

Liberal Libertarians: Why Libertarianism is a Liberal View

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Abstract

Our contribution in this chapter is to address the argument made by philosopher Samuel Freeman (2001) that libertarianism is not a liberal view. Freeman's argument is based on the claim that full alienability of property rights is antithetical to liberal political institutions. We address Freeman's argument by arguing twofold. First, although he derives a logically valid theory of libertarianism, which indeed has illiberal implications, Freeman's account of libertarianism mistakenly conflates an *absolute* notion of private property and contract with liberty itself. Second, we argue that private property and freedom of contract are necessary, but not sufficient for a liberal view of libertarianism. Sufficient for a liberal view of libertarianism is a framework of general and universally applicable rules that exhibit neither discrimination nor dominion over individuals before the law, i.e. liberty. The right to private property and contract are normatively laden principles, yet *contextual* and endogenous to a political framework that gives space to exchange and human flourishing. Ultimately, what Freeman is criticizing is an illiberal view of libertarianism that structures *atomistic* interaction, one where human interaction is passively based on a logical derivation of the non-aggression axiom. Our account is that libertarianism, properly understood, is a liberal view that structures *social* interaction, one where human interaction is open-ended and exchange is initiated by individuals' purposive plans.

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I. Introduction

The unifying aim of modern political theory, and liberalism in particular, has been its attempt to discover solutions to the problem of securing peaceful cooperation amongst individuals pursuing diverse plans and goals without engaging in violent conflict with one other. This is, we argue, an *institutional* problem in need of an *institutional* solution. Liberalism as a political theory has attempted to resolve this problem by establishing clear social boundary rules and historically this entailed restricting the role of the state to securing individuals' rights. As Rasmussen and Den Uyl state, "the language of rights is the language of liberalism, and liberals" (2005: 76). How individual rights have been defined and their relationship with other liberal institutions, such as the rule of law, freedom of association, and freedom of contract has not been settled among liberals of a classical, "high"³, or libertarian stripe.

The right to private property and contract are arguably the most controversial institutional features of liberalism; they are also perhaps the most misunderstood. According to philosopher Samuel Freeman, "It is a fundamental libertarian precept that people ought to have nearly unrestricted liberty to accumulate, control, and transfer rights in things (property), whatever the consequences may be for other people" (emphasis original 2001: 127). This fundamental precept, according to Freeman, is what fundamentally distinguishes libertarianism from liberalism, and why libertarianism is not a liberal view. Pushing this precept to its logical conclusion, Freeman contends, libertarianism must have illiberal implications, namely the violation of individual liberties and their political status as free and equal individuals.

³ "High liberalism" is a term used by philosopher Samuel Freeman to mean "the set of institutions and ideas associated with philosophical liberalism" to distinguish from classical liberalism and libertarianism. Philosophical liberalism, as he defines it, states that (1) there are "different ways of living worth affirming for their own sake"; (2) freedom is essential for individuals to pursue their conception of the good life; and (3) that freely adopted conceptions of what is good by individuals must be consistent with respect for an individual's basic rights (2001: 106).

For libertarian readers it seems almost natural to dismiss Freeman out of hand as an exercise built on a combination of uncharitable reading, strawman arguments, and leaps of logic. But this, we argue, would be the wrong way to engage Freeman's argument and would reflect a critically missed opportunity. Instead of seeking to dismiss Freeman's argument out of hand, we should be willing to ask what, in certain canonical libertarian writings, could plausibly result in such a reading of libertarianism as fundamentally illiberal. By asking this question, we believe we can improve the presentation of the libertarian position and reassert the essential liberalism of the libertarian project.

The case for the right to private property since the Scottish Enlightenment has rested not only on its normative weight but on the positive consequences for economic development and thus human flourishing which it engenders. An analysis of modern economic growth throughout the world since the early 19th century indicates that those countries with an institutional environment of secure property rights have achieved higher levels of various measures of human well-being, including not only higher GDP per capita and greater political freedom, but also lower infant mortality rates, higher rates of education, greater respect for civil liberties (including religious toleration), improvements in the treatment of women, and longer life-expectancy (see Gwartney, Lawson, and Hall 2015). Where property rights have been well-defined and enforced, individuals have been able to satisfy their individual wants and desires, both material and nonmaterial, not through violent conflict and theft, but through productive specialization and exchange. Property rights constitute the critical part of the institutional package that *enable* individuals to realize the gains from social cooperation and to overcome the harsh reality of subsistence existence that had plagued mankind through much of its history (see Boettke and Candela forthcoming).

Despite this fact, the *normative defense* of private property rights provided by libertarians, according to Freeman, is antithetical to liberalism. However, what should be made clear is that the debate among liberals about what rights are paramount for a liberal and open society has been one of disagreement over means and not of ends, namely the definition and utilization of rights as a means of securing peaceful cooperation.⁴ Moreover, our understanding of the nature of rights also generates disagreement over the meaning of peaceful cooperation itself. Are we to define peaceful cooperation merely as non-interference in the exercise of autonomy among individuals, or is peace to be interpreted more broadly as individuals engaging in human flourishing, exchange, and productive specialization under the division of labor? Understood differently, the debate among liberals is about what it means to have secured peace: is it merely to have prevented the violation of the non-aggression axiom or to have secured the possibility of human flourishing and cooperation under the division of labor? For liberals of a libertarian stripe, the terms in which we frame the case for securing peace has implications for its reception as being either an illiberal or liberal political view.

Our contribution in this chapter is to address the argument made by philosopher Samuel Freeman (2001) that libertarianism is not a liberal view. Our purpose in this chapter is not to provide an indictment of Freeman's critique, but to argue that, though indicative of a particular account of libertarianism, Freeman's critique is not fundamentally characteristic of libertarianism in general. Fundamentally, Freeman's argument is based on the claim that full alienability of

⁴ Freeman rules out classical liberals from this analysis defining the libertarian as one who believes that the state has no legitimate role. In making this statement, we are blending once again classical liberalism with what could be termed radical liberalism and engaging with modern liberalism. All three forms of liberalism, we contend, share a similar goal of peaceful cooperation among diverse individuals and groups and for the economic system to escape from wretched poverty and the tyranny of others over their lives. In our rendering, the radical liberal is essentially an updated classical liberal who on the basis of social science and history is more pessimistic about the constitutional project to constrain public predation, and more optimistic about mediating institutions of civil society to ward off private predation. (see Boettke and Leeson 2015)

property rights is antithetical to liberal political institutions. We address Freeman's argument by arguing twofold. First, although he derives a logically valid theory of libertarianism, which indeed has illiberal implications, Freeman's account of libertarianism mistakenly conflates an absolute notion of private property and contract with liberty itself. Second, we argue that private property and freedom of contract are necessary, but not sufficient for a liberal view of libertarianism. Sufficient for a liberal view of libertarianism is a framework of general and universally applicable rules that exhibit neither discrimination nor dominion over individuals before the law, i.e. liberty. The right to private property and contract are normatively laden principles, yet contextual and endogenous to a political framework that gives space to exchange and human flourishing. Ultimately, what Freeman is criticizing is an illiberal view of libertarianism that structures atomistic interaction, one where human interaction is passively based on a logical derivation of the non-aggression axiom. Our account is that libertarianism, properly understood, is a liberal view that structures social interaction, one where human interaction is open-ended and exchange is initiated by individuals' purposive plans.

II. The Freeman Critique of Libertarianism

The political philosophy known today as libertarianism is a 20th century sociological construct that has evolved by historical accident, not a designed philosophical construct independent of the liberal political tradition. What had been known simply as liberalism before the mid-20th century embodied those principles upheld by political economists who have come to be known as classical liberals, such as Adam Smith, David Hume, and John Stuart Mill, as well as Ludwig von Mises, Friedrich Hayek, and James Buchanan.

All liberals, whether they are described as classical liberals, libertarians, or what Samuel Freeman calls “high liberals,” which include John Rawls and Ronald Dworkin, claim that the end of the state, or the political/legal order, is to secure peace, not to make men moral. In other words, “statecraft is not soulcraft”. The means by which the political/legal order achieves this end is by establishing an institutional framework that upholds a set of liberal principles, including the rule of law, the right to private property, freedom of contract, and religious toleration. However, as H.L.A. Hart argues, after the mid-20th century, liberals grew increasingly divided between a defense of individual rights based on utilitarian grounds, which had been characteristic of classical liberals of the 19th and early 20th century, such as Bentham, Mises, and Hayek, and a defense of rights based on *deontological* grounds. Among those liberal philosophers taking up the deontological defense of rights, a further split emerged between “high liberals” (as Freeman dubs them), who emphasize “the duty of governments to treat their subjects as equals, with equal concern and respect”, and libertarians, such as Robert Nozick, who emphasize the duty of governments to recognize the “*separateness or distinctiveness*” of persons with respect to their goals (Hart 1979: 828). While the focus of our chapter is not to focus on this distinction between rights and utility, our point here, and that of Freeman’s, is that illiberal readings of libertarianism are unnecessarily based on a defense of individual rights independent of attention to economic consequences as well as to human flourishing (see Boettke 1995).

Although “high liberals” and libertarians share a respect for individual rights, philosopher Samuel Freeman argues that libertarianism is not a liberal view. As he states, “Libertarianism’s resemblance to liberalism is superficial; in the end, libertarians reject liberal institutions” (2001: 107) because “what is fundamentally important to libertarians is maintaining a system of historically generated property rights, whatever the consequences for individuals’ freedom,

independence, and interests” (2001: 133). Freeman’s critique of libertarianism is not only about the means of securing peaceful cooperation, namely the rights that people hold; it is also about what it means to have achieved peaceful cooperation. Freeman’s critique of libertarianism as being illiberal is based ultimately on the claim that libertarians give primacy to a *normative* principle that individuals ought not to violate private property rights, including the right to contract oneself into slavery. By engaging in an argumentative strategy of *reductio ad absurdum*, Freeman attempts to establish that an absolute notion of private property undermines liberal political institutions. Freeman concludes that libertarianism is illiberal because “it is not so much about liberty as it is about protecting and enforcing absolute property and contract rights” (Freeman 2001: 133).

According to Freeman, “The most characteristic feature of a liberal society is its toleration of beliefs and diverse ways of life. Dissent, nonconformity, and assured space of independence are accepted as normal in social life” (2001: 108). Ludwig von Mises has also stressed that liberals demand tolerance as a matter of principle since “only tolerance can create and preserve the conditions of social peace without which humanity must relapse into the barbarism and penury of centuries long past” (2005 [1927]: 34). Because liberalism “limits its concerns to earthly life and earthly endeavor” (Mises 2005 [1927]: 33), human beings have neither omniscience nor access to divine truth. Due to our scarcity of knowledge, both of earthly and religious matters, toleration is a *competitive* means toward the fulfillment of peace. It is a form of competition in which individuals are striving to meet their goals of religious and personal expression, not through violence, but through peaceful cooperation. Liberalism as a political theory cannot achieve peace by eliminating competition; it can only offer institutional solutions that channel human action from forms of competition that are violent and illiberal to those that are peaceful and liberal in nature.

Freeman recognizes that securing the conditions for peaceful cooperation is a common good to all individuals, but “central to the liberal public good is maintaining the civic status of persons as free and as equals. Basic rights are the primary means for securing this status” (2001: 113, fn. 19). Saying that rights are “basic” means that they are both fundamental and inalienable. By “fundamental”, Freeman means that basic rights or liberties “have absolute priority over other political values; they cannot be sacrificed or weighed off against non-basic rights or other political values in ordinary political procedures” (2001: 109). By inalienable, “a person cannot contractually transfer basic liberties or give them up voluntarily” (2001: 110), that a person has the right to exit at any time an essentially private relationship. Although Freeman acknowledges that there are differing accounts of libertarianism among libertarians, such as Robert Nozick and Murray Rothbard, crucial to his illiberal account of libertarianism is that the right to liberty is non-basic whereas “rights of property are both plenary and fundamental...Absolute property is perhaps *the* most significant right in a libertarian view” (emphasis original, 2001: 115).

Building from this underlying premise, Freeman constructs a logically valid though unsound argument that libertarianism does in fact have illiberal implications, “taking the view outside the boundaries of a liberal conception” (2001: 123). Before engaging this underlying claim in Freeman’s critique, it is important to understand what these implications are. First, the primacy of absolute private property, according to Freeman’s conception of the libertarian view, means that individuals can contract themselves into slavery, which “conflicts with the public interest in maintaining the status of persons as free and equal, and the moral quality of civic relations” (2001: 113), and therefore should not be legally recognized.

A second implication of Freeman’s criticism libertarianism rejects the liberal principle that “political power is a public power, to impartially issue and enforce uniform public rules that apply

to everyone and that promote the common good” (2001: 120). He further states that the “liberal idea of the rule of law evolved to reject this claim that anyone’s conduct can be beyond legal restriction” (2001: 122). By upholding a notion of libertarianism that upholds an absolute notion of private property and freedom of contract, Freeman is lead to conclude that “libertarianism resembles feudalism in that it establishes political power in a web of bilateral individual contracts” (2001: 149), negating any notion of the rule of law.

III. Libertarianism Reconsidered

An exhaustive summary of all of Freeman’s criticisms of libertarianism is beyond the scope of this chapter. Suffice it to say, for the purposes of building a case for a liberal view of libertarianism that will contrast Freeman’s critique later in this chapter, Freeman’s argument can be summarized as follows: libertarianism is based on *normative* claim that individuals ought to have an absolute right to private property and to contract with other individuals so long as they do interfere or violate other individuals’ rights. Moreover, an absolute right to private property provides a *direct* or *isomorphic* link between morality and legality. As Freeman states, “liberty is property” (2001: 128). Therefore, if the legal system is nothing more than a sum of private contractual relations made amongst individuals, then liberal institutions that uphold individuals “equal rights to basic liberties” have no role in a libertarian order. As long as such transactions are made amongst consenting adults, the enforcement of private property rights are both morally and legally binding, independent of the consequences that follow (Freeman 2001: 133), including the emergence of slavery and feudalism based on consensual contractual arrangements.

It is important to first point out that the among the libertarians he mentions in his article, such as Robert Nozick, Jan Narveson, Ayn Rand, Murray Rothbard, John Hospers, *only* Nozick

made the claim that an institutional framework of private property may, though not necessarily so, allow an individual to contract themselves voluntarily into slavery:

The comparable question about an individual is whether a free system will allow him to sell himself into slavery. I believe that it would. (Other writers disagree.) It would also allow him permanently to commit himself never to enter into such a transaction (1974: 331).

Among those libertarians mentioned above, Rothbard is explicit in arguing against the notion of a voluntary slave contract based on absolute freedom of contract. Rothbard argues that voluntary slave contracts cannot be enforced under libertarian law, despite what Freeman claims, because “a person cannot alienate his will, more particularly his control over his own mind and body. Each man has control over his own mind and body. Each man has control over his own will and person, and he is, if you wish, ‘stuck’ with that inherent and inalienable ownership” (2002 [1982]: 135)⁵.

It is indeed the case that the right to private property and the right to contract are both important normative principles among libertarians, in which individuals *ought* to have the right to be able to acquire, transfer, and dispose things. However, property rights are best understood as “*the sanctioned behavioral relations among men that arise from the existence of things and pertain to their use*” (emphasis original, Furubotn and Pejovich 1972: 1139). To say that property rights are “sanctioned” means that they do not rise *ex nihilo* from the mental state of an individual; they cannot be understood outside a social context of legal norms, which must be consistent or congruent to the prevailing informal norms and customs of a particular society for them to be well-enforced (Boettke [2001] 1996: 257; see also Boettke, Leeson, and Coyne 2008).

These legal norms are not to be understood simply as normative principles, but as what Rasmussen and Den Uyl refer to as “metanormative principles”, which are “concerned with the

⁵ See also Rothbard’s *Man, Economy, and State* (2009 [1962]: 82, fn.2), where he also makes this argument against voluntary slave contracts.

creation, interpretation, and justification of a political/legal context in which the possibility of the pursuit of flourishing is secured” (2005: 78). The metanormative principle paramount to liberalism is the basic⁶ right to liberty, not the individual right to private property. In other words, the right to liberty is not the right to private property itself; rather, the right to private property is *corollary* to the right to liberty and arises in a context in which individuals are free to self-direct their lives according to their own purposive plans, but one in which the autonomy to self-direct their lives is in concert with enabling and contributing to the self-direction of others’ purposive plans.

Freeman’s claim, however, is that libertarianism is a political theory of individual rights “independent of social interaction” (2001: 125). Moreover, he also claims that that “libertarianism assigns far less importance than does liberalism to freedom as individual independence and autonomy, the degree to which people are self-sufficient and can control their options and important aspects of their lives” (2001: 127). However, a liberal view of libertarianism, we argue, is both radically individualized and radically social. In other words, the ethical underpinning of a liberal political framework is not one in which the “the personal, the interpersonal, and the social stand as separate spheres, independently regulated, but as concentric circles of the same figure” (Norton 1976: 241). To understand how individual autonomy, independence, and the common good are compatible and reinforce one another, we borrow the distinction made by philosopher David Norton between “antecedent and consequent sociality”:

Every human being is social in the beginning and social in the end, but the two socialities are radically different in kind in virtue of the intervening attainment to individuality. The first is a received sociality to which the person (as child and adolescent) is responsible; the second is a constituted sociality for which he shares responsibility. The sociality that follows the choice of oneself in no way compromises this choice but extends and fulfills it. It asks for no sacrifice of individuality to the collective interest but exemplifies the principle of the complementarity of true individuals. The normative principles of sociality implicit in principles of self-actualization pertain exclusively to consequent sociality. But

⁶ We define “basic” here in the same manner as Freeman (2001)

consequent sociality should be viewed in developmental context, hence we must sketch the antecedent sociality from which it is emergent (1976: 253-254).

It is uncontested that in the sphere of human action that social entities have real existence. Nobody ventures to deny that the historical, geographical, and cultural context into which we are born are real factors influencing the course of an individual's life. However, as James Buchanan states in his famous article entitled "Natural and Artifactual Man," "*man wants liberty to become the man he wants to become*" (1999: 259). Norton also echoes this point that within every human being resides a constellation of human possibilities, one of which must be discovered and actualized by the individual as a unique potentiality (Norton 1976: 248).

It is in the following ways that a liberal view of libertarianism is both radically individual and radically social. First, individuals are not passive integers within the social; it is not the case that their identities are identical and therefore derive no benefit from social interaction. Second, it does not take the Hobbesian view that individuals are entirely unique and atomistic, and therefore conclude that individuals are self-sufficient and naturally exist independent of social interaction (Machan 1998: 4). Rather, "every person is a universal-particular; he is both a unique destiny and 'humanity' in the form of the total constellation of human possibilities" (Norton 1976: 248). This has important implications for how we define the common good, individual independence, and autonomy in contrast to Freeman.

The way in which to distinguish the liberal constitution that Freeman is outlining and that which we are outlining can be framed in terms of the relationship between rights and justice. For Freeman, questions about justice are about particular distributions of resources that secure individuals with independence and autonomy *from* others. By our own account, questions about justice are not about particular distributions of resources; rather, they are about choices over the rules of the game, which generate a pattern of exchange, production, and thus distribution as a

result of individuals securing individual autonomy and independence in cooperation *with* others (see Boettke 2012: 50; Rasmussen 1974: 308).

Our account of a liberal view of libertarianism sees the possibility of social cooperation under the division of labor as crucial to securing the autonomy and independence of individuals. “Thus, community life not only does not change the need to be the author one’s own actions, it intensifies it” (Rasmussen and Den Uyl 1991: 134). The right to liberty not only liberates individuals from material poverty by allowing individuals to specialize in their own natural talents and capacities; it also liberating by affording individuals the opportunity to differentiate themselves and realize their uniqueness through association with others. This self-discovery process cannot be realized and achieved outside the context of voluntary social interaction.

The common good is defined by a framework of general and universally applicable rules that exhibit neither discrimination nor dominion over individuals before the law. Given as we said previously, following Norton, that individuals represent a composite of human potentialities, for individuals to flourish and actualize their own unique personhood, they can only do so in a context of voluntary social interaction. The common good of a liberal political order, which is to secure the right to liberty, allows for the possibility of self-discovery process in consequent sociality with others to emerge. The creative powers of a free society are unleashed when individuals are at liberty to realize their own self-worth and uniqueness through their own effort and active pursuit in sociality with others. Consequent sociality emerges out of human action but not of human design from this self-discovery process, “and the division of labor within consequent sociality derives not from abstract assignment of integers by an impersonal agency, but from choices by persons according to the unique persons they are” (Norton 1976: 274). Within an institutional context of rules that protect the right to liberty, autonomy arises directly out of human action and the pursuit

one's goals, but the independence (i.e. self-sufficiency) of each individual emerges indirectly as the unintended consequence of each individual's participation in productive specialization under the division of labor. Thus, "the moral propriety of individualism and the need for sociality are reconciled" (Rasmussen and Den Uyl 2005: 78).

However, Freeman casts doubt on whether a libertarian legal order could discover and implement the institutional preconditions required for liberty to be preserved. Freeman goes on to state that without "institutions to publicly identify the principles of libertarian natural law and to specify their rules under existing circumstances, it is difficult to see how the countless sophisticated rules that make up the modern institutions of property, contract, securities, negotiable instruments, patents and copyrights, and so on, could effectively evolve by the Invisible Hand" (2001: 142). This point brings us back to Freeman's claim that libertarianism, based on an absolute notion of private property and freedom of contract, resembles feudalism, and that such a "system of personal political dependence that is based in a network of private contractual agreements" (Freeman 2001: 147-148) runs analogous to system of Nozickian private firms offering different packages of protection services.

Freeman's analogy is an important point, but one that we believe is fully applicable and consistent with a liberal rendering of libertarianism, and yet not fully developed and appreciated by Freeman himself. Ludwig von Mises famously stated that "The Idea of Liberty is and always has been peculiar to the West" (1990 [1950]: 303), but not because of any racial, genetic, or other behavioral superiority unique to Westerners. Rather, the liberal institutions that fostered liberty and economic growth in Western Europe "*grew out of a politically decentralized feudal society*" (emphasis added, Rosenberg and Birdzell 1986: 138). The politically fragmented nature of Western Europe was an institutional prerequisite for *freedom of competition* (Boettke 1993: 108)

among alternative governance structures for the development of peaceful cooperation and economic development. Freeman recognizes that the “allocative role of markets is basic precept in all liberal views” (Freeman 2001: 117), but by casting markets in terms of perfect competition, he underappreciates the role that competition plays as a discovery procedure (Hayek 1978: 179-190), both in markets as well as in politics.

Whereas Freeman views libertarianism as resembling feudalism and therefore inconsistent with liberal institutions, we regard the divided structure of feudal governance in Europe as having sowed the seeds of its own destruction, from which liberal institutions would emerge as an unintended consequence of political competition. Given the absence of any centralized political author in Medieval Europe, political leaders competing with each other had to offer more liberties to their subjects, at the expense of their political discretion. Their political privileges to exercise dominion or discrimination over their subjects for their own private ends was increasingly eroded for fear of migration to areas that offered greater political, economic, and religious liberty. Political competition between emerging nation-states in Western Europe set in motion a discovery process that enabled the emergence of a set of political institution which constrained, rather than unleashed, the political privilege and discretion of feudal aristocrats, creating a situation in which laws were increasingly applied impartially to all individuals. Such a discovery process also revealed information about the legitimate role of the state and the level of public services demanded by citizens of a particular jurisdiction.

IV. How Some Libertarians Can Be Read as Illiberal

In the previous section we outlined Freeman’s critique of libertarianism as an illiberal political theory. Freeman’s critique is not without merit and is in fact a view held by several self-proclaimed libertarians, who use an absolute notion of private property rights as a litmus test to illustrate the validity of a “pure” notion of libertarianism as analytically different from other “impure” notions masquerading as libertarianism, such as classical liberalism. The point of this section is to illustrate how libertarianism can be read as illiberal by examining the arguments of two self-proclaimed libertarians, Walter Block and Hans-Hermann Hoppe.

What these two particular authors illustrate is how a particular defense of libertarianism, based on the same premises utilized by Freeman, is a plausible, yet mistaken, understanding of an “institutionless” libertarianism, one that is based on *a priori* defense of the non-aggression axiom. As Freeman states, “Libertarians of course deny the *institutional* conception of property. Fundamental to their arguments are ideas of *noncooperative* natural property and *pre-social* ownership (emphasis added, 2001: 130). This is a crucial and important criticism of an illiberal reading of libertarianism, one that captures the problem with equating private property rights as a *moral* concept with a *political/legal* (i.e. institutional) concept: it takes property rights out of social and political context and provides an atomistic rather than a social articulation of rights. Any conception of private property rights defined independent of social interaction and exchange renders them unnecessary, redundant, and inapplicable to the possibility of peaceful social cooperation under the division of labor and human flourishing.

To understand this fundamental criticism of Freeman’s, let us turn to the arguments made by libertarians such as Walter Block and Hans Hermann-Hoppe. In his essay responding to Sam Freeman’s critical account of libertarianism, Walter Block not only agrees with Freeman that

libertarianism is not a liberal view, but further argues why this is in fact “a good thing too” (2011: 539). Block not only claims that libertarianism is a more logically consistent philosophy, but is also a more encompassing philosophy than liberalism (2011: 540). While Block’s essay is quite thorough in countering each of Freeman’s points section by section, we shall discuss his rejoinder in terms of Freeman’s primary claim that was discussed in section II: if libertarians take the right to private property and contract to be basic, absolute, and fundamental rights rather than the right to liberty, then individuals are allowed to contract away their liberty and sell themselves into slavery.

Block does not dispute Freeman’s claim. Rather, he confirms Freeman’s claim regarding libertarianism that the right to liberty is the right to property by stating that “[t]he two, of course, are but opposite sides of the very same coin” (2011: 564). In fact, not only does he argue that in a libertarian society slave contracts would be enforced, but also that individuals would be under a “legal and moral duty” to turn in runaway slaves (2011: 551). Block justifies this claim by illustrating an example in which the poor parent of a sick child sells himself into slavery in order to obtain \$5 million for their child’s cure. Moreover, because “Freeman type liberals” would not allow such a contract to be legally sanctioned, they are not only “heartless” but also “against allowing the mother her self actualization” (2011: 552).

There are two problems with Block’s arguments. First, the claim that individuals have both a moral and a legal duty to uphold individual rights, so long as they are entered into voluntarily, runs in direct contradiction to Block’s claim that libertarianism is a more encompassing philosophy than liberalism, in the sense that “for the libertarian, *any* act between consenting adults, sexual, social and even commercial, should be legal. Thus libertarianism in this case accepts the basic premise of liberalism, but applies it far more widely, fully and consistently” (2011: 540). Contrary

to his claim, Block's account of libertarianism implicitly narrows, rather than widens, the notion of individual rights into an ethics of non-aggression writ large. Secondly, Block strait jackets himself into an illiberal view of libertarianism by taking the concept of rights outside of the context of liberalism, one in which property rights are a means to achieve peaceful cooperation defined by voluntary exchange and human flourishing. Instead, Block conceives of rights as being derived *a priori* to uphold peaceful relations but defined by the non-aggression axiom, providing a "litmus test" to distinguish a "pure" libertarianism based on negative liberty from liberalism, which is contaminated by positive liberties.

Distinctions between negative and positive liberties, while conceptually useful, do not perform the clean split that Block wishes to draw. Who cares if we can conceptually distinguish between negative and positive liberties when if sticking to negative liberties we entrap individuals in poverty and eliminate each individual's ability to self-direct their lives? The fact that in many modern libertarian writings, the institutionalization of negative liberties leads to favorable consequences appears as a happy coincidence. But this type of reasoning simply reinforces the artificial split between morality and consequentialism that must be rejected (see Boettke 1995).

Individual rights must be understood as a link between the ethical order and the legal/political order, not as an "amorphous or direct link" between the two (Rasmussen 1989: 99). Rights properly understood set the preconditions for moral activity and human flourishing to take place; they do not determine a one-to-one mapping between what is moral and what is legal (Boettke 2003: 153). Choices defined by emergency situations, such as the choice between selling one into slavery or condemning one's child to death by illness, are taken out of the context of political and social life. To this point, Rasmussen and Den Uyl elaborate:

Without attempting to determine what the ethically proper course of action would be in such a situation, if there is one, this is a situation in which the flourishing of

both parties cannot be attained – *social and political life* is impossible – and individual rights, the very social and political principles which exist to guarantee the possibility that each and every person might flourish, have no point. Such a situation by its very nature precludes the possibility that both parties will flourish. We may say, then, that when social and political life is not possible, namely, when it is in principle impossible for human beings to live among each other and pursue their well-being, consideration of individual rights are out of place, they do not apply (emphasis original, 1991: 145-146).

A libertarian order, properly understood as a liberal view, not only sets the institutional preconditions for freedom of choice, but also *tolerates* the freedom to engage in choices that may be considered immoral but not necessarily legally prohibited just because they are regarded as immoral (Rasmussen and Den Uyl 2005: 85).

Although Block is careful to distinguish between what is moral and legal, his concept of rights is both, in the words of Freeman, asocial and noncooperative because he defends rights independent of a context in which individuals are in fact free to choose (i.e. not constrained by only one choice, namely between the choice of saving one's child or condemning him to death) as well as independent of the consequences for human flourishing and human cooperation under the division of labor. Indeed, in Block's "consistent and all encompassing" conception of libertarianism, it would be neither immoral nor illegal for all individuals to contract themselves into slavery to one single person who remains free and owns every individual (see Freeman 2001: 133). However, by taking the non-aggression axiom (which is in fact a political principle) and failing to distinguish the latter from human flourishing as the normative premise upon which individual rights and peaceful social cooperation ought to be based, libertarianism will in fact have illiberal conclusions. Pushing Block's argument to its logical conclusion, such a legal outcome would still be, according to his account, consistent with everyone's pursuit of their human flourishing, even though it might result in an entire society's enslavement to one individual.

Such a *reductio ad absurdum* is not the “litmus test” with which liberal libertarians want to identify. The preservation of peace by means of an absolute right to contract as an absolute ethics are incoherent to each other, rendering such a set of means inimical to liberalism; such an institutional set of means to achieve peace must be viewed as intolerant, antisocial, and noncooperative if it includes the possibility that voluntary exchange, productive specialization, and human flourishing can be eliminated by those very means and yet accepts this possibility independent of those consequences.

So far, we have established that Freeman’s claim, one in which the right to property is equivalent to the right to liberty, is indeed indicative of an illiberal understanding of libertarianism. However, should we dismiss Freeman’s claim that libertarianism resembles feudalism, in which political power is privately exercised? In answering this question, let us consider some additional arguments held by Block and Hoppe. According to Mises, “Democracy is that form of political constitution which makes possible the adaptation of the government to the wishes of the governed without violent struggles” (Mises 2005 [1927]: 21). Mises, like all liberals, including Freeman, advocate democracy but within the context of the rule of law, one in which political authority is, above all, non-personal and impartial (Freeman 2001: 143).

Block, however, regards democracy as a “snare and a delusion” (2011: 560). Instead, Block would instead favor a form of long-term political dictatorship, since a political leader in such a situation would govern his or her domain much like private property. Reinforcing this point, Hoppe argues that monarchical rule would be preferable to democratic rule because a democratically elected official “is a temporary caretaker and thus tries to maximize current government income of all sorts at the expense of capital values, and thus wastes.” In addition, democracy has diminished the position of “natural elites” from their positions of natural authority that they had

before the democratic age (Hoppe 2006). However, this comparison presumes that monarchical rulers will always have full residual claimancy over their decision-making and that a “natural aristocracy” will have better knowledge in governing the rest of society. Not only are both notions inherently undemocratic and illiberal; they also take miss the crucial point of *contestability* in governance that is also crucial to market competition. Returning to our discussion of competitive governance institutions in Section II, what we said there was that the decentralized nature of political rule in Europe gave rise to liberal institutions and constrained competing states from utilizing political power for private ends. If political authority is centralized and faces little threat of exit, then *contestability* of political authority will erode the political privilege of monarchy just as it constrains the despotic nature of democratic majority. By overlooking this point of competitive institutions for governance, one that is crucial for liberalism as well, Block and Hoppe only lend weight to Freeman’s critique that libertarianism is in fact illiberal.

It is important to note, however, that such “in extremis examples are regularly abused in philosophical debate”, as philosopher David Norton states, and what is of “immensely more interest is how a given theory handles common situations,” (1976: 318) namely how liberal political theory delivers an institutional solution to problems associated with toleration of cultural, racial, and religious diversity. Traditionally, liberals have regarded the case for toleration, freedom of association, and free trade to be complementary and inherently linked by private property. The ability for goods, services, ideas, and people reinforces the principles of toleration, liberty of conscience, and freedom of association to which all liberals are beholden.

Hans Hermann Hoppe, however, argues that the case for free trade is inconsistent with free immigration. According to Hoppe, free trade is consistent with restrictions on immigration when it contractual and regarded as mutually beneficial. In a society based on private property, “[f]ree

trade and markets mean that private property owners may receive or send goods from and to other owners without government interference” (1998: 227). Just as individuals voluntarily buy and abstain from buying goods and services without government interference in a free market, Hoppe regards free trade simply as a subset of “the absolute voluntariness of human association *and* separation – the absence of any forced integration – which makes peaceful relationships – free trade – between racially, ethnically, linguistically, religiously, or culturally distinct people possible” (italics original, Hoppe 1998: 224). When individuals migrate without the voluntary consent of other individuals, then “immigrants are foreign invaders, and immigration represents an act of invasion” (1998: 227). Whereas *invited immigration* (emphasis original Hoppe 1998: 228) is consistent with free trade, uninvited immigration must be regarded as a violation of one’s private property according to the non-aggression axiom.

From a logical point of view, Hoppe’s conception of the relationship between free trade, migration, and private property represents a “litmus test libertarianism” that demonstrates the pure logic and the starting point of analysis for understanding a libertarian world in order to distinguish it from an “impure” notion of libertarianism. For example, Hoppe regards the “relationship between trade and migration is one elastic substitutability (rather than rigid exclusivity): the more (or less) you have of one, the less (or more) you need of the other” (1998: 224). By this logic, if there are lower transaction costs of trading goods and services, then there will be less incentive for individuals to migrate from low-wage to high-wage areas, such as between Mexico and the U.S. In addition, the smaller the quantity of public property, the less acute the problem of immigration. However, “as long as there exists *any* public property, it cannot be entirely escaped” (Hoppe 1998: 230). Following the logic of the Coase Theorem (1960), if property rights are well-defined and transactions costs are insignificant, private bargaining between individuals will generate an

efficient allocation of resources independent of the initial assignment of property rights (Coase 1960). In a zero transaction costs world, the situational logic that Hoppe depicts would define uninvited immigration out of existence. However, in a world of positive transaction costs, where private rights would not be perfectly defined and the trade and migration are not perfect substitutes, Hoppe is led to the conclusion that “civilization” in the developed parts of the world, such as the U.S. and Switzerland “would vanish, just as it once did from Rome and Greece” (1998: 226).

Our point here is not to establish how Hoppe’s theory would handle an emergency situation such as Jewish refugees “invading” the U.S. in refuge from Nazi persecution. Such a question is difficult and perhaps unfair to ask of any political or social theory. Rather, what we are trying to illustrate is that in the context in which Hoppe argues that free trade and immigration are consistent with the non-aggression axiom, liberal institutions, or any institutions for that matter, are completely unnecessary. Outside this context, Hoppe must conclude as a *reductio ad absurdum* that human relations, including immigration, are coercive and involuntary; therefore, they must not be tolerated when private property rights and contracts are not perfectly defined. But as Adam Martin states, “the relevant question is not whether there is an ultimate guarantee against conflict, but which sort of governance regime makes conflict less likely” (2015: 84). Hoppe’s theory tries to provide clear social boundary rules *a priori* to define social conflict out of existence. However, by doing so, he provides no endogenous institutional solution to the problem of immigration, or more importantly an account of how private property rights emerge and change to ameliorate social conflict.

V. Conclusion

In this chapter we have developed the case for a liberal view of libertarianism. We have attempted to do so by engaging two claims Freeman has made about an illiberal view of libertarianism. First, that people possess absolute right to private property independent of social interaction and, secondly, that libertarianism neglects the importance of individual independence and autonomy.

While liberty is a concept that is generally regarded as negative, as Hayek states, “[t]his is true in the sense that peace is also a negative concept”. However, liberty “*becomes* positive only through what we make of it” by leaving it “to us to decide what use we shall make of the circumstances in which we find ourselves” (emphasis original 1960: 19). Autonomy and individual independence are not atomistic and generic ends passively received by individuals as mere receptacles according to some notion of distributive justice, but are open-ended and unique to our particular purposive plans discovered and realized in our relationship with others. However, any distinctions between negative and positive liberties, while conceptually useful, do not perform the necessary task of understanding what liberalism is *for*.

Rather than facilitating a particular normative principle, namely adherence to the non-aggression axiom, libertarianism seeks out a set of institutions that provide the preconditions for non-aggression, but manifesting itself in society as peaceful cooperation under the division of labor. Thus, what moral duties and obligations individuals have to each other are not derived *a priori* and collapsed into the political/legal obligations that individuals have to each other. Given that our liberal account of libertarianism is grounded in a set of general and universally applicable rules rather a particular moral duty to engage in non-aggression, “*the actual social and cultural implications of its principles remain to be worked out, and indeed cannot be developed except in practice*” (Rasmussen and Den Uyl 2005: 40).

A liberal view of libertarianism is not one in which the right to property is protected for its own sake. Rather, a libertarian defense of private property rights, properly understood, is based on the fact that such an institutional framework incentivizes individuals to substitute peaceful competition for violent competition. Free markets and private property rights are the means to facilitating the common good sought by a liberal society: the preservation of peace among individuals against the threat of violence and coercion. But man does not live by non-coercion alone. In order to live *well*, liberalism requires a deeper understanding of what non-coercion is for, namely human flourishing and productive specialization under the division of labor. As Mises states, “The preservation of society is an essential condition of any plans an individual may want to realize by any action whatever (Mises 1949: 165)”.

What a liberal view of libertarianism must emphasize, we argue, is not any absolute notion of particular institutional arrangement, such as freedom of contract, but freedom of competition among alternative institutional arrangements in order to discover what are the institutional prerequisites necessary that make social cooperation and human flourishing possible. A liberal account of libertarianism cannot derive *a priori* the set of political institutions as a litmus test to distinguish it from other “illiberal” political theories. Libertarianism draws no bright lines in the sand against other political theories; it is not a theoretical conclusion in search of justification. Rather, it takes peaceful cooperation as its unifying principle and utilizes freedom of competition to discover those institutional arrangements most conducive to peaceful cooperation under the division labor.

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