

Palmer, Tom G. *Realizing Freedom: Libertarian Theory, History, and Practice*. Washington, DC: Cato Institute, 2009.

As presented by academic philosophers and economists, libertarianism can seem otherworldly, a clever but impractical exercise in utopian theorizing. As presented by journalists and in popular culture and electoral politics, libertarianism can seem more a sensibility than a system of thought, a set of policy preferences and cultural attitudes which despite their piecemeal practicability and influence, add up to something less than a coherent philosophy. The great strength of Tom G. Palmer's work is that it combines the intellectual muscle of the academic theorist with the broad appeal of the journalist and the realism of the policy maker. Palmer is neither a pie-in-the-sky ideologue nor a muddleheaded popularizer, but a principled thinker sensitive to both the indispensability and the limits of theory. He is the sort of libertarian writer non-libertarians (and us ex-libertarians) need to take the most seriously. Ample evidence for this judgment is provided by the academic and popular essays collected in *Realizing Freedom*. Whether expounding his brand of libertarianism, applying it to concrete issues, or responding to critics of libertarianism, Palmer is unfailingly clear and interesting, even when one is inclined to disagree with him. He is also sometimes acerbic, sometimes witty, and sometimes both at once. (His targets are usually asking for it.)

Like Robert Nozick and Murray Rothbard, Palmer grounds his libertarianism in a doctrine of natural rights. Unlike too many rights theorists (libertarian and otherwise), though, Palmer's understanding of rights is deeply informed by the history of rights theory, and in particular by knowledge of the complex historical circumstances under which the notion of natural rights evolved. Specifically, he emphasizes the Aristotelian approach to ethics in light of which Scholastic natural law theorists developed the notion of a natural right, and the role played in hammering out the content of natural rights by the medieval debate between Pope John XXII and the Franciscans over property, and by the late Scholastics' teaching on the moral status of the conquered American Indians. In general, Palmer insists upon testing moral theory against concrete human experience. He very effectively criticizes egalitarian philosophers like G. A. Cohen and Michael Otsuka for resting their arguments on undefended intuitions, bizarre and unrealistic thought experiments, and studied inattention to historical fact.

Palmer is also keen to emphasize that at the heart of the freedom that libertarians value most (or ought to value most) is the rule of law and the stability it provides. This rules out not only Saddam Hussein-style despotism but also the rights theories of Ronald Dworkin and Joseph Raz (which would allow rights to be overridden if some allegedly compelling collective interest

would be served thereby) and the redistributive schemes of egalitarians like Otsuka (which would entail the constant upsetting of property titles in order to maintain equality). But it also requires that government, while it needs to be strictly limited, nevertheless be strong enough to enforce the legal framework without which stable rights are impossible. (Palmer is no anarchist, nor does his preference for market solutions lead him to reduce all human relations to market relations.)

With all of this, even an unreconstructed Thomist (like me) is bound to agree warmly. There are, however, some weaknesses in Palmer's position, especially where he seeks to move beyond the case against big government and arbitrary power—a case a conservative could (and should) endorse—to affirm a strictly libertarian conception of rights and freedom. Like other libertarians, Palmer is sometimes too quick to think that identifying potential practical dangers in some non-libertarian view, or possible bad motives on the part of those who endorse it, suffices to discredit the view itself. In particular, his treatment of the notion of “positive liberty” or “substantive freedom” (which Palmer attributes to Plato, T. H. Green, and Amartya Sen) suffers from this defect. The idea of positive or substantive liberty is that freedom is valuable to the extent that it enables us to realize some end (of a moral sort, say) that is itself truly valuable. Palmer rightly points out that such a conception of freedom is politically dangerous insofar as it can be used to justify the tyrannical imposition on others of the questionable moral opinions of intellectuals and anyone else who happens to hold the levers of power, in the name of promoting “real” freedom.

But that the idea of “substantive freedom” can be abused and may be difficult safely to implement at the level of public policy does not entail that there is nothing of importance in it. Indeed, as the Catholic moral theologian Servais Pinckaers emphasizes, the philosophical premises from which moral theorists like Aristotle and Aquinas proceed—premises with which Palmer himself appears to sympathize, given the support they provide for a doctrine of natural rights—lead precisely to the conclusion that freedom in the fullest sense is “freedom for excellence,” that is, freedom to realize the ends set for us by natural law, and toward the pursuit of which the will is itself directed by its nature.¹ By contrast, the turn in modern thinking about freedom toward an emphasis on mere freedom from external constraints (what Pinckaers calls “freedom of indifference”) followed upon the nominalist revolution of William of Ockham. And given its denial of a universal human nature, nominalism is arguably destructive of the very possibility of an objective moral order, including any objective foundation for a doctrine of natural rights.

What Palmer fails seriously to consider, then, is the possibility that the very ends for which natural rights exist (at least on a natural law view) might entail limitations on those rights. To take only the most obvious

¹ See Servais Pinckaers, *The Sources of Christian Ethics* (Washington, DC: Catholic University of America Press, 1995).

example, if the reason I have a natural right to my life is that such a right is a necessary precondition of my fulfilling the ends the natural law has set for me, then it is hard to see how I could have a natural right to commit suicide. (Indeed, not only Thomists, but also non-Thomistic natural law theorists like Locke would deny that we can have such a right.) And in general, if the very point of natural rights is to safeguard our pursuit of what is good and obligatory for us under natural law, it is hard to see how we could have a natural right to do something that is *inherently* wrong or bad. Of course, that does not entail that government should always prevent us from doing what is inherently wrong or bad for us; there may be practical and indeed moral reasons why it should not do so. The point is that it is hard to see how an *absolute, in principle* prohibition on such government action, of the sort libertarians tend to insist upon, could be grounded in a natural rights theory that derives rights from our obligations under natural law, as the Scholastic and Lockean theories praised by Palmer do.²

It is also important to emphasize that there is more than one way in which a government might try to promote a substantive conception of freedom. Commanding certain positive actions—say, requiring citizens to attend church services on pain of fines or imprisonment—would (we can agree with the libertarian) surely be tyrannical. But it is hardly obvious that it would also be tyrannical to promote virtue in an entirely *negative* way, such as (for example) by keeping heroin use illegal—a policy which does not force anyone to *do* anything, but merely keeps a certain course of immoral action off the table. Again, none of this by itself implies that it really is, all things considered, either possible or advisable for government to promote any particular conception of positive freedom, even by merely forbidding certain actions rather than requiring any. That is a separate issue. The point is that the theoretical and practical issues are more complicated than Palmer seems to realize. One can endorse Palmer's objections to egalitarian redistribution and to any totalitarian, Plato's *Republic*-style enforcement of virtue, and still—for all Palmer has shown—consistently opt for a limited-government, market-friendly brand of conservatism rather than Palmer's thoroughgoing libertarianism.

In other ways, too, the philosophical foundations of Palmer's position might be more carefully developed. In the course of expounding and endorsing Locke's thesis of self-ownership, Palmer also appears to endorse Locke's account of personal identity. Now, as Palmer notes, Locke grounded

² Obviously, this raises all sorts of questions that I cannot address here. I develop and defend an Aristotelian-Thomistic approach to natural rights in general and property rights in particular in "Classical Natural Law Theory, Property Rights, and Taxation," *Social Philosophy and Policy* 27, no. 1 (2010), pp. 21-52, reprinted in *Ownership and Justice*, ed. Ellen Frankel Paul, Fred D. Miller, Jr., and Jeffrey Paul (New York: Cambridge University Press, 2010), pp. 21-52. I discuss Locke's approach to natural rights (and criticize it from an Aristotelian-Thomistic point of view) in my book *Locke* (Oxford: Oneworld Publications, 2007).

personal identity in continuity of consciousness: In Locke's view, I am the same person as my ten-year-old self because I have conscious memories of doing what my ten-year-old self did. Locke thus breaks the connection between personal identity and bodily identity, as his famous example of the prince whose consciousness is transferred into the body of a cobbler illustrates. Nevertheless, Palmer asserts that "Locke identified the person with an animated body" (p. 66), on the grounds that Locke's argument in the *Second Treatise* presupposes that the body is essential to the person. Palmer does not seem to recognize, much less resolve, the contradiction (or at least tension) that exists in Locke's position.

Nor is this merely a question of Locke exegesis. If personal identity really does reside in continuity of consciousness and has no *essential* connection to any particular body, then it would seem that a person's body is not, in the strict sense, a part of the person *himself*. But in that case a "continuity of consciousness" theory of personal identity would seem to entail that the body is an external resource analogous to land, water, and other natural resources, title over which is at least in principle no less disputable than title over these latter resources. The potentially (and radically) unlibertarian implications of this result should be obvious. In general (and as I have argued at length elsewhere), the content of rights claims, including the content of a claim to a right of self-ownership, crucially depends on what theory of personal identity one adopts.³ Yet though Palmer is evidently aware that not every theory of personal identity is compatible with the rights theory he favors, he does not pursue the issue in sufficient depth to show that even his own conception of personal identity is compatible with his approach to natural rights. The most he does is to emphasize that the conception he favors would make a person's body essential to the person himself. But does this mean that he would reject Locke's "continuity of consciousness" approach after all? Would he endorse some variation on a bodily continuity theory instead? Or would he opt for a mixed approach? And how would the theory that results avoid the dissolution of the very notion of the self (and with it, it seems, any notion of self-ownership) that writers like Derek Parfit argue follows upon the standard modern approaches to the issue? We are not told.

All the same, it is to Palmer's credit that he at least recognizes—as too many moral and political philosophers do not—that issues in moral and political philosophy cannot neatly be disentangled from controversies in metaphysics. (Indeed, in addition to his remarks about personal identity,

³ See my "Personal Identity and Self-Ownership," *Social Philosophy and Policy* 22, no. 2 (2005), pp. 100-125, reprinted in *Personal Identity*, ed. Ellen Frankel Paul, Fred D. Miller, Jr., and Jeffrey Paul (New York: Cambridge University Press, 2005), pp. 100-125. I argue there that only an Aristotelian-Thomistic hylomorphic conception of personal identity could plausibly ground a right of self-ownership, though I also suggest that the natural law moral theory that follows from an Aristotelian-Thomistic metaphysics rules out the extreme claims about self-ownership many libertarians would make.

Palmer comments on the relevance to moral theory of the dispute between Aquinas and the Averroists over the unity of the intellect!) This is of a piece with the nuanced and historically informed approach to politics which, as I have said, characterizes his work in general. Other moral and political theorists could profit from the example Palmer sets in *Realizing Freedom*.

Edward Feser
Pasadena City College

