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WHAT'S WRONG WITH LIBERTARIANISM

ABSTRACT: *Libertarian arguments about the empirical benefits of capitalism are, as yet, inadequate to convince anyone who lacks libertarian philosophical convictions. Yet "philosophical" libertarianism founders on internal contradictions that render it unfit to make libertarians out of anyone who does not have strong consequentialist reasons for libertarian belief. The joint failure of these two approaches to libertarianism explains why they are both present in orthodox libertarianism—they hide each other's weaknesses, thereby perpetuating them. Libertarianism retains significant potential for illuminating the modern world because of its distance from mainstream intellectual assumptions. But this potential will remain unfulfilled until its ideological superstructure is dismantled.*

In David Boaz's *The Libertarian Reader*—one of a spate of recent books about libertarianism—there is a long excerpt from Richard Cornuelle's 1991 article, "The Power and Poverty of Libertarian Thought." In this assessment of libertarianism in light of the collapse of communism,¹ Cornuelle noted that "the repudiation of communist economics is shifting the intellectual action from a battle in which the libertarians held the high ground"—the battle over the feasibility of socialism—

to one where they hold no ground at all. From the beginning and almost to the end, communism drew its legitimacy from its ends

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rather than its means, from the powerful echo of its original promises to protect ordinary people from the hazards of life in a capitalist society. Large numbers of working people and their intellectual surrogates still feel in their bones that an unfettered free market is a jungle, that workers do not get their fair share of what they produce, that capitalism so degrades and disorients working people that they cannot make mature decisions about their own welfare, that it pollutes the streams and waters the whiskey, that it creates an acrid social atmosphere in which the smell of money works its way indelibly into the fabric of everything, that it leaves undone or poorly done all the things a good society needs most, and finally that capitalism is given by its nature to large arrhythmic spasms, and the burden of this abiding economic insecurity falls primarily on working people. (Boaz 1997b, 364)

In the new, post-1989 intellectual landscape, Cornuelle noted, it is not socialism but the redistributive, regulatory state that commands allegiance. In the 1920s and 1930s, Ludwig von Mises developed a challenge to the economic feasibility of socialism that was finally, and suddenly, accepted as self-evident in 1989. With the collapse of communism, however, what is at issue between libertarians and everyone else is no longer the value of a market economy, but whether the market should be "closely watched and guided" by "democratic political institutions . . . and a welfare or service state with a broad charter to keep the society fair and fit for human habitation" (*ibid.*, 365). Cornuelle pointed out that this was a debate libertarians would find much tougher going than the debate over socialism.

Seven years later, even Cornuelle's daunting assessment of the task for libertarians looks overoptimistic. The conclusion that resounds through Boaz's *Libertarianism: A Primer* (New York: Free Press, 1997), Charles Murray's *What It Means to Be a Libertarian* (New York: Broadway Books, 1997), John L. Kelley's *Bringing the Market Back In* (New York: New York University Press, 1997), and David Conway's *Classical Liberalism: The Unvanquished Ideal* (New York: St. Martin's Press, 1995), is that libertarians do not yet possess an adequate critique of government interference in the market economy—a critique, that is to say, that establishes not only why the state should be kept on a very short leash, but why it should be emasculated. Although not all of these books are scholarly, they accurately represent the deficiencies in the scholarship that attempts to make a presumptive case for the untrammelled market. It is not

unfair, then, to judge the state of libertarian thought against the evidence of these four volumes.

My aim in this essay is to diagnose the failings of libertarianism and propose a remedy for them. The key to doing so is, I believe, to overcome the fundamental tension running through all libertarian thought: the tension between criticizing what Cornuelle calls the legitimacy of the ends of the modern state—the ends that formerly legitimated communism—and the efficacy of the means the state employs. Libertarianism tries to criticize both the efficacy of the means and the legitimacy of the ends. These two forms of critique, however, depend on antithetical forms of argument that not only subvert each other, but feed on each other's weaknesses.

I. CONSEQUENTIALIST LIBERTARIANISM

To put my thesis in more technical language, libertarian doctrine tries to unite consequentialist arguments about the harmful empirical effects of the modern state with nonconsequentialist arguments about the allegedly *intrinsic* evil of state regulation and redistribution. A purely consequentialist, "empirical" libertarianism could, on its own, largely accept as valid the meliorist aims listed by Cornuelle, challenging mainly whether the state is capable of achieving them without causing even worse problems. A purely nonconsequentialist, "philosophical" libertarianism,² in contrast, views the modern state as intrinsically unjust, regardless of whether or not it actually rectifies the "abuses" of capitalism. This form of libertarianism cannot accept the notion that any end justifies the coercive means used by the redistributive, regulatory state. Such ends are therefore seen as illegitimate political goals, although they may be laudable objects of private, nonpolitical action. Why empirical and philosophical forms of argument should conflict with each other, and why libertarians nonetheless try to yoke them together, will be my chief concern.

A good place to begin is the British philosopher David Conway's *Classical Liberalism*, a book that breaks with libertarian orthodoxy by attempting to come down squarely on the consequentialist side of the fence, and a book that, as a result, is the most convincing case for libertarianism in print.

Conway attempts to justify libertarianism (which he calls "classical liberalism") solely on the basis of its being "more conducive

than any other form of societal order to the well-being or happiness of members of society" (9). In choosing happiness as the positive consequence against which social systems should be evaluated, Conway eschews any appeal to the inherent value of capitalist freedom or the intrinsic justice of private property. While Conway by no means claims that a libertarian society would produce universal bliss, he does maintain that libertarianism deserves our allegiance only inasmuch as it would enable its members to achieve "*greater well-being or happiness than does any other societal form*" (135, emphasis original). In effect adopting as his own Rawls's concern for the least advantaged members of society, for example, Conway contends that

the life-prospects of society's less well-off members are not likely to improve if and when redistributive political institutions replace those which generate the inequalities which modern liberals find so unconscionable. Such egalitarian reforms are only likely to discourage the formation of capital and encourage its dissipation. Since it is upon the formation of capital that the continued and enhanced well-being of members ultimately depends, redistributive measures and institutions favored by modern liberals are unlikely to benefit those whom they are ostensibly designed to benefit. (133)

Conway's undiluted utilitarian rationale for libertarianism is unusual and refreshing. As we will see, consequentialist arguments usually serve a much more confused and illicit function in libertarian thought. For its attempt to clarify the contribution a libertarian society might make to human happiness, Conway's book would deserve commendation even if it had no other merits. But Conway also takes the trouble to defend his utilitarian libertarianism against liberal, feminist, communitarian, and conservative alternatives, and the resulting chapters, which take up most of *Classical Liberalism*, are well worth the attention of anyone interested in political philosophy—not just libertarians.

That said, it must also be admitted that Conway's argument for libertarianism fails. Conway does just about everything a philosopher could do for the utilitarian-libertarian cause, but it is in the nature of this cause that it must inevitably appeal to empirical claims, and the vindication of such claims requires more than philosophical expertise. The concern about capital formation just quoted is one example. It is true that if government redistribution of in-

come brought *all* saving to a halt, it would be disastrous, as Conway claims. But he adduces no evidence that the particular amount of redistributive taxation necessary to bring about income equality, or greater income equality, in a particular society would bring about such severe consequences. Only extremely high ("confiscatory") levels of taxation would stop all saving. Short of that point—wherever it lies—Conway gives us no reason to believe that the addition to well-being that might be produced by shifting income from the most to the least advantaged would be outweighed by the depressing effect this might have on capital formation in a given time and place.

Classical Liberalism teems with problems of this kind. For instance, Conway shares the tendency—endemic among classical and interventionist liberals alike—to equate "economic growth and affluence" (53) with his *telos*, happiness. But this philistine equation rests on large claims about human psychology of which Conway takes no notice and which he certainly does not substantiate.³ Again without any apparent empirical support, Conway endorses Henry Sidgwick's claim that "the general happiness is promoted by far the most effectively through 'maintaining in adults generally (except married women) the expectation that each will be thrown on his own resources for the supply of his own wants'" (48)—as if this is not only self-explanatory but uncontroversial. Throughout, Conway tends to treat claims about the likely results of various social arrangements as if they need only be stated, not demonstrated.

This is not to say that all of his claims about social arrangements are false. But such claims are inherently empirical, and thus cannot succeed as exercises in abstract reasoning of the sort in which academic philosophers engage. Arguments about the beneficial consequences of civil society and the harms caused by political intervention—arguments that might be both true and important—carry little weight when they are merely asserted a priori. For instance, Conway observes that "the existence of a state welfare apparatus designed to ensure [that] a decent living is had by those unable to provide one for themselves does not necessarily increase the likelihood that a decent life *will* be had by those unable to provide for themselves" (21, emphasis added). In other words, good intentions are one thing, good results another. But if this observation is to warrant our opposition to the welfare state, rather than simply making us cautious while we continue to cede to the welfare state

the power to expand its well-intentioned interference in civil society, Conway would have to adduce evidence of widespread, cross-national "state failure" in programs of welfare provision, and this he does not do.

The flaw in Conway's book runs deeper, however, than a simple failure to report to a philosophical audience empirical evidence of state failure (or civil-society success). The real problem is that such evidence—even if Conway were familiar with it—taken in its entirety, appears to be insufficient to warrant the radical conclusions libertarians such as Conway want to draw. Even if *many* government interventions have failed to advance human happiness—as classical liberal economists have tried to show—this alone would not justify libertarianism. Libertarian conclusions require not only extensive evidence of government failure, but an empirically substantiated reason to think that such failure is *always* more likely than the failure of civil society.

If such a reason exists, Conway fails to provide it. In fact, he assumes that the burden of reasoning lies not with him, but with his opponents. In rebutting Ted Honderich's radical version of social democracy, for example, Conway asserts that Honderich "needs to provide . . . some reason for doubting that the institution of private property is essential to the happiness of everyone" (52), even though Conway has given us no (substantiated) reason to think that private property *is* essential to everyone's happiness. Those who favor departures from *laissez faire*—even when their aims are, like Honderich's, radical enough to qualify as "socialist"—do not, after all, make the unequivocal claim that government action will always tend to produce better results than private property. Thus, their evidentiary burden is lighter than those, like Conway, who implicitly make the opposite claim. In the post-communist era, the antagonist of classical liberalism is not likely to believe anything more sweeping than that state action may be needed whenever civil society fails. The questions the libertarian must answer, then, are how often civil society does fail, and how often the state is liable to do better. The interventionist can be an agnostic about such general questions, treating each potential civil-society failure (i.e., each "social problem") case by case. It is the libertarian who is committed to the grand claim that, for some reason, intervention must always be avoided. The "piecemeal social engineer" (as Popper called interventionists) can concede a presumption in favor of private property

while reserving the right to whittle away at its "excesses" by means of state action; she faces no obligation to disprove the overall utility of property rights. The utilitarian libertarian, however, is obliged to show that the utility of property rights is so nearly universal that all government intervention with them is bound to fail, when judged against the standard of human happiness.

Charles Murray's *What It Means to Be a Libertarian: A Personal Interpretation*, although not intended to be scholarly, is much better on factual questions than Conway's *Classical Liberalism*. Despite philosophical problems that make Murray's book inferior to Conway's as a self-contained argument for utilitarian libertarianism, *What It Means to Be a Libertarian* is a potent stimulus for thinking about how such a worldview might (or might not) be justified. Unlike Conway, Murray recognizes that libertarianism cannot be defended on utilitarian grounds unless there are *empirically substantiated reasons* to think that, in general, *laissez faire* will produce better results than state intervention.

Murray's first empirical rationale for libertarianism is that state action tends to be ineffective because, at best, it displaces efforts that would have taken place in civil society, while often it cannot match the success of those efforts. Murray's chapter on government regulation of consumer goods, for example, disputes the idea that without state supervision of the market, people would be at the mercy of unscrupulous businesses. He points out that before the U.S. government began regulating hazardous products, "the level of such problems compared favorably with the record of any other country's," and "the trendlines were moving in the right direction, toward products and services that gave the consumer greater safety and reliability as well as more functionality" (61). Murray shows that these positive trends, which he attributes to the market's response to consumer demand for safety and reliability, have simply continued as before in the present era of active government regulation. Murray accepts that in some cases we need third parties to certify the safety of products or services, such as drugs and medical care. But he points out that, for just this reason, "there will be money to be made by setting up a nongovernmental counterpart to the FDA" (69)—that is, a certifier whose reputation, and thus its profits, rest on its independence and integrity.

This example suggests both the advantages and the drawbacks of

Murray's main device for showing government inefficacy: the trend-line test.

Trend Lines and Historical Research

The trend-line test plots product safety, or poverty rates, or measures of educational achievement, or life expectancy, or industrial accidents, or wage rates, or any other desired or undesired outcome over time; it superimposes on this trend the expansion of government intervention designed to solve the problem in question; and then it bids us to observe whether or not intervention seems to have pushed the trend in a more positive direction. Murray asserts that in almost every case, the answer is negative. Thus, he points out that the New Deal by no stretch of the imagination ended or even improved the unemployment trend of the Great Depression, which wore on for nearly a decade after its implementation; that the War on Poverty apparently had no positive effect on the rate of poverty, which was already declining but which dropped more in the 1950s than in the 1960s; that, after the introduction of Medicare and Medicaid in 1965, Americans' life expectancy, which had been rising since 1900, began to rise more slowly; that federal spending on education has gone up as educational achievement has declined; and that U.S. government regulation of occupational health and safety seems to have had no impact on already-falling rates of injury and disease (51-62).

All of this is interesting but inadequate. Returning to the initial example, we can't really know why product safety was improving before federal regulation began, and we can't really tell why it continued to improve at the same rate, until we go well beyond the simple scrutiny of trend lines. To truly prove Murray's point we would need historical studies that explored the sources of the trends in detail; and these studies would have to be more subtle than the simple, two-variable model implicit in the trend-line test. Let us take these points in turn.

First, no accumulation of trend-line tests alone can reveal the *reasons* for government inefficacy. Murray claims that there are three reasons: (a) state action merely displaces the action of private individuals; (b) "so much in a modern society has the inertia of a ponderous freight train, running on rails that government cannot shift

and moving with such momentum that an outside force such as government cannot speed it up or slow it down more than fractionally" (57); and (c)

the old functions of government were straightforward . . . with by-the-book techniques that worked. A bureaucracy could do them. In contrast, healing an abused child is not a known task. Instilling racial understanding is not a known task. Teaching self-restraint to teenagers is not a known task. (145)

While plausible, reason (c) cannot (and is not intended to) justify anything approaching Murray's repudiation of almost all regulation and government service provision. It applies only to the type of problem with which social workers must deal, leaving most modern government functions untouched. Reason (b)—society as unstoppable freight train—is either no reason at all, in that it simply restates the alleged inefficacy of government action; or it is, in reality, an argument for a much bigger government, since it attributes government failure to a sheer lack of power.

That leaves reason (a), government displacement of civil society. This reason is assumed, not demonstrated, by Murray's interpretation of the trend lines; it amounts to little more than an ungrounded assertion—*something* more (a plausible hunch), but not much. In the late 1990s, all the trends may seem to tell against the efficacy of state action. But in the early 1930s they all seemed to tell against the efficacy of the market. Murray's hunch, like that of our socialist grandparents, may be nothing more than an artifact of the times: it could be that a predominantly libertarian society, like that of the early 1930s, will produce a characteristic set of problems that show up in negative trends, while a predominantly interventionist society, like ours, will produce a different set. Extrapolating from these trends, either to the conclusion that "capitalism can't do anything right" (as it appeared in, say, 1932) or that "government can't do anything right" (as it may appear today) is simply unwarranted. The truth could lie somewhere in the middle; that is what makes the social-democratic order so difficult for simplistic forms of libertarianism to challenge effectively.

The second problem with the trend-line test is that it may obscure more than it reveals. Consider that there is now a rapidly growing movement to use legislation to prop up the standards of

medical ethics that are being undermined by managed care. In 20 years this movement will probably have produced a welter of state and federal regulations controlling every aspect of the doctor-patient relationship; but a retrospective trend-line test performed in 2018 would tell us almost nothing useful about how we got to that point. The trend-line historian of 2018 would, at best, be able to devise some measure of the decline in professional standards that prompted the first spate of controls in 1997; and she might notice further that this decline continued over the first two decades of the twenty-first century, despite the multiplication of government regulations designed to staunch it. These data might seem to justify her conclusion that if the regulations hadn't been imposed, civil society would have dealt with the problem as well, or as poorly, as the regulations did. But it is unlikely that this conclusion would be accurate. The erosion in medical standards is the result of the rise of managed care, which is itself a response to a problem with much earlier roots that produced a completely different trend. Managed care is designed to stop the spiralling cost of medical care by bureaucratically controlling the actions of doctors—undermining their professional ethos. Understanding the cause of the trend line at issue, then, would require us to grasp the source of rising medical costs; and here, the culprit may well be something that happened as long ago as World War II: the creation of a tax deduction for employer-paid health insurance. Once insurance costs were assumed by employers rather than by the actual recipients of health care, consumers lost most of the financial incentive to conserve on their use of benefits. Managed care was the eventual result. If this analysis is correct, managed care, hence the erosion of professional standards, is civil society's response to a problem unintentionally caused by government policy half a century ago, and civil society may be powerless to correct the defects of its own response unless that policy is repealed. Until then, government regulation may be the only thing that can keep a deteriorating situation from worsening even faster. None of this could be determined simply by comparing two end results of a complex historical process: the decline in medical standards and the resulting implementation of new regulations.

Or consider one of Murray's own examples, the trend of unemployment during the Great Depression. It is not enough to know that massive government efforts did little to improve the trend line; we also need to know whether the civil-society alternatives would

have done any better. Perhaps government intervention kept unemployment from getting worse than it did. To rule out this possibility, we would need both a theory explaining how civil society can, on its own, generate high levels of employment; and—something free-market economists often forget—empirical confirmation that the theory's assumptions are applicable to the case at hand. We would need, in short, an empirically grounded explanation of the cause of the Great Depression that vindicates the free market (e.g., Friedman and Schwartz 1963; Smiley 1991). Without it, the trend-line test would tell us nothing of value.

Finally, consider Murray's use of the trend-line test in *Losing Ground*. There he concludes, from the observation that the decline in poverty flattened out after the start of the War on Poverty (Murray 1984, 57), that the War itself must have caused this adverse trend. But what if the cause of the trend lay in another variable—for example, the coincidence of African-American migration from the Jim Crow South to the industrial North at the same time racist unions, minimum wages, occupational-licensing laws, and other labor-market restrictions were blocking traditional paths into the urban labor market (cf. Williams 1982)? The main effect of the War on Poverty might then have been not to cause poverty but to ameliorate it, keeping people alive once first-rung, low-paying jobs started disappearing.

Perhaps my criticisms of the trend-line test seem excessive. Murray is not, after all, claiming that this test is the end-all; he nowhere tries to discourage more searching examinations of governmental efficacy. Yet Murray is convinced that, with the assistance of the trend-line test, he can make an empirical case for libertarianism in 178 very small pages of very large type—with, he brags (xii), no footnotes, no tables, and only one graph. This conviction militates against detailed historical argumentation, and in favor of a simplistic substitute for it such as the trend-line test.

Murray's dedication to simplicity would nonetheless be excusable, even admirable, if he were popularizing a vast body of empirical research that made his case more systematically. But he is not. *What It Means to Be a Libertarian* does not draw on the extensive work of, say, the Chicago school in documenting the many failures and perversities of government regulations. This may be because Murray recognizes that even a great deal of research showing the inefficacy of this or that government program is not the same thing

as a credible, rigorous argument for why inefficacy would be endemic to political but not other institutions. Instead of citing this research, then, Murray proposes the trend-line test as an attempt to bridge the gap between evidence of state failure and a general presumption against state efficacy. But this device cannot accomplish such a large goal.

Libertarian Communitarianism

The flimsiness of the trend-line argument may not be all that surprising in light of Murray's second utilitarian argument for libertarianism: the claim that the displacement of civil society by state action is not only ineffective, but is positively harmful, because the individual and communal exercises of responsibility thus crowded out are the source of essential psychological satisfaction. If running our own lives is inherently satisfying, as this argument assumes, then the question of whether civil society is more effective than government is almost beside the point. Although, as a utilitarian, Murray cannot and does not hold civil society to be *intrinsically* valuable, he does consider it to be *inherently* conducive to happiness. Now if civil society automatically produces happiness by giving people the responsibility of taking care of themselves, why should a utilitarian worry very much about whether civil society is more efficacious than the state? Murray can afford to be cavalier about whether the trend-line test provides sufficient grounds for thinking civil society more effective than government because his second argument makes the issue of efficacy a mere afterthought.

Once we accept Murray's second argument, a case for libertarianism could, in fact, be made in far fewer than 178 small pages—and it is, in two paragraphs that are reproduced here in their entirety:

Think about your own life and whatever its most enduring *satisfactions* have been—not its amusements or pleasures, nor even its commitments, but its satisfactions. They are probably made up of a mixture of pleasure and contentment, but they are something more as well. They are the parts of your life in which you take pride, that make you think you haven't done so badly after all, that define your own sense of what is best in you.

Odds are that these satisfactions involve accomplishments for which you bore responsibility. What filled an event with satisfaction is that *you* did it—not alone, necessarily, but with a substantial amount of responsibility resting on *your* shoulders, with a substantial amount of the good thing being *your* contribution, whether in a moment (sinking the winning basket) or over many years (making a good living). You may be happy that your team won the game if you are a spectator; you may have a good living from a trust fund. But the word *satisfaction* does not apply. (31–32)

There is some wisdom here—but not enough to get us to libertarianism.

For one thing, why should satisfaction be the form of happiness that we want institutions to encourage, *rather than* pleasure or contentment? This stacks the deck in favor of Murray's desired conclusion—that responsibility is the key to happiness. It is hard to be satisfied about things for which one isn't responsible. But one may be content about such things, or joyous; why should these feelings be scanted?

My purpose is not to dispute in seven lines what Murray asserts in 16. It is, instead, to note the bourgeois complacency of Murray's two-paragraph take on the meaning of life. I am not suggesting that what Murray says should be disregarded because whatever is bourgeois, or brief, is vulgar. I am not suggesting that what Murray says should be disregarded at all. He, and the bourgeoisie, may well be right in extolling a job well done and "making a good living." But to find out if they—that is to say, we—are right, we need to do a bit more than the introspecting that is all Murray seems to have done. What we find when we look inward may, after all, be nothing but the contingent product of a particular constellation of historical circumstances—those that have produced what we know as bourgeois society, and thus our own bourgeois sensibilities. If we are going to base our political agenda on institutions' conduciveness to happiness, we had better ask whether our understanding of happiness—no matter how profound it may seem to us—might be less than a universally valid perception of the human condition. Do people in other cultures find "satisfaction" to be so clearly preferable to other forms of happiness? Is there any reason to think that the type of satisfaction Murray invokes would have had survival value to the hunter-gatherers whose genes, and thus whose emo-

tional dispositions, we inherited? Could his version of happiness be gender-specific? I do not prejudge the answers to such questions. I do believe, however, that a serious treatment of human happiness would need to ask them.

Murray goes directly from his privileging of satisfaction to the conclusion that it is best attained under a libertarian regime. "Responsibility," he writes, is "freedom's obverse"; and responsibility "is the indispensable quality that allows us to carry through on our choices and take satisfaction from our accomplishments, whether they be making a living, realizing our gifts, caring for a family, or being a good neighbor." Since "limited government leaves people with the freedom and responsibility they need to mold satisfying lives both as individuals and members of families and communities," Murray is able to conclude that "limited government enables people to pursue happiness" (35). At this early juncture, Murray has completed a case for libertarianism that is, if accurate, dispositive. The remaining four-fifths of the book, which spells out Murray's vision of limited government and defends it by means of the trend-line test, is—at best—secondary. If satisfaction is the end and libertarianism is *automatically* the means to it, because it leaves us responsible for our lives, then it hardly matters whether libertarianism also would be more effective in solving social problems than social democracy. Murray's second argument obviates his first one, and this may account for the careless treatment of efficacy issues that is inherent in the trend-line test.

This carelessness will vitiate Murray's argument for libertarianism in the eyes any serious utilitarian. For the social problems that are treated cavalierly by the trend-line test may themselves impinge on happiness if happiness is not arbitrarily confined to "satisfaction." Thus, the possible inability of civil society to solve social problems might counteract the satisfaction people get (*ex hypothesi*) from being left to solve these problems on their own. This is, presumably, why Murray himself started off, in *Losing Ground*, with the question of the state's problem-solving efficacy—did welfare programs, he asked, "add to the net happiness in the world?" (Murray 1984, 203)—and why, in *What It Means to Be a Libertarian*, he cannot resist the temptation to continue trying to answer this question. If the inefficacy of civil society is causing people to starve to death, are we really to believe that the satisfaction they get from fending for themselves makes it all worthwhile? Perhaps so, but one would like

to have more evidence for this conclusion than Murray's ruminations about the rewards of sinking the winning basket. If we *are* interested in efficacy, as Murray seems to be most of the time, then the putative satisfaction allegedly inherent in civil-society problem-solving efforts should be, at most, one factor in our estimate of whether libertarianism can be expected to produce the greatest happiness.

Even then, we need to ask some hard questions about Murray's move from extolling responsibility to his assumptions that government is its enemy, and that "community" is the fount of human satisfaction.

First, it is facile to assume, as Murray does, that even if personal responsibility is essential to happiness, market and nonprofit activity are its essential manifestations. The ability to "make a good living" depends overwhelmingly on good luck—on dispositions, habits, and skills that an individual cannot acquire on her own, but is sometimes fortunate enough to acquire from others. Is it to the upper middle-class child's credit that he enters an Ivy League university savvy in the ways of modern institutions, relatively well-educated, and organized enough to accomplish tasks and make short-term sacrifices? Is it the ghetto child's fault that she emerges unskilled and illiterate from public school, bereft of self-discipline from a disintegrated family, or listless and afraid from 18 years in a housing project? Do people never lose their jobs because of a recession or a shift in market conditions for which they are not the cause; and do they never gain them because the talents and experiences they happen to have—or that they were able to acquire because of dispositions they were lucky enough to inherit or learn from others—position them well to take advantage of whatever the market now happens to value? F. A. Hayek (1976, 74) wisely realized that market outcomes cannot legitimately—or successfully—be defended on the basis of desert. Murray, by contrast, advocates, in effect, a return to Victorian psychology. His libertarianism is just as vulnerable as Victorianism was to the discovery that people are not, in fact, solely or even largely responsible for their good or ill fortune.

Even if happiness is reducible to "satisfaction," and even if self-responsibility is inherent in markets, is it also inherent in local community? Murray thinks so, and he departs from hard-core libertarianism by blessing zoning laws and other exercises of local power, as

well as the municipal provision of public services (42-43), so strongly does he believe in the devolution of government responsibility not to the individual (as a strict libertarian would), but to "the most local *feasible* level" (42, emphasis added). This raises anew, however, the tension between Murray's two rationales for libertarianism. Murray justifies devolution as essential to achieving satisfaction-cum-responsibility, but in the same breath he implicitly eschews localism, hence responsibility, hence satisfaction, when they are unfeasible. This, in turn, leads him into a series of dubious assumptions designed to prove that a great deal of local responsibility is, in fact, feasible.

For instance, Murray blames the relative absence of neighborhood service provision in contemporary America on the growth of more distant and bureaucratic levels of government. This allows him to assume that neighborhood service provision would be feasible if centralized government services were rolled back. But Murray fails to ask whether it is not big government but affluence, and thus capitalism, that is making "community" superfluous by allowing people to buy services they would otherwise have to provide for themselves cooperatively or through local government. And he fails to ask whether it might be urbanization, or suburbanization, that makes neighbors strangers to each other. These possibilities could render neighborhood "community" unfeasible in any modern society, no matter how libertarian. Murray insists that in extolling neighborhood service provision as a realistic alternative, he is not "referring just to small-town America," but to "working-class and middle-class neighborhoods in Brooklyn and San Diego" (166). Having lived in working-class and middle-class neighborhoods in Brooklyn, Berkeley, and New Haven, this reader is skeptical. But Murray might convince skeptics if he provided us something more than assertions. In the urban neighborhoods I have known, people have little contact with each other because they are transient, because they are busy, and because they have little in common besides their addresses. Perhaps if we had to provide our own police patrols and fire protection, we would get to know each other better, but I suspect that most of us would end up paying somebody else to do these things for us—just as we do now, through our (landlords') property taxes—because we don't particularly *want* to meet our neighbors, and because we don't have time to. These observations

are not intended to be decisive. They may establish, however, that Murray has not discharged his burden of proof.

Murray contends that it is only among "the elites" that "geographic neighborhood is no longer a critical part of American life." The elites' "little platoons" are, he observes, "drawn from professional circles, people with shared intellectual interests, old school ties, and clubs, and are scattered around the city, the country, and increasingly, the world." Fortunately, he claims,

the elites are a small minority. For much of working-class and middle-class America the geographic neighborhood continues to be important. Friends are likely to live down the street. Engagements in social life are likely to be grounded in the neighborhood churches, lodges, service organizations, charities, and schools. (166)

Even if this is true, though, the ranks of the "elites" seem to be growing, as reflected by such indices as the infamous decline of bowling leagues (Putnam 1995). By Murray's own account, then, it would appear that rising levels of education and the growth of professional work are as dangerous to "community" as big government is, and that cutting back government services will not bring forth a resurgence of community unless the growth of the "elite" is somehow stopped.

A different possibility is that it is simply bad neighborhood design that atomizes neighbors, isolating them behind large front lots and streets bereft of inviting sidewalks. Since federal highway and mortgage subsidies and local zoning regulations have been credibly blamed for this problem (e.g., Plater-Zyberk 1992, 22–23), it might seem to be a fat target for libertarians. But the remedy would have to be both more and less libertarian than the one Murray favors. The restoration of neighborliness would seem to impinge on the local zoning powers that he wants to preserve, even while the repeal of those powers, and of federal subsidies for suburbanization, would leave the social-service state intact. The success of new towns such as Celebration, Fla., where neighborliness is successfully encouraged by "New Urbanist" design, in no way relies on a diminution of the powers of state and federal government, even if the creation of Celebration by the Walt Disney Corporation does suggest—in direct contrast to Murray's vision—the need to diminish the powers of local government. In fact, the one area of Cele-

bration town life that seems to be anything short of idyllic is the single area that is controlled not by Disney but by local governance: the school. Education politics in Celebration has been the source of vicious factionalism and personal enmity (Pollan 1997). This suggests that politics, even local politics, can easily be a source of misery, not satisfaction.

One might think that a utilitarian libertarian would be interested in such possibilities, but Murray, attempting to fuse Jeffersonian republicanism with his utilitarianism, is committed to seeing politics as an important source of happiness as long as it is local. This puts him on the side of the moralizing reporter for the *New York Times Magazine*, whose major article on Celebration, ignoring the very evidence it has presented about what politics is really like, bemoans the city's relative depoliticization and endorses the notion that "people taking responsibility for their own lives and the place where they live" is a "deeply satisfying process" (Pollan 1997, 81, emphasis added). This will be news to anyone who has attended a faculty meeting, participated in a political party, or observed a public debate.

The point, however, is not to settle here whether politics and happiness go together—any more than it was to establish that government, not civil society, caused the erosion of medical professionalism, the Great Depression, or the underclass. It is instead to analyze why Murray fails to make a *prima facie* case for his conclusions. I have deliberately restated standard free-market accounts of health insurance, the Depression, and poverty in order to suggest that the inadequacies of Murray's arguments are not, as is often the case, caused by dogmatism. The trend-line test leads Murray *away* from uncompromising libertarianism toward a view that is more flexible, but less credible. And so, too, does Murray's localism.

Albert Hirschman (1970) famously distinguished between two ways of dealing with interpersonal conflict in an institutional setting: "exit," or secession from the institution, and "voice": that is, remaining in the institution and engaging in discussion—politicking—with those with whom one disagrees. Murray puts a priority on exit, but not because he recognizes that being forced to remain in an organization where one is deeply at odds with one's peers is to be consigned to a living hell. If he did recognize this, it might spur him to conclude that there is immense value in being able, as an individual, to secede from as many political groupings as feasible

(where "feasibility" is defined in terms of human happiness). The ability to secede even from local neighborhoods would not only free the individual from the unpleasantness of politics in both its petty (personal) and grand (ideological) forms. It would also enable her to join with others with whom she is *not* at odds in common enterprises designed to do what needed to be done.

Common enterprises can be a great source not only of satisfaction, but of friendship and delight, as long as the criterion for continued membership in them is agreement on a common goal and on the way to achieve it. This makes it unlikely⁴ that their boundaries will coincide with the geographical borders of a neighborhood: a neighborhood is a chance agglomeration of people unlikely to share ideas about means, even if their proximity to each other sometimes imposes shared ends. If this holds true, then Murray's localist deviation from strict libertarianism is worse, from a utilitarian point of view, than complete *laissez faire* would be. He points out that "it is much easier for the average person to move out of Detroit than it is for him to move out of Michigan, and infinitely easier than to move out of the United States." Yes, but one can only move *into* another "voice" community. And even if, as Murray recommends, it is made "easy for outlying neighborhoods in a city to secede and incorporate as independent municipalities" (43), this gives neighborhoods the "exit" option but leaves individuals trapped within neighborhood boundaries.

Why, then, is Murray concerned with allowing neighborhoods to exit? Because this safeguards against the danger that "local governments can be as tyrannical and corrupt as any other level of government" (42). In short, Murray misses the chance to launch a more penetrating critique of government because in the end, for all his talk of happiness, he accepts the notion that the ultimate evil is not unhappiness but *coercion*. The equation of satisfaction with self-governance makes *liberty*, in Murray's view, the functional equivalent of happiness; and liberty is, within the parameters of "feasibility" (criterion undefined), roughly equivalent to neighborhood autonomy, because "the smaller the unit of government, the more closely it approximates a group of people acting consensually" (*ibid.*). Murray may be willing to compromise the ideal of individual freedom as the ultimate value, but he is not willing to abandon it. The reasonable veneer cannot obscure the orthodox libertarian edifice.

There may be a deeper connection than is first apparent, then, between Murray's heterodox, utilitarian libertarianism and the libertarian orthodoxy, which attempts to weld together utilitarian and "philosophical" considerations. To get a handle on the nature of this connection, let us turn to David Boaz's recent book, written from the perspective of a much more orthodox libertarianism than either Conway's or Murray's.

II. PHILOSOPHICAL LIBERTARIANISM

Officially, at least, Boaz, a long-time executive at the libertarian Cato Institute, has little use for assessments of the consequences of libertarianism. He repeats the standard worries about utilitarianism:

How do we know what is good for millions of people? And what if the overwhelming majority in some society want something truly reprehensible—to expropriate the Russian kulaks, genitally mutilate teenage girls, or murder the Jews? Surely a utilitarian faced with the claim that the greatest number thought that such a policy would do the greatest good would fall back on some other principle—probably an innate sense that certain fundamental rights are self-evident. (83)⁵

Boaz believes, then, that governments should enforce self-evident fundamental rights rather than pursuing the greatest happiness for the greatest number. Indeed, rights are important because they "protect us from others who might use force against us" (3)—including those who would use force to achieve the greatest happiness for the greatest number. "The libertarian goal is a society free of coercion" (217). The chief defect of the state is not that it stands in the way of happiness, but that it stands in the way of liberty.

That, of course, is why Boaz's doctrine is called libertarianism. But libertarianism would simply be liberalism if not for its equation of "liberty" with private property. How does Boaz justify this equation?

He begins with an argument drawn from Murray Rothbard (1976, 29): that individuals must be owned, such that the only question is whether (a) individuals own each other, or (b) everyone collectively owns everyone, or (c) each individual owns herself. Conceding that (b), collectivism, would, in practice, degenerate into (a), other-ownership; and rejecting (a) as inegalitarian; Boaz con-

cludes that (c), self-ownership, is morally required. Boaz should stop right here, since he is, in effect, trumping liberty with equality. Amartya Sen (1992) has pointed out that all contemporary moral theories, including libertarianism, are essentially egalitarian; we can press on from this observation to ask why, if (as Boaz maintains) the liberty of a human being to own another should be trumped by equal human rights (62), the liberty to own large amounts of property should not also be trumped by equal human rights. This alone would seem definitively to lay to rest the philosophical case for libertarianism.

Before proceeding I should also note, if only briefly, that Rothbard's version of the self-ownership argument, and thus Boaz's, presupposes that someone—whether the individual herself or someone else—has the authority to have the individual do whatever this someone desires, whether what is desired is good or bad. This is what ownership means: the ability to dispose of the owned "property" (in this case, the individual) as one wishes. Rothbard and Boaz thus disregard the possibility that people's lives should not be subject to the arbitrary power of either their own or some other owner's will: that people's actions should, in principle, be controlled not by any arbitrary will, including their own, but by whatever it is good to do in each particular instance. The very idea of ownership contains the relativistic seeds of arbitrary authority: the arbitrary authority of the individual's "right to do wrong." To pursue this thought, however, would take us too far afield—to a critique of the intrinsic value of this right, and thus a critique of liberalism per se, rather than merely a critique of the libertarian version of liberalism.

To self-ownership, Boaz adds Locke's theory of property acquisition to derive what G. A. Cohen (1986) calls "world-ownership," the ownership of property. Boaz does not attempt to defend the Lockean notions that one can "mix" one's labor with inanimate objects, and that this mixing results not in the loss of one's labor but rather in the gain of a piece of the world.⁶ He does not, in fact, defend Locke's theory at all. He simply states it in summary form (67) and then concludes that since Lockean property is equivalent to liberty, and since liberty is the greatest good and coercion the worst evil, anything that interferes with private property is coercive and therefore impermissible. The upshot is that "no one has the right to initiate aggression against the person or property of anyone else" (74, emphasis original)—including the government. Any regulation or re-

distribution of property is, accordingly, illegitimate. "Since taxation is *coercive*, the ultimate libertarian goal is to eliminate it" (217, emphasis added). The problem with the modern state, then, is that it is unjust, whatever its consequences, because it inherently deprives people of freedom. But does it?

It does not; for all legal systems, including libertarianism, coercively enforce rules that assign the "ownership" of all persons and all bits of the world. Every legal system throws a net of coercion over the entire society it covers, prohibiting by force any deviations from its definitions of rights. Inasmuch as there is just as much of the world to be parcelled out under each system's set of property rules, and the rights governing all of this property are just as coercively enforced in all systems, there is no difference in the "amount" of coercion—or, conversely, the amount of (negative) freedom—under different legal systems, including libertarianism. If someone violates the laws of a social democracy—say, by hiding income from the government to avoid taxation—it is true that the state may subject her to coercive penalties. But if, in a libertarian society, someone violates the laws of property—say, by redistributing wealth from a rich person to a poor one without the consent of the former—it is equally true that the state may subject the malefactor to coercive penalties. So, strictly in terms of negative liberty—freedom from physical coercion—libertarianism has no edge over any other system (cf. Samuels 1993; Cohen 1995; Weinberg 1997).

This argument, it is true, clashes with the tacit libertarian presupposition that there is a baseline entitlement to whatever one "earns," such that government "redistribution" of wealth is coercive. The Lockean theory of property acquisition enshrines this baseline as "natural." But the legitimacy of the baseline is what is at issue, so it will not do to rest a defense of libertarianism on it: this would amount to resting libertarianism on itself. If we do not privilege the libertarian baseline as a state of "freedom," then it should be evident that a libertarian legal system uses this baseline to establish a distribution of property titles that is enforced just as coercively as any other legal system would enforce its distribution of entitlements. Thus, in a libertarian society, I am no less "prevented from doing what I could otherwise do"—Isaiah Berlin's definition of negative liberty (Berlin 1969, 122)—than in a social-democratic society. Under social democracy, things that I could otherwise do

(in a libertarian society) with private property are prohibited by laws that assign much of that property to the state. If I treat state property as a private possession, transgressing the social-democratic baseline, I am considered a criminal. By the same token, however, under libertarianism, things that I could otherwise do (in a social-democratic society) with state property are prohibited by a legal system that assigns all property to individuals. If I treat the private property to which someone else had legal title as if it is state property—say, by giving “someone else’s” money to a bag lady without the permission of its “rightful owner,” or by entering the art gallery “owned” by a wealthy collector and treating it like a public museum without his consent—I am considered a criminal. By using the force of law to prohibit me from enjoying a state museum (of which there could, legally, be none), or from working in a state factory, or from receiving state welfare benefits or a public education, a libertarian government violates my negative liberty by prohibiting me from doing what I could under social democracy. (Whether these prohibited state activities might, in practice, be less enjoyable, remunerative, or educational than their libertarian alternatives is beside the point, since philosophical libertarianism must not appeal to beneficial consequences.)

Thus, Boaz is mistaken in describing taxation as “aggression against the person or property of” the taxpayer (74). If we start from a social-democratic baseline, it is *libertarianism* that sanctions coercive aggression: coercive aggression against the persons or property of those who are deprived, say, of their welfare entitlements by the refusal of a libertarian government to enforce them. The peaceful taxpayer in a social democracy, minding his own business, is revealed to be no more entitled to keep “his” property on the basis of a right to be free of aggression than is the peaceful recipient of “stolen” goods in a libertarian society, who could have no legitimate objection to the libertarian government’s “redistribution” of her property to the person who is, according to the libertarian baseline, its rightful owner. For according to the social-democratic baseline, the welfare recipient is the rightful owner of the wealth in question, and the recalcitrant taxpayer is just as much a usurper of this right as the thief. The fact is that both social democracy and libertarianism violate negative liberty equally: for every taxpayer whose negative liberty would be violated by a social democracy, there is (figurative speaking) a would-be welfare recipi-

ent whose negative liberty is violated by a libertarian government—as surely as is that of a homeowner, under either government, by a burglar.

There is, to be sure, a real difference in the amount of freedom libertarianism makes available to people relative to other systems. This difference, however, lies not in the ability of one social system to avoid coercively preventing me from doing what I would be able to do in another system, but in the putatively lesser *extent* of what “I could otherwise do.” Compare libertarianism to Communism of the type that collapsed in 1989—state socialism—for a moment. In a Communist society I can, unless I am a high government official, devote fewer discrete chunks of the world to my purposes than I could in a libertarian society, since under Communism, the amount of the world that any private person owns is relatively small compared to the amount one is permitted to own under libertarianism. This means, however, not that Communist laws violate my negative liberty more than libertarian laws do, but that I have more *positive* liberty under a libertarian than a Communist regime: more liberty, that is, to “attain a goal” of my own choosing (Berlin 1969, 122)—as long as the goal is one better attained with private than with public property. I have no more negative liberty under libertarianism, since it is as true of Communism as of libertarianism that, so long as I obey the coercively enforced allocation of property titles, “no man or body of men interferes with my activity” (*ibid.*). Under Communism, there is no more “deliberate interference of other human beings within the area in which I could otherwise act” (*ibid.*)⁷ than under libertarianism. What varies between the two societies is the scope of this area, the size of the private sphere (which Berlin unaccountably equates with *negative* liberty)—not whether its borders are coercively enforced.

Once we recognize that libertarians can legitimately claim an advantage over Communism only on the basis of positive freedom, however, it becomes unclear why one should prefer (philosophical) libertarianism to social democracy. For the social democrat wants to ensure that the opportunity for goal attainment that libertarians extend from high Communist officials to property owners does not stop there, leaving out the propertyless. In other words, the social democrat wants to equalize positive freedom, but more rigorously than does the libertarian. The libertarian’s libertarianism turns out to be less complete than that of the social democrat, since the liber-

tarian would arbitrarily extend positive liberty only to those who happen to have acquired title to pieces of the world. The social democrat asks why only property owners, rather than all human beings, should be able to attain their goals. Or, more accurately, the social democrat asks why only those who have "mixed" their labor with the world, or those who have received bequests or exchanges from others who have mixed their labor with the world, should be entitled to pieces of the world with which they may attain their goals.

Libertarians might respond by arguing that libertarianism is, *in practice*, able to achieve a wider distribution of property, hence of positive freedom, than social democracy. Such a response would remain "philosophical" in that it would take the freedom conferred by private property to be intrinsically valuable, regardless of its effects. People might use their positive freedom in ways that made them unhappy, for example; yet the assumption would still be that it is desirable for them to have more positive freedom than less, regardless of the resulting unhappiness. Despite this apriorism—and despite the type of apriorism that is neither avoidable nor undesirable in consequentialist inquiries, which must, of course, take as given the desirability of a goal against which some consequences are judged good and others bad—the *positive libertarianism* toward which this response points would also be resolutely empirical, in that its political recommendations would be based entirely on the claim that in the real world, the workings of an unregulated private sector would have the effect of distributing more opportunities for goal attainment, more equally, than any more regulated system. This claim cannot go through without knowledge of how the real world does, in fact, work.

To my knowledge, all libertarian philosophers (except Conway), from Hayek to Nozick to James Buchanan to lesser-known writers such as Antony Flew and Tibor Machan, reject the positive-libertarian alternative, preferring to rely on the claim that only negative liberty is "real" liberty. It may be surprising that, 700 years after the collapse of Scholasticism, there should still be philosophers who assume that there are "correct" and "incorrect" definitions of words. But it would be a mistake to underestimate how important to libertarian philosophy is the conviction that only negative liberty captures the "essence" of the word *liberty*.

Even if negative liberty is "true" liberty (and even if liberty is in-

trinsically valuable), however, this cannot constitute an argument for libertarianism without the further assumption that negative liberty is either *uniquely* or *relatively* embodied in libertarianism. The assumption that liberty is embodied in libertarianism *relatively* more than in other systems is necessarily false, however—unless we are speaking of positive liberty—since, as we have seen, there is no difference in the amount of negative liberty afforded people by libertarianism and by competing systems of property law. And for the same reason, the assumption that freedom is *uniquely* embodied in libertarianism, such that libertarianism is the only system that would not infringe upon negative liberty, is equally false—unless we conflate negative liberty with Lockean property holdings, “moralizing” our definition of liberty (as Cohen puts it) by importing into it a theory of rights, such that, by definition, any deviation from those rights counts as coercion, while deviations from, say, social-democratic welfare rights do not. This moralization of “negative liberty” is perfectly acceptable as a stipulation of the definition of the term—one stipulative definition is as good as another—but it deprives of any normative force the claim that libertarianism uniquely preserves negative liberty, since “negative liberty” has now been defined to mean nothing more than Lockean property rights, so that the claim must now read, “Libertarianism uniquely preserves Lockean property rights”—a tautology.

As we have seen, Boaz officially sets out no defense of the value of Lockean property rights *apart from* the fact that, supposedly, they embody “liberty,” such that violations of these rights amount to “aggression” against the right-holder. Recall how quickly Boaz passes from describing Lockean property acquisition to equating it with freedom. The libertarian appeal to negative liberty is entirely parasitic on the appeal to Lockean property rights, but the appeal to Lockean property rights is entirely undefended. This raises the question of what makes libertarians so confident that they can stake their case on philosophical grounds.

The answer is, I think, to be found less in the poorly argued philosophy of libertarianism itself than in the prephilosophical conviction that capitalism equals freedom. This conviction has its foundations in the understanding of freedom that seems “obvious” to people who live in capitalist societies, even though this foundation crumbles under close scrutiny. As Alan Haworth puts it, libertarians “think they are for freedom but they don’t know what freedom is. In reality, their

doctrine is so contrary to freedom that it ought to be entitled 'anti-libertarianism'" (Haworth 1994, 5). This may strike the libertarian reader as bizarre, but it only seems so because it goes against conventional wisdom. In the West—and particularly in the United States, the only country where libertarianism (as opposed to more consequentialist forms of classical liberalism) has made any headway—market relations and, perhaps more importantly, the Protestant Ethic and its Lockean and implications are so pervasive that it is difficult to extricate them from our thinking. But that is exactly what we must do if we are to think about libertarianism seriously.

When libertarian philosophers cling ferociously to the view that the very idea of positive liberty is an abominable corruption of language, their "certitude is the classic symptom of ossified dogmatism" (Haworth 1994, 40). But when they further equate negative liberty with libertarianism, their certitude is, I think, less a sign of dogmatism than of the very problem that plagued Conway's and Murray's consequentialist arguments: complacency. Dogmatism is desperate; complacency is careless. The libertarians' angry denunciations of those who would question the "correct" definition of freedom (e.g., Flew 1992; Narveson 1992; see also Haworth 1994, 39–40) are last-ditch defenses against an idea that they realize threatens to bring down their entire system. But since that system is equally grounded on a commonsensical equation of negative liberty with private property that simply begs the question against nonlibertarians, their unargued acceptance of this equation suggests that they are oblivious to the possibility that their worldview rests on unexamined presuppositions absorbed unconsciously from the culture of capitalism. That just isn't something libertarians think about.

The fact that the problems of consequentialist libertarianism are traceable to a similar complacency may suggest that nothing more is at work here than an all-too-human failing. I believe, though, that the problem lies not in libertarians, but in libertarianism. The way libertarianism incorporates consequentialist *and* philosophical arguments feeds on and breeds complacency at the same time.

III. THE LIBERTARIAN DILEMMA

Consider the many pages Boaz devotes to the negative consequences of state action, often to great effect. One of the most im-

pressive sections of the *Primer*, for example, discusses public education. Boaz points out that in the decade before 1833, when the English government began subsidizing schools, literacy among working-class youths had reached about 66 percent and school attendance had doubled; and that literacy was nearly universal in England before school was made free and compulsory in 1870 (261). Similarly, Boaz reports that in 1957, prior to the advent of Medicare, only 5 percent of elderly Americans reported being unable to afford needed treatment (*ibid.*). It is all too easy to assume that massive government programs must have been responses to massive failures of civil society; Boaz provides convincing antidotes to that assumption.

But how does this square with Boaz's overarching commitment to philosophical libertarianism? It doesn't. If private property is liberty, and liberty is intrinsically valuable, then taxation of private property is both coercive and intolerable; so why should we care if "taxes and regulations reduce people's incentive to produce wealth," or if "government enterprises are less efficient, less innovative, and more wasteful than private firms" (13)? Conversely, if private property is not so much intrinsically as instrumentally valuable—if it is the undesirable consequences of big government that are at issue ("the bigger the government," Boaz claims, "the bigger the failure" [12])—then of what relevance is it, for instance, that "socialism and other attempts to replace individual decision making with government solutions took away the freedom and dignity of the individual" (12)? On the one hand, Boaz is dedicated to the a priori proposition that "individuals have the right to do whatever they want to do, so long as they respect the equal [property] rights of others" (57). On the other hand, he believes that "libertarian social analysis" (16) demonstrates a posteriori that the consequences of inviolate property rights are prosperity, peace, and civil social relationships. Which is it?

Perhaps Boaz need not choose. Perhaps private property is intrinsically valuable, and so should be inviolate regardless of the consequences; while, at the same time, it also produces the best results, and so should be inviolate on consequentialist grounds, too. As Rothbard (1976, 40) memorably put it,

It so happens that the free-market economy, and the specialization and division of labor it implies, is by far the most productive form of

economy known to man, and has been responsible for industrialization and for the modern economy on which civilization has been built. This is a fortunate utilitarian result of the free market, but it is not, to the libertarian, the *prime* reason for his support of this system. That prime reason is moral and is rooted in the natural-rights defense of private property. . . . Even if a society of despotism and systematic invasion of rights could be shown to be more productive than what Adam Smith called "the system of natural liberty," the libertarian would support this system. Fortunately, as in so many other areas, the utilitarian and the moral, natural rights and general prosperity, go hand in hand.

This is the orthodox position, which tries to marry instrumentalist and intrinsic defenses of libertarianism while giving primacy to the latter. Boaz and, in the end, Murray follow this line. But they come no closer than Rothbard did to explaining the remarkable coincidence that libertarianism "happens" to be the system that does best on both a priori and a posteriori grounds.

Is it just amazing good fortune that the armchair philosopher, reflecting on the different forms of individual ownership and on the metaphysics of labor mixing, reaches the same conclusion—libertarianism—as the economist studying the effects of minimum wage laws and the causes of business cycles, the sociologist investigating the war on drugs, and the political scientist probing the rationality of democratic decision making? Divine intervention might seem to be the only thing that could make sense of this libertarian straddle: the notion that one need not choose between a priori and a posteriori rationales for a libertarian world (although, if one had to choose, one would choose the a priori rationale), because such a world would be the best possible world in every respect.

The effect of libertarian straddling on libertarian scholarship is suggested by a passage in the scholarly appendix to Boaz's collection of libertarian essays, *The Libertarian Reader*. There, Tom G. Palmer (also of the Cato Institute) writes that in libertarian scholarship, "the moral imperatives of peace and voluntary cooperation are *brought together* with a rich understanding of the spontaneous order made possible by such voluntary cooperation, and of the ways in which coercive intervention can disorder the world and set in motion complex trains of unintended consequences" (Boaz 1997b, 416, emphasis added). Palmer's ambiguous "brought together" suggests (without coming right out and saying) that even if there were

no rich understanding of spontaneous order, libertarianism would be sustained by "moral imperatives." But in that case, why develop the rich understanding of spontaneous order in the first place, and why emphasize its importance now that it has been developed? Spontaneous order is, on Palmer's own terms, *irrelevant*, since even if a rich understanding of it yielded the conclusion that markets are *less* orderly or less spontaneous than states, or that the quality of the order they produce is *inferior* to that produced by states, we would still be compelled to be libertarians by moral imperatives. The premise of the philosophical approach is that nothing can possibly trump freedom-cum-private property. But if libertarian freedom is an end in itself and is the greatest of all values, one's endorsement of it should not be affected in the slightest by such empirical questions as whether libertarianism would spell starvation or warfare. The premise of the empirical approach is, conversely, that such consequences *do* matter. Why investigate the effects of libertarianism if they could not conceivably outweigh the putative intrinsic value of private property? If a priori reasoning tells us that *laissez-faire* capitalism is just, come what may, then why should we care to find out what may, in fact, come?

The great merit of Boaz's *Primer*—other than clearly and forcefully presenting the state of libertarian thinking on both philosophical and empirical questions—is that it confronts this conundrum openly, honestly, and insightfully. Boaz writes:

This is not to say, Let justice be done though the heavens fall. Of course consequences matter, and few of us would be libertarians if we thought a strict adherence to individual rights would lead to a society of conflict and poverty. (84)

How, then, does Boaz justify his fealty to the orthodox fusion of consequentialist and nonconsequentialist approaches, and the priority it necessarily gives the latter? He continues:

Because individual rights are rooted in the nature of man, it is natural that societies that respect rights are characterized by a greater degree of harmony and abundance. *Laissez-faire* economic policy, based on a strict respect for rights, *will* lead to the greatest prosperity for the greatest number. But the root of our social rules must be the protection of each individual's right to life, liberty, and property. (Ibid.)

Boaz's attempt to resolve the quandary is borrowed from Ayn Rand: "individual rights are rooted in the nature of man." "Humans," Boaz elaborates, "come into the world without an instinctive knowledge of what their needs are and how to fulfill them; as Aristotle said, man is a reasoning and deliberating animal. . . . So they need a social system that allows them to use their reason, to act in the world, and to cooperate with others." But since "we think and act individually" (61), only a social system such as libertarianism, one that respects human individuality, will manage to meet human needs.

That, however, is a claim about the empirical consequences of libertarianism. As such, its validity cannot be known in advance. Only if, as a matter of fact, empirical investigation and experience indicate that libertarianism *does* meet human needs better than other social systems is Boaz's thesis validated. If another form of individualism, such as social-democratic liberalism, proves better able to meet human needs than libertarianism, then we would, by Boaz's argument, be required to endorse it. And if this research reveals that Boaz is mistaken in his identification of the human "essence"—if it is our sociality (as Aristotle believed), or our mortality, or our historicity, or our evolutionary origins, rather than our individuality, that actually determines our needs—then we should not restrict our options to forms of individualism, libertarian or otherwise. A non-individualist social system might be the one most appropriate to human beings; only empirical investigation, not moral imperatives, could say.

Moreover, the Randian argument is opaque and, to the extent it is clear, it seems to be wrong on almost purely logical grounds. What, exactly, does it mean for action and thought to be individualistic? Clearly it is *possible* for people to act collectively, whether through cooperation or coercion; and it is even possible for them to "think" collectively, by learning from, or being brainwashed by, each other and their predecessors. So the claim that "we think and act individually" is either inaccurate or trivial: if individual participation in collective action and thought makes them count as individual action and thought, then all action and all thought are individualistic. Boaz may be speaking loosely, however. Perhaps he means that people think and act *most effectively* to meet their needs when they think and act individually. But this is clearly false. Thinking without learning from others would reduce us to the

level of newborn infants. And acting in isolation from others would deprive us of all the forms of cooperation and coercion that make survival, let alone civilization, possible. Included among these are the very institution that Boaz is trying to defend, for as he would be the first to recognize, the market is a vast engine of cooperative action.

Perhaps, then, Boaz means by "individual" action and thought "free" action and thought. But it is unclear why we should believe that free thought is most at risk from other people: the greatest barriers to free thought are often self-imposed, and the influence of others can often wake us from dogmatic slumbers. As for action, we have already seen that action in free markets is no freer, in the negative sense, than action in any other context. Which leaves us, again, with positive freedom, in the sense of a wide variety of choices of action. If this is what the Randian claim is intended to mean, however, we still lack an a priori reason for believing that "individual action" will be more conducive than collective action to meeting human needs. Perhaps giving individuals more choices simply enables them to make more mistakes. Nor have we grounds for connecting positive freedom to libertarian politics. The Randian argument attempts to go from the satisfaction of human needs to freedom. But negative freedom is violated equally by all legal systems, including libertarianism; and positive freedom and meeting human needs are the very rationales social democrats use for interfering in untrammelled capitalism.

Boaz's attempt to reconcile philosophical and consequentialist libertarianism fails, then, in at least two ways. First, the attempt does not effect harmony between the two approaches; in justifying individual rights through their ability to meet human needs, it subordinates the a priori to the a posteriori. Faced with the choice between libertarianism, come what may—"let the heavens fall"—and libertarian consequentialism, Boaz's argument wisely opts for consequentialism, but this negates the orthodox straddle Boaz wants to affirm. Second, consequentialism requires empirical evidence. But, as we saw in Part I, consequentialist libertarians do not yet appear to have established a valid reason why government intervention in a free-market economy might not sometimes be better at meeting human needs than *laissez faire*. The allegedly individualistic nature of "man" is no such reason, because we are not, in fact, particularly individualistic, and because freedom does not seem, a priori, to be

particularly helpful in meeting our needs or in fending off social democracy.

Elsewhere in the *Primer*, however, Boaz does make consequentialist arguments of sufficient generality to justify libertarianism, if they are sound. Perhaps, then, we should interpret his Randian argument as relying, in un-Randian fashion, not on “the nature of man,” but on these other empirical claims.

Orthodox Consequentialism

I count two major lines of consequentialist thought in *Libertarianism: A Primer*, and these arguments faithfully represent orthodox libertarian thinking at the end of the twentieth century.

Boaz’s first consequentialist theme is the already-mentioned idea of *spontaneous order*. He claims that “the great insight of libertarian social analysis is that order in society arises spontaneously, out of the actions of thousands or millions of individuals who coordinate their actions with those of others in order to achieve their purposes” (16). In *The Libertarian Reader*, Boaz goes so far as to allow explicitly that “if individuals using their own knowledge for their own purposes didn’t generate a spontaneous order of peace and prosperity, it would make little sense to advocate either natural rights or free markets” (Boaz 1997b, xv).

Spontaneity is too wide, however, and *order* too empty, to carry the great weight contemporary libertarians place on spontaneous order. Spontaneity is too wide because, inter alia, *democracy* is a spontaneous order (diZerega 1989). If the absence of central direction is sufficient to justify an order, there would seem to be nothing wrong with supplementing the market order with a democratic one. More important, “order” is hardly an end in itself. The free market is an order; democracy is an order; bureaucracy is an order; a concentration camp is an order. Their orderliness says nothing about their desirability. It is not order as such, but the ends an order produces, that determine whether or not it is a good thing.

That spontaneous order is “the great insight of libertarian social analysis” makes sense only if one accepts Hayek’s notion that what motivates those who would interfere in the market must be the conviction that it is not orderly enough: the idea, as Boaz puts it, “that smart people could plan an economic system that would be

better than the unplanned, anarchic market" (205). This notion had some justification at the beginning of the twentieth century, when Hayek used it to explain why his fellow economists—whose views he tended to equate with intellectual opinion in general—did not accept his and Mises's argument against the feasibility of socialism. But however useful this notion was in explaining the myopia of socialist economists (and Fabian and Progressive noneconomists), it is now thoroughly outdated. Boaz follows Hayek in failing to recognize that it has been roughly half a century since a desire for planning motivated many interventionists (or even many socialists) in the West; there is no longer even a tacit acceptance of planning as a means to egalitarian ends among most on the left.⁸ If anything, a revulsion against planning, hierarchy, and power—a deeply libertarian current of feeling—has driven the postwar left. This anti-authoritarian sentiment, which had always been the heart of leftist thought but was sometimes eclipsed by the romance of the state, took aim at "planning" long before 1989—in reaction against Auschwitz, Hiroshima, the Gulag, and Vietnam. It crested in the 1960s, and Western intellectual life has been a great stream of anti-authoritarianism ever since. Hayek's attacks on the "engineering" or "planning" mentality rarely manage to adduce as an exemplar of this mentality anyone who has been alive since 1946 (when Keynes died). There are, to be sure, "planners" in high government office—Hillary Clinton and Ira Magaziner come to mind. But Boaz errs in accepting Hayek's belief that *intellectual* (rather than bureaucratic) thinking is suffused with "the idea of planning" (202). Hayek appears to have been simply ignorant of the antibureaucratic influence exercised on modern thought by Marcuse, the Frankfurt School, the New Left, Habermas, Foucault, Derrida, MacIntyre, Taylor, even Rawls and Dworkin. Hayek's notion that the key to understanding contemporary intellectual life is to be found in the works of such writers as H. G. Wells (Hayek 1988, 67) can only be characterized as cranky.⁹

"Spontaneous order" constitutes an argument for libertarianism only as a rebuttal to a mostly defunct version of interventionism. This argument misperceives the nature of modern culture and, in doing so, demonstrates libertarianism's extreme cultural marginality. In the concluding part, I will suggest that cultural marginality could be turned to advantage, but only if libertarians were to engage in serious reflection about how their opposition to central planning

differs from, and might improve upon, that of the leftist cultural mainstream. Unfortunately, libertarian intellectual marginality is not, at present, a fruitful attempt to stand back from unwarranted conventional assumptions. It is instead a willful isolation from the mainstream that makes an accurate grasp of its assumptions impossible. It amounts to contempt for anyone who disagrees with libertarianism, based on profound misunderstandings of their reasons for doing so. This is why it is a great shame that Boaz relies so heavily on arguments from "spontaneous order" and on the caricature of nonlibertarian thought that they depend upon. Unfortunately, this mistake is all too common among libertarians.

Boaz's second major consequentialist rationale for libertarianism is drawn from public choice theory—the application of economic assumptions to political behavior. As James Buchanan and Gordon Tullock (1962, 23) put it, "the economic approach . . . assumes man to be a utility-maximizer in both his market and his political activity." In explicating this assumption, Boaz inadvertently puts his finger on exactly what is wrong with it. "Why," he asks, "should the guy who graduates from college and goes to work for Microsoft be self-interested, while his roommate who goes to work for the Department of Housing and Urban Development is suddenly inspired by altruism and starts acting in the public interest?" (193). One answer is obvious: the very fact that the second roommate seeks a job in government may indicate that he is more interested in serving the public than in financial gain. (The civil service is hardly known as the place to make big money.)

A more subtle possibility is that after arriving at work, general or local expectations may alter even initially self-interested motivations. If the ethos of a government bureaucracy discourages self-interest, or if it is widely thought inappropriate for civil servants to be self-interested, these pressures may shape the second roommate's motives even if he started out being self-interested. That there are such general pressures is evident: what *defines* the market is that it is the sphere where the pursuit of self-interest is considered legitimate. Conversely, self-interest is accorded limited legitimacy, at best, in the public sphere. To maintain that, under these circumstances, people in both the public and private spheres *must* be equally selfish is unwarranted. Moreover, introspection tells us that we sometimes act ideologically or altruistically, and casual observation (borne out by a wealth of political-science data) suggests that

in politics, we do so often—as when we vote, which can almost never make sense as an act of self-interest, given the minuscule chance that one vote will affect an electoral outcome. Do *libertarians* devote their lives to their cause out of self-interest? Hardly.

This does not mean that public choice theory is useless. Undoubtedly, government officials often transgress the altruistic norms to which they are expected to adhere. Empirical investigation can tell us when this is, and when it is not, the case. The problem is that if public choice theory is to do the work libertarians expect of it, we must assume that self-interest is *universal*, such that we can *always* expect government officials to work against the public interest. This assumption, however, is falsified not only by everyday acquaintance with political actors, but by empirical research (see Lewin 1991).

Such research has not been carried out by public-choice scholars, but this is not all that surprising. If one presumes to know, a priori, what the results of such research will be—as scholars who accept the Buchanan-Tullock assumption do—then why should one bother to do research designed to *test*, rather than confirm, the assumption? Public choice theory has had the same debilitating effect on libertarian empirical research that we might expect libertarian philosophy to have. Like libertarian philosophy, public choice theory, when deployed as an assumption rather than a hypothesis, obviates serious investigation into the way the world actually works. As the chairman of the Cato Institute, William Niskanen (1993, 151), himself a public-choice theorist, has written recently, “much of the [public choice] literature is a collection of intellectual games. Our specialty has developed clear models of first and second derivatives but cannot answer such simple questions as ‘Why do people vote?’” (See Green and Shapiro 1994; Friedman 1995).

The Crisis of Libertarian Scholarship

We have reviewed several consequentialist arguments for libertarianism, and we have found all of them to be inadequate. By “inadequate,” I must emphasize, I mean unable to justify full-scale libertarianism. These arguments may well be adequate to justify skepticism about government, and therefore, perhaps, movement toward smaller government; but they do not get one all the way even

to Murray's watered-down version of libertarianism. The simplistic trend-line perception that government doesn't work fails to explain why we should continue to expect (federal) government failure in every case. The equation of happiness with responsibility ignores too many other elements of happiness to be credible. The theory of spontaneous order does not sustain the claims of civil society over those of the democratic state, and it does not explain why an unjust order is preferable to justice and some measure of "disorder." Public choice theory is neither logical nor true as the type of universal prediction it would have to be in order to sustain libertarian conclusions.

There is a deeper problem with the consequentialist approach, however, than the fact that there seems to be, at the present moment, no adequate consequentialist reason for favoring libertarianism. This is that consequentialism is inherently an "at the present moment" proposition. Even if there were some reason to think that all government action has bad consequences, an empirical claim of this sort is, by nature, open to falsification in the future. So libertarian consequentialists could never rest easy. They would always have to keep an open mind; for them, the task of studying the changing world would never end. They could never be sure that new observations would not demand new political conclusions. They would, accordingly, have to maintain much more psychological distance between themselves and their politics than libertarians are accustomed to. Consequentialism is conducive to scholarship and to scholarly habits of mind, not to ideology and political crusading.

As Boaz puts it, with typical and admirable candor, "most libertarians conclude that liberty is better protected by a system of individual rights than by simple utilitarianism or economic analysis" (84). In other words, most libertarians conclude that once we have decided that "liberty" (inviolable private property) is the desideratum, we should eschew consequentialism because it is a less reliable way to achieve inviolable private property than is a priori philosophy. This is undoubtedly true, but how can we decide that inviolable private property is the desideratum without doing empirical research? Only by accepting the premise Boaz sensibly rejects: that we should be libertarians "let the heavens fall." A priori rights are conducive to the untroubled sleep and closed minds of libertarians. But as Boaz points out, there would be hardly any libertarians in the first place if the chief rationale for libertarianism were a priori

rights theory. Philosophical libertarianism is plausible only to the already-convinced. That we should confer inviolability on property holdings derived from labor "mixing" at the possible cost of human suffering, starvation, or civil strife strikes nonlibertarians as ridiculous.

Thus, the libertarian dilemma. Libertarian philosophy is self-sustaining if one accepts its premises, but one would only accept them if one had already been pushed in a libertarian direction by consequentialist considerations. Yet consequences are irrelevant once the philosophical premises are accepted. Libertarian philosophy repudiates social science, but it needs social science if it is to be persuasive. On the other hand, libertarian social science needs libertarian philosophy to achieve closure. Empirical research does not, as of yet, seem to have legitimately gotten anyone 100 percent of the way to libertarianism; there remain, at the very least, some public goods and, in principle, the need for economic redistribution. Libertarian philosophy fills the gap between what free-market economists can prove about the undesirable consequences of government intervention and the absolute prohibition of all intervention. Consequentialist and nonconsequentialist arguments for libertarianism may be antithetical in principle, but they are symbiotic in practice. The resulting organism, unfortunately, can neither swim nor fly. The weaknesses of each of its two parts are aggravated by those of the other.

At the end of Part I, for example, I suggested that Murray's flawed localism may depend on his adherence to libertarian philosophical precepts that are alien to his avowed consequentialism. Completely disregarding his own eudaimonism, which is embodied in the claim that freedom "is as indispensable to happiness as oxygen is to life" because it "is the stuff by which we live satisfying lives" (4), Murray simultaneously maintains that "it is wrong for me to use force against you, because it violates your right to the control of your person" (6). We should be libertarians, then, for two reasons: not only because "limited government leaves people with the freedom and responsibility they need to mold satisfying lives," but because "freedom is our birthright" (35). The second, philosophical reason is responsible, it appears, for the complacency of Murray's consequentialist thinking about localism. By including a (weak) "exit" option, he makes localism compatible with (a watered-down form of) libertarianism. As long as no neighborhood

will be *forced* to put up with an oppressive local government, Murray the libertarian philosopher is satisfied. But then what has happened to happiness as the ultimate criterion of a good society? It does not occur to Murray the utilitarian social scientist to ask whether consigning people to "city and county governments [with] the latitude that the Constitution originally gave to the states" might, in fact, sometimes make them miserable. In part this is because he assumes that happiness is reducible to satisfaction, and satisfaction to self-governance. But surely the fact that he can then equate self-governance with *freedom* must reinforce his complacency about the satisfaction/happiness equivalency.

This, however, is but a mild case, revolving around the peculiarities of Murray's version of libertarianism, of the damaging effects of the empirical-philosophical symbiosis. More acute and recognizable symptoms are Murray's willingness to accept a few trend-line tests as reason enough to conclude that government is generally incompetent; and the inability of spontaneous-order and public-choice logic, let alone evidence, to withstand skeptical attention. Libertarian philosophy lowers the logical and evidentiary standards for libertarian social science: if one believes that redistribution and regulation are immoral anyway because they violate self-ownership rights, then it is understandable that one would have a cavalier attitude about proving that redistribution and regulation cause unhappiness or "disorder," or that they always serve the venal interests of politicians and bureaucrats. The orthodox libertarian schema implies that these consequentialist arguments are superfluous. They are essentially propaganda devices, designed to convince nonlibertarians to reach libertarian conclusions for the wrong reasons.

The "right" reason is that libertarianism is inherently right, because it and it alone protects people's intrinsically valuable property rights, i.e., their "liberty." Since most people do not accept this reasoning, however, spontaneous-order, public-choice, or other free-market economic arguments may be needed to bring people around. This is the subconscious thought that seems to motivate shoddy libertarian empirical work. Murray, who is more explicitly reliant on consequentialism than Boaz but who fails even to notice the potential conflict between consequentialist and rights arguments, ironically ends up allowing an overreliance on libertarian philosophy to traduce his consequentialist concerns. Boaz, who officially supports the libertarian orthodoxy, is nonetheless driven in

the other direction by his awareness of the libertarian dilemma. This prompts him to put more weight on consequentialist arguments than they can bear. There is indeed, for example—as Boaz points out—a powerful incentive for special interests to concentrate their energies on affecting government policies that will reap them great rewards; and there is little incentive for the public to oppose these efforts, since any one policy that is of great importance to a special interest is unlikely to cost the average member of the public more than a penny or two in taxes. In the aggregate, the concentration of government benefits and the dispersion of government costs may be of profound importance, resulting, arguably, in a tendency for the modern state to redistribute income upward. But we cannot assume a priori that this *must* always hold true, or that, when it does, it is sufficient to justify libertarian conclusions. Scholars who make such assumptions succeed only in branding public choice research as untrustworthy propaganda. James Buchanan has written that

underneath its abstract analysis, the Virginia research program has always embodied a moral passion that our adversaries have fully appreciated. The program has advanced our scientific understanding of social interaction, but the science has been consistently applied to the normatively chosen question. How can individuals live in social order while preserving their own liberties? (Quoted in Kelley, 46)

But how scrupulous is the research produced by moral passion likely to be?

Although there is a handful of exceptions, most libertarian empirical work displays an obvious impatience to reach a foreordained antigovernment conclusion. A random and quite typical example of how poorly such work fares, even as propaganda, has appeared on the day I write these words. In response to a new book by two libertarian economists that deals, among other things, with the diversion of American Cancer Society funds to political uses, a reviewer writes:

Were it not for the authors' strident tone, the reader might become indignant, too. . . . But their stridency gets in the way of their arguments not only here but elsewhere in the book. The authors indict the American Cancer Society and other voluntary, charitable health associations as "appendages of the Government and paid promoters

of an expanded welfare state." Such shrillness makes the rest of their arguments, even those supported by actual data, all too easy to ignore. (Henig 1997, 15)

In editing a journal that has received manuscripts from virtually every libertarian scholar, famous and unknown alike, I have long been struck by the consistent juxtaposition of what another observer delicately calls the "intermingling of positive statements and normative pleadings" (Whitman 1995, 218): the coincidence of libertarian philosophical sentiments with weak empirical research, leaps of logic, and contempt for nonlibertarian points of view (of which the authors usually appear ignorant). The polemical tone and deficient evidence, however, and the tarnishing of often-good ideas by doctrinaire rhetoric and low scholarly standards, are only the least of it. The worst thing is not the waste of effort that goes into producing propaganda barely veiled by the robes of scholarship. The greater tragedy is what libertarians could produce, but do not.

In considering this issue, one must distinguish between *libertarian scholarship*, which has generally been so deficient, and *scholarship by libertarians*.

Since the early days of the libertarian movement—the 1950s, when the Volker Fund (a precursor of the Institute for Humane Studies) had trouble scaring up a few dozen "classical liberal" students and scholars of promise—there has been a vast increase in the number of libertarian scholars. Between 1983 and 1993, the Institute for Humane Studies gave fellowships to 300 students, of whom one-sixth had gained faculty appointments by the end of that period (Kelley, 84). Between 1995 and 1997 alone, the recipients of IHS fellowships produced nearly 1000 publications (Institute for Humane Studies 1997, 1). The caliber of these publications is quite impressive, bordering on the spectacular. Indeed, the most notable trend among libertarian scholars of the 1980s and 1990s has been their professionalism. But the corollary of this trend is that they write about subjects that are relevant to libertarianism with less and less frequency. A plethora of libertarian scholars does not necessarily indicate an abundance of libertarian scholarship (nor, of course, does it say anything about the quality of that scholarship).

Boaz refers to "an explosion of libertarian scholarship in such fields as economics, law, history, philosophy, psychology, feminism,

economic development, civil rights, education, the environment, social theory, bioethics, civil liberties, foreign policy, technology, the Information Age, and more" (57). Grouping these "fields" according to scholarly discipline, the list becomes: psychology, law, history, philosophy, economics, and political science. But there is in fact no libertarian scholarship to speak of in psychology and almost none in history, law, and political science, as Boaz's references indicate (296-97). The only fields in which there has, in reality, been an explosion of scholarship by libertarians are economics and philosophy. There have been virtually no contributions by libertarians to any of the other social sciences and humanities; and even in economics and philosophy, the recent abundance of work by libertarian scholars has not, by and large, been *libertarian scholarship*.

The young, professionalized libertarian economist or philosopher publishes a great deal, but on subjects that are tangential, at best, to libertarian concerns. The philosophers tend to be aware of the deficiencies of libertarian philosophy, so instead of defending Lockean property theory, they write, say, defenses of liberalism (not classical liberalism) against communitarianism and group rights theory. However, libertarian philosophy takes a back seat to the advancement of libertarian philosophers' careers not only because they find libertarian philosophy indefensible, but because they assume that a sound empirical case for libertarianism has already been made—by economists—so that defenses of untenable philosophical libertarianism are unnecessary. Among libertarian economists there is a parallel conviction that a sound philosophical case for libertarianism has already been made—by libertarian philosophers. Faced with career pressures that are even greater than those confronting philosophers, this conviction leads growing numbers of young libertarian economists, who tend to have been inspired originally by the antipositivist Austrian school of economics, to conform to the positivist tenets of their discipline, consigning Austrian economics, and libertarianism, to the status of a hobby.

Of the "explosion of libertarian scholarship" symbolized by those 900-plus publications, then, probably at least half consists of "tenure articles"—sophisticated careerist exercises in mathematical modeling by young economists, or brilliant additions to liberal (not classical liberal) theory by young political philosophers: not libertarian scholarship, but "cutting-edge" ephemera that is valuable as another line on one's vita, not because it makes important breakthroughs or

is widely influential. Even the scholarship that is libertarian in content is often inconsequential, the better to serve the careerist imperative to publish trendy trivia or perish.

This helps explain why there has been no increase in the quality or impact of libertarian ideas that would correspond to the growing quality and quantity of libertarian scholars. Or at least, so it seems to an attentive observer of libertarian scholarship and scholarship by libertarians. Libertarian scholars may dispute this judgment, but I would ask them: What have libertarian scholars of the last 20 years produced that is both relevant to libertarianism and of lasting value?¹⁰ It is one thing to list various topics that libertarian scholars have written about; it is quite another to tell us how these writings have fundamentally changed our understanding of the issues in question.

When we put the consequentialist-nonconsequentialist symbiosis in historical perspective we can, I think, get a clearer picture of why libertarian scholarship is (arguably) so disappointing. At the same time, we might be able to explain the curious codependence of libertarian philosophers on inadequate libertarian economics, and of libertarian economists on inadequate libertarian philosophy. Kelley's *Bringing the Market Back In*, while long on description and short on analysis, gives us the raw materials we need to sketch the historical roots of the libertarian dilemma.

IV. TRANSCENDING LIBERTARIANISM

Kelley's book serves this purpose by placing the two mainstays of contemporary libertarian consequentialism—spontaneous order theory and public choice theory—into the context of a general ferment of free-market ideas that bubbled up in the middle of the century. Kelley shows that, at the same moment when the left was also beginning to repudiate bureaucratic statism (in principle, at least), Hayek, Buchanan, and Tullock were only a few of those who challenged the burgeoning postwar megastate from the right. Among the others were Milton Friedman, Ronald Coase, George Stigler, Harold Demsetz, Yale Brozen, G. Warren Nutter, Gary Becker, and Sam Peltzman, all of the University of Chicago. The first thing to notice about this list is that every one of its members was an economist by training (Tullock receiving economics training as part of the Chicago law program). The roots of libertarianism

were fundamentally economic—hence consequentialist. Hayek was an economist who cut his teeth in the debate between Ludwig von Mises and the socialist economists of the 1920s; Nozick became a libertarian only after being convinced that the Mises-Hayek critique of socialism was lethal. But the second thing to notice is that the resurgence of free-market economics was insufficient to create libertarianism, even though it was absolutely necessary. All of the painstaking research of Chicago- and Austrian-school economists could not explain why *every* government regulation, let alone every government redistribution of wealth, would necessarily do more harm than good. This is the aspiration, in effect, of universalist public choice theory and of the exaggerated claims now made for spontaneous order. But neither these nor any other consequentialist arguments convincingly closed the gap between a general predisposition for free markets and the rigid libertarian refusal to deviate from them under any circumstances.

This was finally achieved by two figures, Murray Rothbard and Ayn Rand, who were crucially influenced by free-market economics, but who, in an act of “creative synthesis,” combined economic consequentialism with a priori libertarian philosophy to create “packages” of ideas that their followers came “to see as ‘natural’ wholes” (Converse 1964, 211)—doctrines that combined the a priori and the a posteriori in webs that were supposed to be seamless. Mises, the émigré Austrian economist, had taught Rothbard at his New York University seminar and influenced Rand after she emigrated to the United States, decisively shaping both authors’ understanding of the free market. But where Mises had written that private property was important “not because it was the ‘privilege of the property owner, but a social institution for the good and benefit of all’” (86), Rand and Rothbard regrounded private property in rights—in Rand’s case, rights derived from the nature of man; in Rothbard’s, rights derived from self-ownership. This instantly rendered the actual, economic basis of Rand’s and Rothbard’s libertarianism philosophically irrelevant. But in the ideological packages they created, economics continued to play a central—albeit, strictly speaking, an illogical—role.

The power of *Atlas Shrugged* stems from Rand’s evocation of accelerating social disintegration. At first there is just a vague sense that something is going wrong, but soon there are shuttered factories, mass unemployment, riots, the unraveling of civilization itself,

at every step supported by the clamor of public opinion, manipulated by demagogues. *Atlas Shrugged* extrapolated into a fictional future the most nightmarish tendencies Rand and her beleaguered free-market friends saw around them in the dark days of the 1940s and 50s. The result is a tale of the ruinous consequences of state control of the economy. Without free-market economics, Rand could have produced neither her dystopian vision nor the ideological "package" that went with it.

Economics is, however, insufficient to explain even the extra-philosophical appeal of *Atlas Shrugged*. What gives the novel its force, for those who are affected by it, is Rand's description of how, in response to each politically induced crisis, new forms of intervention are instituted that lead to even greater breakdowns. It is a novel about a slippery political slope. Rand, however, could not competently analyze politics; when she tried, the results were disastrous. For her, the problem was that politicians and their intellectual allies were mendacious. They purveyed leveling policies that were bound to fail and that, therefore, could only have been motivated by envy of successful industrialists and other "men of the mind." In short, not only the means of political power but the ends they served were "evil."

Rand's way of trying to stop the perceived slide of the United States toward socialist catastrophe, then, was to attack the envy she thought drove real-world egalitarian politics and, as the alternative, to make a virtue out of selfishness. Her solution to her *psychologized* depiction of the *political* problem was a *philosophical* justification for laissez-faire capitalism that unwittingly obviated the *economic* analysis without which the political problem would not have seemed problematic to begin with. Rand was perceptive enough to see that politics must be related to culture, but her form of political analysis reduced culture to a simplistic psychological disease, envy, for which a simplistic philosophy, egoism, was the cure. In this way she transmuted the essentially consequentialist force of her dystopian vision into a set of a priori precepts that made consequences irrelevant.

Rothbard reached the same terminus by a slightly different route. He, too, thought it was only a matter of time before "statism" led to economic collapse (e.g., Rothbard [1965] 1979, 28). Although he eschewed egoism, however, he was as inept as Rand at understanding the political tendencies he feared. Instead of recognizing that, in

effect, he was afraid that *democratic politics itself* might undermine economic prosperity and thus modern civilization, he revived a bourgeois version of class theory according to which there is a "political class" that, abetted by the self-serving nostrums of intellectuals, leeches off the "productive class." Accordingly, the way to avoid economic collapse was through a principled form of democratic politics, one that would rally the oppressed "net tax-payers" against the parasitic political class by condemning any violation of the producers' private property "rights" as morally unforgiveable—as with Rand's egoism, nullifying the economic analysis on which Rothbard's fear of modern politics was based. Both Rand and Rothbard, overeager to seal the case for expelling the state from the economy that economic arguments alone apparently could not clinch, had to cast themselves as participants in a Manichean struggle against unscrupulous wrongdoers with impure motives. This already betokened a deep complacency about the validity of their own views, such that anyone who disagreed with them must be a deliberate enemy of truth; and it marked the beginning of the anti-intellectualism that continues to disfigure libertarian thought. The virtually unanimous opposition of scholars and intellectuals to a view as self-evidently true as libertarianism seemed to be to Rand and Rothbard must, they thought, be a function of the intellectuals' perversity (rather than of the weaknesses of libertarian argument and evidence). Most germane to our inquiry, however, their Manicheanism betrayed the perception that had animated their vision in the first place: the perception that mass democratic politics is characterized by an ignorance—not an evil intention—that can have unfortunate but unintended consequences.

This perception is easily grasped by anyone who finds himself disagreeing with the *demos* and alienated by the cultural platitudes that sustain the political consensus of the moment—whatever it is. One need not believe in any particular brand of economics or political philosophy to realize that the voice of the people is not the voice of God. But in postwar America, free-market economists were uniquely positioned to hit upon this realization, and however unreflectively, they did. This is the undercurrent that sparked the libertarian movement and continues to do so. If one has learned the counterintuitive lessons of free-market economics—that rent control causes housing shortages, that minimum-wage laws cause unemployment, that state control of the economy causes business cy-

cles, that business regulation is as likely to foster monopoly as to temper it—then it is inevitable that one will find oneself deeply at odds with public opinion and the politics it sustains, for all of these counterproductive measures are overwhelmingly popular. The resulting political alienation was channeled by Rand and Rothbard into libertarian ideology, but instead it might have been the source of a penetrating critical inquiry into the realities of modern government and culture. The problem is that such an inquiry might not have produced libertarian recommendations. The only way to ensure those recommendations before the inquiry had been concluded—since consequentialist inquiries are never concluded—was by turning to libertarian philosophy. That is what Rand and Rothbard did, rendering further empirical inquiry otiose.

Meanwhile the left has, in practice, been prevented from taking advantage of its own frequent disagreements with public opinion by its historically contingent attachment to democratic politics as the primary means to its ends. This allegiance has forced leftist political and cultural critics to presuppose the possibility of rational democratic politics—if only the corrupting influences of money, commercialization, and corporate control could be excised. Libertarians have the basis for a deeper critique of modern culture: they understand that what corporations sell, consumers want to buy. But, precluded by their own ideology—which effectively celebrates whatever consumers freely choose as, *ipso facto*, good¹¹—from criticizing consumerism, libertarians end up being as unthinkingly apologetic about mass culture in its commercial manifestations as the left is about mass culture in its political guise. And by apotheosizing the intrinsic value of private property, libertarian philosophy renders the investigation of even political culture—the very thing that drives libertarian concerns about irrational public policy—irrelevant.

Rand and Rothbard confronted a slide toward ever more government intervention that seemed almost unstoppable. What was frightening about this accelerating process is that it could reasonably be expected to have severe economic and social consequences when it led, as it seemed it must eventually, to socialism. The spiraling growth of government was not bad in itself, but in its effects and in the effects of its anticipated denouement. Economics, a legacy of the eighteenth-century Enlightenment's determination to turn reason to the service of earthly happiness (Hazard 1963;

Muller 1997), was the starting point for these dystopian fears because it diagnosed the dangers to which popular policies might lead. But these fears were so strong that it seemed imperative to begin a war to save civilization, and nobody mans the barricades in defense of marginal-utility theory. As Rothbard wrote in 1965,

only forms of natural or higher-law theory . . . furnis[h] a sense of necessary immediacy to the libertarian struggle by focusing on the vital importance of bringing existing criminal rulers to the bar of justice. Utilitarians, on the other hand, in abandoning justice for expediency, also abandon immediacy for quiet stagnation. ([1965] 1979, 8-9)

To paint the status quo as unjust, not merely dangerous, required convicting politicians of criminality, not merely demagoguery. But this meant making the cause of prosperity and civil peace the cause as well of Liberty; and that, in turn, meant making private property not just Mises's "social institution for the good and benefit of all," but a totem so sacred that its desecration would be unthinkable, regardless of the consequences. Hence the official libertarian willingness to put the sanctity of private property ahead of the very consequences that make free markets compelling to libertarians in the first place. The subordination of economics to philosophy by orthodox libertarianism meant that the political-economic problem that had been its original stimulus could be reconceptualized. Not popular ignorance of economic truths but evildoers in high places were the culprits; no longer was mass democracy to be feared, but instead the hoodwinking of the people by the libertarian equivalent of the left's "corporate media conglomerates": malevolent intellectuals who blind the masses to moral truths and to their own true interests. Once this transformation had been effected, the political insights that might have flowed from free-marketeters' alienation from democratic culture were lost, and with them the opportunity to extend the meliorist Enlightenment project beyond economics, toward a confrontation with the realities of modern democracy.

At roughly the same time, however, political scientists with no free-market inclinations began to document the very phenomenon—democratic incompetence—upon which such an extension might have been premised. The pivotal work was Philip E. Converse's magisterial article, "The Nature of Belief Systems in Mass

Publics" (1964), which has been the fountainhead of three decades of subsequent research by public-opinion scholars.

Converse drew on survey data to reveal that the public's grasp of political affairs was so meager that it was questionable whether many people could be said to have what amounted to stable political attitudes at all. Unfortunately, the "nonattitudes" thesis prompted a methodological debate that distracted attention from the most disturbing implications of Converse's findings for democracy: the sheer ignorance of public opinion (a finding implicit in the earlier work of the Columbia and Michigan schools of public-opinion research), and the fact that the "constraint" on ignorance exercised by the relatively well informed was something that is, arguably, even worse than sheer ignorance: ideology. These implications have been fully borne out by a vast body of subsequent research, but they have not made a dent in nonspecialists' views of either the functioning or the legitimacy of modern democracy. Scholars with a healthy dose of cultural alienation might some day bring these questions into the center of our thinking about politics.

For instance, one might explain Converse's findings by arguing that a government as large as the modern megastate cannot conceivably be controlled by a well-informed public, since it is literally impossible to be knowledgeable about even a fraction of the many complex matters modern governments are called upon to govern. The only options for modern electors would seem to be either unmitigated ignorance or the false sense of knowledge conveyed by ideology. The attraction of free markets in particular and civil society in general is, in this view, that they have self-correcting features that place far smaller demands on anyone's knowledge than democracy does. Each person concerns herself with her own life and the system, supposedly, runs itself. Interpreted in this way, the literature on public ignorance could form the basis of the consequentialist argument the postwar free-market economists sought, but never found (without turning to philosophy), against *all* government economic intervention: for even if it cannot be shown, on economic grounds, that every intervention hurts more than it helps, it might be shown, on political grounds, that by opening the door to helpful interventions, we begin sliding toward the unhelpful ones on a slope slippery with public ignorance.

But a consequentialist rehabilitation of libertarian conclusions is unlikely to come about so easily. The magnitude of public igno-

rance is so great already, and the consequences so far short of disastrous, that the slope does not seem so slippery any more. What at first looks like evidence for small-government conclusions may instead turn out to support the other alternative to mass democracy—effective rule by a sort of Platonic, technocratic elite (cf. Blinder 1997).

In this respect, “state theory” (see Skocpol 1985) acts as an inadvertent counterweight to public-opinion theory. State theorists have found that modern governments are often untethered from the pressures of interest groups in civil society. If they are put in charge of a suitably small area of civil society, expert state elites might be able to overcome the ignorance that plagues a general elector. (Alan Greenspan—ironically, a follower of Ayn Rand—could be seen as the prototypical technocrat-king.) What state theorists have not, to my knowledge, recognized is that the most important source of “state autonomy” may not be tax revenues or military forces, but the public’s ignorance of the great majority of the things that states do.

From such considerations flow important questions that are not, at present, being asked: Who would guard the guardians? What are the relative consequences of technocratic guardianship and of self-regulation by civil society? Libertarians would seem uniquely well suited to ask such questions—not libertarians as we know them, but libertarians who stripped away the ideological detritus that has piled up during the past 50 years and who returned, in a sense, to the fraught moment when there was no such thing as libertarianism, but there was only skepticism about the new world of omnicompetent government that appeared to be the wave of the immediate future. To transcend the libertarian dilemma, these libertarians—call them post-libertarians—would need to become, in effect, proto-libertarians.

It is true that the original proto-libertarians—the Austrian- and Chicago-school heirs of the Enlightenment project—were by no stretch of the imagination free of “philosophical” taint. Buchanan’s pride in the moral agenda of the Virginia school was matched by Mises’s dogmatic free-marketeting, grounded in Austrian methodological apriorism;¹² and it was Milton Friedman who, after all, most famously equated capitalism with freedom. These tendencies to, in effect, confer intrinsic value on capitalism were driven by the same fears of the consequences of modern democracy that inspired

Rand's and Rothbard's more successful ideological constructs. Like Rand and Rothbard, the proto-libertarian economists fell back on one aspect of American culture—its “common-sense” identification of private property with individual liberty, and of government with coercion—in order to fight off what seemed to be more fearsome aspects. In effectively turning toward “philosophy” rather than political science, they unwittingly confounded their own skeptical consequentialism and sacrificed the opportunity to launch a searching examination of modern democracy. But they might have done otherwise, and so might we.

If we add together the halting ideological gestures of some of these mid-century skeptics and the full-blown belief systems of Rand and Rothbard, I believe we can understand why contemporary libertarian thought is impoverished. The libertarian typically recapitulates in her own intellectual development the historical sequence just described, transmuted her belief that too much government intervention is inimical to human welfare into a consistent ideology by subordinating a posteriori to a priori considerations. The effect this transformation works on an economist is to ensure that when she is not producing career-driven publications, she is animated by the subterranean conviction that intervention is clearly immoral. Occasionally this conviction breaks the surface in the form of shrill rhetoric; sometimes as the assumption that interventionists bear a special burden of proof; often as carelessness about fulfilling her own burden.

If libertarian economists feel license to be careless because libertarian philosophy is supposed to be dispositive, libertarian philosophers feel the same license because they suppose that economics plays the decisive role. The libertarian philosopher would not be a libertarian if he did not think libertarianism would have overwhelmingly beneficial consequences, but his work as a philosopher can, by its nature, hardly be devoted to empirical matters. So he either veers off into distantly related disciplinary matters or—if he is one of the older generation of philosophers, who continue to deal with libertarian issues—he takes shrillness and condescension to new levels; begs the important questions; or disdains to understand his antagonists. These pathologies stem, I believe, from the libertarian philosopher's intuitive grasp of the irrelevance of the very thing his ideology has saddled him with defending: libertarian philosophy. To the libertarian economist, libertarian economics is irrelevant be-

cause officially, libertarian philosophy is fundamental. But the libertarian philosopher recognizes, deep down, that it is really the other way around, and this makes him as impatient in his own work as the libertarian economist is in hers.

Despite this bleak tableau, there is reason for optimism about the potential buried beneath decades of libertarian ideology. It may be appropriate to conclude, then, with some comments about what it is that one might hope for from post-libertarian scholarship, and what one should not.

On the one hand, the reclamation of the Enlightenment legacy can lead in far more directions than the political-science path I have suggested. It is surely important to launch anthropological, economic, historical, sociological, and psychological investigations of the preconditions of human happiness. And post-libertarian cultural historians and critics are uniquely positioned to analyze the unstated assumptions that take the place of the requisite knowledge in determining democratic attitudes. A prime candidate would seem to be the overwhelming focus on *intentions* as markers for the desirability of a policy. If a policy is well intended, this is usually taken to be a decisive consideration in its favor. This heuristic might explain the moralism that observers since Tocqueville have noticed afflicts democratic cultures. To date, this phenomenon is relatively unexplored. Analogous opportunities for insightful post-libertarian research can be found across the spectrum of political behavior. What is nationalism, for example, if not a device that helps an ignorant public navigate the murky waters of politics by applying a simple "us-versus-them" test to any proposed policy?

Pursuit of these possibilities, however, must be accompanied by awareness of the degeneration of postwar skepticism into libertarian ideology. If the post-libertarian social scientist yields to the hope of re-establishing through consequentialist research the antigovernment politics that has until now been sustained by libertarian ideology, she will only recreate the conditions that have served to retard serious empirical inquiry. It is fashionable to call for political engagement by scholars and to deny the possibility that one can easily isolate one's work from one's political sympathies. But difficulty is no excuse for failing to try. Libertarians have even less of an excuse than most, since, having for so long accused the intellectual mainstream of bias and insulation from refutation, they should understand better than anyone the importance of subverting one's own

natural intellectual complacency with the constant reminder that *one might be wrong*. The only remedy for the sloppiness that has plagued libertarian scholarship is to become one's own harshest critic. This means thinking deeply and skeptically about one's politics and its premises and, if one has libertarian sympathies, directing one's scholarship not at vindicating them, but at finding out if they are mistaken.

To transcend libertarianism, in short, is to view its underlying concerns as stimuli to research that may, or may not, produce libertarian conclusions. In this sense there is no reason that nonlibertarians might not make better post-libertarians than libertarians themselves. But for libertarians, the benefits of transcendence are greater. Only if one divorces oneself from all attachment to libertarian ideology does it become possible to dispel the gnawing fear that the facts will not bear out one's predetermined conclusions. This—the perpetual obligation to defend a position before one has the necessary information to assess its accuracy—is a terrible burden to bear. The consequentialist libertarian, having made the leap from skeptic to prophet, comes to identify himself with his political convictions. So he lives, or should live, in fear that the next social problem or environmental threat or economic crisis will be the one that finally shows those convictions to be inadequate. This is the psychological problem for which orthodox libertarianism is a palliative. Once consequentialism is overlaid with “philosophy,” one should, in principle, have no fear: libertarianism is right, come what may. But among conscientious libertarians the fear persists beneath the surface; as Boaz understands, the consequences of libertarianism remain important to libertarians, even when they try to bury such concerns beneath layers of ideological sediment.

The remedy for this persistent fear is the same as that for the low intellectual standards of libertarian scholarship; blast away the ideology, strip off even the ideological impulse, by withdrawing one's emotional commitment to political conclusions that have not yet been justified. Even while this makes room for intellectual seriousness, it promotes a joyous freedom of inquiry; one need no longer fear where one is headed. The moment a libertarian leaves libertarianism behind, reality loses its threatening aspect; his intellectual marginality becomes a precious source of fresh insight into every aspect of politics and culture. It seems paradoxical but true that high seriousness can be enjoyable, and that political disengagement

can produce genuine insights into politics. The paradoxes may be dispelled, however, by realizing that disengagement is equivalent to alienation. Alienation plants the seeds of doubt, doubt nourishes serious thinking, and serious thought is the only alternative to an intellectual complacency that must always be shadowed by fear of its own simplifications.

NOTES

1. Cornuelle's article, originally published in the *Times Literary Supplement* of April 5, 1991, under the title of "New Work for Invisible Hands," was expanded into "The Power and Poverty of Libertarian Thought" in *Critical Review* the next year (Cornuelle 1992).
2. The scare quotes are needed because obviously, even consequentialist approaches to libertarianism are "philosophical" in that they presuppose a priori the intrinsic, philosophically determined value of whatever consequences they take to be desirable. Another terminological difficulty is that, rather than deontologically defending a set of property rights as inviolate, libertarians might treat the form of freedom associated with private property as a *telos* to be maximized by balancing one person's degree of freedom against that of another. The question, then, is not technically one of consequentialism versus deontology, or of empirical research versus philosophy, but of whether the libertarian version of freedom is intrinsically (rather than instrumentally) valuable. The question is whether libertarianism—if it is good—is good in itself, or only insofar as it brings about some *other*, independently valuable, *telos*.
3. See Scitovsky 1992 for data supporting an alternative view.
4. The conditional language is meant to suggest that I have no more proved my claims about community than has Murray, and that research into the psychological qualities of "voice" versus "exit" communities is called for.
5. This is not the place to defend or reconstruct utilitarianism, but a couple of points should be noted. First, not all utilitarians believe in implementing the will of the majority, as Boaz's examples assume. Majoritarian "preference" utilitarianism is much closer to the libertarian sanctification of individual will than "psychological" utilitarianism, which would implement policies that people oppose if these policies would achieve people's objective happiness. Libertarianism satisfies individuals' *preferences*; preference utilitarianism satisfies aggregated preferences; but psychological utilitarianism sanctifies people's *happiness*. For psychological utilitarianism to sanction genocide, it would have to be true not that a majority wanted to kill a minority, but that the happiness of a majority would be so greatly increased by killing the minority that the minority's suffering, and the loss of the happiness it would have experienced over its lifetime, would be out-

weighed. Moreover, a psychological utilitarian should sacrifice the happiness of some to increase that of others only if there is no way of increasing the majority's happiness without sacrificing the minority's—e.g., by changing the hateful attitudes of the majority, so their happiness is no longer antithetical to the existence of the minority. Third, it may be truer to the concern for people's psychological well-being to distinguish negative and positive utilitarianism, and rank them lexically, than to treat suffering and happiness as parts of the same continuum, so they can be traded off against each other. In this view, the happiness of many could not be extracted at the price of the suffering of a few, although the suffering of many *could* be alleviated at the price of the suffering of a few. Fourth, happiness (and suffering) are not fungible masses that do not change their psychological significance regardless of whether they are spread over many people or concentrated in a few: slight gains in happiness, or even slight reductions in suffering, cannot be aggregated over many people so as to outweigh the agony of a few without violating the purpose of utilitarianism, which is not, properly, to fetishize the size of a blob of "happiness," but to increase the proportion of happy (or reduce the proportion of unhappy) *individuals*.

In addition, it should be kept in mind that if we reject utilitarianism because of the impermissibility of sacrificing one person's interests (converted by nonutilitarians into inviolate rights) to those of another under any circumstances, we must then allow the suffering of many to persist rather than violating the rights of a few. This is the upshot of philosophical libertarianism: if the miserable lives of everyone in the world could be transformed into joyous reveries at the cost of imposing a tax of one penny on a billionaire, the tax must be rejected. This, of course, is a fanciful version of the "let the heavens fall" argument against philosophical libertarianism developed in the text—as fanciful, perhaps, as the fear that the only way to increase overall happiness is through genocide. While libertarianism would not allow a majority to kill a minority outright, it *would* allow a majority—or a minority—to kill the rest of society indirectly, by letting it starve to death. Every *reductio* of utilitarianism can be converted into a *reductio* of philosophical libertarianism simply by changing the source of the terrible consequences envisioned from bands of hateful genocidists into the operation of impersonal market forces. This is why social democracy has an advantage, in principle, over both utilitarianism and libertarianism. The only ways for libertarians to overcome this advantage are (a) to show that in reality, libertarianism would serve the ends of liberalism—protecting everyone, as much as practicable, from reductions in freedom or happiness—better than the statist means preferred by social democrats; that is, to adopt both Rawls's principle of equal liberty and his subordinate principle of distribution as their own; or (b) to show that in reality, libertarianism would serve the ends of a utilitarianism modified in the ways suggested in the previous paragraph, so as to produce something like Rawls's difference principle—interpreted as a mandate to reduce suffering and only then in-

crease happiness—but without being subordinated to his principle of equal liberty.

6. For other problems in Lockean property theory, see Weinberg 1997.
7. The issue is more complicated than is indicated by its treatment in the text, in that Berlin seems to presuppose a natural state of liberty that sets the boundaries of “the area in which I could otherwise act” (Berlin 1969, 122). In the text, by contrast, I use this phrase to indicate the area in which I could act *under another system of property laws*, not under a state of nature. I justify this deviation from Berlin’s meaning as follows.

The scope of the area in which I could act if the term *otherwise* refers to a state of nature would depend on the indeterminate actions of other people in that state. Whether I could use a certain apple tree would depend entirely on whether someone else was able to seize control of it first. Therefore, “the area in which I could otherwise act” is a meaningless phrase if it is taken to refer to a sort of state of nature, as Berlin seems to have in mind: we have no way of knowing how free one would naturally be. The only legitimate way to give “otherwise” some determinacy, then, is to refer not to a state of nature but to a different set of (strictly enforced) rules than the one being considered. But having done this, we have undermined the notion that different property systems differentially violate negative, rather than positive, liberty. For each system of property is a set of coercively enforced rules, and all of them equally restrict the area in which one could “otherwise” act, when this word refers to another system of property.

Berlin would agree with me, I think, that, contrary to the notion that libertarian property laws are noncoercive, all coercively enforced laws, including libertarian laws, violate negative liberty, since they all deliberately constrain “the area in which I could otherwise act.” A law against “theft” deliberately constrains the area of action that would otherwise be open to the “thief,” and therefore it clearly violates the “thief’s” negative liberty. But if any system of property violates my negative freedom to “steal” the property assigned to another, which I would “otherwise” be free to take (that is, if it weren’t for the law that defines this action as “theft”); if the negative freedom to transgress its rules is equally violated by any system of property; then how can I intelligibly compare the “breadth” of my area of freedom under different property systems? Inasmuch as there is no way to compare different systems against a state of *natural freedom*, since such freedom, at least regarding world ownership, is indeterminate; and inasmuch as each *social* system establishes a new set of negative freedoms that blankets all of the property of the society, in the very act of enforcing prohibitions against another system’s set of negative freedoms; it would seem that the only way to measure the amount of freedom left to people by a set of property laws is to compare one’s ability to attain one’s goals under that system and under different property laws—which Berlin defines as positive liberty.

Although the intersystemic comparison of degrees of positive liberty seems the only legitimate way to overcome the indeterminacy of Berlin's definition of negative liberty, there is also an illegitimate way to do this: namely, by unreflectively equating one system of property rights with what is natural. In this way, one can give content to the otherwise empty yardstick of natural freedom on which Berlin's view appears to be predicated, allowing one to believe that any other system does not merely distribute negative freedom differently than the system one has privileged as "natural," but that the "natural" system is uniquely noncoercive, while only its competitors violate negative liberty. This is what libertarian philosophers do when they portray status-quo property relationships, reconceived as "Lockean," as natural ones. The illegitimacy of this procedure becomes obvious if one notices that if we were to privilege any other property system—say, communism, or Filmer's system of royal ownership of each prince's realm—as natural, then Lockean property rights would be among those that would suddenly appear to violate negative liberty, since they would prevent the people collectively, or the king individually, from doing what they could "otherwise" do with "their" natural property.

8. I undertake a more detailed critique of the notion that "constructivist rationalism" plays a major role in left-wing thought in Friedman 1997.
9. Hayek's *Fatal Conceit*, alone among his many works of the 1960s, 1970s, and 1980s, mentions some of the figures named in the text: Marcuse (Hayek 1988, 138), Habermas (*ibid.*, 64), and Foucault (*ibid.*). The desperate attempts in these passages to identify "planning" tendencies in postwar intellectual figures should not, however, be blamed on Hayek. In 1986 I served as research assistant to W. W. Bartley, III, Hayek's officially designated biographer and the "editor" of the book while it was being written—apparently by Bartley, with little noticeable input from Hayek, who was mortally ill. What Bartley characterized as confused and mostly unusable notes and passages written by Hayek, some of which ended up in the book's Appendices, apparently served as the basis of Bartley's efforts to complete a manuscript; the products of Bartley's labors were allegedly reviewed by Hayek. (James M. Buchanan writes, on the dust jacket, of his admiration for Hayek's success in turning "a somewhat rambling set of sketches . . . into a coherent, well-constructed argument," but I have no doubt that the credit should go to Bartley.) The extent of Hayek's supervision of the project, however, is called into question by the appearance in the book, verbatim, of passages I submitted to Bartley as suggestions for how Hayek might consider updating his critique of constructivist rationalism. Among these are the passages mentioning Marcuse, Habermas, and Foucault. Since Hayek had not previously referred to these figures in print, I was surprised to learn, upon the appearance of the book, that he would have accepted without alteration discussions of their work written by someone he had never met. This prompts the thought that Hayek may never even have seen these words, although they were published under his name. Bartley,

who was as well qualified as anyone to determine what Hayek might have written had he been able to write, had the best of intentions in making good on Hayek's desire to see the work completed. But the resulting document may not accurately reflect Hayek's thinking in all respects. The presence of the passages on Marcuse, Habermas, and Foucault that I wrote certainly does not show that Hayek understood the sea change in postwar intellectual life. His strictures against constructivist rationalism are, I believe, obsolete legacies of his intellectual combat with socialist economists 50 years earlier.

Boaz mentions Rawls (with Marx, T. H. Green, Keynes, and Catharine MacKinnon) at one point in his *Primer*, attributing his alleged "crabbed and reactionary statism" to "the great attraction statism and planning holds for intellectuals," inasmuch as "the intellectual believes [in] . . . the application of human intelligence and rationality to the social system" (202). But Rawls is, in reality, concerned neither with planning nor with the application of intelligence and rationality to the social system (as Hayek seems to recognize; see Hayek 1976, 100), but with exactly that with which philosophical libertarians are concerned: *justice*—which he equates, as they do, with the protection of equal individual rights to freedom. His "difference principle" is an attempt to ensure that everyone is, as much as practicable, free to pursue whatever ends she values (and even this principle is trumped by Rawls's principle of equal liberty). The result of applying the difference principle would be an order every bit as spontaneous as that of a free market. If *laissez-faire* capitalism is the system that best ensures the welfare of the least advantaged—as consequentialist libertarians such as Conway contend—then it would satisfy the difference principle.

Whether or not that is the case, however, is a contingent, empirical question. It is therefore possible, as Nozick points out, that not *laissez faire* but constant government intervention might be required to satisfy the difference principle. But this does not justify the claim that Rawls is a "planner." The purpose of the intervention would not be to apply intelligence and rationality to the social system, but to apply the standards of justice—as is the purpose of libertarianism. And these standards of justice, like libertarian standards of justice, would be directed toward equal individual freedom. The redistribution a Rawlsian government might have to undertake would no more qualify as "planning" than would the redistribution of property from thieves to their victims that a libertarian government might have to undertake.

10. Leaving aside the work of various authors that has appeared in these pages, there has been solid research on the socialist calculation debate (Lavoie 1985) and, in the large corpus of Israel M. Kirzner (see, e.g., Kirzner 1973), on the role of entrepreneurship in the imperfect markets characteristic of the real world. From Austrian economics, too, has come the important work of the free banking school (see White 1984 and Selgin 1988), which holds that central banking did not improve on the performance of private

banking systems. All of this work promises a great deal if it can be pursued outside the hostile confines of the discipline of economics (where positivist standards render it "unscientific") and isolated from libertarian philosophical influence.

11. Libertarians may disagree with this characterization of their thought, on the ground that by defending someone's "right to do wrong," they do not suspend judgment about whether it is, in fact, wrong. This standard liberal view, however, raises the question, Why should one have a right to do what one should not do? Many consequentialist reasons for such a right are conceivable—e.g., such a right is conducive to civil peace or prosperity, which are either intrinsic goods or are conducive to intrinsic goods that outweigh the bad consequences of allowing people to do what they should not. But this type of instrumental reasoning is off-limits to nonconsequentialist libertarians (and liberals). Instead, they must contend that it is intrinsically valuable to be able to do what is bad—intrinsically valuable, that is, to be able to do what is intrinsically valueless. This is a *prima facie* logical contradiction. For a more elaborate critique of the "right to do what is wrong," see Friedman 1996.
12. I propose the beginnings of a critique of Austrian apriorism in Friedman 1995, 23n4.

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