruction—the “literary version of Duchamp and Rauschenberg” (p. 199)—is “arrayed primarily against works that do not square with postmodern commitments” (p. 199).

Deconstruction has the effect of leveling all meaning and value. If a text can mean anything, then it means nothing more than anything else—no texts are then great. If a text is a cover for something fraudulent, then doubt about everything apparently great creeps in. (p. 199)

Hicks’s analysis at this point has an edgy ingenuity to it, seeing the hostage art gives to nihilism as symptomatic of the twentieth century’s characteristic malaise, with all of the postmodernist pathologies it reflects. To be sure, some minor inaccuracies have found their way into his account of Rauschenberg, who completely erased (not painted over) a drawing (not a painting) given to him by de Kooning (who was involved in the project from the start, even if only reluctantly), for the express purpose of determining “whether a drawing could be . . . created by the technique of erasing.” Rauschenberg tells us he spent a month, and forty erasers, trying to do just that. He then framed, dated, and gave the item the title *Erased de Kooning Drawing* and exhibited the erasure as his own work of art.⁷ In this respect, the enterprise may be thought to bear a family resemblance to *4’33”*—the notorious piano piece by the composer John Cage, which consists of a pianist sitting at a keyboard for exactly 4 minutes and 33 seconds without playing a note. In both cases it is arguable that we do not have an art work here at all, to say nothing of one which sends a message of nihilism. But perhaps Hicks only means that the *antics* involved in the process of erasing the de Kooning drawing (or, in the cases of Duchamp and Cage, the act of painting a moustache on the *Mona Lisa* or sitting at a piano keyboard in silence) together with the chutzpah of putting it forward as an artwork of one’s own, is the vehicle of the nihilistic message.

⁷ See Rauschenberg’s account, from which I have quoted, in *Anecdotes of Modern Art*, ed. Donald Hall and Pat Corrington Wykes (New York: Oxford University Press, 1990), pp. 347-48. Of course, one may not wish to credit Rauschenberg’s account of his own intentions.

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In any case, I take it that Hicks's remarks in this context are further illustrations of postmodernism's descent into nihilism:

To the postmodern mind, the cruel lessons of the modern world are that reality is inaccessible, that nothing can be known, that human potential is nothing, and that ethical and political ideals have come to nothing. The psychological response to the loss of everything is anger and despair. (p. 198)

So goes Hicks's diagnosis of postmodernist nihilism's attack on "the Enlightenment's sense of its own moral worth":

Attack it as sexist and racist, intolerantly dogmatic, and cruelly exploitative. Undermine its confidence in its reason, its science and technology. The words do not even have to be true or consistent to do the necessary damage. (p. 200)

Of course, as Hicks acknowledges, identifying the roots of postmodernism and linking them to contemporary nihilism does not refute the doctrine. As the curtain comes down on page 201, one waits in vain for Act Three. Hicks knows he has an unfinished agenda "essential to maintaining the forward progress of the Enlightenment vision and shielding it against postmodern strategies," namely, a refutation of postmodernism's historical premises as they are found in Rousseau, Kant, and Marx and an articulation and defense of the main alternatives to them (p. 201). Let us hope that Stephen Hicks will apply the historical understanding, analytical insight, and argumentative skills so much in evidence in *Explaining Postmodernism* to complete the work that remains to be done.

Putnam, Hilary. *The Collapse of the Fact/Value Dichotomy and Other Essays*. Cambridge, MA: Harvard University Press, 2002.

It has long been a dogma in some quarters that value judgments are radically different from factual judgments, that they are “subjective” or “untestable” in a way that factual judgments are not. This fact/value dichotomy has become so widely accepted that I can recall my high school teachers in the 1970s reciting it as an uncontroversial truism; and even my college students today, most of whom are religiously conservative Alabamians unlikely to harbor sympathies for ethical relativism, can be counted on to confront assertions in ethics with the question “Who’s to say what’s right or wrong?” on the clear assumption that the question is unanswerable.

During the first half of the twentieth century the fact/value dichotomy was also widely accepted among academic philosophers. (Indeed, their authority probably helped to win respectability for the doctrine in broader intellectual circles.) In the previous few decades, however, support for the dichotomy, while still strong across most of the academy, has begun to crumble in philosophy departments. Putnam’s *The Collapse of the Fact/Value Dichotomy* helps to explain why.

Any plausible short list of the most important philosophers of the twentieth century would have to include the name of Hilary Putnam; everyone working today in philosophy of mind, philosophy of language, or philosophy of science toils in the shadow of his revolutionary achievements. *Collapse* is not, and makes no claim to be, one of those revolutionary achievements; as Putnam freely acknowledges, many of the book’s central points have been made previously by other philosophers. But for that very reason this short book serves as a valuable introduction to the sorts of considerations that have been moving a growing number of thinkers to reject the fact/value dichotomy. (For that matter, many of the ethical and epistemological points that Putnam wants to make can be found already in the ancient Greek philosophers; the first attack on value-free economics, for example, was Plato’s dialogue *Hipparchus*.)

One of the chief props of the fact/value dichotomy has been the closely related analytic/synthetic dichotomy. (Putnam has a general suspicion [p. 9] of dichotomies, or “philosophical dualisms.”) According to this latter dichotomy, every true judgment must be either analytic or synthetic; analytic judgments are logical tautologies, “true by definition,” while synthetic judgments are substantive claims whose truth or falsity—according to the

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most popular version of the dichotomy—can only be determined by empirical test. Value judgments are substantive claims, and so presumably aren't analytic; but there doesn't seem to be any way to test them empirically, so they must not be synthetic either. Hence, the analytic/synthetic dichotomy forces its proponents to the conclusion that value judgments have no place among truths at all.

Putnam raises a familiar problem for the analytic/synthetic dichotomy: We are never in a position to test any empirical statement *singly*, since such testing always takes place against background assumptions which are themselves open to revision. No empirical test can by itself determine whether what needs to be revised is the statement being tested or one of the background assumptions; such decisions can only be made by weighing all of our beliefs against one another and making comparative judgments concerning their plausibility, centrality, etc. But obviously *this* sort of evaluation can be done as easily for value judgments as for factual judgments; hence, value judgments are *no less testable* than factual judgments. Putnam concludes that ethical discourse is *objective*—without thereby being committed to the existence of ethical features intrinsic in reality, external to our practices of valuing, with which we mysteriously interact.

Another point Putnam makes against the fact/value dichotomy is that the case for rejecting the factual status of *ethical* or *aesthetic* values would, if it worked, have to apply with equal force against *epistemic* values. Yet any claim to *factual* knowledge that we possess must rely on principles of belief-justification and theory choice that are themselves normative. An upholder of the dichotomy (call her a dichotomist) might try to define these epistemic values in purely descriptive terms, as those methods of investigation that have been shown to lead us reliably to the truth; but as Putnam points out, we have no “way of telling that we have arrived at the truth *apart from* our epistemic values” (p. 32), and so we cannot identify which epistemic value judgments are truth-conducive without already relying on such judgments to begin with. Scientific practice's dependence on value judgments is thus irreducible. (Putnam's critique of value-freedom in science is of course not a critique of *objectivity* in science, since he does not regard value judgments as non-objective.)

Another problem for the fact/value dichotomy is the existence of “thick” ethical concepts, that is, terms that include both descriptive and evaluative aspects; standard examples are “cruel” and “courageous.” Dichotomists usually argue that the descriptive and evaluative aspects are *separable components*—that to call someone courageous, say, is to make a factual judgment that she is unusually willing to face danger, along with a *distinct* value judgment approving of this trait. Now this analysis might work for some terms that mix description with evaluation (racial epithets, for example); but, as Putnam points out, it does not work for “courageous”—or

most of the other normative concepts that interest us. To be courageous is not just to be unusually willing to face danger; otherwise, rushing into a burning building to rescue one's ham sandwich would be a clear act of courage, and it isn't. It is part of the concept of courage that a danger's not being *worth* facing counts—at least somewhat—against calling those who face it courageous. Putnam concludes (following Plato in the *Laches*) that there is no *value-neutral* way to identify what all courageous acts or persons have in common, and so there is no way of *separating* the normative from the descriptive aspects of courage in the way dichotomists require.

The absence of a value-neutral way of applying thick concepts implies, Putnam tells us, that “if one did not at any point share the relevant ethical point of view one would never be able to acquire a thick ethical concept,” and so that “sophisticated use of such a concept requires a continuing ability to identify (at least in imagination) with that point of view” (pp. 37-38). This seems right. But Putnam is too quick, I think, to deny the further Platonic inference that “anyone who uses [an evaluative term] without hypocrisy or insincerity must be *motivated* to approve (or disapprove)” of what the term refers to. To regard something as good, I would argue, is to regard it as an appropriate object of endorsement; and in granting that something is an appropriate object of endorsement *one has thereby endorsed it already*. But just as (Wittgenstein showed) we cannot intelligibly interpret someone as believing that the left fork leads to Ennis without attributing to her *some* (defeasible) tendency to take the left fork when she wants to get to Ennis, so we cannot intelligibly interpret someone as endorsing, say, a rule of action without attributing to her *some* (defeasible) tendency to act in accordance with that rule. Hence, there is a conceptual link between regarding something as worth doing and being disposed to do it. Putnam thinks apathy, depression, and weakness of will are counterexamples (p. 71); but I do not see how they are anything more than counterexamples to the claim that value judgments provide *overriding* motivations for action, which is a stronger claim than the one I've been defending. (After all, an agent can be torn by *conflicting* value judgments of varying strengths; to be motivated is not to be *decisively* motivated.)

Readers of this journal will have noted several points of contact between Putnam's views and those of Ayn Rand: the rejection of the fact/value and analytic/synthetic dichotomies; the suspicion of philosophical dichotomies generally; the emphasis on the *contextual* nature of empirical testing; the acceptance of ethical objectivity while denying “intrinsic” ethical features; and the conscious invocation of an ancient Greek understanding of ethical concepts. Putnam does discuss Rand briefly (pp. 114-15), but in a way that suggests little recognition of these affinities. He seems to have a rather simplistic picture of what Randian “egoism” (or “egotism,” as Putnam calls it) is supposed to be, and he describes her central ethical commitment as a

“rejection” of the Kantian principle that “one must act so as to treat others always as an end, and not as a mere means”; given Rand’s frequent and explicit insistence that *man is an end in himself, not a means to the ends of others*, this charge at the very least needs more defense than Putnam gives it. Putnam also maintains that the entrepreneur-heroes in Rand’s novels unethically “manipulated people . . . via their control of capital” (with no defense of this idiosyncratic conception of “manipulation” offered), and dismisses Rand as too “amateurish” to be considered a genuine philosopher (which is an awkward judgment for Putnam to be making about a thinker who, whatever her philosophical failings, was able to come up, independently of Putnam, with a theory of reference and necessity strikingly like the one that is Putnam’s own chief claim to philosophical fame).

Since Putnam maintains that “in ethics we need both Aristotelian and Kantian insights,” and favors attempts to “reconcile a concern with human flourishing with Kantian ethics,” it is surprising that he rejects Christine Korsgaard’s argument for the conclusion that, *pace* Kant himself, Kantians should attach moral value to self-love. Korsgaard maintains that Kantian moral requirements make sense only in the context of a life that is *already* characterized, prior to those requirements, by the pursuit of its own ends; hence, the “denial of self-love is a route to normative skepticism and emptiness,” for “unless human beings place a value upon ourselves, there can be no reasons and values at all” (pp. 173-74). To this Putnam replies as follows:

But surely no one ever, say, ate a pastrami sandwich because they decided to make the maxim of acting on those of their desires which are not morally or prudentially wrong into a law *because they didn’t see any other way to avoid normative skepticism*. Even as a rational reconstruction, this is unbelievable. (p. 174)

Putnam is of course right to dismiss Korsgaard’s account as an *explanation*—whether actual or “rationally reconstructed”—of anyone’s eating a pastrami sandwich; but it hardly follows that it isn’t a good argument for the *moral value* of eating a pastrami sandwich. Recognizing that moral principles depend for their intelligibility on the moral value of self-love would have brought Putnam into still closer affinity with Aristotle and Rand.

Readers of this journal may be wondering how Putnam’s arguments apply to Austrian economics, with its aspiration to “value-free” analysis. Putnam, in fact, devotes several chapters of *Collapse* to exploring the implications of his thesis for economic theory, and much that he says is strongly reminiscent of what the Austrian School has been saying for decades—*e.g.*, his critiques of positivist methodology, mathematized utility functions, and unrealistic *homo œconomicus* models of rationality echo Mises

and Hayek, while his charge (pp. 54-56) that Pareto-optimality is not truly value-neutral, and is neither necessary nor sufficient for a desirable social order, echoes Murray Rothbard and Walter Block.

Unfortunately, Putnam seems unfamiliar with the Austrian tradition. His ideal economist is Amartya Sen, of all people; reading Putnam, one might indeed form the impression that no economist other than Sen had ever criticized the neoclassical mainstream. Of course, Putnam, as a social democrat, would find the Austrian critique, which attacks the mainstream from the libertarian left, far less politically useful than Sen's, which attacks the mainstream from the social-democratic right. (I use the terms "left" and "right" in their precise rather than their popular sense.)

Putnam's discussions of diminishing marginal utility (p. 53) and preference transitivity (p. 81) show that he knows of only the *psychological* interpretation of these principles; certainly, his lengthy critique of preference transitivity in chapter 5 is completely irrelevant to the Austrian version of that doctrine, which is about preferences expressed *in action*. Putnam's discussion of Habermasian "discourse ethics" likewise takes no account of the contributions of recent Austrians like Shearmur, Madison, and Hoppe to that tradition. It's particularly regrettable that Putnam doesn't discuss Hayek's seminal 1942 article "The Facts of the Social Sciences," which he ought to find quite congenial.

Do Putnam's arguments endanger Austrian value-freedom? I don't think so. They certainly endanger the view that judgments of ultimate value are inherently arbitrary and beyond rational discussion; but while some Austrians (e.g., Mises and Hazlitt) have held this view, others (e.g., Menger and Rothbard) have not. The sense in which Austrian economics is value-free is that the economist's argument that a certain policy will have a certain result is not supposed to depend on the economist's evaluation of the desirability of either the policy or the result; Rothbard in particular has argued that economics can and should be value-free in *this* sense *without* being value-free in the distinct sense of denying any way of objectively assessing the desirability of policies or consequences. As Rothbard liked to point out, advocates of minimum wage laws, say, could happily accept the Austrian demonstration that these laws increase unemployment, if they thought unemployment was not such a bad thing.

Now it may well be true, as Putnam suggests, that we need to accept certain epistemic value judgments in order to conduct scientific inquiry, as well as certain ethical value judgments in order to be able to identify economic categories in practice—to engage in the process of hermeneutic understanding that both Putnam (p. 25) and the Austrians call *verstehen*. But these requirements seem consistent with the rather narrowly delimited sense of value-freedom that Austrians champion. So long as economists can explain the effects of a particular policy without presupposing any evaluation of *that*

policy or its effects, the fact that *other* evaluations must be presupposed need not perturb us.

The subtext of Putnam's critique of value-free economics is a political one: He thinks that the refusal to allow value judgments into economics creates the illusion that the free market is "efficient," and he evidently hopes that reintroducing values will strengthen the case for governmental intervention. If Mises is right, however, the efficiency of the market is going to be relatively *invariant* across differences in civilized values; one need have only a general preference for cooperation over conflict, prosperity over poverty, and more options over fewer—preferences that few moral theories are likely to reject. Of course, Mises's theories might be wrong, but if so, then showing this will require engaging Mises's specifically *economic* arguments; bringing in value judgments will not be sufficient.

It's unclear whether he knows of Mises's Kantian *a priori* approach to economics; but Putnam attacks *a priori* theorizing, whether in economics or in ethics, on the grounds that knowledge of general theories presupposes knowledge of particular facts (and vice versa)—a thesis which he says "would be denied by Kantians who would argue that certain generalizations are *a priori*" (p. 137). This criticism is puzzling, since Kant famously maintained not only that thoughts without content are empty, but also that intuitions without concepts are blind; Kant grants that all conceptual knowledge begins *with* experience, while denying that it must therefore arise *from* experience. Hence, the fact that we cannot employ our concepts in the absence of experience is no objection to the Kantian version of apriorism, and so no objection to Mises.

The closest Putnam comes to discussing an Austrian theorist is his critique of Lionel Robbins, who was at least a semi-Austrian at the time of the methodological writings that Putnam discusses. (It was Robbins who brought Hayek to the London School of Economics in 1931.) Putnam speculates as to whether Robbins's prohibition on interpersonal utility comparisons was influenced by positivism or by Jevons (p. 53), apparently unaware that the chief methodological influence on Robbins was Mises. Of course, the Misesian case against interpersonal utility comparisons is based not on "skepticism concerning the possibility of knowledge of the states of mind of other people"—Putnam rightly dismisses this—but on the fact (pointed out by Mises in 1912, a full two decades before Robbins) that utilities are *ordinal* rather than cardinal, and so lack a common *unit* for interpersonal comparison.

Part of Putnam's hostility to the ban on interpersonal utility comparisons is provoked by the fact that it would bar one traditional argument for compulsory income redistribution—namely, that "the marginal utility of, say, a thousand dollars to someone at the point of going hungry or becoming a homeless beggar is greater than the marginal utility of a thousand dollars to, say, Bill Gates" (p. 53), and so redistributing those thousand dollars from

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Gates to the beggar would increase overall social utility. What Putnam fails to see is that “utility” in the *economic* sense describes the structure of *preferences*, and so utility comparisons make sense only in the context of a single agent; “I prefer X to he prefers Y” is nonsense.

Nothing in Austrian theory rules out interpersonal *eudaimonic* comparisons, based on an objective theory of human flourishing, say; but this would not be an *economic* comparison—not because it involves values, but because it involves *preference-transcending* values. Without preference-transcending values, the case for compulsory redistribution is blocked. And once we invoke preference-transcending values, issues of rights and liberty come into play—and the case for compulsory redistribution is arguably blocked once again.

The Collapse of the Fact/Value Dichotomy is a book that libertarians should welcome. Putnam has given us an excellent introduction to what I will optimistically call an emerging philosophical consensus on the legitimate role of value judgments in objective social science; and the aspects of the book that are intended to undermine the case for free markets actually strengthen that case, by bolstering the “Austro-Athenian” perspective generally.

Roderick T. Long
Auburn University

Kimball, Roger. *The Rape of the Masters: How Political Correctness Sabotages Art*. New York: Encounter Books, 2004.

Art historians contextualize art. We shed light on little known facts, elucidate meaning and intent, provide clarity and insight. We also destroy. Many art historians seem bent on dissecting and scrutinizing works of art to the point of having them be unrecognizable, an endeavor often fueled by personal agendas and far-fetched theories. In *The Rape of the Masters*, Roger Kimball has chosen seven relatively well-known works of art that have fallen prey to this destructive trend. The works under discussion in the *The Rape of the Masters* are: *The Quarry (La Curee)*, 1856, by Jean Désiree Gustav Courbet; *Untitled*, 1953, by Mark Rothko; *The Daughters of Edward Darley Boit*, 1882, by John Singer Sargent; *Drunken Silenus*, 1618, by Peter Paul Rubens; *The Gulf Stream*, 1899, by Winslow Homer; *Spirit of the Dead Watching*, 1892, by Paul Gauguin; *A Pair of Shoes*, 1886, by Vincent Van Gogh; and *Las Meninas*, 1656, by Diego Rodriguez Velazquez. Kimball reclaims these works and restores them to their rightful place as examples of superior craftsmanship, artistic brilliance, and, first and foremost, examples of art works from specific times and places in history. Through this reclamation project, Kimball succeeds in demonstrating the dangers, pitfalls, and myopic vision that can hinder one's understanding of art. Many artists, art historians, patrons, and students of art would benefit from reading *The Rape of the Masters*. This is an excellent cautionary tale about how far off track one can really go if allowed to completely dismiss the work of art that is right in front of you in favor of personal agendas, theories, and current trends.

Kimball begins his reclamation by discussing Courbet's *The Quarry*, which depicts a deer strung up to a tree by its hind leg while a man relaxes against a tree. Most observers of *The Quarry* would conclude that Courbet has rendered the conclusion of a successful hunt. According to art historian Michael Fried, however, the work is really about male castration. Fried supports this idea by discussing at length what is *not* seen and what is *not* depicted. Kimball quotes Fried as saying:

For one thing, I am attaching considerable significance to a "side" of the roe deer we cannot see as well as to a bodily organ that isn't actually depicted. For another, the hunter isn't looking at the roe deer but faces in a different direction. But I would counter that we are led to imagine the roe deer's genitals or at any rate to be aware of their existence by the exposure to our view of the roe deer's anus, a metonymy for the rest I would further suggest that, precisely because the roe deer's anus stands for so much we cannot see—not simply the roe deer's genitals and wounded underside but an entire

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virtual face of the painting—such an effect or equivalence or translatability may be taken as indicating that the first, imaginary point of view is more important, and in the end more “real,” than the second.

When, Kimball rightly asks, has the imaginary side become more important than the actual painting? And when should the interpretation of an art historian trump the insights of the actual artist? Kimball properly steers us to Courbet’s correspondence with his students in 1861 where he stated (emphasis Courbet’s):

I also believe that painting is an essentially **concrete** art and can only consist of the representation of **real and existing** objects. It is a completely physical language that has as words all visible objects, and an **abstract** object, invisible and non-existent, is not part of painting’s domain. Imagination in art consists in knowing how to find the most complete expression of an existing object, but never in imagining or in creating the object itself.

By pitting the art historian against the words of the artist, Kimball is able to show to what extremes interpretations of art have gone and how we as art historians are losing sight of, if not outright dismissing, the artist’s original intent. Kimball deftly chronicles how artists such as Rothko, Sargent, Rubens, Homer, Gauguin, Van Gogh, and Velazquez have fallen victim to interpretations based on everything from sexism, racism, and feminism to Marxism and Freudianism. Discussions of aesthetics, taste, and quality are rarely employed by many art historians, nor the context in which the work was produced or the influence of patrons. The contrast between what has recently been written about works of art to what the artists intended is often astonishing, sometimes embarrassing, and frequently comical. An interpretation of a Von Gogh painting by Martin Heidegger manages to be all three. As Kimball tells us:

Here we have a painting of a well-used pair of ankle-high leather shoes, half unlaced, standing by themselves on a yellowish-orangish-brown surface. We all know what shoes are. Or do we? Heidegger urges us to look more closely. “The peasant woman wears her shoes in the field Only here are they what they are A pair of peasant shoes,” Heidegger tells us, “and nothing more. And yet—“From the dark opening of the worn insides of the shoes the toilsome tread of the worker stares forth. In the stiffly rugged heaviness of the shoes there is the accumulated tenacity of her slow trudge through the far-spreading and ever-uniform furrows of the field swept by a

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raw wind. On the leather lie the dampness and richness of the soil.
Under the soles slides the loneliness of the field-path as evening falls
....”

Heidegger goes on, but there is no need for us to follow him. Rather, Kimball suggests that we should follow Gauguin, who, while living with Van Gogh, discussed this very painting with him. According to Gauguin, the shoes are Van Gogh’s, not a peasant’s, and he placed a great deal of sentimental value on the shoes because he wore them during the time in his life when he was a priest and serving a mining community. While serving this community, Van Gogh took charge of nursing back to health a severely injured miner who by all accounts was not supposed to live. This is not as creative as Heidegger’s interpretation, to be sure, but no less interesting, and surely no less important.

However, this seemingly reasonable notion—that the artist is the best interpreter of his or her works—is turned on its head by the statements chosen by Kimball that are attributed to Mark Rothko. Rothko’s *Untitled*, 1953, is a non-representational work of various shades of yellow and black rectangular blocks. Despite the fact that the style is undeniably Abstract, Rothko denied it. He also denied that he was a colorist. In fact, during the height of his artistic production, he is quoted as saying, “Abstract art never interested me; I always painted realistically. My present paintings are realistic.” Kimball’s inclusion of Rothko unfortunately undermines his argument and in essence gives license for art historians to see what they wish. Kimball fails to reconcile Rothko’s personal beliefs about his work with what logic tells us it is, and the reason for this is rather straightforward: It is irreconcilable. Rather than relying so heavily on subjective interpretations, even those of the artist, to make his point, Kimball might well have asked his readers to be guided solely by simple common sense. Indeed, this is in fact the approach he takes most of the time, and for that reason, *The Rape of the Masters* is refreshingly poignant. It is also humorous and inspiring. It may even be cause for hope. Perhaps, upon reading it, art historians will begin to lay down their intellectual brushes and learn to appreciate what is already there.

Brenda Molife
Bridgewater State College