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# COSMOS + TAXIS

Studies in Emergent Order and Organization



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Studies in Emergent Order and Organization

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# The Pluralism of the Emergent-Order Paradigm

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**Bio-sketch:** David Emanuel Andersson is the Editor-in-chief of *Cosmos + Taxis*. David's more than 50 scholarly contributions have appeared in journals such as *Environment and Planning A*, *Journal of Economic Geography*, *Journal of Institutional Economics*, *Regional Science & Urban Economics*, *Technological Forecasting & Social Change* and *Urban Studies* and also include nine authored or edited books. His research focuses on the role of institutions and institutional change in urban and regional development.

The rationale for establishing *Cosmos + Taxis* is that we believe that emergent-order theorizing constitutes a promising unifying approach for understanding the social world. It can shed light on phenomena as different as market processes, political decision-making and religious worship. The articles in this issue not only show that the domain to which we can apply an emergent-order perspective is unusually expansive; they also show that this perspective allows for normative pluralism as well as pluralism of the subject matter.

Klein (2012), following Myrdal (1969), argues for self-disclosure about one's ideological commitments, the reason being that there is an unavoidable pre-analytic bias that influences individual social scientists in their choices of research topics. The authors in this issue of *Cosmos + Taxis* are exemplary in this respect; each makes absolutely clear that they are not neutral about societal outcomes. They have strong commitments to their respective visions of "the good society." Perhaps more surprising is the ideological diversity that is compatible with general adherence to the emergent-order paradigm, which has historically been associated with the classical liberalism of Friedrich Hayek and Michael Polanyi.

Steve Horwitz is perhaps closest to Hayek's version of classical liberalism. But he applies Hayekian theory in a novel context: childhood play. Austrian and institutional econo-

mists often draw attention to how informal norms reduce transaction costs and facilitate market exchange. But how these informal norms are transmitted and cultivated is for the most part treated as external to their analyses. Horwitz argues that transmission and learning of social norms are closely related to childhood play, and further that a particular type—unsupervised play—is more likely to develop the capabilities for effective adult participation in entrepreneurial markets as well as in non-coercive civil society contexts. He sees the increasing emphasis on adult supervision and "bubble-wrapped kids" as potentially detrimental to the classical liberal ideal of self-organization and self-regulation. The key dilemma for the classical liberal is whether the childhood experience of being closely supervised and protected by adults will translate into an increased reliance on government regulations and bailouts during adulthood.

Gus diZerega (1989) was the first scholar to introduce democracy as a political counterpart to the spontaneous market order, and later extended this reasoning (diZerega, 2013) to argue for the possibility of a Hayek-inspired defense of egalitarian left-liberalism. In the current issue, he makes the argument that a *taxis* is not simply an instrumental organization that unambiguously pursues its founder's goals, but a more complex entity that tends to develop emergent properties such as organizational survival as its overarching

aim, even at the expense of whatever motivated the founder. Breaking with the tradition of Austrian as well as mainstream economics, diZerega contends that we have to give up methodological individualism in favor of treating organizations as akin to an organism that shapes the values and preferences of its individual members. Taking his cue from Berger and Luckmann (1967), diZerega writes that “human beings are social creations, society is a human creation *and* society is an objective reality.” Because organizations have the ability to shape the human beings that constitute them, individual norms of behavior are sometimes suppressed so as to ensure organizational survival, with tragic consequences such as the Roman Catholic Church covering up sexual abuse or the US Army suppressing evidence of American soldiers murdering civilians in Vietnam.

The second part of this issue is a mini-symposium that addresses normative conceptions of property rights. Walter Block has long been associated with advocacy of an anarcho-capitalist version of the inviolability of private property rights, first propounded by the Austrian economist Murray Rothbard. In this issue, he attacks what he sees as the “utilitarian” approach of Gene Callahan. According to Block’s deontological vision, inviolable private property rights are not only just; they are the only safeguard against the slippery slope that leads to a thoroughly politicized economy. In his most controversial example, Block argues that trespassing should remain illegal even in the case where it is necessary to avoid death, as when clinging to a flagpole owned by someone else fifteen stories above the ground.

In his response, Callahan disagrees, arguing that deontologists and utilitarians are equally one-sided, which ultimately stems from similar attempts to adhere to “rationalism,” in its pejorative Oakeshottian sense. Against this, Callahan argues that it is often the case that different rights contradict one another, and that in those cases the role of any *reasonable* legal system is to weigh competing rights claims against each other (for example, the right to life versus the right to exclude others from privately owned property).

In the final article, Hudik makes the case that while there is no logical inconsistency in Block’s view of justice, it is nevertheless a particularly extreme special case of many possible libertarian “preference structures.” He labels Rothbard-Block libertarianism as either “single-value libertarianism” or “lexicographic libertarianism.” In either case, the implication is that it is inadmissible to trade off absolute private property rights against other desirable rights or goods. In contrast, Hudik contends that it is equally defensible to have a clear preference for “libertarian justice” (i.e., strong protection of

private property rights) and yet be prepared to trade off such justice against a “composite good” that represents the bundle of other (non-libertarian) attributes that an individual deems desirable. Hudik labels the moderate version with trade-offs (and convex indifference curves) “convex libertarianism.”

All in all, the present issue of *Cosmos + Taxis* is testament to the richness and pluralism of the analytical framework that treats civil society, politics and markets as multi-level processes of emergence rather than as static equilibria.

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# Cooperation over Coercion: The Importance of Unsupervised Childhood Play for Democracy and Liberalism

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**Bio-sketch:** Steven's most recent book is *Hayek's Modern Family: Classical Liberalism and the Evolution of Social Institutions* (Palgrave Macmillan, 2015). He is also the author of *Microfoundations and Macroeconomics: An Austrian Perspective* (Routledge, 2000) and *Monetary Evolution, Free Banking, and Economic Order* (Westview, 1992), and he has written extensively on Austrian economics, Hayekian political economy, monetary theory and history, and macroeconomics.

**Abstract:** Unsupervised childhood play is how children learn the sort of informal rule-making and rule-enforcing that is so critical to a liberal society's attempt to minimize coercion. It is a key way that children learn the skills necessary to engage in social cooperation in all kinds of social spaces within the market and, especially, outside of it. We learn how to problem solve in these ways without the need to invoke violence or some sort of external threat, which enables us as adults to cooperate peacefully in intimate groups as well as within what Hayek called the Great Society. A society that weakens children's ability to learn these skills denies them what they need to smooth social interaction and undermines their ability to participate in what Tocqueville called "the art of association." Losing the skills learned in unsupervised play makes coercion more likely by threatening our ability to create and sustain the rule-governed relationships that are at the core of liberal societies. If we parent or legislate in ways that make it harder for children to develop these skills, we are taking away a key piece of what makes it possible for free people to generate peaceful and productive liberal orders.

**Keywords:** liberalism, democracy, childhood play, Vincent Ostrom, Elinor Ostrom, Hayek, spontaneous order

## INTRODUCTION

One of the defining characteristics of the broad classical liberal tradition is its desire to minimize the amount of coercion in human social life. Various scholars in that tradition have differed on how far coercion can be minimized and what sorts of institutions would best achieve that outcome, but they generally agree on that common goal. The very first sentence of Hayek's (1960, p. 11) *The Constitution of Liberty* reads: "We are concerned in this book with that condition of men in which the coercion of some by others is reduced as much as is possible in society." For much of the history of classical liberalism, the desire to minimize coercion has focused on the degree to which the state is necessary to achieve that end. Classical liberals have generally seen the market as a nexus of voluntary exchange in which human relations are

non-coercive, as long as participants refrain from the use of fraud or force. While acknowledging that there are important criticisms of that view both in and out of classical liberal thought, I am going to take that claim as a given for what follows.

What I mostly address in this paper is the realm of human action that is neither the market nor the state, as the vast majority of human interactions take place in these small moments of life. These are the areas that concern Vincent Ostrom (1997) in his *The Meaning of Democracy and the Vulnerability of Democracies*. Ostrom understands "democracy" in the spirit of Tocqueville as the system in which people have the:

capability for pursuing and mediating conflicting interests through processes of conflict resolution... [by]

constituting shared communities of understanding about how to cope with the exigencies of life through reflection and choice in self-governing communities of relationships. (Ostrom, 1997, p. 26)

Democracy and the art of citizenship are the way “self-governors” construct “rule-governed relationships” to prevent and resolve conflicts while minimizing the use of private or political coercion. Ostrom is clear to say that the practice of democratic citizenship concerns neither the market nor the state as typically construed. Instead it comprises all of the various ways humans use language and persuasion to develop “covenantal” solutions to the endless problems of conflict that constitute life in a social order. Such covenantal solutions include everything from larger scale social institutions, to various civic and market organizations, to neighborhoods and families. For Ostrom, democracy is the practice of creating rule-governed arrangements through conversation, collaboration, and consent.

For example, consider how much of our lives is made up of interactions with members of our families or the people with whom we work. Families and firms are just the sorts of “intermediate institutions” between individuals and the state that are central to liberal societies. Markets too might be considered intermediate institutions, but for my purposes here, I want to exclude markets and focus on the human interactions that take place outside both the formal institutions of politics and the monetary exchange (“cash nexus”) of the market. Those spaces frequently involve moments of conflict that need to be either avoided or solved without coercion if the classical liberal desire for a coercion-minimizing society is to be realized. In addition, to the extent that such small moments of conflict are already solved without coercion, our ability to do so contributes to the emergence of a whole variety of social orders, including the grand emergent order of what Hayek called the Great Society.

What I am interested in exploring is one of the most important ways we learn how to negotiate these small spaces of potential conflict that lie outside of the market and state without invoking public or private coercion to do so. In other words, how do we learn to develop the skills and aptitudes needed to be self-governors who can effectively participate in democratic citizenship, as Ostrom understands it? I will argue that the opportunity to engage in unsupervised childhood play acts as a school for learning both social norms and the skills required to avoid and resolve the innumerable moments of conflict that fill our daily lives. In this way, the ability to engage in such play is central to democracy and

the liberal order. If this argument is right, it also suggests a central role for parenting and the family in the maintenance of the liberal order. Such play seems to be increasingly absent from the lives of many young people in the West, and we need to consider the implications of that loss for the future of the liberal order. In our zeal to protect our children from a whole variety of (mis)perceived dangers, we may be undermining their social conflict solving skills in ways that prevent them from learning the art of association at the core of democratic citizenship. Losing the art of association invites a larger role for both public and private coercion that will frustrate liberalism’s goal of reducing the role of coercion in society.

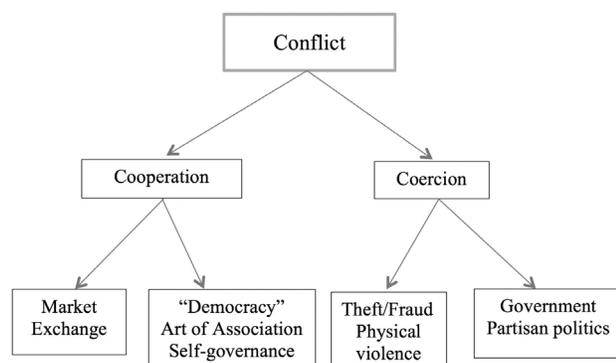
#### A BRIEF TAXONOMY OF CONFLICT, COOPERATION, AND COERCION

The fundamental fact of human existence is that we are unable to satisfy all of the wants we might have. Physical resources are scarce in comparison to wants, but so are time and knowledge. On an individual level, we are constantly confronted with the necessity of choice and the reality of those choices having costs in terms of foregone alternative uses of resources, time, and knowledge. On a social level, humans require institutions through which all of those individual choices can be reconciled as there is no reason to believe that all of our particular wants will be perfectly consistent with everyone else’s in such a way as there will be no conflicts over resources. In the absence of such pre-reconciliation, humans have discovered, through a variety of social evolutionary processes, various practices and institutions that can either avoid or resolve the conflicts that thereby arise. Such institutions include the market and formal political processes, but also a whole variety of social norms and intermediary institutions, such as families, houses of worship, clubs and organizations, and a variety of other elements of what is now often called “civil society.” These intermediary institutions are an important constituent part of the larger emergent order of the Great Society.

One way of viewing our evolved methods of dealing with conflict is in Figure 1 below. Where two or more people cannot decide on how to resolve a conflict, especially those over resources, the two basic choices are either finding a way to cooperate or making use of coercion. These two options are available in any case where humans have to work together as team. Cooperation can be divided into two categories: the use of markets to mutually and peacefully satisfy self-interest through monetary exchange and the use of a variety of

other forms of cooperation that rely on any number of types of persuasion and agreement, whether implicit or explicit. These non-market forms of cooperation are what Vincent Ostrom sees as the domain of democracy. Coercion also comes in two forms: public and private. Where cooperation is not possible, perhaps because the framework of institutions necessary to generate market exchange is absent or various forms of social trust are weak, or because the problems of public goods and free riders are too costly to overcome, humans are likely to make use of coercion. Public coercion takes place through the formal political process. Whatever one's view on the size and role of government, it ultimately rests on coercion, even if that coercion is thought to be socially beneficial<sup>1</sup>. Private coercion is always an option as well, particularly if attempts at persuasion in small groups fail to produce agreement, perhaps because individuals lack the skills required to generate consensual and fair arrangements. Stronger individuals can individually, or through a coalition, attempt to determine who gets what, or how groups function, by various forms of coercion.

Figure 1: Dealing with conflict



The concern by Hayek, Ostrom, and others that we minimize coercion as far as possible can be seen in light of this analysis. Whatever one's view of the role for government with respect to market exchange, it would seem clear that if market and non-market forms of cooperation can do sufficiently well in avoiding or solving situations of conflict, we would prefer these non-coercive solutions. When we consider all the moments of human interaction that are cases of potential conflict, especially the very small and local ones, it is extraordinary that we do not see more coercion and violence than we do.<sup>2</sup> The ability to engage in group problem solving and settle disputes without the intervention of outsiders is a key part of the liberal order. When we consider all of the

social interactions people have during the day that involve some minor disagreement or dispute (Whose turn is it at the copier? Who should clean up the coffee area? Who gets that parking space?), it is stunning how often these disputes get settled without violence or acrimony. Or consider how we design rules and procedures in small informal groups, again mostly without violence or acrimony. The same can be said of how humans create formal organizations and institutional arrangements for resolving larger-scale conflicts, or how we put up with the annoying or obnoxious small-scale behavior of others, or the ways we adjust our own behavior to the needs and wants of others. When one seriously considers all the moments in a typical day that have potential for conflict that get resolved through conversation and negotiation, or just plain tolerance, it is actually somewhat astounding how smooth social life is. These solutions are both non-coercive and non-market. They are the heart and soul of democratic civil society and our interactions in the various intermediate institutions that comprise it.

In a liberal society, these sorts of moments can take place in a variety of institutional contexts. Even in the context of the market, there are still numerous moments of human interaction that demand that we accommodate others without clear, explicit rules to guide us. Outside of the formal market, we engage in voluntary interactions with a large number of other people during the course of our days where, again, there may be no explicit rules to guide us in how to behave. Yet we manage to find ways to avoid conflicts or resolve those that arise.

One good example of the creation of conflict-reducing rule-governed social institutions comes from the work of Elinor Ostrom (1990). Her scholarship focused on the ways in which people solved common-pool resource problems without using the formal structures of either the market or the state. She argued that those are not the only two institutional forms available to communities as they figure out how to “govern the commons.” Many situations are more amenable to having the members of the communities involved develop their own institutional solutions for managing common-pool resources, and she shows through case studies the variety of forms such solutions might take. Using examples of common property in villages in alpine Switzerland and Japan among others, Ostrom explores the ways in which these communities deploy particular rules, monitoring arrangements, and sanctions to ensure that the common property is used wisely and does not fall victim to the well-known tragedy of the commons. Each of these communities endogenously develops a particular set of rules, monitoring

arrangements, and sanctions that work for the specific problem they are facing and that are consistent with the cultural practices of the community in question. Although all of these cooperative solutions have to solve the same general problems (i.e., providing rules, monitoring, and sanctions), the particular form the solutions will take will vary with the specific circumstances and practices of the group.

Ostrom is careful to point out that these emergent community-based solutions are much harder to develop than is suggested by simple models that assume such solutions can be designed from the top down:

Instead of presuming that optimal institutional solutions can be designed easily and imposed at low cost by external authorities, I argue that “getting the institutions right” is a difficult, time-consuming, conflict-invoking process. It is a process that requires reliable information about time and place variables as well as a broad repertoire of culturally acceptable rules. (Ostrom, 1990, p. 14)

Elinor Ostrom’s work is a useful example of the sort of bottom-up problem solving that can characterize how free people engaged in the art of association avoid and resolve conflicts without resort to external authorities and coercion. But, like Vincent Ostrom’s work, it raises the question of how we learn to engage in these sorts of cooperative ventures, especially when so many of them are idiosyncratic and not easily captured by clear, explicit rules such as “respect property” or “keep promises.”<sup>3</sup> When we expand our perspective beyond the community-wide problems that concerned Elinor Ostrom and consider the enormous number of smaller cooperative tasks that fill our days, the scope of these sorts of interactions becomes clearer and more daunting. Humans are constantly having to figure out how to work together to solve problems. In our evolutionary history, many of these collaborations were with kin who were well-known to us. In those situations, cooperation is perhaps easier and lower cost, though it still requires some version of the skills involved in larger scale cooperation. Of course in the Great Society, those collaborations are often with people who are strangers, requiring that we rely even more heavily on acquired social skills rather than particular knowledge of the individual.<sup>4</sup> More specifically, what needs to be explained is how people learn to develop and enforce endogenous rules and norms, particularly with strangers. In other words, where do we learn the “culturally accepted rules” (i.e., the skills needed for self-governors to participate in democratic processes) about

how to cooperate and collaborate with each other without invoking third-party coercion?

## UNSUPERVISED CHILDHOOD PLAY AND ENDOGENOUS RULE CREATION AND ENFORCEMENT

With respect to market exchange and the Great Society in general, we have some sort of understanding that we need to learn the rules of respecting property, keeping promises, and practicing tolerance, and we also understand that this learning takes place in the family and in schools, and is supported by our rhetoric about economic activity (McCloskey, 2010). What are the equivalent sites for learning how to negotiate and persuade in situations in which there are few, if any, formal rules to guide us? How do we avoid and resolve conflict in these informal and all-too-frequent moments?

In his *Free to Learn*, psychologist Peter Gray (2013) documents the ways in which the ability to truly play is central to how children learn and how it thereby contributes to their growth into functional adults.<sup>5</sup> In particular, he (p. 7) focuses on what he calls “free play,” or “play in which the players themselves decide what and how to play and are free to modify the goals and rules as they go along.” He (pp. 17-18) adds that “free play is nature’s means of teaching children that they are not helpless” and that in playing this way “children learn to make their own decisions, solve their own problems, create and abide by rules, and get along with others as equals rather than as obedient or rebellious subordinates.” In addition, Gray (p. 18) argues that “in social play, children learn how to negotiate with others, how to please others, and how to modulate the anger that can arise from conflicts.” Therefore “unsupervised” in this context need not mean that there are no adults in the vicinity, nor that, for example, neighbors or police are not nearby. What it does mean is that the nature of the play, the creation of the rules governing that play, and the enforcement of those rules is left in the hands of the children who are playing. The structure of that play is not imposed on the players, but emerges from their own choices.

One other element that defines play is that it continues only with the consent of those playing: “the ultimate freedom in play is the freedom to quit” (p. 141). Consent matters because it means that the playing will only continue if those engaged in such play can resolve conflicts and mollify complaints in ways that keep everyone interested in playing. This is one way in which the social skills are taught: if children want to play, they have to learn to keep everyone

sufficiently happy. The kind of play Gray is focusing on here is very different than the structured play of something like Little League baseball. There the rules are imposed and disputes are settled from the outside by adults, and children, once they get involved, cannot quit the specific game as easily as they can in true play. The alternative institutional environment of Little League forecloses the bottom-up ways in which children learn to create and enforce their own rules and makes them almost completely dependent on adults. Gray (p. 159) also argues that free play helps children to develop an important kind of empathy, as they have to be able to “see from others’ perspectives, to understand what others want, and provide at least some of that for them.”

Gray notes that the differing context between the unstructured, unsupervised free play and the structured play of something like Little League explains why there are more injuries in structured play than free play. In free play, each player must take account of the skill and size of the other players in order to keep the lesser-skilled and smaller ones interested in playing, so better, larger players will ease off on them. The centrality of consent and the ease of exit force players to moderate their behavior in ways that are unnecessary in structured play. In the competitive environment and formal structure of something like Little League not only is such moderation unnecessary to maintain consent to play, it will be actively discouraged. In free play, by contrast, the means matter more than the ends, reducing the competitiveness that can prevent more skilled players from easing off the lesser-skilled.

The processes at work in enabling free play to continue parallel those identified by Elinor Ostrom in her studies of community-driven responses to common property resource problems: rules have to be developed and behavior has to be monitored and sanctioned. One of the most powerful ways to deal with rule transgressions in emergent orders is through exit because the continuation of the game or institution requires the continued consent of the players. If exit causes the game, or the social institution, to collapse, the participants have strong incentives to make sure that all players think the rules are fair and that they are being followed. In rules imposed from above, such as in highly structured and supervised play, the need for consent to the rules is absent and exit becomes a much weaker form of sanction. As a result, participants are less likely to take the desires of others into account because ignoring them does not lead to cessation of the activity.<sup>6</sup>

The skills developed in playing such games are also the skills central to Vincent Ostrom’s (1997, p. 296) broader discussion of the importance for effective self-governance of “common knowledge, shared communities of understanding, patterns of social accountability, and mutual trust in one another.” He also recognizes the way in which these skills “begin to accrue in the early years of childhood” and how “every child can learn what it means to play games” (p. 286). However, Gray reminds us that play need not be games in the sense of things like baseball or basketball, but can take all kinds of different forms including fantasy play, language play, social play, and many others. Gray’s (2013, p. 140) definition of play is worth quoting in full. It consists of the following five characteristics:

- 1) play is self-chosen and self-directed;
- 2) play is activity in which means are more valued than ends;
- 3) play has structure or rules that are not dictated by physical necessity but emanate from the minds of the players;
- 4) play is imaginative, nonliteral, mentally removed in some way from “real” or “serious” life; and
- 5) play involves an active, alert, but non-stressed frame of mind.<sup>7</sup>

He (p. 146) adds: “To play is to behave in accordance with self-chosen rules.” Among the lessons unsupervised play inculcates is that “players have to make up and modify rules according to varying conditions” and, unintentionally echoing Vincent Ostrom, he notes that “for life in a democracy, few lessons are more valuable” (p. 160). Children also learn that “conflicts are settled by argument, negotiation, and compromise” and therefore learn the importance of consensus (as opposed to complete agreement), which is another key skill for dealing with the endless moments of potential conflict that characterize the Great Society (p. 160).

Finally, Gray (p. 174) notes children experienced in this form of play are more empathetic and less narcissistic than those who lack such experience. The constant need to take the concerns of others seriously in order to ensure continued consent and thereby keep the game going helps to develop the capacity to recognize when others are not enjoying the game or are perceiving the rules as unfair. Again, this set of skills is crucial for resolving all kinds of adult conflicts without the need for coercion.

All of these skills developed by play, Gray argues, are central to child development and enabling children to be functional adults. He notes that these also have impor-

tant social implications. If we did not have these skills, we would inhabit a world where many more social conflicts, or interpersonal slights, would lead to anger or violence. Imagine a world where rather than trying to settle conflict through conversation and negotiation among the parties, we immediately went to the police or lawyers.<sup>8</sup> If the central idea behind liberalism is to minimize the use of coercion in society, then any social practice that inculcates skills in rule creation, negotiation, and compromise, as well as enhancing our ability to empathize and reducing the frequency of narcissism, should be seen as central to developing the skills necessary for practicing the art of association in a liberal society. The political importance of childhood is that it prepares us for the freedom of adulthood by allowing us to experience that freedom in small, bounded doses. If Gray and the research he cites is correct, then unsupervised childhood play is one of the most important means by which both parents and society at large can help children become the self-governors that democracy and liberalism require.

This analysis is a fairly rosy description of unsupervised play and its role in the liberal order. Exit options are indeed powerful, but invoking them raises the question of the role of coercion in providing the framing institutions under which the various forms of social interaction and conflict resolutions take place. Do we need the coercion of something like the state to ensure that lower-level cooperation can take place? How do we deal with those who do not play by the rules? All of these are questions that go to the heart of political economy. I will make two observations in the context of this paper. First, while we do tend to treat things like the law as an “external” institution for the analysis of various forms of social cooperation, it may also be the case that for understanding the emergence of legal rules or other forms of governance, we have to treat the sort of skills at the art of association I am discussing as “external” to that analysis. That is, the way in which law emerges may depend just as much upon the nature of play and cooperation as play and cooperation do on the law.<sup>9</sup> The second point follows from this. In fact, a great deal of contract enforcement comes not from the state traditionally understood, but from a whole variety of forms of private governance, many of which might well rely on exactly the kinds of skills that are under discussion here. Seeing the relationship between “external” institutions of contract or other kinds of norm enforcement as simply being the state providing the framework for voluntary cooperation misses the more dialectical interaction between enforcement institutions and the cooperation that emerges from them.<sup>10</sup>

## THE DEMISE OF UNSUPERVISED PLAY<sup>11</sup>

Unfortunately for the future of liberalism, unsupervised play is in decline. For example, a recent poll indicated that 68 percent of Americans think there should be a law that prohibits kids aged nine and under from playing at the park unsupervised, despite the fact that most of the adults polled no doubt grew up doing just that. In the same poll, 43 percent supported a similar law for 12-year-olds.<sup>12</sup> In other words, almost half of Americans would like to criminalize all pre-teenagers playing outside on their own. In the last several months, the media have been full of reports of parents who have tried to let their kids play, or go to the park or school, unsupervised being ticketed or arrested for endangering their children. This is despite abundant evidence that childhood has never been safer than it is today. Between these unfounded fears about child safety, and the belief that parenting needs to be incredibly labor intensive, children are losing the opportunity to engage in unsupervised play.

One of the features of parenting in the twenty-first century is the expectation that it should be extraordinarily intensive and invasive. The media are also full of stories of moms and dads who hover over their kids, directing every aspect of their lives just about every hour of the day. A conversation with a K-12 teacher or college professor will bring forth even more such tales. Often this form of parenting manifests as kids who are scheduled full of activities both in and out of school, from music lessons to sports to volunteer work or any of several dozen things that the parents have decided that they need. This drive to over-schedule, like so much else with this phenomenon, may well come from a good place, namely the parents’ desire to see their kids succeed combined with the assumption that meaningful success requires all of this preparation from day one. It is not hard to imagine, mostly because they are real, the parents who fret over their kids not getting into the right baby day care because it will shut them out of the best pre-school, which means the child will not get into the top private primary school, which in turn means that he or she will not get the preparation and connections necessary to get into that Ivy League college that is believed to be the only path to a successful adulthood.<sup>13</sup> These parents also tend to be the ones that Marano (2008, p. 19) calls “snowplow parents,” who attempt to remove every obstacle in the way of their kids living out that life-path, while simultaneously giving the children very little responsibility, or choice, in the matter.<sup>14</sup>

At the same time that these parents are over-scheduling and hyper-managing the details of their kids' lives, they are also protecting them from any risk of danger or failure. Here again we are all familiar with the stories of parents fearing all of the horrible things that can happen to their kids, and demanding hand sanitizers everywhere, or removing traditional playground equipment, or driving their kids two blocks to school for fear of what might happen if they walk by themselves. Add on to this the additional parental fears about everything from online predators to poisoned Halloween candy to what chemicals are in their children's plastic sippy cups, and you have kids who are constantly being bubble-wrapped for their own protection.

Aside from the fear of the lurking dangers, real or imagined, this hyper-parenting often takes the form of an unwillingness to allow kids to experience the pain and discomfort of failure.<sup>15</sup> More generally, in an analogy to how markets work, hyper-parenting refuses to allow kids to suffer the psychological equivalent of profits and (especially) losses that help them learn how to navigate the world successfully. The snowplow parents who clear the road of obstacles are denying their kids the feeling of psychological profit that comes from accomplishing something themselves. As a result, such children do not learn as effectively as they should how to deal with challenges and novel situations that require them to work hard and figure out solutions. Those parents who attempt to cushion every one of their children's failures, whether in the trivial form of Second Winner trophies for losing sports teams, or in the more serious form of aggressively pushing school officials to change grades or override a coach's decision to cut their kid from a sports team, are denying those kids the chance to feel the psychological loss that comes from failure, and that is necessary for learning what *not* to do. Trying to bail out kids from every possible failure has the same effect as bailouts do in the economy: it locks-in inefficiencies and wastes resources by cutting short the process by which we learn what to do and what not to do. Just as bailed out firms can become economic zombies, economically dead but still wandering around consuming resources, so do bailed out kids stumble through late adolescence and early adulthood unable to be resilient in the face of failure and creative in the face of roadblocks.<sup>16</sup>

Another way of looking at these phenomena is that they represent the sheltered childhood and its sentimentality taken to an extreme. As it emerged in the Victorian Era, the concept of the sheltered childhood was originally concerned with creating a space in which children could become educated, play, and learn without having to worry about the

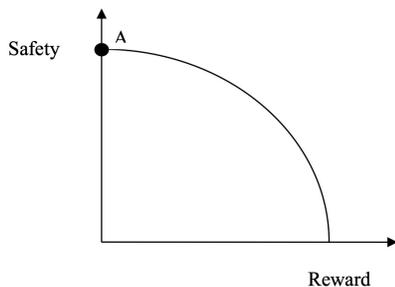
ugly reality of the adult world of work and the public sphere more generally. Sheltering children within the worlds of family, school, and houses of worship, and in the process really creating childhood and adolescence as we know them today, was an understandable reaction to the long history of children having to work on farms or factories as part of the family's role in market production. It was not intended to protect children from every possible danger or even cushion them from failure in the way that too many parents do today. It seems as though now there is no risk to children that is worth tolerating, at least if parents or policymakers become aware of it. Steven Pinker (2011, p. 444) aptly said of this phenomenon that: "The historical increase in the valuation of children has entered its decadent phase."

An economic perspective can shed some light on this view of childhood. One way to understand it is that it is almost as if each and every child is viewed as infinitely valuable and therefore his or her safety or happiness cannot be traded off against any possible risk. Notice how many of the safety-related concerns of parents deal with very low probability outcomes, though often ones that would have very large negative effects if the very low probability event were to occur. Included here would be fears of kidnapping and online predators, the risks of which are greatly over-estimated by most parents, especially since crimes against children in general have fallen significantly over the last few decades.<sup>17</sup> If the activities that incurred these risks had no benefits, then it might be sensible to not accept any level of risk. However, as I have argued, many, if not most, of the activities that are seen as too risky for kids, such as the various forms of unsupervised play that interest Gray, do indeed have benefits associated with them, which makes them worth engaging in if the risk is so small. However, not enough parents and policymakers seem to be willing to talk in terms of costs and benefits or acceptable risk when it comes to issues involving children.

In the language of economics, it is as if parents can only think in terms of a "corner solution" when it comes to risks to their children. This terminology refers to the way economists think about tradeoffs. We tend to depict tradeoffs using something like the diagram in Figure 2. For almost any example one can think of, there is a trade-off between safety and the reward one gets from the activity. Almost anything we do has some element of risk to it, such that the only way to obtain the reward is to accept some amount of risk and thereby reduce one's safety in the broadest sense of the term. The curve depicts that tradeoff by showing how increasing the benefit from the activity also means reducing its safety

(increasing its risk). The term “corner solution” refers to point A, which lies at the corner of the curve and the axis, indicating that there is no tradeoff being made. At point A, the person prefers all the safety that can be obtained, which implies no reward whatsoever. (And we could put a comparable corner solution point at the other axis, reflecting someone who had no concern for safety whatsoever.)

Figure 2: Corner-Solution Parenting



Many parents might well say “yes, when it comes to my child’s safety, no risk is worth taking.” Such parents probably believe this as well, yet their actions suggest otherwise. If parents really believed this, they would never choose to put their child in a car (car seat or not). Car accidents are a major killer of children, yet parents seem very willing to take *that* risk, but far less willing to, for example, allow their children to eat Halloween candy from strangers even though there is not one verified incident of poisoned Halloween candy on record (Skenazy, 2009, p. 62). So at one level, this concern about keeping children safe is problematic because parents appear to misjudge what choices really put their kids at risk. A concerned parent might respond by saying “well of course I put my kids in the car—after all I have to transport them to various places and they cannot walk everywhere.” This response, however, just makes the point: some risks are worth taking if there is a benefit to the risky activity that more than compensates for the risk. Parents do, in fact, understand that corner solutions are not optimal in most situations.<sup>18</sup>

Parenting should be about ensuring that children are exposed to a profit and loss system of maturation. When kids get it right, they should reap the benefits, but when they mess up, they should also pay the price. If we continue to grant children greater freedoms but continually prevent them from experiencing the psychological equivalent of losses, we will have denied them a crucial part of the learning process and, in so doing, potentially weakened their ability to navigate effectively in the liberal order. Just as privatizing profits

and socializing losses in the economy leads to misallocation and moral hazard, so will parenting that socializes losses lead to children who find the reality of the extended order of the Great Society puzzling and unacceptable. If the liberal order depends crucially on people acquiring certain values and norms, and understanding that the Great Society differs from the intimate order of the family, parenting needs to take into account how best to inculcate those values. Allowing kids to experience the real risks associated with freedom, and the profit *and loss* such freedom might bring, is one way to do so.

In Gray’s (2013, p. 6ff) description of what he calls a “half century of decline” in free or unsupervised play, he puts a great deal of the blame on the increased importance of compulsory formal schooling and the ways in which it has led people to think that time in the classroom is what matters, making the opportunity cost of other activities too high. The ways in which schools have reduced or eliminated recess for young children are evidence of this, although that change probably is also affected by liability laws in a highly litigious society. He also summarizes the literature that connects this decline in free play with the increase in a variety of psychological disorders in children. Ironically, and tragically, in the name of protecting our children, and trying to guarantee them what we believe is the right kind of education, we may be harming them and, in the process, weakening the skills that help to minimize coercion in liberal societies.

## PARENTING, “OSTROM MOMENTS,” AND THE LIBERAL ORDER

Denying children the freedom to explore on their own takes away important learning opportunities that help them to develop not just independence and responsibility, but a whole variety of social skills that are central to living with others in a free society. If this argument is correct, parenting strategies and laws that make it harder for kids to play on their own pose a serious threat to liberal societies by flipping our default setting from “figure out how to solve this conflict on your own” to “invoke force and/or third parties whenever conflict arises.” This is one of the “vulnerabilities of democracies” noted by Vincent Ostrom (1997). A society that weakens children’s ability to learn these skills denies them what they need to smooth social interaction. The coarsening of social interaction that will result will create a world of more conflict and violence, and one in which people’s first instinct will be increasingly to invoke coercion by other parties to solve problems they ought to be able to solve themselves

through democratic self-governance. Unsupervised play is a key way that children learn the skills necessary to engage in social cooperation in all kinds of social spaces, both within the market and especially outside of it. If we parent or legislate in ways that make it harder for kids to develop those skills, we are taking away a key piece of what makes it possible for free people to be peaceful and cooperative people.

If all of this is reasonably accurate, it suggests that parenting practices matter for the viability of a liberal social order. Bryan Caplan's (2011) recent book has led many defenders of classical liberalism to conclude that parenting does not matter that much, as Caplan marshals impressive evidence from behavioral genetics showing that most life outcomes for children are the results of nature not nurture. Though Caplan is clear to also point out that really bad parenting practices (e.g., locking kids in rooms) can cause damage, and equally clear to note that the most important thing parents can do for their kids is to provide the kids with happy memories of their parents and childhood, he does make the argument that parenting is much less important than people think. However, Caplan is concerned with the effects of parenting on individual outcomes, especially various metrics of a successful life. He is *not* concerned with the ways in which parenting might affect how children deal with the sorts of issues I have raised here, such as the ability of liberal societies to minimize coercion. One can accept that genetics might explain a great deal about individual outcomes but still think parenting is significant for the ability of young people to become self-governors with the capacity to engage in cooperative and collaborative conflict reducing processes.

We can see why parenting's relationship to unsupervised play might matter for liberal orders by returning to Elinor Ostrom's work and the ways in which intermediate institutions based on human cooperation are central to the emergent order of the liberal society. A great deal of contemporary social science makes use of game theory to describe human social interactions. Ostrom does as well, and she (1990, p. 23) claims that: "In the most general sense, all institutional arrangements can be thought of as games in extensive form." Formal game theory is most often thought of in terms of a given structure of rules that, along with payoffs, determine the various strategies that players can deploy. A particular mix of strategies given those rules and payoffs will produce the equilibrium outcome. The institutional arrangements that interest Ostrom, however, are rules that emerge endogenously from a game played within a higher order set of rules. That is, the equilibrium outcome of the game of institution formation is a set of emergent rules. She (1990, p.

52) notes that any analysis that purports to explain to the emergence of one set of rules endogenously must take another set of rules as exogenous.<sup>19</sup> But what this does mean is that the "game" of institutional emergence is a game that also must produce a set of rules for a further game to be played among the participants. Here is where institutional emergence meets unsupervised play, as the leap from games to play is a very short one.

In Gray's analysis of play, he is explicit that true play is "mentally removed" from real life, but many of the elements of play can be seen in the ways in which people construct and make use of the institutional arrangements that resolve social conflicts in real life. Like play, how a community might decide to best manage a common grassland or waterway ultimately rests on developing a set of rules that everyone will consent to. The same sorts of skills of compromise and empathy, and the same need to keep people sufficiently happy so they consent to play the game (i.e., adopt and follow the institutional rules) that characterize childhood play, are necessary for developing real-world institutional solutions for the management of common-pool resources and many other situations of social conflict. What Elinor Ostrom (1990, p. 25) calls "the possibility of self-organized collective action" and what Vincent Ostrom (1997, p. 292) describes the "pathway to peace...through self-governance" appear to be alternative ways of seeing what Gray calls "free play." The key difference is that real world institutional solutions, because they are in the real world, are focused on particular ends, unlike play which has no specific goal of its own. The kinds of institutional arrangements that interest the Ostroms are ones that solve specific problems, and in that way they are like the forms of intentional cooperation that characterize a great deal of human action. Nonetheless, they do take on many of the characteristics of play, and as Elinor Ostrom's work demonstrates, human communities are able to develop amongst themselves a wide variety of institutional solutions in the face of common-pool resource problems. One of the reasons that humans can bring about these solutions is that we can make use of the skills, including the ability to empathize, that are learned in the school of free play.

Although Elinor Ostrom's work focuses on larger scale social problems that require collective solutions, the same sorts of potential for conflict exist in all of the smaller scale kinds of situations noted earlier. Conflict is a constant feature of human interaction. It is possible that these little "Ostrom moments" get resolved peacefully because so many of us have had experience from childhood at having to engage in the collective self-governing processes of rule-making

and rule-enforcing that are so critical to a liberal society. Unsupervised play gives children the opportunity to learn how to rule and be ruled, but does so with the need for consent and the option of exit, also helping them understand what constitutes legitimate authority and preparing them for participation in the democratic processes of a rule-governed society. Such play also requires that power be wielded gently, which is an important skill for people to have as members of the little platoons that make up civil society. Liberal societies are ones in which people have learned how to problem solve by making use of all of these skills, obviating the need to invoke violence or some sort of external threat. Developing these skills is a central, if largely invisible, foundation of the peaceful human interaction and cooperation that keeps liberal societies as liberal and free as they are.

If we were to lose the skills necessary to solve conflicts cooperatively, it is not hard to imagine that people will quickly turn either to external authorities like the state to resolve them, or would demand an exhaustive list of explicit rules where such a list might not be possible. As an example, this point might contribute to our understanding of the conflicts around sexual consent that have characterized US college campuses in recent years. If large numbers of late adolescents have never acquired the skills that are involved in unstructured play, it makes sense that they would find it difficult to engage in the unstructured “play” that might characterize a great deal of sexual interaction.<sup>20</sup> Sexual interactions are a form of adult play and the process of negotiating the rules and, especially, *ensuring that all involved continue to consent to those rules and the game being played*, clearly draws on the same set of social skills that Gray claims characterize unsupervised play. Without developing the capacity to compromise and empathize, or the experience at negotiating rules and having difficult conversations about conflict, it is not surprising that college students might want an external authority (such as college administrators and their judicial processes) to settle conflicts, or insist on an explicit set of rules that describes what is okay and what is not. These considerations might explain the increased presence of the sexual contracts or more extreme forms of “affirmative consent” that have become in vogue in recent years.<sup>21</sup>

One key to maintaining a society in which the role of either public or private coercion is limited is a citizenry that has the skills to solve these little “Ostrom moments” consensually. The ability of the people involved to design a set of rules for resolving potential conflicts is at the center of how free people can create institutional solutions that reduce the level of coercion. Like play, such solutions rest on the con-

sent of the players and must be created in ways that keep everyone happy. When we understand play as a consent-based activity structured by rules created by the players, learning to play becomes the way we practice in a world removed from reality the skills we need for the very real world of social and political interaction. Losing the opportunities to engage in such play would be one reason to share Vincent Ostrom’s concern about the direction in which American democracy is headed. If emerging adults do not have the skills to problem solve by engaging in the rule creation and enforcement that characterizes self-governing citizens, they will continue to cede power to partisan politics and the state or other forms of coercion. The result will be the slow destruction of liberalism and democracy.

## UNSUPERVISED PLAY AND THE IMPORTANCE OF FAILURE

Hara Estroff Marano’s description of the benefits of unsupervised play is particularly Hayekian in its emphasis on the importance of rules and uncertainty. It also provides one other way in which childhood play might matter for the liberal order:

[P]lay is the true preparation for adulthood. At its heart, play is rule-bound activities in which the outcome is unknown. It’s the way we learn to handle the unexpected. Play sharpens the wits and makes mental processes nimble – resilient and ready for whatever life throws our way. (Marano, 2008, p. 91)

This description of play could apply equally to competition in the market process. It too is a rule-bound activity whose outcome is unknown, and it too is about helping us to handle the unexpected, as well as increasing the mental skills of those who are competing. Thinking about play this way provides additional texture to Hayek’s (1977, pp. 115-20) description of the market as a “game of catallaxy” or exchange. Thinking of markets as, in these ways, a form of play opens up some interesting possibilities for how we think about game theory and competition and their relationship to child development. It also reinforces the argument that parenting that allows children to engage in unsupervised play is central to the sustainability of liberal institutions.

Of more direct importance for the relationship between parenting and the liberal order is whether overly intrusive parenting affects the ability of children to accept the responsibilities of such an order. Is there a link between parenting

styles and how children come to view the political world at the broadest level? For example, if we raise children who are used to having things done for them, and who are not used to suffering the consequences of their mistakes, will they have the tolerance for risk that is necessary to produce the entrepreneurship that is essential to economic growth in a market economy? Can children who have not been trusted to wander more than a block from home, or to organize games unsupervised by parents, or to go the playground without every extremity padded, become adults who are themselves willing and able to take economic risks? Will they willingly tolerate others taking such risks, including standing idly by when those risks do not pan out? The liberal order cannot survive without a willingness to take risks, particularly in the economy, but also in terms of what John Stuart Mill (1859) called “experiments in living.” If liberal societies are to progress, path breakers with new ideas have to be able to accept the risk of rejection, whether in the form of social condemnation or economic losses. If there is a link between having been parented in a way that protects children against all such risks, and how children view risk taking in the broader social order, then we might be raising a nation unprepared to take on the tolerance for risk and failure that is essential in a liberal society.

Perhaps an even worse outcome than young adults afraid to take risks would be young adults who are *too* willing to take risks because they are used to getting bailed out if they fail. Overly intrusive parenting might produce young adults who want more and more freedom with less and less responsibility when their choices do not pan out. Rather than raising, as Marano suggests, a nation of wimps, we get a nation of excessive risk takers who want to externalize the responsibility for their mistakes onto other individuals or institutions rather than accepting responsibility for their choices and their corresponding risks. Furthermore, will such young adults be willing to tolerate the verdict of the market when firms, whether their own or others, fail and are headed for bankruptcy? Or will they prefer the economic equivalent of “everyone gets an award” and argue that bailouts are in order? Will a nation of bailed-out kids produce a nation of bailed-out firms? If the discovery process of the market is an essential element of a liberal society, and if that process requires that actors bear the economic consequences if their plans fail to create value, then constantly bailing out money-losing firms will destroy the learning process of the market. Without that learning process, we will be stuck in a world where many resources are consistently misallocated, and where other resources get devoted to battles over the po-

litical distribution of bailouts and other forms of favors and subsidies designed to soften the blow to firms that cannot create value.<sup>22</sup>

This question is perhaps even more pressing in the context of the Great Recession and especially the reaction of groups like Occupy Wall Street and others concerned about the “one percent.” Even as some of the protestors complained about the privileged one percent, survey data indicated that about half of the protestors thought the bailouts of the banking system were necessary.<sup>23</sup> A sizeable number of young protestors have also argued that their college loan debt should be forgiven, which amounts to their own request for a bailout. Whatever the legitimacy of their complaints about the power of corporations and the failures of the political class, the frequent refrain that their college degrees did not ensure them their dream job, or that their debt should be forgiven, is at least consistent with a generation that was raised with a great deal of freedom, but far less responsibility for bearing the negative consequences that come with it.

Perhaps it is a stretch to connect parenting styles with political *gestalt*, but liberal thinkers have long argued that families are central transmitters of important cultural values and norms, so we should not be surprised that if the structure of families and the way children are parented change, so would the values and norms children bring to their understanding of politics.<sup>24</sup> If, as I have argued, unsupervised play is central to learning the skills that enable us to effectively cooperate rather than coerce and that prepare us to accept the risk and consequences of failure that are inevitable in a free society, then parenting does indeed matter for the health of democracy and liberalism. We frequently think of the ways in which parents transmit important skills and norms to their children as being a matter of explicit instruction. Although such instruction is surely important, we also know that imitation is a big part of how children learn. What the research on unsupervised play suggests is that one of the most important ways parents can enable their children to develop at least one set of important social skills is to simply leave their children be when those children go out to play.

Hayek’s (1989) belief that liberalism demands that we suppress our atavistic, altruistic moral instincts honed in eons of existence in small kin-based groups is relevant here. If the family has one key function in the Great Society, it is perhaps that it can teach the ways in which members of a liberal society must accept failure and learn from it. Of course no parent should allow his or her child to risk serious physical harm, but to the degree we continue to prevent children from feeling any pain, disappointment, or frustration, we

risk creating a society in which people either demand freedom without responsibility, or constantly wish to restrict the freedom of everyone in the name of either safety or preventing the negative feelings associated with failure. Each of these outcomes poses a threat to democracy and the liberal order.

## CONCLUSION

If liberal societies are desirable because they strive to minimize coercion, parenting matters for our ability to maintain a liberal order. If we do not give kids the chance to develop the skills that come from unsupervised play, they are going to find it very difficult to generate cooperative, tolerant, and non-coercive approaches to both larger-scale institutional problems as well as smaller-scale “Ostrom moments.” So much of our interaction in the liberal order is in spaces not fully defined by formal rules nor enforced by formal mechanisms. Without practice at dealing with such situations, young people may struggle and ask for formal rules and enforcement, which will likely smother those informal spaces. More young people without the skills developed by unsupervised play might result in a severe coarsening of human social life. Changes in parenting can reduce the vulnerabilities of democracies.

The ability to solve low-level conflicts through peaceful means by the parties involved reduces private coercion, and thereby reduces the demand for more public forms of coercion. Free societies rest on a bedrock of informal conflict resolution and the skills necessary to make that happen may well be developed through forms of unsupervised childhood play. Declaring such play to be too risky is a decision fraught with risk, both to the well-being of children and to the society they will inhabit as adults.<sup>25</sup>

## NOTES

- 1 The question of whether democratic political processes also count as a form of cooperation is one worth asking here. I do not have the space to address it fully, but I think the question depends on the ability of actors to engage in meaningful acts of consent and exit. As I will argue later, these two factors are at the core of what young people learn from unsupervised play and thereby transfer to their ability to avoid and resolve conflict in civil society. The ability to engage in meaningful consent and exit is surely much more available the more local the level of politics, so for the purposes of my argument here, one should read “government” as national governments and keep in mind that at more local levels, government looks more like the covenantal rule-governed relationships that Ostrom sees at the center of democracy.
- 2 Steven Pinker’s (2011) work on the decline of violence over the course of human history is relevant here. Pinker attributes a good hunk of this reduction in violence to the role of the state, but he also points to the importance of the discourse of rights for changing our belief systems about the acceptability of violence and coercion in other arenas, such as the family.
- 3 Of course, those two rules might have some relevance to being able to engage in non-market cooperation, but they are only a small part of the broader skill set to be discussed later.
- 4 For more on how modern institutions enable us to trust strangers, see Seabright (2004).
- 5 Marano (2008, pp. 88-91) raises some similar arguments. Both Marano and Gray provide references to the primary scholarly literature on the developmental role of play.
- 6 This discussion of the power of exit in both play and emergent institutional practices might have important implications for federalism.
- 7 In addition to the rules “emanating from the minds of the players,” Gray (2013, p. 139) observes that play cannot be objectively determined from the outside: “To tell which one is playing and which one is not, you have to infer from their expressions and the details of their actions something about why they are doing what they are doing and their attitude toward it.” Distinguishing play from non-play requires interpreting intentionality and aligns nicely with the subjectivism of economics and the social sciences more broadly.

- 8 Ironically, calling the police or Child Protective Services is becoming a more common way that people respond to the sight of unsupervised childhood play.
- 9 I discuss these issues in Horwitz (1998).
- 10 For more, see Stringham (2015).
- 11 This section draws heavily from Horwitz (2015, chapter 8).
- 12 The results of this 2014 Reason-Rupe Poll can be found at: <http://reason.com/poll/2014/08/19/august-2014-reason-rupe-national-survey>.
- 13 My sarcasm here is supported by a recent book that argues that colleges other than Ivy League schools are perfectly capable of preparing students for very successful and happy lives. See Bruni (2015).
- 14 Gray (2013) calls this “directive-protective” parenting.
- 15 On the importance of failure, see McArdle (2014). Taleb’s (2012) work on “antifragility” is also relevant to these issues.
- 16 Anecdotally, my own experiences working with first-year students on their writing and speaking provide some evidence of this phenomenon. Many kids are so used to being praised for everything they do, and never facing real criticism of their work, that when they get critical feedback on their first few papers they simply do not know how to deal with it. For many, their only reaction is to take it as a personal attack or insult. Even if they can get by that reaction, figuring out how to learn from their mistakes and avoid them in the future is a major challenge. Part of the problem might be that they see grades and other responses from teachers as indicators of personal merit, rather than as feedback or input into their learning process. As one might say about markets, the real function of profits/losses and grades/responses is as a feedback device for learning, not a judgment of some underlying personal merit. If kids do not get to experience real failure and learn from it, why would we expect them to respond to poor grades as if they had, especially if their parents have pushed the notion that grades are about merit? For more see Hayek (1960, chapter 6).
- 17 And seen from a larger historical perspective, childhood has never been less violent and more safe than it is now: “Now that children are safe from being smothered on the day they are born, starved in foundling homes, poisoned by wet nurses, beaten to death by fathers, . . . worked to death in mines and mills, felled by infectious diseases, and beaten up by bullies, experts have racked their brains for ways to eke out infinitesimal increments of safety from a curve of diminishing or even reversing returns” (Pinker, 2011, p. 444).
- 18 See also Pinker (2011, p. 446).
- 19 There are two figures that accompany this point (Ostrom, 1990, p. 53). The first makes a distinction among different levels of choice that draws upon Buchanan’s distinction between the pre- and post-constitutional levels of choice. The second distinguishes “formal” and “informal” arenas of collective choice and how both contribute to the “operational rules in use” in any society. My interest here is with the informal arenas and the way in which they generate emergent rules within the broader constitutional structure of the Great Society.
- 20 More generally, they may lack the skills to deal with what are now termed “microaggressions” on college campuses. Microaggressions are slights by others perceived to be based on race, class, gender and the like. Historically, many of these would have been simply ignored, but as Campbell and Manning (2014) argue in a brilliant analysis of the phenomenon, we may be evolving away from a culture of dignity in which ignoring or politely confronting the speaker was the norm, to a culture of victimhood where publicly shaming the speaker and asking for external control of their behavior has become the norm. My analysis in this paper might explain why college students in recent years find the culture of victimhood more amenable than the culture of dignity: they lack the skills needed to deal with conflict in ways that settle it between the parties.
- 21 The demise of unsupervised play might also explain why so many college students seem to have difficulty with group projects, which require similar skills of rule negotiation and searching for consensus as do various forms of play. Similar considerations might be relevant for their difficulties in dealing with roommate conflicts, although this is also surely due to so few of them growing up sharing a bedroom, which requires that they develop similar negotiation skills and a desire for consensus.
- 22 I put aside the question of economic failure at the individual or household level because I do think there’s a coherent classical liberal case for a minimal state-provided safety net at that level. It is an interesting question whether the argument for state provision is the strongest of the possible classical liberal arguments, but I also think that it is not inconsistent with the classical liberal tradition to think that it is.

- 23 A poll conducted in the fall of 2011 found that 49 percent of Occupy Wall Street protestors in Zuccotti Park in New York City believed the bank bailouts were “necessary.” See Schoen (2011).
- 24 See Vincent Ostrom’s (1997, p. 296) too brief discussion of the importance of childhood for raising self-governors.
- 25 Originally presented at the Cosmos + Taxis 2015 Conference, Rochester Institute of Technology, May 7-9, 2015. I thank Lauren Hall for very helpful comments and the participants for the questions raised in the discussion. I also thank an anonymous referee for useful suggestions.

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# Not Simply Construction: Exploring the Darker Side of *Taxis*

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“The main business of humanity is to do a good job of being human beings, not to serve as appendages to machines, institutions, and systems.”

— Kurt Vonnegut, *Player Piano* (Mystic Michael)

## OVERVIEW OF THE ARGUMENT TO FOLLOW

F. A. Hayek and Michael Polanyi’s distinction between spontaneous and constructed orders is one of the most important insights in social science. Many of us have spent years exploring, expanding, and deepening this distinction, mostly with regard to spontaneous orders. Constructed orders have been far less explored from this perspective though they are often analyzed from others. Within Hayekian circles they are usually treated simply as human tools or machines, relying on human knowledge and intent to do what they were constructed to do. When that knowledge is lacking they fail. Without in any sense denigrating the important work done on spontaneous orders and *cosmos*, this neglect is unfortunate.

Hayek generally included *taxis* with simple phenomena that can be understood linearly and reductively, contrasted to complex phenomena which cannot, and about which only what he called “pattern predictions” could be made. To be sure, instrumental organizations start off as simple phenomena, but key elements are people, who are not simple. If organizations persist for long important emergent character-

istics of their own arise. Individuals are not independent of their organizational environment nor are organizations simply tools serving human purposes.

In this sense organizations are not simply constructions as organizations can develop emergent qualities independently of their creators’ intentions. They possess a degree of independence from their creators and members. Far from being simply tools for achieving human purposes, it often seems as if organizations are acting at least somewhat independently of human intentions.

Modern biology offers additional insights on how such collective entities are human creations that can reverse their relation to human action, making human beings their tools and resources. Organizations can actively shape their environment to some degree independently of their creators’ intentions.

I develop this argument beginning with the puzzle that members of organizations frequently act differently and have different values than before they joined. Analyzing this clarifies organizations’ emergent capacity to become somewhat independent actors in the human world, adapting on their own terms to the spontaneous order in which they exist.

We live in a world shaped at every level by organizations. Nearly all of us spend our working lives within them. They shape our politics, our religions, and many of our social activities. In many cases they are the intermediaries between human actions and the spontaneous orders and larger *cosmos* these actions generate. Far from being simply tools for achieving human purposes, organizations can act at least

somewhat independently of human intentions. And not always to our benefit.

Like Baron von Frankenstein, it often seems we are in danger of being attacked by our own creations, which appear to have taken on a life of their own. I argue this suspicion is well founded.

### An opening puzzle

To develop this claim, I begin with a puzzle. Why do so many normally ethical people act unethically when acting as members of large organizations?

For centuries the Catholic Church's hierarchy covered up cases of sexual abuse by parish priests. In 900, the monk Peter Damian wrote the Pope about the need to address the abuse of underage boys in the Church (Damian, 1982). There is no historical record of significant action being taken. More recently we know once complaints about predatory priests reached a certain intensity they were transferred elsewhere, but their new parishes were often not notified about their past transgressions. Which resumed.

In 2011, after a major sexual scandal in Germany, the Church promised "full transparency" in investigating what happened. Two years later the Church refused any cooperation. The promise would not be kept (Hans, 2013). I once had a student who had played an unwilling part as a young victim in a major Irish scandal (Cullen, 1997). For over 1000 years the Church has a pattern of failing to protect children.

Recently we learned of similar behavior within the Boy Scouts. While the Scouts are not a church, their more modest claims are equally infused with explicit moral content incompatible with abusing children. For nearly a century the Scouts amassed files, the better to keep suspected abusers from rejoining. Neither police nor parents had access to their files (Naziri, 2012). However their file system failed to prevent abusers from re-entering the organization (Ross, 2012).

The Scouts' existence depends entirely on parents trusting them with their children. No one fears for their soul if they leave. Perhaps as a consequence once the issue became public they acted decisively. The *New York Times* reports the Boy Scouts today are "regarded by many experts as a national leader in the field. It has conducted criminal background checks on all volunteers since 2008 and since 2010 has mandated any suspicion of abuse be reported to police" (Naziri, 2012). The Catholic Church is not so vulnerable.

What is most interesting to me about these cases are not the predators themselves. Beyond the realms of psychology,

law enforcement, and the victims and their families, their behavior is not all that interesting. What *is* interesting are those people who *covered up* for the abusers.

This pattern is not confined to child abuse. For example, while police corruption demonstrates many police officers share the weaknesses of others who turn to crime, over and over again we also encounter a code of silence by officers otherwise innocent of wrong-doing. In a study involving police academies in 16 states, 79% reported a "Code of Silence" is fairly common. Fifty-two percent, a *majority*, reported its existence *did not trouble them* (Trautman, 2000). Presumably personally devoted to enforcing the law, many police consistently cover for their dishonest colleagues. In all these cases and many more the innocent cover for the guilty.

So far as we know, most individuals in responsible positions within these organizations were innocent of wrong doing before they decided to cover-up *other* people's crimes. These crimes violated the basic values for which these organizations stood, and did so in the most direct way. The once innocent covered up the guilty in institutions established to serve values violated by the guilty. In so doing they became guilty themselves. But the usual motives of money, power, or sex were apparently not much involved in these second-order crimes.

When the *organization's* existence was threatened, as with the Scouts, decisive remedial action was taken. Such a threat has yet to materialize for the Catholic Church or police departments. If the argument to follow is valid, when it does, it will.

## I: COSMOS AND TAXIS

The insights about emergent order pioneered by F. A. Hayek and Michael Polanyi demonstrate how what Hayek called a "cosmos" developed characteristics independent of those acting within them. Organizations, or "taxis," were left as taken for granted tools reflecting human intentions and capacities. Our first step will be to revisit the *cosmos/taxis* distinction, but with an emphasis on emergent qualities within *taxis*.

### Equality and inequality

Taken from the ancient Greek, a *cosmos* facilitates the simultaneous pursuit of independently chosen projects, even ones that would appear contradictory if pursued within a *taxis*, which is characterized by a hierarchy of goals or priorities. Unlike within a well managed *taxis*, within a *cosmos* multiple projects cannot be arranged in a hierarchy of importance and can even contradict one another.

In the social world a *cosmos* takes two forms. It can be ordered by a narrow set of values generating specific feedback signals, or it can arise from overlapping influences arising out of multiple networks of cooperation (diZerega, 2013). Initially used by Polanyi and Hayek to describe science and the market, the term “spontaneous order” best refers to the first kind of *cosmos*. Its patterns reflect values such as comprehensibility in language, instrumental utility reflected in market prices, agreement among peers about the physical world in science, or agreement among peers about values applying to a community in democracy.

In the second, more complex case no narrow set of values coordinates action. In the modern world feedback signals arising from different spontaneous orders merge within the more encompassing *cosmos* of civil society. Collectively these signals help people make the decisions needed to achieve their goals more effectively. But no single signal dominates. Each member attends to the feedback signals they wish, as much as they wish, and ignores the rest. Both spontaneous orders and civil society are emergent orders, but civil society incorporates more complex values and within it multiple sometimes contradictory feedback signals shape the order that arises.

My agreeing to hike with someone this weekend takes place within civil society but cannot be understood in terms of any one spontaneous order. Price feedback from the market helped me decide whether I could afford the outing, and where to go. Perhaps observations I could make during the hike would assist ecological research I hope will result in a scientific paper. I might choose a state park. The first is the spontaneous order of the market, the second, of science, and the third, of democracy. But I also might include the value of our time together, my love of the out of doors, my desire for some exercise, and other factors not reflected in feedback from any spontaneous orders. The market, science, and democracy influenced my decision but the pattern emerging within civil society cannot be reduced to any one of them, or even to all of them together.

*Equality* of status describes the formal relation between people in civil society, as it does in spontaneous orders. This is why I use the term “civil society” in preference to Hayek’s more general term “society,” which lacks such implications (Hayek, 1973, p. 47). All societies are complex emergent phenomena, but only civil society is compatible with the fullest development of spontaneous orders because it maximizes the range and depth of cooperation possible among status equals. Ideally, and to a large extent practically, everyone’s projects are subject to the same procedural rules and

everyone is free to pursue whatever project they wish within that framework. Both civil society and spontaneous orders are a *cosmos* because the network of interlocking relationships they generate facilitate the successful pursuit of many independent projects that cannot be arranged in an ordered hierarchy. Many spontaneous orders can exist within civil society, as can many hierarchies.

Similarly taken from ancient Greek, a *taxis* is established through deliberate construction seeking a specific goal. It is a teleological order existing for a purpose or hierarchy of purposes. As an instrumental organization a *taxis* can range from two people organizing their time and other resources for a weekend’s outing, to complex organizations of millions arranged in a hierarchy, the better to attain its primary goal, as with an army fighting a war. Some organizations are ephemeral, such as that weekend outing. Others can last millennia, as with the Catholic Church.

*Inequality* of status is the formal relation between people within a *taxis*. A hierarchy arises based on each member’s importance in helping the organization attain its goals. Civil society as well as particular spontaneous orders will contain many such hierarchies, but will not be hierarchies themselves.

### Power in *cosmos* and *taxis*

In this paper “power” means *making a difference*. Power can be narrowly directive, as when A tells B to do something. Power can also be indirect, as when A does something to avoid an expected reaction by B. Finally, power can manifest within and through a context where in order to attain their goal people must act in ways strengthening or maintaining values different from and even opposed to their own. The context has power because it makes a difference independently of the values held by those acting within it. I call this *systemic power*.

Power exists in a *taxis* in all these senses, but in a *cosmos* power exists only in the systemic sense, where it manifests as the unintended consequence of people’s actions when they follow its rules. This power is a property of the system, not of those acting within it. Within spontaneous orders I call the values privileged by this kind of power *systemic bias* (diZerega, 2010). Far from being undesirable, systemic bias makes systemic feedback possible. But by reducing useful information to a single or small number of signals it also limits the context where it is helpful.

To succeed a *taxis* needs power to attain its goal. From two people dividing tasks for a road trip to the largest corpora-

tion or army, instrumental organizations have long proven their value as concentrations of focused power. They make a difference.

Instrumental organizations proved very useful in some contexts and not useful at all in others. Nineteenth Century business organizations' impressive successes in creating an industrial economy encouraged some people to advocate rational management replace "anarchic" or "wild" spontaneous orders, the better to guarantee achieving the goals they valued over those they did not. The most important examples were plans to centrally plan a nation's economy. When tried the results were disastrous.

First, as Hayek and Mises in particular are known for arguing, instrumental organizations cannot coordinate changing, uncertain, widely distributed, and often tacitly held and contextually dependent knowledge as effectively as can a spontaneous order. But this critique only explains *why* the task could not be done, it does not explain organizations' *re-definition* of their task in the face of that impossibility. This redefinition strengthened the organizations involved, making them instruments of despotic control *at the expense* of those they were created to help. In solving the puzzle of why the innocent so often shield the guilty in organizations this paper will also explain why this redefinition happened.

Successful in their appointed task or not, in a *taxis* power orders priorities and resources into a hierarchy of ends considered more or less important. While power almost never flows only one way, in effectively managed organizations beyond very small ones it mostly flows from the top down. Once a goal exists only in that way can the organization become a reliable tool to pursue it.

A spontaneous order creates a different pattern of power. The procedural rules shaping different spontaneous orders reflect the dominant interests shared by their participants. The spontaneous order generating modern science responds to different values than does that generating a market economy, and their rules differ accordingly. The feedback generated by those acting within these rules reflects a systemic bias to some degree independent of the values of the individuals involved. This feedback helps guide the plans pursued within a spontaneous order, strengthening its dominant values. It is no accident that science discovers new knowledge about the physical world better than the market, or that the market coordinates competing uses of steel and plastic in the economy better than can science.

Systemic bias goes beyond the patterns of cooperation they encourage. Success within a spontaneous order does not necessarily equal success from the actor's standpoint. For

example, profit is a sign of success from acting within the market order. But even high profits do not necessarily mean those voluntarily paying for the enterprise believe they are better off because it exists. Mark Sagoff's example of a ski resort, profitable even though *every* person using it wishes it had never been built, is a persuasive example (Sagoff, 1988, pp. 50-57).<sup>1</sup>

### Systemic tensions and contradictions

Most discussions of spontaneous orders emphasize they harmonize the often superficially conflicting and uncoordinated plans of those acting within them. This insight is importantly true, but it is one-sided. Similarly, organizations are treated as if they were simply tools for achieving human purposes. This insight can be true but even more one sided. In both cases the resulting abstract theoretical harmony can disguise very different realities. When a person or organization acts within multiple spontaneous orders, or in one along with an ecosystem, (which is also a cosmos), disconnected feedback signals for their complicate effective coordination. The signals point in different directions. A hi-tech company must adapt to the market and science. Usually the market matters most in the short run, science in the long. This is why in wisely managed firms R&D departments are under less pressure to contribute to current profits than other parts of the company. The resources spent in R&D are intended to expand future sales. If R&D is abandoned short-term profits will increase, but potentially at the expense of the company's long term viability. Likewise, a farmer must operate successfully within both the market and an ecosystem, making enough money to continue in business, but not by sacrificing the soil's fertility over the long run. The market matters most in the short run, the ecosystem in the long. Tradeoffs are unavoidable.

Finally there are tensions between organizations and the spontaneous orders in which they exist. The same feedback that guides and helps an organization succeed can also weaken and destroy it (Hayek, 1976, p. 128). An ecosystem works best when even those who had previously been successful must adapt to maintain themselves. The same point holds for social spontaneous orders. Consequently, the interests of organizations tend to be at cross-purposes with the spontaneous order of which they are a part (Hayek, 1979, p. 90).

These issues bring us to a final insight. The *cosmos* of civil society is the realm of individual choices across a broad range of different values compatible with peaceful relations with others. As David Hardwick succinctly defined it, civil

society is the “interdependent relationships of independent equals” (Hardwick, 2008). It is not coordinated by any particular feedback signal. *Because feedback is multiple, civil society constitutes the ultimate social realm of human freedom and wellbeing.*

Within this broad framework we turn to *taxis*.

### People and *taxis*

Most organizations are ordered hierarchically in terms of people’s utility for attaining their goals. However, people’s reasons for joining an organization may have little to do with those goals. Members may want security, status, or income, choosing employment without regard to the organization’s purposes. For them membership is a means, and their goals may not harmonize with those of the larger organization. The larger the organization, the more kinds of individual goals will often need to be harmonized, or at least neutralized, for them to serve the organization efficiently.

Whenever a tension exists between participants’ goals, and those of the organization as a whole, members’ incentives pull them in two directions. On the one hand, ‘self-interested individuals’ rank their own goals more highly than those of the organization. It is as much a means to their ends as they are to its. But this purely instrumental relationship holds only as far as the ‘self’ is independent from its organizational environment. This independence is rarely complete.

When membership provides benefits such as security, status, or a sense of giving their lives meaning, over time many people will reframe their less vital goals, the better to harmonize them with the organization. To the degree membership is important, a person joining an organization becomes a *different person*, with changed values and a different sense of self. Becoming a loyal member of a team or of the military are classic examples of this transformation.

When people’s self-identity is tied to membership, for them the organization becomes a good in itself. However from the organization’s perspective the members’ value remains purely instrumental. The organization becomes a context within which people find meaning, but from the organization’s point of view people possess no intrinsic meaning at all. Everything and everyone is instrumental to its purpose, a problem to be solved, or irrelevant.

There is another twist to the relationship between a member and an organization. If individuals regard an organization as important for attaining personal goals distinct from the organization’s initial goal, but depending on its continued existence, they will treat the organization as *more important*

than its original mission. Such people will try to redefine its primary goal as survival, the better to serve *their* ends.

If this occurs the organization may still pursue its original mission, *but only in ways conducive to growing or at least maintaining the organization itself.* Insofar as it contributes to maintaining the organization’s existence the original goal remains. The organization remains a *taxis*, but a *taxis transformed*, as its original end becomes a means and its existence as a means becomes its end.

For example, upon helping achieve a cure for polio the March of Dimes found a new and (perhaps not coincidentally) more intractable problem to solve: ending premature births. Once polio was conquered people within the organization wanted it to continue. Organizations are hard to create, and once created become vehicles for exercising power, giving them value distinct from fulfilling their original purpose. As my example makes clear this transformation need not be objectionable. But it can be.

*As a system*, the organization takes on a degree of independence from its creators and their purposes. People redefine their goals to harmonize with the organization’s success, while as an institution of organized power the organization acts to maintain itself after its original reason for existence ends. People change when they identify with an organization, and once they do the organization changes them further. A new and somewhat autonomous system of relationships has established itself.

Hayek described this process in his “The Theory of Complex Phenomena:”

The “emergence” of “new” patterns as a result of the increase in the number of elements between which simple relations exist, means that this larger structure will possess certain general or abstract features which will recur independently of the particular values of the individual data. . . Such “wholes”, defined in terms of certain general properties of their structure, will constitute distinctive objects of explanation for a theory...” (Hayek, 1967, p. ?)

I would add the increase in numbers also *changes the context of relations between them.* This change then reacts back reflexively on the elements, changing them in turn. The issue is more complex than just numbers.

Organizations are not simply constructions serving human goals. They help define those goals. As Paul Lewis and Peter Lewin observe, Hayek’s insights account for downward

causation, from the whole to the parts (Lewis and Lewin, 2015).

## II: COLLECTIVISM TAXIS AND COMMUNITY

To better understand *taxis* we need to distinguish it not only from a spontaneous order, but also from those groups of people that come together due to certain shared values, but under most circumstances cannot be understood as organizations. Within this paper I call these groups *modern communities* because, being rooted in civil society, they exhibit something relatively new to human experience. When we understand the differences between spontaneous orders and communities we will also better understand the logic of *taxis*.

### Community and civil society

By “community” I mean a set of relationships where members’ status exists due to their common membership, but normally the community itself does not exist to pursue any specifiable goal. With thousands of others I live in the community of Sebastopol. We share common legal and political status, and can become huffy when outsiders criticize our town. Usually our common status and interests do not enter into our thinking. But sometimes they do.

Historically communities existed within encompassing hierarchical orders in which their members also stood in hierarchical relations to one another. Stephen Toulmin described how in such cultures “masterless men” were considered a social and political threat (Toulmin, 1990). Opportunities for cooperation were limited and shaped by differences in status. Emerging civil society replaced this universal hierarchy with equality of status generating a polycentric network connected by increasingly anonymous relationships. Modern communities emerged within these networks.

Cooperation among equals can encompass larger or smaller parts of a person’s social environment. Aldo Leopold made an important point in a charming way when he observed “A hobby is perhaps creations first denial of the ‘peck-order’...” (Leopold, 1966, p. 187) Modern science grew from those who at its inception could have been described as hobbyists. Their interest in a common issue overrode social distinctions between them and they grew into a community exploring the nature of the physical world and largely regarded themselves as equals in this endeavor, even though the societies within which they lived were dominated by powerful hierarchies (Polanyi, 1962).

Some modern communities arose from the intentional and organized creation of a settlement. During this time organizational tasks were clear: create housing, roads, and the other institutions needed for a viable town. But once this was accomplished, residents pursued their own projects independently from one another and no hierarchy of goals existed in the absence of a supervening crisis such as a hurricane or earthquake. In these cases civil society grew out of what could once have been considered an organization, because once its tasks were completed the organization lost focus and dissolved.

In the American South for the most part a genuine civil society existed for Whites, particularly men, but slaves were excluded. Today in most things even foreigners are regarded as deserving equality under the law. Wherever equality of status exists, and to the degree it exists, civil society exists. It manifests as a web of relations, not a pyramid.

Along with Adam Smith and Karl Popper, Hayek described the most inclusive civil society as “Great” or “Open,” which in principle can embrace all of humanity (Hayek, 1973, p. 2). It is characterized by abstract procedural legal rules that apply equally to all. There are basically three: that possessions are secure, that exchanges are consensual, and that promises are kept (Hayek, 1950, p. 153).

Property rights can be defined in different ways and still be able to be freely exchanged by contract. What constitutes a consensual exchange can be conceived in different ways. The rules of what constitutes a proper contract can be defined differently. Consequently whereas “civil society” can include humanity as a whole, it has been and likely will continue to be broken up into different communities defining the details of its basic principles differently. These smaller civil societies constitute political communities that establish the rules people must follow as they live there.

Hayek rightly distinguished civil society from community, although as we will see, they can overlap. “Community” implies boundaries as well as values. Members know who can be and who cannot be a member. There are residents of Sebastopol, and many more people who are not. Modern communities exist within civil society and for them relations between them and that society can be complex because community depends on *both* a “we” and a “them,” whereas civil society is defined inclusively and abstractly. Community always implies boundaries between human beings.

Modern communities stand midway between Hayek’s Great Society and organizations. They have boundaries but their members generally do not pursue any hierarchy of common goals. The only exception is when the community

faces a major crisis. Then the community becomes a temporary organization to address the threat, be it a fire, a storm, or a war. Within what Hayek termed “value communities” these crises might be a threat to shared values (Hayek, 1976, p. 151). Think of salmon fishermen or river rafters coming together to oppose a proposed dam. Once the threat is addressed, communities return to their previous form as networks of civil associations without a hierarchy of purposes

From this perspective civil society can be understood as a social ecosystem within which social evolutionary processes operate. The ecosystem model clarifies the otherwise complex issue of boundaries between “we” and “they.” Hayek’s description of the Great Society and civil society as it manifests within smaller communities stand in relation to one another much as the all-inclusive ecosystem of the earth stands to the ecosystems of a lake and a prairie.

In all these cases what counts as boundaries is determined by the questions asked. For some issues both lakes in the Pacific Northwest and their surrounding forests can be treated as separate ecosystems. Both are also powerfully impacted by salmon, who spend most of their lives in salt water. For questions about salmon the ecosystem may include lakes, forests, and even the Pacific Ocean.

Similarly, while communities have boundaries, their boundaries often overlap or interpenetrate, as with marriages between families or biologists and mountaineers between nations. As part of a *cosmos* communities stand in no invariant hierarchy in relation to one another. To the degree their members are free to enter into equal relationships on mutually agreeable terms, civil society includes diverse and overlapping communities.

Some form of democracy is most in keeping with the principles of civil society because equality of status at the public level is necessary to preserve it at other levels. Democracy is a Hayekian spontaneous order relying on votes as feedback (diZerega, 1989). While citizens possess equality of vote, other politically relevant inequalities can exist. Democratic relations of equal status are as interwoven in civil society as are market and scientific ones. The overall pattern of individual relationships arising among individuals, communities, and organizations within a context of equal status and voluntary cooperation describes civil society as a whole.

Because they rely on normative rules modern communities and civil society are both characterized by ethical relationships reflecting members’ equal status. Having an ethic means utility does not trump all other values. Sometimes our desires *should* be overridden by principles demanding we refrain from doing what we otherwise might. When

they conflict, within communities and civil society alike, the means normally trump the ends.

This logic works differently in organizations.

### Collectivism and community

Hayek came close to grasping how organizations differed from civil society when he criticized “collectivism” in *The Road to Serfdom* (Hayek, 1945). He attacked “collectivism” as a threat to freedom, arguing every collectivist system “has two central features . . . the need for a commonly accepted system of ends of the group and the all-overriding desire to give to the group the maximum of power to achieve these ends. . . .” (Hayek, 1944, p. 146) Individuals are valued to the degree they serve the collective. Further, Hayek held that “To act on behalf of a group seems to free people of many of the moral restraints which control their behavior as individuals within the group” (Hayek, 1944, p. 142) When Germans were inducted into the SS Heinrich Himmler admonished them “to be prepared at any time to risk our own individual lives for the life of the collective whole. . . .” (Rudgley, 1998, p. 136).

As war demonstrates most profoundly, when the well-being of one’s favored group is at stake, “all is fair.” The reasons are complex, but the result is not. When the group feels seriously challenged members tend to treat those outside it as real or potential allies, real or potential opponents, or irrelevant. For example, when responding to Osama bin Laden’s attacks, George Bush (2001) said: “Either you are with us, or you are with the terrorists.” He was echoed by Hillary Clinton: “Every nation has to either be with us, or against us.” (source??, 2001) There was nothing unusual in these sentiments. Thucydides described identical reasoning in the Athenians’ brutal rejection of the people of Melos request for neutrality during the Peloponnesian War (Thucydides, 1951).

In Hayek’s view, the basic principle of collectivist organization is “the end justifies the means,” which “makes collectivist morals so different from what we have known as morals that we find it difficult to discover any principle in them, which they nevertheless possess.” (Hayek, 1944, p. 146) Because ethics limits power, collectivist groups cannot truly be ethical, and individuals in these groups must subordinate their own ethics to serving them. By subordinating individual conscience to the goals of the organization, collectivism eliminates any role for what we generally consider ethics. Utility takes its place.

Collectivism *must* elevate power over ethics because ethics applies to individuals or groups of individuals *distinct* from their contribution to a collective goal. As is also said about friendship, ethics can be very useful, but if the only reason you act ethically is because you find it useful, you are not ethical. Membership in a collectivist organization supplies most of the benefits of belonging and support found in communities. It may even provide some in greater quantity, particularly the feeling of solidarity. But it does so only so long as the person is useful to the group. Its power must be served.

In communities status arises from membership; in collectivist groups status arises from utility. In communities membership trumps utility. In collectivist organizations utility trumps membership. Community is polycentric, with many independent centers of action pursuing independently determined ends. A collectivist organization is hierarchical, with one center claiming authority to subordinate all subsidiary goals to serving an over arching purpose.

In times of crisis such as war or natural disaster, when virtually everyone agrees on what must be done, communities can become temporary organizations and take on collectivist traits. Feelings of solidarity become stronger because of the impact of external threats (Solnit, 2010). But the unsettling amorality Hayek associated with collectivism also appears when members see themselves as parts of a giant enterprise. Dissidents become traitors.

After the threat passes, unity of purpose dissolves as members again become more loosely linked. What often remains is a captivating memory of former solidarity as well as regrets for abusing fellow members, as happened to Japanese Americans during WWII. Those regrets and fond memories of unity are two sides of the same coin, the bad and good dimensions of finding oneself a devoted member of a large enterprise.

Hayek targeted the powerful collectivist political organizations of the totalitarian right and left in *The Road to Serfdom*. But the problems he attributed to collectivism go deeper. They exemplify the pure logic of instrumental organization. All organizations seek the power to realize their ends. Good leaders value their members for their ability to assist them. What checks apply to this logic are not whether the goals are good or bad, but how limited they are. How far can the organization go in disciplining dissident or otherwise unsatisfactory members and how much can it treat non-members as means to its ends or obstructions to be removed. There is a reason collectivist movements of both left and right like uniforms: the military is a completely collectivist organization.

Uniforms have a powerfully transformative impact on many people's sense of personal identity. War is a powerful expression of collectivist mentality: everything is a resource, an enemy, or irrelevant. *The logic of collectivism is the pure logic of taxis.*

And yet collectivism depends on a moral sense to exist, as do other organizations. But it is a morality transformed from that applying to private relations and civil society.

### Ethical transformation

In a well-managed organization, and some falling short of that, members view themselves as participating in a common culture, sharing important experiences, values, and loyalties compared to those on the outside. They become a "we," and those outside a "they." They share this quality with communities, but in a different context.

In a classic experiment conducted in 1954, boys at a summer camp were divided into two groups, the Chiefs and the Rattlers. The groups were encouraged to bond internally and then compete with one another. In a short time hostility arose between the groups including each being sure of the other's severe character flaws, despite there having been no significant prior differences between them.

For my purposes the experiment illustrated three points. First, if members of a group compete with each other, the group will cease to function effectively as a unit. Loyalty matters. Second, if members of a group compete with an opposing social unit, the group will become internally cooperative, and function as a cohesive social unit. Solidarity matters. Third, defining ourselves as members leads to devaluing nonmembers, especially competitive ones (Muzafer, 1988).

As studies of cognitive dissonance show, people often modify their initial perceptions to fit better with their new identities as group members (Cooper, 2007). Within an organization it is often easier to change one's evaluation of a troubling situation than to change the situation, and so there appears to be a powerful human predilection to harmonize one's views in favor of the organization of which one is a part. Members redefine their goals, bringing them into greater harmony with one another and with the organization. This sense of connection normally feels good. I often asked my students how many had been on a sports team and seen a team member cheat. Many hands went up. I then asked how many had reported the infraction to an umpire. No hands went up. Or remember the ease with which many Americans began calling French fries 'freedom fries' and considered the

French effeminate when they did not support our attacking Iraq.

For another example, in the famous Milgram and Stanford 'prison guard' experiments the numbers of subjects inflicting abuse were dramatically higher when they participated in the most hierarchical contexts farthest removed from contact with the person being mistreated. In addition, the greater the apparent authority of their 'superior' the greater the pattern of abuse (Bond, 2014, pp. 114-5). Most organizations are hierarchical and authority is ultimately concentrated at the top. This tendency for hierarchy and distance to override ethics seems if not innate, then at least very deeply rooted.

The more an organization makes strong moral claims upon its members, and its claims are accepted, the more easily they can override conflicting ethical concerns among members. In particular, when collectivist organizations seek universal abstract moral goals while denying the moral equality of those not sharing those goals, many members easily subordinate ethical relations with concrete people to abstract priorities. A kind of pragmatic nihilism results, usually disguised in utopian or apocalyptic moral language.

In such organizations the ultimate achievable value becomes the power to dominate others. Only then might those abstract universal goals to be attained over opposition. Ethical limitations on power are treated as inhibiting an even greater good.

### Moral inversion

Hayek argued collectivist morality was not really morality at all. This insight is an important part of solving the puzzle of why the innocent covered for the guilty. When analyzing the amoral totalitarian movements of the 20<sup>th</sup> century, Michael Polanyi argued "modern nihilism is not a form of moral laxity." On the contrary, it is "part of a comprehensive moral protest that is without precedent in history" (Polanyi, 1969, p. 4). As Polanyi explains, "To the typical modern revolutionary the degree of evil he is prepared to commit or condone in the name of humanity is the measure of his moral force" (Polanyi, 1969, p. 44). Such domination oriented nihilism can assume the external trappings of any desirable goal, be it religious, ideological, or scientific. It is as true of the 'Muslim' ISIL today as it was of the old Communist Parties of Polanyi's time. He termed this phenomena "moral inversion" (Polanyi, 1969, p. 19).

Many people eventually recoil from a totalitarian movement's demands and reject it. However, Polanyi observed that after returning to genuinely moral beliefs they "will

still feel that their inversion had been a sign of a more intense passion for social justice. And in a sense they are right. Unfeeling people would have remained immune to moral inversion because they had little social zeal seeking active manifestation." (Polanyi, 1969, p. 44). Moral inversion is central to totalitarian movements because it fuels the intense passions energizing them.

In the old Soviet Union, and its satellites, when Party members still believed a proletarian paradise could arise from their efforts, many communists remained loyal even when falsely accused of serious crimes, imprisoned, and sentenced to death (Polanyi, 1969, p. 30). They believed the Party erred in condemning them, but such mistakes should not be allowed to get in the way of its historic mission. Polanyi quoted Miklós Gimes, a prominent Hungarian Communist later executed by the Russians for supporting the Hungarian Revolution (Polanyi, 1969, p. 21):

Slowly we had come to believe, at least with the greater, the dominant part of our consciousness, that there are two kinds of truth, that the truth of the Party and the people can be different and can be more important than the objective truth, and that truth and political expediency are in fact identical. . . . if the criteria of truth is political expediency, then even a lie can be 'true', for even a lie can be momentarily expedient; even a trumped-up political trial can be 'true' in the sense that even such a trial can yield important political advantage. And so we arrive at the outlook which infected not only those who thought up the faked political trials but often affected even the victims.

This phenomenon cuts across ideological and religious divides. It has reappeared in America today, particularly within the religious dimension of the political right. Christian theocrat Rick Joyner of the New Apostolic Reformation explained Godly rule will be (Joyner, 2007, p. ?):

freedom even greater than anyone on earth knows at this time. At first it may seem like totalitarianism, as the Lord will destroy the antichrist spirit now dominating the world with "the sword of His mouth" and will shatter many nations like pottery... the kingdom will move from a point of necessary control while people are learning truth, integrity, honor, and how to make decisions, to increasing liberty so that they can.

“The Family” is a Christian dominionist group with powerful ties to Senators and Representatives in Washington. Jeff Sharlet quotes Doug Coe, their ‘spiritual’ leader (Sharlet, 2009; 2008; 2003)

You know Jesus said You got to put Him before father-mother-brother-sister? Hitler, Lenin, Mao, that’s what they taught the kids. Mao even had the kids killing their own mother and father. But it wasn’t murder. It was building the new nation. The new kingdom.

Movements in many ways similar to the Twentieth Century’s totalitarianism characterized the Christian moral absolutism that periodically convulsed the Middle Ages. Polanyi argued interpretations of Old Testament prophets combined with the New Testament’s apocalyptic message encouraged “a series of chiliastic outbursts in which the inversion of moral passions into nihilism made its first appearance” (Polanyi, 1969, p. 4). Because “no society can live up to Christian precepts, any society professing Christian precepts must be afflicted by an internal contradiction, and when the tension is released in rebellion its agents must tend to establish a nihilist Messianic rule” (Polanyi 1969, p. 5).

Moral inversion arises from elevating a great moral value above all individuals, and so above all genuine morality. Individuals become mere means subordinated to the end, which however noble, depends on seeking overwhelming power. The greater the goal the greater the risk of moral inversion. As ideologies Fundamentalist Christianity, ISIL, and Marxism-Leninism have little in common. But when their followers’ moral energy seeks power to accomplish universal collectivist goals they are remarkably similar.

Focusing on different dimensions, Polanyi and Hayek recognized moral passion floating free from every relation that made it morality becomes a justification for power and domination. Because the goal can never be achieved. collectivist organizations pursuing utopian goals must by their very nature elevate power as their supreme practical goal.

### Not just collectivism

I have discussed collectivism at such length because *collectivist organizations exemplify the pure logic of taxis*. It applies in weaker form to other organizations based on the extent of their claims, how they frame them, and their freedom from oversight. A continuum exists with collectivist organizations on one end and small temporary and relatively unimportant

organizations, such as planning that weekend hiking trip, on the other.

In the economy today no matter how ruthless their economic competition, killing people to enhance the bottom line is not usually a deliberate practice, although organized crime has no such compunctions. But this rejection of violence is a function of the context within which organizations operate rather than their internal logic. When free from oversight a very different pattern emerges.

The world’s first joint stock corporation, the Dutch East India Company, engaged in voluntary transactions with its customers. One of its most famous products was nutmeg from the island of Banda. As with companies today, their customers could not be forced to buy and so engaged in mutually beneficial transactions. But there is more to the story.

The Dutch East India Company enjoyed a monopoly over trade in East Asia. With control over nutmeg’s availability securely in their hands and the inhabitants of the islands excluded from civil society, the logic of seeking wealth before everything else ruled. “When some Bandanese failed to appreciate the [company’s] right to control the nutmeg trade . . . the then head of the Company, Jan Pieterszoon Coen, ordered the systematic quartering and beheading of every Bandanese male over the age of 15” (Thring, 2010; Coolhaas, 2015)

Everything in the Dutch East India Company’s environment was a resource for its use, a problem to be overcome, or irrelevant. The natives of the Banda Islands started out being useful until control over their resources was secured. They then became irrelevant until they objected. Once they became problems, they were slaughtered.

Today in some very large businesses practices are deliberately pursued that do eventually kill people, as the tobacco industry famously demonstrated (Herbert, 1997, p. 19). More recently it appeared when auto manufacturers did not report design flaws that if left unaddressed would kill people (Durbin, 2014). Nearly fifty years ago Ford Motor Company had information that if implemented at a cost of \$11 per vehicle would decrease the possibility of the Ford Pinto from exploding. The company chose not to implement the design even though it believed doing so would result in 180 fewer deaths (Leggett, 1999). There is nothing unusual about this behavior.

Politically my case is easier to make because the correlation between starting wars and winning elections is well known. Morally the line between organized crime and many large corporations and political organizations is often difficult to draw (diZerega, 2013).

When moral utopianism is added to this logic the relation of *taxis* to totalitarian control becomes even more clear. The “war on drugs” framed reducing the use of drugs within an absolutist moral goal. To accomplish their goals ‘drug warriors’ sought to organize society to ‘fight’ and ‘win’ this ‘war.’ People became resources to be deployed, threats, or irrelevant. Innocents killed in mistaken raids are regrettable but acceptable “collateral damage.” Suppressing medical and scientific research that might uncover beneficial uses of banned substances was justified as helping pursue the war more single-mindedly. The police were militarized and the logic of the battlefield applied within civil society. Drug warriors sought power to prevail against all obstacles because short of totalitarian control their goal is unattainable (drugs are even available in prisons) (Purdy, 1995).

We see here the same patterns of moral inversion found in totalitarian movements, only more circumscribed because of external institutional and environmental limitations. At some point along this continuum an organization transforms from being a means to achieve its creators’ goals to becoming an end in itself. Something new emerges.

Human beings can adapt general rules to reflect subtle nuances and creative insights within complex relationships, usually in acceptable ways. Most people do not regard others as nothing but objects for their own benefit, opponents, or irrelevant. Those who do are called sociopaths, a pathological condition. An organization has simpler goals, and looks at all around it in terms of their utility alone. The moral tension existing between human beings and the organizations they create is inescapable.

People and the organizations they create to pursue their goals influence one another, but when membership is important to people, large organizations influence most individuals more than they influence the organization.

### III. ORGANIZATIONS AS ORGANISMS

When the organization becomes an end in itself, it selects for people who are comfortable with that goal. Human values take second place to organizational well-being. It was better for Ford that 180 additional people die than that their cars sell for \$11 more. It is difficult to imagine any normal human being benefiting from such a decision. If organizations can develop independence from their founders and shape the actions of their parts/members to serve their prolonged existence, we are observing a kind of emergent individuality. The organization becomes more like a living organism subordinating all values to its survival than an instrument for

doing our will. As it turns out, current discoveries in biology give us an important insight as to the nature of organizations as life forms.

#### Biology and individuals

Hayek ultimately abandoned the common distinction between the natural and social sciences for one distinguishing sciences exploring “simple” phenomena from those studying “complex” phenomena (Caldwell, 2005, p. 284) From this perspective the social sciences share much in common with biology, and Hayek emphasized this similarity. He explained the theory of evolution, so foundational to biology, had been developed during the Scottish Enlightenment to explain how societies formed and changed (Hayek, 1973, pp. 22-3). The same kind of relationship also exists with respect to ecology, which as Aldo Leopold observed, stands at “right angles” to evolution. (Leopold, 1970, p. 189). Evolution traces changes in species over time whereas ecology focuses on stable and slowly shifting relationships between species without any necessary change in the species involved. Taken together, ecology and evolution describe the cosmos of life.

Geerat Vermeij a leading biologist, compares how life evolves and flourishes with the spontaneous order of science:

The universe works, and life works and persists, because we co-construct our universe through the combined process of modification and selection. Adaptation, the process resulting in a better fit between entities and their environment, is universal among living things, which create and improve hypotheses about their surroundings much as scientists propose and test hypotheses explaining observations and regularities in the world (Vermeij, 2004, p. 2).

Biologists have often treated individual organisms as equivalent to actors in the social realm. (Heinrich, 2004). Ecology is often compared to economics (Worster, 1994; Vermeij, 2004). Participants follow procedural rules, and do not need be aware of these rules, which coordinate their actions in unintended patterns (Hayek, 1973, pp. 74-6). In biology’s more extreme formulations of this perspective, life’s complexity is reduced to the ‘rational behavior’ of genes seeking to replicate themselves (Dawkins, 1989).

Less persuasively, Hayek elaborated that the “organismal analogy” was natural when people looked at complex societies because “organisms were the only kind of spontaneous order with which everybody was familiar.” Hayek argued or-

ganisms were spontaneous orders (in a more inclusive sense of the term than I am using for social analysis) but they were “spontaneous orders of a very special kind” such that the analogy “becomes more misleading than helpful” (Hayek, 1973, p. 52).

According to Hayek the major difference between the spontaneous order of an organism and the spontaneous orders of society is (Hayek, 1973, pp. 52-3):

In an organism *most* of the individual elements occupy fixed places which, *at least once the organism is mature*, they retain once and for all. They also, *as a rule*, are *more or less* constant systems consisting of a fixed number of elements which, *though some may be replaced* . . . retain an order in space readily perceivable with the senses. They are . . . orders of a *more concrete kind* than the spontaneous orders of society, which may be preserved although the total number of elements changes and the individual elements change their places. . . . their existence as distinct wholes can be perceived intuitively by the senses, while the abstract spontaneous order of social structures can only be reconstructed by the mind. [italics added]

Hayek’s concept of an organism fits the analysis of *taxis* as an independent system far more closely than it does a society. Yet he emphasized an organism is a “spontaneous order” or in contemporary terms, an emergent outcome of evolutionary processes rather than a *taxis*. But the terms I emphasized in his description of an organism also characterize organizations once they begin to define their goals independently of the intentions of their creators.

Hayek took human individuals as given, arguing the individual’s “existence as distinct wholes can be perceived intuitively by the senses” (Hayek, 1973, p. 53). Biology has deepened its understanding of individuals since he wrote, and no longer finds the individual to be intuitively clear. Exploring why deepens our understanding of *taxis*.

In their Introduction to a recent collection of essays on biological individuality Frédéric Bouchard and Philippe Huneman write: “Contemporary biology recognizes that the living world displays a hierarchy of individuals at various levels, from genes to chromosomes, cells, organisms, colonies, social groups, species, communities, and ecosystems” (Bouchard and Huneman, 2013, p. 2) In the same volume Matt Haber argues that biologically *there is no paradigmatic individual or organism*. There is only continuing variation:

... if individuality is an evolved level of organization (or organizations), then we should not expect any particular form of individuality to be paradigmatic. There is no better reason to identify colony-individuals (i.e. superorganisms) in terms of organisms, than to define organisms in terms of similarity to colonies (Haber, 2013, p. 201).

Useful biological conceptions of what constitutes individuality are varied and irreducible enough that Charles Goodknight concludes “the concept of ‘individuality’ is a concept imposed by the observer” (Goodknight, 2013, p. 48).

The slime mold brings these points to life and ultimately gives us a newer and deeper perspective on why a *taxis* can become independent from its creators.

### The extraordinary slime mold

During most of their existence cellular slime molds exist as independent single celled organisms crawling along a forest floor, engulfing and digesting bacteria and plant debris. A cell will occasionally divide during this time, as do individual amoebae in pond water. These unicellular organisms also have an ability to ‘remember’ certain events and learn from them despite their being only a single cell (Keim, 2012). They possess a kind of individuality.

If their environment becomes sufficiently challenging up to at least 100,000 previously independent amoebae gather together to form a larger multi-cellular organism that eats and crawls to an appropriate location for reproduction. The cells begin to differentiate depending on where they are located in the “slug.” It even develops an immune system (Pradeu, 2013, p. 77). Eventually it raises a stalk, and releases spores, thereby reproducing. But only some cells travel up the stalk to become spores. The others die and decay. Spores landing in favorable places become individual amoebae and repeat the process.

If such an organism had always been an accumulation of cells it would be an example of nature’s wonderful diversity of life forms. But it is not. It emerges from the collective relationships of thousands of hitherto independent organisms that collectively bring greater power to bear in their environment. A slime mold matters more than an amoeba. It makes more of a difference.

A slime mold ‘slug’ is an emergent phenomena. No “master” or “leader” cell exists to coordinate this complex life cycle. Every amoeba follows the same abstract rules but ap-

plied in different concrete environments (Keller, 1985, pp. 95-7, 101-7). As they do something far beyond the capacity of an individual amoeba comes into existence. And yet, if conditions improve the amoebas can return to their previous conditions (Pradeu, 2013, p. 86).

Is the cellular slime mold slug an individual? Do its constituent cells remain individuals? Whatever answer we might give is made more difficult by the fact that there are two kinds of slime molds, the cellular slime molds I have just described, and plasmodial slime molds that differ from cellular ones in that once the cells swarm together they fuse into a single-celled mass of protoplasm with thousands of separate nuclei. One might observe playfully that cellular slime molds are like organizations and plasmodial ones are like the Star Trek Borg. The nuclei continue to exist, but have been “assimilated.”

The slime mold demonstrates in the living world *our concept of what constitutes an individual is contextual, and rooted in relationships*. What is clearly an individual in one context may not be in another. The individual’s characteristics depend on context as well as content. The line between what used to be considered an organism and what is not has blurred. And not just with slime molds.

When we see an ant on a plant or kitchen counter it appears to be an individual insect, and in one sense it obviously is. It has senses, a metabolism, and eats. But its behavior is no more separate from a larger body than many a cell is to something larger in nature. Most ants are sterile, but there has been no shortage of them for millions of years. Understanding why further transform our understanding of individuality.

### Eusociality, group selection and super organisms

Biologists define eusocial life as multigenerational groups organized by means of an altruistic division of labor. Eusociality characterizes the social insects, human beings, and a variety of other otherwise quite different species. Given the role of genetics in modern biology, the key theoretical question regarding eusociality was how altruism could evolve within the competitive context of biological evolution.

Long dominant reductive genetic explanations used biological variants of the logic of ‘self interest’ to explain ‘altruistic’ traits. The ‘selves’ were genes and their interest was reproduction. Many organisms favored their kin, even to the point of apparent ‘altruism,’ because so many of their genes are the same. This perspective viewed the division of labor

between queen ants and offspring as a kind of self-interested cooperation. What appears to be altruistic behavior by workers is really selfish at the genetic level. Richard Dawkins’ *The Selfish Gene* (2006) is the classic argument for this view.

While this model appeared to work for ants, the most completely social insect, it does not fit many other eusocial species, including termites, mole rats, some beetles and shrimp, and human beings. Among these organisms far more genetic variability exists than would be expected from a ‘selfish gene’ or primacy of kin argument.

As biologists learned more about eusociality, two concepts traditional selfish gene styles of argument had set aside re-emerged: group selection and the super-organism. The former is central to Hayek’s approach to understanding human societies.

In biological terms group selection takes place when an individual within a group is able to reproduce more successfully than could the ‘same’ individual if living alone. Emergent patterns of cooperation arising within a group determine that different outcome. Selection at this level is for or against the group, and it cannot be reduced to kin selection. Causality can be top down as well as bottom up.

In its modern form theory group selection occurs simultaneously with pressures for kin selection. Among eusocial species composed of genuinely cooperating individuals, such as human beings “selection among genetically diverse individual members promotes selfish behavior. On the other hand, selection between groups of humans typically promotes altruism among members of the colony” (Wilson, 2012, p. 162). The result is a complex dynamic, pulling eusocial organisms in two directions. Within such a society “cheaters” typically have an advantage within the group, benefiting at the expense of others, and so pushing selection away from altruism. However, cooperating groups have the advantage with respect to other groups, rewarding altruistic behavior. The environment within which individuals in groups live influences how this mix of ‘self-interested’ and ‘altruistic’ traits manifests.

In some ways pressures for group selection can be stronger among humans than among other life forms. Lewis and Lewin argue that evidence accumulating in behavioral economics indicates cheaters among human beings have less of an advantage than a purely logical analysis would suggest. We appear to possess “pro-social preferences” that strengthen the eusocial tendencies within our species (Lewis and Letwin, 2015). These characteristics might well have arisen during the enormous spans of time when the characteristics

of small and tribal groups made all the difference between survival and death.

Cultural evolution enables valuable traits acquired by many more sources than parents alone to be passed down. (Pagel, 2013). Adaptation by learning also takes place faster than biological adaptation (Caldwell, 2005, p. 354). From this perspective culturally transmitted ideas are analogous in important respects to genes, a point to which I will return in Part IV.

E. O. Wilson writes the dynamics of group selection ultimately creates “super organisms, the next generation of biological complexity above that of organisms” (Wilson, 2012, p. 133) As A. Hamilton and J. Fewell put the matter, “it is coherent and compelling not only to regard colonies of highly social insects as individuals, but also to recognize that they are biological and evolutionary individuals properly so-called” (Hamilton and Fewell, 2013, p. 191).

The transition from discrete individuals to a super organism is well recorded in the fossil record of bees. The earliest bees were individuals living largely alone. This kind of bee still survives, and early stages in the evolutionary process leading to eusociality can be triggered among them. When artificially forced to live together, solitary bees spontaneously take on a division of labor that begins the process of group selection, ultimately leading to the honeybee hives we know so well (Wilson, 2012, p. 150).

Like bees, ants’ evolutionary ancestors were individualized, and lived independently. Today ants are more completely social than are bees, so much so that many biologists now hold that an ant *colony* is itself an individual. The transformation from many individuals to one is apparently the most complete development of eusociality. Unlike in the ‘selfish’ models, ants in a colony do not really cooperate for mutual advantage. Wilson (2012, p. 143) explains why:

Workers are not players. When eusociality is firmly established, they are extensions of the queen’s phenotype . . . alternative expressions of her personal genes and those of the male with whom she mated. In effect the workers are robots she has created in her image that allows her to generate more queens and males than would be possible were she solitary.

Wilson argues robot workers are one expression of the queen’s flexible phenotype and not biological individuals. “The defending worker is part of the queen’s phenotype, as teeth and fingers are part of your own phenotype.” Workers develop into adults “under the influence of pheromones

from fellow colony members and other environmental cues.” As they do they “are directed to become one particular caste” (Wilson, 2012, p. 144).

An earlier version of this kind of development underlies all multicellular life. Charles Goodknight observes multi-celled organisms became possible once they had evolved mechanisms preventing evolutionary adaptations by their constituent cells, thereby subordinating them to the organism as a whole. He argues social insects have done the same. Worker bees can still occasionally lay eggs, but they are destroyed. Ants have taken this process to its most extreme, for workers are sterile. Goodknight argues “the cells within a metazoan are not qualitatively different than, for example, individual bees or ants within a colony” (Goodknight, 2013, p. 46).

Wilson (2012, p. 186) points out that:

...evidence from primitively eusocial species has shown . . . the queen and her workers have the same genes that prescribe caste and division of labor, although they vary extensively in other genes. This . . . lends credence to the view that the colony can be viewed as an individual organism or, more precisely, an individual superorganism. . . . descent is from queen to queen . . . . Group selection still occurs, but it is conceived to be selected as the traits of the queen and extra somatic projection of her personal genes.

Ants’ individuality is most clearly expressed in the colony as a whole. Colonies even change their behavior as they age (Wilson, 2012, pp. 183-7). In the case of ants group selection favored qualities that ultimately led the colony to be best understood as a *single* organism. The Borg indeed.

Remarkable as it is, this evolutionary process has not stopped. Among some harvester ants several queens will establish a common nest and share tasks. Their offspring live together. Hamilton and Fewell (2013, p. 180) note that “In a sense these colonies are multiple eusocial groups cohabiting a single nest and acting as a single unit.” I think Wilson would describe it as queens cooperating for their mutual benefit: a community of borks.

We are observing organisms that from one perspective are objectively individual but are or become parts of a larger organism that is also objectively an individual, even as the individuals that form it continue to exist, but no longer as quite the individuals their ancestors were. Many individuals become a super organism which in time itself may evolve into a single individual.

To summarize these insights as they relate to this paper, human societies are characterized by both group and individual selection. A continuum exists of integration within such groups from loose or temporary alliances for a discrete purpose to an open ended organization existing for its own sake. Within spontaneous orders organizations are subject to group selection. Those most effectively organized tend to prevail over others less effectively organized in terms of obtaining systemic resources from the spontaneous order in which they exist. We appear predisposed to reshape our perceptions to harmonize with the group with which we identify. Human beings easily take on new traits when they closely identify with an organization.

*From a biological perspective it appears the gap between individuality in slime molds and within tightly linked organizations is quantitative not qualitative.* It is more than a metaphor to say large organizations can become organisms under frequently encountered conditions.

“Individual organism” is a theory laden concept rather than intuitively obvious, and individuals from one perspective can become elements of another individual from a different one. Individuals arise through relationships with other individuals. This observation raises a wide range of theoretical and practical questions going well beyond the confines of this already ambitious paper. For example, if a *taxis* can develop into a superorganism, can the same be true of a *cosmos*?

#### IV: IDEAS

A biological organism is dependent on its genome. But human evolution consists of cultural evolution as well as genetic evolution. This provides two avenues by which evolutionary processes can develop new organisms, and organizations are organisms living within the mental ecosystem of human culture.

##### Genes, memes, and the organizational mind

An organization is a pattern of relationships ordering its biological parts into an institution of power that cannot be reduced to its parts’ intentions alone. It helps shape those intentions. The organization is the *pattern* of relationships, a pattern shaped and maintained by the ideas of its parts as influenced by its environment, including the pattern itself. The pattern is oriented towards the organization flourishing. But, like Buckminster Fuller, it is more a verb than a noun (Fuller, 1970).

A biological organism is also a pattern of relationships ordered by its genome in relation to its environment. Its actions cannot be explained by its parts, from the eukaryotic cell up to and including the complex relations between our genomic body and the bacteria needed to keep it healthy, and perhaps even alive. Like an organization, it is a hierarchy of relations with influence going in both directions. What Buckminster Fuller said of himself can be said of organisms in general: “I seem to be a verb” (Fuller, 1970).

An organism is the expression of its genome in relation with its environment, an organization is an expression of ideas in relation with its environment. In the biological world the genome adapts or dies, and with it the organism that is its expression. In the social world ideas adapt or die, and with them the organizations that are their expression.

Richard Dawkins coined the term “meme” for an idea that enters into and can be transmitted by culture. Comparing memes to genes, Dawkins wrote they adapt, flourish, and die through our success or failure in incorporating them into our lives, for we are their carriers (Dawkins, 1989). While I disagree with Dawkins’ reductionist approach to evolution, his equating memes with genes is a most useful heuristic, and perhaps considerably more than that. As memes, ideas adapt, spread, die or mutate through their interaction in a social ecosystem analogous to genes in a natural one.

From this perspective ideas are like organisms needing mental rather than physical energy from people to flourish. Ideas compete for this support and the most successful often have symbiotic relations with others the better to obtain and maintain that support. When no one supports an idea, it “dies,” or perhaps goes dormant awaiting a more supportive environment.

Ideas manifest in the material world through their ability to influence behavior, and powerful ideas often do this through their ability to inspire, create and preserve organizations. As elements within a culture, ideas influence the world through the mediation of the people guided by them, sometimes with the additional mediation of the organizations they influence.

This process of ideational growth, development, and extinction is clearly illustrated within the spontaneous order of science. A classical example is Newtonian theory, a scientific paradigm (Kuhn) strengthened the meme of the world as mechanism; a meme shaping not only science but also how people thought about themselves, and much of social life, including how America’s Founders thought about the new constitution. (Landau, 90) In science mechanism is now

largely extinct, though the habits of thought and perception it facilitated continue elsewhere.

### Epigenetics and epimemetics

The science of epigenetics is the study of heritable changes caused by mechanisms other than changes in the underlying genes. Biologists have discovered the relationship genes-plus-environment can have heritable consequences not determined by the gene on its own. How a gene expresses itself can also depend on the organism's environment. Epigenetics explores how the same genes trigger different *heritable* somatic characteristics in different environments. These changes may last for multiple generations, without any change in the organism's underlying DNA sequence.

Epigenetics discards the old dichotomy of nature versus nurture, recognizing each is impacted and even transformed by the other. For example, mice with an "agouti" gene are obese, unusually prone to many diseases, and have yellow coats. They pass these traits down to their offspring. But when provided an unusually enriched diet mothers gave birth to brown coated mice that were lean and healthy. Their environment profoundly altered the impact of their genes (Jirtle, 2009; Waterman, 2003).

Epigenetic interrelationships are now known to exist among people. The last famine in Europe occurred when the Nazis cut off food to a significant part of the Netherlands to weaken their ability to support the invading allies. More than 20,000 starved. When access to food was restored in 1945 the generation of children born to malnourished mothers grew up smaller than normal, as was expected. What was unexpected was that the *next* generation was also smaller. The grandchildren of people traumatized by famine were still physically affected by the event (Carey, 2012).

This observation about genes-plus-environment applies even more to memes. A meme, an idea, is powerfully affected by its environment: the people believing it and the organizations created under its influence or through which people seek to realize it. Organizations are particularly effective carriers of memes compatible with their survival, but in so doing they can transform how those memes manifest. Over time organizations subordinate the memes with which they are associated to the power they need to survive. This can be true even though the idea remains the "same."

Karl Marx inspired many people to devote their lives to human liberation, and his writings were required reading under Soviet totalitarianism. In one context he inspired altruistic sacrifice for the working class. In another he was

read as justifying their most naked exploitation, an exploitation that as my earlier quotation from Miklós Gimes demonstrated, was invisible to the perpetrators (Polanyi, 1969, p. 21).

The Bible is regarded as authoritative in Catholic, Calvinist, and Orthodox Christianity. It is also famous for its emphasis on forgiveness and love. But when the Bible is interpreted in the context of a strong church these virtues are consistently subordinated and even redefined into obeying religious hierarchies never mentioned in scripture. For decades Europe was convulsed in religious war by people all of whom honored the same book as different organizations used that book to justify their attempts to destroy one another. The organizational framework within which ideas are incorporated changes their expression and what people mean by them, and it does so to serve the organization.

Perhaps if a science arises studying this phenomenon it could be called 'epimemetics'.

### On social meanings

We have now identified the crucial link shaping both people and the organizations of which they are a part, a link that exists to some degree independently of either. In addition, memes and organizations influence one another to some degree *independently* of the purposes of the people motivated by them. Peter Berger and Thomas Luckmann provide the crucial insight as to how this happens.

Berger and Luckmann argue there are three "moments" in any full sociological explanation: human beings are social creations, society is a human creation, *and* society is an objective reality (Berger and Luckmann, 1967, p. 61). This third "moment" is objective in the sense that it is the means by which people understand reality. Insofar as social meanings are objective they are initially experienced as being as real as a rock. Yet these meanings are also reflexive in that while they shape and change minds, they can in turn be shaped and changed by them. They must continually be sustained, and in the process can change. Any particular social meaning can be questioned and even abandoned, but always within the context of taken for granted social meanings as a whole, a point with which Hayek agreed (1973, p. 78).

Objectivity in this sense also means knowledge and ideas exist independently of any individual holding them, and can carry additional meanings and insights not known to those transmitting them. Those insights and meanings can be discovered later, by others. William W. Bartley, another scholar deeply influenced by Hayekian insights, writes:

What is distinctive about an item of objective knowledge – a book for instance . . . is its *potential* for being understood or identified in some way that has not yet been imagined. . . . Objective knowledge—including all the potentialities that are a part of it—... forms a major component of our ecological niche. . . . Objective knowledge interacts with the individuals living in that ecological niche, and may transform the niche itself. And it adapts in a way analogous to, though not identical with, biological evolution (Bartley, 1990, pp. 60-1).

Berger and Luckmann believed their insights were compatible with traditional methodological individualism, but as Paul Lewis has shown they were mistaken. In keeping with Bartley's observation, they did not fully understand the implications of their own insights (Lewis, 2010).

We encounter social meanings as objectively real, only in time learning to question some of them. But we always do so within a taken for granted context. Our meanings adapt within an ecology of meaning as organisms adapt within an ecology of life. The meanings we explicitly encounter, as well as the institutions through which we examine them, shape the nature of our interactions. They are not passive.

When an organization institutionalizes human purposes to some degree it redefines those purposes and thereby the context within which its members exist. Members in turn adapt to it.

To the degree an organization re-shapes members' perceptions to harmonize them with its own, it takes on central characteristics of a distinct organism. The rule members follow to become its agents is procedural and independent of any particular purpose: identify with it. In time the organization redefines its purposes in terms of its own survival. The organization then has interests separate from its parts and acts in ways not reducible to their independent decisions. *It has become an organism, one subordinating human purposes to power.*

### From tool to organism

I believe I can now describe the stages by which an organization can shift from being a tool subject to human purposes to an increasingly independent entity. This transformation is not inevitable but it is one natural outgrowth of the dynamics set in motion by people joining an organization for reasons distinct from its original reasons for being created. A plausible description of how this process unfolds is:

1. A founder attracts people to work with him or her. This person might be a creative entrepreneur, a charismatic spiritual teacher or political leader, or famous scientist. In its initial stages such a venture is risky and so does not attract the more risk averse.
2. If the organization flourishes and grows, it attracts new members who are motivated as much or more by its attractiveness as an ongoing enterprise with a future as by its founder's promise as an initiator/entrepreneur with a dream.
3. If it continues to flourish and grow the organization attracts members motivated by its utility for providing a job, career or status. The initial reasons for why the organization was created are often secondary to their own reasons for getting involved. Such people will usually be more risk averse than the initial members. Alternatively, people become dependent on it for their livelihood or other obligations over and above their attitudes towards its 'mission.'
4. Over time members joining for utilitarian reasons often link their understanding of their interests more closely with the interests of the organization rather than with its original goals. For them these goals remain valued only insofar as they serve the organization's survival.
5. The ideas that led to the organization's creation are therefore re-interpreted to subordinate them to the organization's survival. New members learn these ideas as they have been re-interpreted.
6. Simultaneously, members redefine their personal goals to bring them into greater harmony with the organization's culture. As it comes to provide an element of meaning within their lives it ceases to be of simply utilitarian value to them. They identify their well-being with its well-being while their value to it is entirely utilitarian. The relation of tool to tool maker has become reversed.

This gradual change in member motivations is neither "good" nor "bad." Steve Jobs and Adolf Hitler could be placed in the first category, along with those who initially linked up with them. The second category could refer to people wanting to get involved in an exciting new technology with lots of opportunities for creative work, or with a new political party with attractive opportunities for acquiring power. The third would attract careerists preferring the tried and true to the new, or to careerists seeking to 'normalize' and routinize a charismatic movement. The fourth begins when the social networks that arise within an organization often fulfill many

of the psychological needs people meet within communities, with the important difference that in organizations these relationships are subordinated to the organization's goals and its members possess only instrumental value for attaining those goals. The fifth involves redefining the organizations goals to survival. The sixth changes human members' senses of who they are better integrating them into serving the organization.

When upon joining and identifying with some kinds of organizations individuals become different people in terms of their character and actions we see a variant of phenomena such as slime molds. Keeping with our biological model, when an individual links their success with the organization but remains of only instrumental value to it, he or she is in important respects like a cell in a slime mold "slug."

*In biological terms collectivism is the mentality of a human slime mold.* Individuals serve the collective while re-defining their self-interest, *but* the collective has no reason to serve the individuals beyond its 'self-interest'. The organization's interests as an organism become their interests but there is no reciprocity. Totalitarian collectivism is an extreme point along this continuum. Dystopic novels like *Brave New World* explored these implications (Huxley, 2006).

## V. ONE PUZZLE ANSWERED, A NEW ONE ENCOUNTERED

We can now answer the puzzle that began this paper. Those who covered up the crimes of others, crimes that flew in the face of the values their organizations supposedly honored, were acting as if they were members of a greater organism. This organism had led its members to equate the organization's good with their own good. Their personal moral values were reshaped and subordinated to the good of the organization. Usually. And here is where our second puzzle arises. There are exceptions.

Becoming part of a large organization is a transformative experience for many people. This happens in ways many did not expect and would once have rejected, as in covering up crimes they once would have denounced in terms of the organization's original values. Their individuality remains real but as with the rest of us, it is constantly shaped by the relations within which we exist (diZerega, 2014).

But a human being is not an amoeba. Human beings preserve the capacity to judge the organization of which they are members because the value world within which they live is deeper than that shaping an organization. Not everyone in the Milgram experiment co-operated (Milgram, 1963).

Throughout history some people have stepped back, judged, and found the organization wanting. Unless they were acting from a sense of personal grievance that alienated them from the organization, one characteristic they appear to have in common is a deep belief in the most uniquely human ethical qualities (Nussbaum, 2006; Fogelman, 1995). *It is these people who are the unusual cases, the ones most deserving our careful study and respect.*

### A really interesting example

Military membership is perhaps the strongest example of how identification with an organization leads people to act in ways they would not previously have done. In recent American history the My Lai massacre during the Vietnam War stands as a particularly horrifying example.

Hugh Clowers Thompson was the American helicopter pilot who landed his craft between fleeing villagers and American troops who were slaughtering them indiscriminately. Thompson explained "These people were looking at me for help and there was no way I could turn my back on them" (Thompson, n.d.). His empathetic capacity made all the difference. It was able to override the efforts to shape his character into simple loyalty to the military.

Following his forcing an end to the massacre, Thompson's superiors in the military acted in the same manner as those in the Catholic Church, Boy Scouts, or police who covered up others' crimes. His commanders worked to cover-up the truth. On future missions they even "neglected" to provide the gunships that were standard protection for aeroscout helicopters, such as Thompson flew. Apparently facilitating Thompson's death (and those with him on the helicopter) was preferable to providing the protection customary for pilots on such missions. They had become different people by virtue of their identification with the organization.

This treatment continued for months until injuries in a crash led to Thompson's evacuation to Japan. For nearly two decades afterwards he continued to be widely reviled by his peers for his actions at My Lai and subsequent truth telling.

Despite it all, because of his love of flying Thompson chose to make a career in Army Aviation, retiring in 1983. Much later, in 1998, he received the Soldiers Medal, the highest award the Army can bestow for bravery other than in combat. Significantly, he refused to accept the medal unless it was also given to his crewmates, Larry Colburn, and posthumously, to Glenn Andreotta. The character traits that saved Vietnamese lives later ensured his crewmates were recognized for their bravery as well.

In his final decade Thompson and his wife worked with young men and women in the military to promote and sustain a “moral conversation” about matters of state, war, honor, duty, and conscience. Moral grounding can preserve people from subordinating themselves to an organization.

Thompson is not unique, only rare. The story of New York police officer Frank Serpico follows a remarkably similar trajectory (Serpico, 2014). But as recent events involving the New York Police Department indicate, there is a perpetual and strong tendency for the organization to become an end in itself. Serpico would apparently again have as rough a time in the NYPD as he had in the late 1960s and early 1970s.

From this perspective what makes human individuals important is not individuality but our capacity for *moral behavior disconnected from calculations of utility*. Care can trump utility. As the ecological scientist Aldo Leopold wrote, while we can mourn the demise of the passenger pigeon, which none of us have ever seen, no passenger pigeon would have mourned our own passing. He concluded that “For one species to mourn the death of another is a new thing under the sun” (Leopold, 1970, p. 117).

Leopold’s words illustrate the fundamental difference between the world of human beings and the world of organizations within which human beings are essential parts. Far from simply being tools for achieving human purposes, organizations often reverse the relationship. The logic of *taxis* undermines one of our most uniquely human characteristics.

Civil society respects all humans as members of a community. Organizations have no respect for human beings as such. From a human perspective it is important that organizations be subordinated to civil society, the realm of truly human action among equals. But today more and more it is the other way around.<sup>2</sup>

## CONCLUSION

We have traveled a far piece while exploring our opening puzzle, and by solving it have deepened our understanding of *taxis*. The major points I have developed are that

1. The most important *taxis* are complex emergent phenomena, as are *cosmos*. They differ from a *cosmos* because they can be described in teleological terms. *Taxis* are not simply constructions, they are self-organizing systems.
2. There is downward causation from the organizational systems people create to those who created them, even as there is upwards causation from individuals to organizations. Human behavior is therefore changed by close identification with organizations of which they are members.
3. Over time these systems can shift from serving the purposes of those who construct them to serving their own survival as a kind of organism. They remain teleological, but the *telos* shifts from one imposed on them to one arising out of their own processes. *They develop a “self” distinct from their constituent parts as well as from their creators.*
4. The logic of *taxis* is collectivist and so, in human terms, amoral.
5. Biology offers important insights on Hayekian approaches to the social sciences., especially its studies of ecologies, evolution, and of what constitutes an individual organism.
6. The Great Society requires the absolute subordination not only of *taxis* to *cosmos* it also requires subordinating organizations to the thick value context of civil society rather than the thin value context of a spontaneous order.

## NOTES

- 1 In terms of Austrian economics, which most makes use of Hayekian insights, Sagoff’s example undermines the argument that successful entrepreneurship always assists in coordinating human plans. (Kirzner, 1976)
- 2 I am grateful to comments by my referees, one of whom in particular facilitated my making this argument far more clear and easy to follow.

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# Response to Callahan on Deductive Libertarianism

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## I. INTRODUCTION

Most critiques of the Rothbardian version of libertarianism<sup>1</sup> are unsophisticated. They attack this political philosophy on the ground that it supports greed and selfishness, or is in the pay of big business, or amounts to crony capitalism, or some such.<sup>2</sup> It is thus a pleasure to respond to a far more sophisticated opponent of this perspective, Callahan (2012). This author takes to task Rothbard himself, plus Hoppe, Block, Nozick, Buchanan and Tullock, all deductivists of one kind or another, in Callahan's (2012) view. Our author does these proponents of deontological libertarianism the honor of citing their actual words, quoting directly from their publications, and then attempting to undermine what they actually say. This is in sharp contrast to the unsophisticated critics, with whom libertarians can never reach any real disagreement. All of these libertarians can be grateful to Callahan (2012), since he presents real challenges to their actual stances.

I shall not defend Buchanan and Tullock against the onslaughts brought against them by Callahan (2012). As far as I am concerned, they may rely on deduction from general principles, but as these starting points are not libertarian, neither are their conclusions (Rothbard, 1997b; Block, 2005; Block and DiLorenzo, 2000; DiLorenzo and Block, 2001). I readily admit that Nozick is indeed a deontologist, but I contend he has led us away from the correct libertarian

viewpoint, anarcho-capitalism (Barnett, 1977; Childs, 1977; Evers, 1977; Rothbard, 1977; Sanders, 1977), so will not rise to his defense either.

I will, instead, show the flaws in Callahan's (2012) critique of Rothbard, since he is no longer available to do so in his own behalf, and because I am a Rothbardian. Hoppe is still actively writing, so, even though I am in virtually full agreement with his entire philosophy, I will allow him to write a rebuttal to Callahan (2012) if he wishes to do so. And, who better to articulate Block's perspective than the present author, who is a fan of Block's?

In section II I defend Rothbard against the intellectual onslaught aimed at him by Callahan. Section III is given over to a defense of Block, in an attempt to refute Callahan's attack on him. I conclude in section IV.

Why should anyone care about any of this? For people not already interested in the freedom philosophy, this debate is important because libertarianism is the last best hope for a free and prosperous society, and most people are concerned about those utilitarian considerations. For those already involved in this perspective, the debate is important because it reaches to the very heart and soul of what free enterprise is all about, how can it be justified, defended. On the one side are the utilitarians, of whom Callahan is broadly representative. On the other side are the deontologists, of which Rothbard is the most prominent. So, sit back in your seats

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and be prepared to witness a knock-down, drag-out battle for the underpinnings of the free enterprise philosophy.

## II. ROTHBARD

Let us begin with Callahan (2012, p. 8) on Rothbard. The former begins with a citation from the latter to the effect that “rights *cannot* conflict with one another.” What is the basis for Callahan’s claim that rights *can* conflict with each other? It consists of a quote from Aristotle to the effect that “the ‘admitted goods’ of a society must be weighed one against another in sound, practical political reasoning.” But “rights” are not at all the same thing as “goods.” Surely, Rothbard would acquiesce in the notion that *goods* may conflict with one another in the sense that people must choose between goods like ice cream and shoes, when their budgets do not allow for the purchase of both. This is but the logical implication of the economic concept of scarcity, something that all economists recognize.

In logic, there are three main principles: the law of identity; the law of non-contradiction; and the law of excluded middle. The first means that a thing is itself; it is not something else. The second states that something cannot both be, and not be. The third establishes that either a proposition is true, or its negation is true; there is no other alternative. Rothbard’s view that “rights cannot conflict with one another” is merely an extension, from logic to ethics, of these three laws.

Suppose A and B are having an argument over the ownership of X. If both A and B own 100% of X, there is a logical contradiction involved. It is more than passing curious that Callahan should object to this basic element of political philosophy.

Callahan’s (2012) next attempt to show that rights do conflict, and/or that Rothbard’s deductivist libertarianism cannot be accepted, is the view of the latter that *if* the police engage in brutality against a suspected criminal who later is proven to be murderer, then they are not themselves guilty of violating the non aggression principle (NAP) of libertarianism, since they have not battered an innocent person. Callahan (2012, p. 8) rejects this line of reasoning on the ground that there is a “practical downside of permitting police torture so long as the tortured party is ultimately convicted, which is that it gives law-enforcement officers a strong motive to frame anyone they have tortured.”

But this hardly shows any conflict in rights. Surely, murderers do not have the right to go unpunished. Nor has the

punishment been excessive, Rothbard assures us, since the police “have only ladled out to the murderer a parcel of what he deserves in return; his rights had already been forfeited by more than that extent” (Rothbard, 1998, p. 82; cited in Callahan, 2012, p. 8). Nor is there much “practical downside” to this deduction for police already have a motive to frame suspects, many of them.

Let us suppose, however, that cops now have an *increased* motive to create “evidence” inculcating innocent suspects. Still, Callahan’s criticism of Rothbard fails. For the latter is discussing *justice*, not utilitarianism. In order to see this point, let us posit that the best way to achieve justice and peace in post apartheid South Africa was via the “truth and reconciliation” process actually adopted in that country.<sup>3</sup> And, also, let us posit that this initiative allowed people guilty of actual crimes to go free. Now, *justice* requires that the guilty be punished, let us stipulate. So, yes, there is indeed a conflict between justice and civil harmony. But Rothbard never denied this; his contention was, rather, that *rights* do not conflict. So Callahan and Rothbard are passing each other as ships in the night. They have not achieved real disagreement. Or to put this more accurately, Callahan has not laid a glove on the Rothbard thesis.

Let us consider another example. A black man has been falsely accused of raping a white woman in Alabama in 1920. He is in jail, awaiting trial. A white lynch mob demands that the sheriff hand over his prisoner to them. The lawman refuses and the mob attacks. The sheriff, the prisoner, most of the mob, and dozens of innocent bystanders die in the ensuing melee. Justice is clearly on the side of the jailor’s decision. It is unjust that the innocent black prisoner be lynched for a crime he did not commit. But social peace is incompatible with justice in this case.

Rothbard is concerned with justice; Callahan, with mere utilitarianism. The latter’s critique of the former fails, because it falls in an entirely different realm of discourse. Rothbard would have no difficulty at all agreeing with Callahan that the most utilitarian result would be for the lynch mob to be assuaged.<sup>4</sup>

But wait. Callahan has a possible response to the foregoing open to him. If the police have an additional incentive to frame innocents, to save themselves from criminal charges, is this not, too, unjust? Of course it is. But Rothbard was concerned not with ensuing acts, but *only* with the one concerning whether or not police who brutalize actual murderers are themselves criminals.

What may or may not occur later on is beside the point.

Let us go back to the case where the Alabama sheriff dies valiantly protecting his prisoner from the lynch mob. He acted justly. But, suppose that as a result of this just act of his, a later injustice occurs. Mr. X an innocent bystander who perished in the conflagration, would have on the next day foiled a robbery, but cannot do so because he was killed. Does this amount to a conflict in rights as Callahan avers, since the one just act, the sheriff protects his innocent inmate on day 1, dis enables another just act from occurring on day 2, Mr. X cannot foil this robbery. Of course not. No more than Rothbard supporting a just act on day 1, the cops beat up a person who is later proven to be a murderer, which leads, on day 2 to other or the same cops unjustifiably framing an innocent man. The sheriff's act on day 1, and the police brutalizing a murderer on day 1, are both just, no matter *what* are the consequences afterward. Justice is timeless. Consequences are utilitarian considerations, very far removed from issues of justice.<sup>5</sup>

Here is another objection. "Consider the territorial dispute in the South China Sea between China and Japan; the two countries cannot agree on the standard for the claim. These islands were once part of Okinawa, which certainly belonged to Japan; but they are part of China's continental shelf and were acknowledged as Chinese on at least one Japanese map. To say that what is in conflict here are not rights but rights claims seems simply to be question begging, because it fails to address the fact that there is simply no internationally agreed deductive standard according to which the conflict can be adjudicated; yet if deductive libertarianism were correct, there ought to be."

Well, there is. According to the libertarian doctrine of homesteading,<sup>6</sup> neither maps nor continental shelves are pertinent. Rather, the solution lies on the basis of who was the first to mix their labor with this land. I am no expert on this bit of geography, but it is my understanding that no one has yet done so. Therefore, neither China nor Japan is the rightful owner of these islands.<sup>7</sup>

What about the niqab? Surely, there is a conflict<sup>8</sup> here? Stipulate that religious freedom requires that women wear this garment, which hides the face. But if such a woman is a plaintiff in a lawsuit, her wearing of it would conflict with the right of the defendant to "face" his accuser. This may indeed be a conflict for a statist system of monopoly courts, but presents no challenge at all for the libertarian institution of competing courts (Benson, 1990, 2002; Friedman, 1979, 1989; Hoppe, 2001; Osterfeld, 1989; Peden, 1977; Rothbard, 1973a, 1973b, 1982, 1991; Stringham, 1998-1999; Tannehill

and Tannehill, 1984; Woolridge, 1970): each judicial system would decide for itself whether a niqab garbed person would be allowed to be heard on its premises.<sup>9</sup> Some might rule one way, and others disagree. Again, there is no conflict in rights, Callahan to the contrary notwithstanding.

One last example, again arising in Canada. A feminist wanted to get her hair cut. She attempted to become a customer of a Muslim barber, whose religion did not allow him such close contact with a woman who was a stranger to him.<sup>10</sup> This is an easy one for libertarians: he is in the right, she is in the wrong. The libertarian notion of free association would rule here: no one may be forced to associate with anyone against his will.

Callahan's next sally against Rothbard concerns parents allowing children to die. Since there are no positive obligations in libertarianism based on the NAP, Callahan (2012, p. 8) charges Rothbard with overlooking "the moral reprehensibility of a parent idly watching her six-month-old child slowly starve to death in its crib." But here this critic errs, again. Rothbard is not at all discussing the *morality* of such action, or, rather, inaction. Instead, he focuses, only, on whether or not it is compatible with the NAP. Callahan fails to appreciate that libertarianism is a theory of just law, *not* ethics or morality. For example, libertarians, all libertarians presumably included if they adhere to any even watered-down version of this philosophy, would agree that the laws prohibiting consenting adult interactions regarding pornography, prostitution, drugs, gambling, are unjust. But advocates of this philosophy need not maintain that these victimless criminal behaviors are *moral* (Block, 1994). Rather, in the view of most if not all libertarians,<sup>11</sup> these acts are indeed unethical, and yet just law would not prohibit them.

Does the mother have any obligation, not to feed the baby, but to notify others (church, orphanage, hospital, synagogue, etc.) that she is no longer willing to do so? Of course she does, and this is *not* a violation of the no-positive-obligations principle of libertarianism. Here, Callahan ignores a rather large literature (Block, 2001a, 2003, 2004, 2008; Block and Whitehead, 2005) making precisely this case: that the obligation to notify is compatible with the NAP. Why? Because, contrary to Callahan's understanding of libertarianism, children cannot be owned in this perspective. Rather, the only aspect of ownership with regard to them concerns guardianship rights. And these must be "earned" every day. Once the mother stops feeding and caring for the infant, she immediately<sup>12</sup> loses her status as guardian. If she allows her baby to starve in its crib, she is engaging in forestalling, which would

be equivalent to homesteading land in a bagel or donut format, which would give control of the “hole” in the middle to such a homesteader, without ever having mixed his labor. Given these considerations, Rothbard’s “morally reprehensible deduction from the NAP” does not sound quite so callous as Callahan makes it out to be.

Callahan next taxes Rothbard for the latter’s refusal to equate promises and contracts. Or, more to the point, Callahan confuses the two, and, to add insult to injury, again conflates morality and just law. If A contracts to give to B an apple in return for B’s banana, and A follows through with his end of the deal but B reneges, then B has stolen a banana from A.<sup>13</sup> This is a crime. But, if B merely *promises* to give A a banana, and does not do so, then while B may well be acting immorally, he is not a criminal, even if A makes plans for his utilization of the banana, which now much come to naught. Callahan (2012, p. 9) quotes Rothbard (1998, p. 133): “mere promises are not a transfer of property title.” Does the former tell us *why* he thinks the latter wrong in this eminently reasonable contention? He does not. Callahan contents himself with merely quoting Rothbard to this effect, presumably thinking that his audience will see the error of Rothbard’s ways.

Callahan employs the same tactic with regard to blackmail, which Rothbard does not see as a crime, either, since it does not violate the NAP. This one sentence constitutes the entirety of Callahan’s (2012, p. 9) objection to Rothbard on this matter: “In addition, he (Rothbard, 1998, pp. 124-126) contended that blackmail must be legally permissible in a just polity, since the victim has no exclusive property right in his reputation.”

This really will not do, neither in the case of promises or blackmail or anything else. It might well suffice for the New York Times or MSNBC merely to *mention* that someone takes thus and such as position as if this alone would be sufficient to condemn him for it,<sup>14</sup> but in a scholarly refereed journal such as the one in which Callahan (2012) appears it really is incumbent on critics to give *reasons* for rejecting a philosophical thesis. Indeed, this aspect of Callahan’s approach is highly problematic and indicates possible intellectual malpractice on the part of the editors and referees of the journal in which his article appeared for not insisting that this author do so. Why does Rothbard maintain that blackmail is not a criminal offense? It is because all this practice consists of is a threat, coupled with a demand/request for money or other valuable consideration, to become a gossip. But if the latter is legal, and no one suggests that it is not, then to *threaten* something otherwise licit should not be a

crime. This is in sharp contrast to extortion, which couples a demand/request for money or other valuable consideration with a threat to violate the NAP.<sup>15</sup>

Callahan’s (2012, p. 9) parting shot at Rothbard is that he “displays a cavalier and reckless disregard for the fact that the existing social arrangements, however far they may fall short of fulfilling one’s idealized visions for society, possess at least the virtue of having demonstrated that they enable most of those whose affairs they guide to lead reasonably tolerable lives.” This defense of “existing social arrangements” is difficult to defend in view of the fact that there is massive human misery under their aegis (Block, 2006a; Conquest, 1986, 1990; Courtois, et. al. 1999; DiLorenzo, 2006; Pinker, 2011; Rummel, 1992, 1994, 1997), due mainly to NAP violations that Rothbard inveighs against, and that Callahan upbraids him for doing. I applaud Callahan’s intellectual courage in making such an outlandish statement, but I hope and trust he will forgive me for regarding it as “cavalier and reckless.”

No truer words were ever said than by Callahan (2012, p. 9) when he asserts: “Rothbard is not an instance of an idiosyncratic thinker whose ideas dies with him; indeed, he has more disciples today than he did when he passed away (in 1995) and there are currently a number of think-tanks in the USA and Europe dedicated to advancing his political programme.”

### III. BLOCK

Block must be deeply honored by Callahan (2012) when he says: “Hoppe’s main contestant for the title of ‘Rothbard’s heir,’ Walter Block, takes great pride in carrying the principles of Rothbard to their logical extremes.” Just to be mentioned in the same sentence as Hoppe in this context is a great compliment, for I regard Hoppe as having made among the most brilliant contributions to libertarian theory and Austrian economics too, in the history of mankind.

Callahan (2012, p. 10) starts off his criticism of Block’s contribution with the example of the man precariously perched on the flagpole owned by someone else, 15 stories above the ground, hanging on for dear life. He wants more than anything else in the world to hand-walk his way down and off the flag pole, go through the owner’s apartment and out of it, and then to live the rest of his life. But the condominium owner threatens to shoot him as a trespasser unless he lets go of her flagpole and drops to his death. Would this private property rights holder be guilty of murder? I say no. Callahan (2012, pp. 10-11) responds:

Once again, we see the embrace of an idealization obliterating any consideration of countervailing concerns that most people would find relevant in deciding the proper legal response to a situation, and, as with Rothbard, it is property rights that are the trump card. The fact that the property rights ‘violation’ is trivial and the response draconian means nothing to Block; only by holding the singled principle of private property to be absolute can he reach deductive, definitive ‘solutions’ to such dilemmas.

Before criticizing Callahan on this matter, let me first thank him for having the perspicacity to see that Block’s views indeed constitute accurate deductions from the viewpoint so brilliantly laid out by Rothbard. No greater compliment to Block is possible.

Now for the rejoinder. “Trivial?” Says who?<sup>16</sup> Suppose that this woman with the gun was raped only the day before by a man who resembles the flagpole holder.<sup>17</sup> She is in not unreasonable fear of further bodily injury, and even death. Who is Callahan to deprecate her subjective assessment of the situation in which she now finds herself? Either we maintain that property rights are sacrosanct, or we do not. If not, all sorts of logical implications arise, that will discomfort Callahan’s perspective on this matter. At any given time, there are starving, or drowning, or seriously hurt people somewhere in the world. If we may with impunity violate this woman’s private property rights to her flagpole, in effect hold that her castle is no longer her castle, then, if we are to be logically consistent,<sup>18</sup> we may not object when all of us are compelled by law to become Good Samaritans.<sup>19</sup> All sorts of people in trouble may trespass on others’ property. What, then, occurs to laissez faire capitalism, to limited government, to libertarianism? If Callahan is so concerned with the plight of the flagpole holder, let *him* hire a helicopter to go to the rescue.<sup>20</sup>

I also find objectionable Callahan’s hiding behind the views of “most people.” Of course his assessment of popular opinion is correct. The man in the street would likely take Callahan’s side in this criticism of principled libertarianism. Is this supposed to count as a valid argument in a scholarly journal?

Callahan (2012) also does not support Block’s contention that if no one in the entire world is willing to care for a severely handicapped child, the father, as a last act of benevolent guardianship, may engage in a mercy killing rather than allow his daughter to suffer from a slow and painful death. Here is Callahan’s (2012, p. 11) take on this matter:

How thoughtful that it is only permissible to murder the kids you have ‘homesteaded’ (a word Block used earlier in the same essay to describe creating children) if you have first offered them to others. In another work Block (2004) describes children as merely another form of property, which can be abandoned like an old sofa or TV.

What is the alternative, given no positive obligations? Mercy killing<sup>21</sup> would appear to be the least callous option. But perhaps we should open up that Pandora’s Box of positive obligations? Then, we would all become our brothers’ keepers; then, many, many more of us would die if the history of socialist regimes is any guide. Can Callahan still characterize himself as some sort of libertarian if he accepts such an anti freedom prescription?

Callahan objects to Block’s use of the word “homesteaded” when applied to children. But Lockean (1948), Rothbardian (1973a) and Hoppean (1993) notions of homesteading merely imply that in order to attain guardianship rights over progeny, one must first create them through pregnancy, and then care for them. Guardianship is indeed “merely another form of property.” This means that as long as a parent continues to care for a child, no one else may take him away, even if it can be proven that someone else—a rich man such as Bill Gates—can do a better job. Of course that child may also be abandoned, if proper authorities (hospital, orphanage, church) are notified, or if the child is adopted by another parent-guardian.<sup>22</sup> This scenario is supposed to be shrunk from in horror, as Callahan urges? Where do old sofas and TVs come into the picture? Such rhetorical flourishes on that author’s part really are not conducive to sound philosophizing.

Block does indeed employ the concept of a “libertarian Nuremberg trial” much to Callahan’s (2012, p. 11) consternation. This does not at all imply that he sees present candidates for such events as bad as Nazis, nor that Block favors an actual such event, nor, even, that he thinks the original trials were justified. Rather, this is an intellectual device that allows us to better focus on legal issues, I contend. Given that violations of the NAP are a criminal activity, and that government,<sup>23</sup> or excessive government<sup>24</sup> is an NAP violator, it follows ineluctably that the persons responsible for them ought to be considered criminals. Callahan vouchsafes us no reason to reject this claim, contenting himself with a mere mention of it, as if that would alone suffice to undermine it. But this *New York Times*—MSNBC style of proceeding hardly constitute a cogent, let alone a valid argument.

It cannot be denied that Block does indeed “equate ‘the Marxist professor in a public university’ to Hitler” in that he regards both as criminals. Block also equates, in precisely the same manner, the person who steals a newspaper and a mass murderer—both violate the law. I also “equate” Hitler and Mother Teresa in that they are both human beings. There are, however, also dramatic *differences* in all of these pairs. But the ability to make such fine distinctions might be beyond a scholar such as Callahan, who wields a bludgeon in a situation that calls for a scalpel. Why is the Marxist in a public university a criminal? Because he is the recipient of stolen tax money, who supports this very system, and argues for its extension. Why not the libertarian professor who ostensibly does the same thing? Because he counsels against this anti NAP system, and works in effect to end it.<sup>25</sup>

Does this imply that Block is “opposed to freedom of thought” as Callahan (2012, p. 11) maintains? Of course not. As far as the libertarian Nuremberg Trials are concerned at least as I understand them, the Marxist intellectual is perfectly free to express his malevolent views, on his own dime. He is not free to do so at the cost of people victimized by the type of tax theft he advocates. He can do so at a private university, none of whose funds are mulcted from unwilling tax payers. He can think as freely as he wishes, when he does so on this basis.

Callahan (2012) disputes “rationalist libertarianism.” But he is as guilty of this train of thought as much as any of the scholars he criticizes in this article. For example, in Block, Barnett and Callahan (2005) he along with his two co-authors,<sup>26</sup> opine: “free markets are desirable precisely because, and to the extent that, they are free. That is, they are beneficial, of necessity, no matter what their assumed efficiency.”

And in Block and Callahan (2003) both authors are guilty of the following example of “rationalist libertarianism”<sup>27</sup>:

(We) ... take the position that any compromise whatsoever with free and unrestricted immigration must perforce be ruled incompatible with libertarianism. After all, the immigrant, merely by appearing at our shores, particularly at the invitation of a citizen and property owner, cannot be said by that fact alone to have initiated violence against an innocent person. Not being guilty of a violation of the libertarian axiom, it would be improper to visit any violence upon him. Since forceful removal from our shores would indeed constitute an initiation of force against him, this would be improper. Hence, there can be no libertarian argument in favor of immigration restrictions.

It therefore ill behooves Callahan (2012) to reject a philosophical tradition to which he has so importantly contributed.<sup>28</sup>

#### IV. CONCLUSION

I am grateful to Callahan (2012) and I think all other libertarians must share this sentiment with me. For all too long libertarianism has been avoided by mainstream philosophers, economists, political theorists; any critique of this philosophy which does so much as spell its name correctly is to be welcomed. But Callahan (2012) obviously, does much more than that: it is a critique of this viewpoint by an “insider”; that is, by someone who has studied it, and has the intelligence to understand it. There are grave flaws in Callahan’s (2012) rejection of the philosophy of liberty, as I have attempted to show above. Nonetheless I acknowledge this author’s critique is a far better one than most of those that usually come tumbling down the pike. What does not kill us makes us stronger. This criticism of his does not kill us.<sup>29</sup>

#### NOTES

- 1 For example, see Schwartz, 1986; for a rejoinder, see Block, 2003.
- 2 See any of Krugman’s critiques of libertarianism.
- 3 <http://www.justice.gov.za/trc/>; Slovo, 2002;
- 4 In order to obviate the objection that this would set a bad precedent, and thus utilitarianism, too, is on the side of the sheriff, we may posit that the entire world ends right after this episode, so that there are no negative utilitarian precedents at all. The only just behavior is still on the side of the sheriff.
- 5 I cannot resist adding one more example; I owe this one to Brian Caplan. The Holocaust was an unjust act. Presumably, it reduced utility also, since the suffering of the Jews and others (blacks, homosexuals, Gypsies) was greater than the enjoyment of the Nazis. But, suppose that there were a *trillion* Nazis, all enjoying the murder and torture of these “vermin.” Then, this mass killing is still unjust, at least according to the NAP of libertarianism, but it is no longer clear that utility has decreased, as a result. Rather, abstracting from the insoluble problem of interpersonal comparisons of utility, one is tempted to say that utility has *increased* as a result of the Holocaust.

- 6 Block, 1990, 2002A, 2002B; Block and Edelstein, 2012; Block and Yeatts, 1999-2000; Block vs Epstein, 2005; Bylund, 2005, 2012; Hoppe, 1993, 2011; Kinsella, 2003, 2006; Locke, 1948; Paul, 1987; Rothbard, 1973A, 32; Rozeff, 2005
- 7 Under pure libertarian theory, anarcho capitalism (Rothbard, 1973A; Hoppe, 1993; Huebert, 2010; Stringham, 2007), states cannot own property; they are illicit entities. On that ground alone neither China nor Japan is the rightful owner of these islands. Where the distinction arises between “rights” and “rights claims” is beyond comprehension. And as for Okinawa “belonging” to Japan, this too is incompatible with libertarian anarchism, and thus cannot be the subject of rights conflict under this philosophy.
- 8 For several cases in Canada on this point, see <http://www.cbc.ca/news/canada/story/2012/12/19/f-niqab-list.html>
- 9 My prediction is that the wearing of the niqab would tend to make the testimony of its wearer less reliable, since people determine truth in part on the basis of facial expressions.
- 10 <http://www.thestar.com/news/gta/article/1288023-woman-denied-haircut-goes-to-human-rights-tribunal-of-ontario>; <http://english.alarabiya.net/articles/2012/11/16/249931.html>; <http://news.nationalpost.com/2012/11/30/gender-vs-religion-woman-refused-haircut-by-muslim-barber-highlights-problem-of-colliding-rights/>
- 11 At least the socially conservative ones
- 12 Here is an objection to the text: “How many feeds must the baby miss before this status is revoked? What if she’s just having a bad day? Can she regain the status if she promises to feed it again? What if she stops feeding it, but the father does so instead? How is the law to be applied; three strikes and she’s out? Once one starts to consider the complexities of turning this position into actual legislation, the libertarian position seems no less absurd (possibly more absurd), and no simpler, than any other way of ordering the parent-child relationship.” I regard this as a superficial pedantic objection; I mention it only because a reader of an earlier draft of this paper was insistent upon it. We are talking about starving a baby, not feeding it off schedule, or having the father, or the baby sitter, taking on this task.
- 13 Some might say that B has stolen an apple from A, since B now has A’s apple, and A has nothing. But this would not be quite true, since, according to the contract, it is entirely alright for B to have the apple. B’s contractual “sin” is in keeping the banana from A, since the contract requires B to hand over this tropical fruit to A.
- 14 For example, the major media often condemns a libertarian for opposing the minimum wage law or favoring the legalization of drugs, as if taking that position constitutes a per se proof that the advocate is wrong. Callahan does much the same thing against Rothbard in this case.
- 15 For a further explanation and explication of Rothbard’s position on blackmail, see Block, 2001B, 2002C, 2002-2003, 2009; Block and Anderson, 2001; Block, Kinsella and Whitehead, 2006.
- 16 For an Austrian economics analysis of subjectivism, which would tend to undercut Callahan’s claim of “trivial,” see Barnett, 1989; Buchanan and Thirlby, 1981; Buchanan, 1969; Butos and Koppl, 1997; Cordato, 1989; DiLorenzo, 1990; Garrison, 1985; Gunning, 1990; Kirzner, 1986; Mises, 1998; Rizzo, 1979, 1980; Rothbard, 1979, 1997A; Schmidtchen, 1993; Thirlby, 1981
- 17 After that horrid experience, she went out and purchased a weapon for her defense, thanks to the fact that the Second Amendment to the U.S. Constitution has not yet been completely obliterated.
- 18 Something about which Callahan is not intent
- 19 For example, we could support the decision in *Kelo* where the property of a Connecticut woman was taken away from her through eminent domain, because it was thought that the new owners would pay higher taxes (Block, 2006B; Epstein, 2005; *Kelo*, 2005; Kinsella, 2005).
- 20 However, I acquiesce in the notion that a good swimmer not legally go off to the proximity of a drowning person only to watch him die. Once he initiates such a procedure—unless he explicitly indicates to the contrary—his actions signal to other would-be rescuers that help is on its way, and their services are no longer needed.
- 21 Under proper legal supervision, to preclude actual murder
- 22 If money changes hands during such a transfer, it would not violate the NAP. If act X is righteous, it does not lose that status when it is done for money, not benevolence.
- 23 For the anarcho-capitalist Hasnas, 1995; Higgs, 2009; Hoppe, 2008; Kinsella, 2009; Long, 2004; Murphy, 2005; Rothbard, 1973A, 1998; Stringham, 2007; Tannehill, 1984; Tinsley, 1998-1999.
- 24 For the minimal government libertarian, or minarchist Machan, 1982, 1990A, 1990B, 2002

- 25 This applies, too, to a libertarian professor of a subject irrelevant to political economy, such as math, physics, music, etc. As a libertarian, he still uses (at least part of) his salary to undermine this practice.
- 26 I assume that all co-authors of a scholarly article agree with each and every word of it. Certainly, Callahan never explicitly objected to anything written in either of the two articles I co-authored with him.
- 27 Footnote deleted.
- 28 Unless, of course, he renounces his contributions to these two articles. He has not done so as of the present date, to the best of my knowledge.
- 29 Editor's note: Block writes of himself, throughout this article, in the third person. He was required to do so by our refereeing process, which mandated that he remain anonymous all throughout it.

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## Response to Block

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Professor Walter Block has done me the honor of penning an extended critique of portions of my paper, “Liberty Versus Libertarianism.” His response which addresses my comments on the work of the professor himself, and on his mentor, Murray Rothbard. A vigorous attack being a much more complimentary response to a paper than is a placid indifference, my thanks are sincere. Nevertheless, I think Block has misunderstood the essence of my thesis, particularly in his contention that I am only arguing “utilitarian” points, and I contend that his reply would have been more cogent had he paid more attention to the other parts of my paper. In writing this response, I hope that I can motivate a mind as sharp as Professor Block’s to actually engage with my entire argument, and not just those portions of it that explicitly address his own work.

Block begins his response to my paper with a defense of Rothbard’s idea that rights cannot conflict. He writes:

The former [Callahan] begins with a citation from the latter [Rothbard] to the effect that “rights cannot conflict with one another.” What is the basis for Callahan’s claim that rights can conflict with each other? It consists of a quote from Aristotle to the effect that “the ‘admitted goods’ of a society must be weighed one against another in sound, practical political reasoning.” But “rights” are not at all the same thing as “goods.” Surely, Rothbard would acquiesce in the notion that *goods* may conflict with one another in the sense that people must choose between goods like ice cream and shoes...

Surprisingly, Block does not seem to have examined this “quote” from Aristotle at any length, which would have led

him to realize the only quoted bit is “admitted goods.” Nor does he seem to have tried to find out what Aristotle meant by this. If he had, he would have found that Aristotle, invoking “goods,” was talking about the “maxims” that guide a society, or in modern vocabulary, what “rights” citizens have, and not choices between ice cream and shoes! (McIntyre, 2004, p. 171).

Furthermore, the whole critique of Rothbard and Block in my original paper is predicated on the critique of rationalism in politics that is offered in the first and second parts of it. The particular complaints I have about Rothbard and Block are abbreviated not because they are the sole basis of my criticism, but because the reader is expected to have absorbed the earlier parts of my paper. His neglect of all parts of my paper except those dealing with his work and that of his mentor, Rothbard, is also on display when he writes, “Rothbard is concerned with justice; Callahan, with mere utilitarianism,” and again when he writes, “On the one side are the utilitarians, of whom Callahan is broadly representative.” He does not seem to have noticed that an entire section of my paper is, in fact, a critique of utilitarianism (the section on Buchanan and Tullock), nor that my paper is almost wholly “concerned with justice”: it contends that Rothbard and Block are fundamentally *mistaken* about what constitutes justice: they believe that justice requires shackling all of society to some abstract scheme exalting one right (in their case, the right to property) above all others, while I (following Aristotle) contend that justice means balancing all of the “admitted goods” of society, carefully weighing one rights claim against another.

Block goes on to assert that: “Consequences are utilitarian considerations, very far removed from issues of justice.”

But this statement simply assumes that the deontological vision of justice is correct, and that utilitarians' focus on outcomes has nothing just about it. But that is as wrong-headed as utilitarians exclusive concern with outcomes. Deontology and utilitarianism are both abstract conceptions of ethics, and therefore, partial and defective. Their plausibility derives from two factors:

- 1) They each get at part of the truth: it *is* true, as deontologists insist, that principles are an important part of ethics. And it *is* true, as utilitarians contend, that the consequences of one's actions are an important part of ethics.
- 2) Each approach is able to benefit from the defective nature of the other: so long as rationalism is understood as the only possible approach to ethics, then, to the rationalist, deontology appears to be the only alternative to utilitarianism, and vice-versa. So deontologists can strengthen their appeal by pointing out the obvious defects in utilitarianism (it ignores principles), while utilitarians do the same by noting the obvious defects in deontology (it ignores consequences). It is like a war between one's right leg and left leg over which is the essential limb in walking: each leg can correctly note its importance to the activity, and also note the flaws in the argument of the other limb that it is exclusively essential to perambulation. Read in light of the critique of rationalism I offer in my original paper, Block's invocation of "Justice though the heavens fall," is not a sign of purity, but of *imprudence*, which, in my (and the common-sense) view of ethics, is a vice, and not a virtue.

Block goes on to claim that it is somehow *illogical* to argue that rights claims can conflict with one another:

In logic, there are three main principles: the law of identity; the law of non-contradiction; and the law of excluded middle. The first means that a thing is itself; it is not something else. The second states that something cannot both be, and not be. The third establishes that either a proposition is true, or its negation is true; there is no other alternative. Rothbard's view that "rights cannot conflict with one another" is merely an extension, from logic to ethics, of these three laws.

I'm not at all sure what to make of this passage. Does Block think that, because logical truths cannot conflict with each other, therefore *nothing* can conflict with *anything* else?

Would he declare that the statement: "Nazi Germany and Great Britain could not have been in conflict during World War II" to be "merely an extension, from logic to international relations," of the laws of logic? Presumably not: to do so, he would have to show that the concrete facts of international relations are just a sub-species of statements in logic. It is pretty obvious that such an attempt must fail.

But despite his assertion that Rothbard has merely extended the laws of logics into rights claims, Block makes no attempt to show that rights claims are the same sort of entities as logical statements. Is "if A then B implies that if A is true, then B is true as well," a statement of the same sort as "Jeb has an easement across Seamus's land"? And I think there is a good reason he doesn't attempt to demonstrate this: rights statements are quite obviously *different* than logical truths. Rights statements are assertions of powers possessed by individuals which may not be legitimately interfered with by other individuals. The claim that "I have the right to control of that acre over there" is quite obviously different than a proposition in logic, and is demonstrated to be true in an entirely different way: we show the truth of our property rights claim by producing deeds of sale and so forth, not by analyzing syllogistic logic. And such rights claims quite clearly *can* and *do* conflict: the person clinging to the balcony flagpole, in the scenario presented by Block that I cite in my original paper, has a right to life, while the person whose balcony flagpole is being clung to has a right to her property. Justice requires *balancing* these claims; whereas Block's *unjust* solution to the conflict allows the balcony owner's rights claims to run roughshod over that of the person merely trying to save her own life.

Block attempts to answer the charge that shooting the fall victim if she attempts to climb off of the balcony flagpole is an absurd elevation of the right to property over the right to life by noting:

Suppose that this woman with the gun was raped only the day before by a man who resembles the flagpole holder. She is in not unreasonable fear of further bodily injury, and even death. Who is Callahan to deprecate her subjective assessment of the situation in which she now finds herself?

Why in the world does Block think I deprecate this assessment? In our legal tradition, the fact that the person clinging to the balcony looked just like the property owner's recent rapist would undoubtedly be taken into account in deciding whether or not the property owner is guilty of murder. Block

presents us with a false dichotomy: either we give the property owner's "subjective assessment" of the situation complete reign, or we ignore her assessment entirely. But this is not at all what our current legal system (as any reasonable legal system must, I contend) looks at here: instead, we ask, "Was it *reasonable* for the property owner to feel threatened by the person hanging onto her balcony?" If it turns out she was wrong that this was her rapist, but the falling victim did, indeed, closely resemble the rapist, she will probably get off or by convicted of, perhaps, manslaughter. Block's unexamined acceptance of the "subjective assessment" of a person who is possibly a murderer would, in fact, if applied consistently, destroy his own property rights regime: for instance, if my "subjective assessment" of Block's co-authoring two papers with me is that thereby he was handing over all of his property to me, then per his own principle, who is he to "deprecate" my "subjective assessment" on this matter? But any reasonable court, including the anarcho-capitalist courts Block advocates, would have to evaluate my "subjective assessment" for plausibility, and would hopefully decide that it is absurd: whatever delusions I may entertain, there is no reasonable basis for concluding that by co-authoring with me, Block meant to grant me all of his property. Similarly, if the woman owning the balcony had been raped by a large white man, while the person clinging to her railing was a petite black woman, I would hope that even anarcho-capitalist courts would decide that her fear that the clinger might be her rapist was entirely unreasonable, and that she is guilty of murder, not engaged in a "defense of her property rights." And, contra Block, my case against her is entirely based on the *injustice* of her action, and not upon "utilitarianism": whether or not one has been recently a victim of a crime, it is fundamentally *unjust* to kill people simply on the basis of unfounded fears that they might conceivably be a threat.

Similarly, Block mistakes my case against police torture of suspects as turning on the utilitarian results of such torture; that is all wrong: I contend that it is *unjust* for law enforcement officials to torture suspects, even when it is absolutely clear to those officials that the suspects are guilty. Every human being is worthy of respect for their human person, and no one, whatever they have done, is *ever* justly tortured. The fact that allowing such torture produces bad results is not the *reason* that torture is unjust; it is *evidence* that it is unjust.

Block writes: "Let us suppose, however, that cops now have an *increased* motive to create 'evidence' inculcating innocent suspects. Still, Callahan's criticism of Rothbard fails. For the latter is discussing *justice*, not utilitarianism."

This is nonsense: it is *unjust* for people to be framed by corrupt cops, even if it happened to produce greater utility. Block's foray into utilitarian grounds for deciding such cases is a complete diversion: my concern is not about what maximizes some abstract concept of "utility," but about what *actual* rules are most likely to produce *just* outcomes. And Block's dismissal of such concerns does not demonstrate his (or Rothbard's) greater commitment to justice: instead, it demonstrates their obsession with achieving easy, deductive answers to conflicts, rather than doing the hard work of actually trying to achieve real world justice by careful balancing of competing rights claims.

Block also addresses my horror at the Rothbardian idea that parents ought to be able to starve their own children to death without consequence. He notes that, in response to the off-putting nature of Rothbard's original example, many other libertarians have sought to amend Rothbard's initial position:

Does the mother have any obligation, not to feed the baby, but to notify others (church, orphanage, hospital, synagogue, etc.) that she is no longer willing to do so? Of course she does, and this is not a violation of the no-positive-obligations principle of libertarianism. Here, Callahan ignores a rather large literature (Block, 2001a, 2003, 2004, 2008; Block and Whitehead, 2005) making precisely this case: that the obligation to notify is compatible with the NAP.

Block's argument here is simply that I addressed Rothbard's argument as he wrote it, rather than taking up the numerous attempts to patch over how horrific the conclusion of that argument is, as Rothbard initially framed it. I congratulate Block and others for recognizing the problem and for their attempts to save Rothbard from the condemnation his original argument rightly deserves, but it is hardly my responsibility to help them in this venture, since I have shown that the argument rested on faulty (rationalist) premises in the first place.

Oddly, despite apparently lacking the time to read my entire paper, Block did have time to make up objections to libertarianism himself. See, for instance, his whole digression about Okinawa, Japan, and China. What this has to do with the many arguments I actually made is unclear to me.

However, in his eagerness to supply his own libertarian counter-examples that he can then refute, Block actually undermines his whole case with his example of the niqab-wearing witness. A Muslim woman's right to free exercise of

her religion suggests that she should be able to wear such a garment wherever she is. But if she is in court accusing another person of some crime or tort, the accused has a right to “face” his accuser. Here is a clear-cut example of rights conflicting, offered by Block himself! His “handling” of this obvious case of a rights conflicting is to assert that anarcho-capitalist courts will resolve this conflict in various ways, and that this result will be better than that achieved by statist courts. Well, perhaps he is right about this: my paper was not intended to decide between various judicial systems. But if Block is correct, it is because anarcho-capitalist courts are *better at resolving rights conflicts* than are statist courts! After all, if there were no rights conflict here, and we could just deductively arrive at the “correct” result, then all anarcho-capitalist courts should reach the exact same, deductively correct, resolution to the issue. By admitting that just courts might resolve this issue in different ways, Block has given away the entire game.

In conclusion, I find Professor Block’s objections to my paper to be based upon a very partial reading of my thesis, one focused entirely upon my comments on the works of Rothbard and Block himself. He treats these comments as if they were a standalone paper themselves, rather than correctly understanding them as merely examples of the rationalism that is evaluated in the first sections of the paper. In brief, while I am thrilled that Professor Block chose to address my paper at all, I do not find his objections to it, based as they are on a partial reading of it, convincing.<sup>1</sup>

## NOTES

- 1 Thanks to Robert P. Murphy for helpful comments.

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# Libertarian Preferences: A Comment on Callahan and Block

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**Bio-sketch:** Marek Hudík is a postdoctoral research fellow at the Center for Theoretical Study at Charles University in Prague. His research focuses on price theory, history of economic thought, and the philosophy of economics.

In his article “Liberty versus libertarianism”, Callahan (2013) criticizes some versions of libertarianism for a single-minded exaltation of a narrowly-defined liberty above all other values. Referring to Oakeshott, he attributes this position to rationalism and discusses works of Rothbard, Hoppe, Block, Nozick, Buchanan and Tullock to illustrate his point. He then calls for a broader concept of liberty than the one advocated by the rationalist libertarians. Block (2015) attempts to clarify possible misunderstandings regarding his and Rothbard’s version of libertarianism and defends it against Callahan’s critique.

This comment also focuses on Rothbard-Block libertarianism: I argue that this version of libertarianism is characterized by a specific preference structure which does not allow for substitutability between justice and other political goods. I hypothesize that this preference structure is motivated by an attempt to build a logically consistent system; however, it is shown that the preference structure describing Rothbard-Block libertarianism is but one of many possible logically consistent preference structures. Therefore, commitment to logical consistency does not imply Rothbard-Block libertarianism. In the light of my argument, I show that Callahan’s critique of this version of libertarianism as a manifestation of rationalism misses the main point.

## 1 SINGLE-VALUE AND LEXICOGRAPHIC LIBERTARIANISM

Both Rothbard and Block agree that there may be a conflict between libertarian concept of justice and other goods (such as civil harmony) (Block, 2015, pp. 4-5). However, according to them, law should be concerned merely with justice and not with other goods.<sup>1</sup> This in particular means that justice should never be sacrificed in favor of something else.

To put it more technically, Rothbard’s and Block’s concept of law either treats commodities other than justice as neuters, or it lexicographically prefers justice to these other commodities. I refer to these two alternatives as single-value libertarianism and lexicographic libertarianism respectively. They are graphically represented in Figs. 1 and 2.

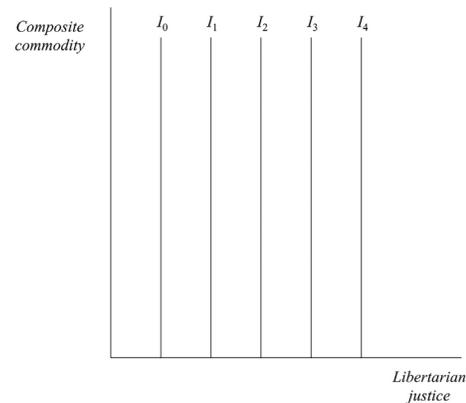


Fig. 1: Single-value libertarianism

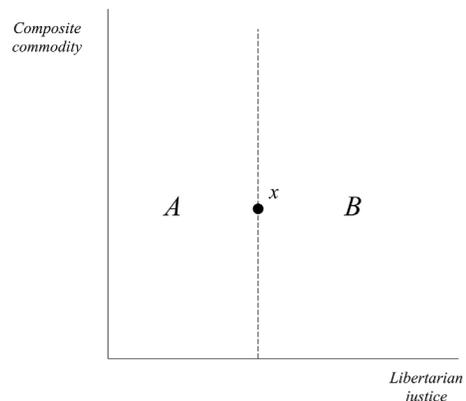


Fig. 2: Lexicographic libertarianism

Fig. 1 shows indifference curves<sup>2</sup> under the assumption that justice is a good and a composite commodity representing other possible concerns of a legal system (civil harmony, welfare, etc.), is a neuter. Libertarian justice is thus considered as the only value that should be taken into account by the system of law; hence the label single-value libertarianism. Fig. 2 represents lexicographic libertarianism: Outcomes preferred to  $x$  are all outcomes in the area  $B$  including those on the line going up from the point  $x$ . Outcomes to which  $x$  is preferred, are all outcomes in the area  $A$  including those on the line going down from the point  $x$ . Unlike single-value libertarianism, lexicographic libertarianism takes into account more goods than justice; however, these other goods are relevant only if justice is not an issue. Hence, according to both single-value and lexicographic libertarianism, justice can never be compensated by an increase in other commodities.

## 2 LOGICAL CONSISTENCY

Why should law disallow substitution between libertarian justice and other commodities? I believe the answer given by Block and Rothbard is twofold: firstly, they simply consider justice as more important (both absolutely and marginally) than anything else; secondly, they seem to think that such substitution would involve logical inconsistency. As put by Rothbard:

Dedicated to justice and to logical consistency, the natural rights libertarian cheerfully admits to being “doctrinaire,” to being, in short, an unabashed follower of his own doctrines (Rothbard, 2006, p. 32).<sup>3</sup>

Block illustrates this dedication to logical consistency with his example of a man perched on the flagpole owned by someone else, fifteen stories above the ground:

At any given time, there are starving, or drowning, or seriously hurt people somewhere in the world. If we may with impunity violate this woman’s private property rights to her flagpole, in effect hold that her castle is no longer her castle, then, if we are to be logically consistent (something about which Callahan is not intent), we may not object when all of us are compelled by law to become Good Samaritans (Block, 2015, p. 9).

However, Block’s argument is a *non sequitur*: a violation of property rights in one situation does not imply that in order

to be logically consistent one has to violate property rights always. To use an analogy with consumption behavior, if you drink coffee in the morning you do not have to drink coffee the whole day to preserve logical consistency of your choices. In some situation you prefer coffee to tea, while in other situation you prefer tea to coffee (for instance because marginal importance of coffee diminishes with its quantity). Likewise, a legal system may sometimes sacrifice libertarian justice to other commodities, and vice versa at other times, without compromising logical consistency.<sup>4</sup> For example, law may reflect preferences represented with standard indifference curves such as the ones in Fig. 3 (this particular case can be referred to as convex libertarianism).

To summarize, my critique of Rothbard and Block is not that their position is logically inconsistent; my critique is that they present it as the *only* logically consistent position.

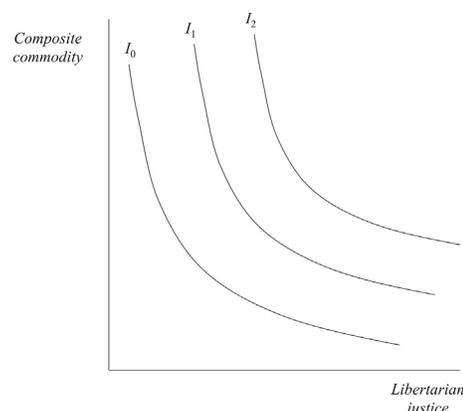


Fig. 3: Convex libertarianism

## 3 CALLAHAN’S CRITIQUE

Callahan (2013) argues that a narrow definition of liberty and its exaltation above other values, typical for Rothbard and Block, is a manifestation of rationalism. Although one can advocate single-value or lexicographic libertarianism without being a rationalist, Callahan is perhaps right in the sense that this preference structure is rather untypical and it is therefore unlikely that we would observe it among non-rationalists.

However, Callahan’s critique of Rothbard and Block in my view misses the main point: As Callahan himself illustrates with reference to Buchanan and Tullock, rationalism does not always produce exaltation of liberty (Callahan, 2013, p. 60). More to the point, one may agree with Rothbard’s and Block’s view on what counts as just (as I did in this paper),

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and yet be sometimes willing to sacrifice libertarian justice in favor of other goods. Ultimately, specificity of Rothbard's and Block's libertarianism consists primarily in its preference structure rather than in their rationalist concept of justice.

#### 4 CONCLUDING REMARKS

I agree with Block (2015, p. 12) that Callahan's critique does not kill the Rothbard-Block version of libertarianism: If one thinks that law should reflect single-value or lexicographic preference structure, so be it. But there is also nothing irrational about convex preference structure which allows for substitutability between libertarian justice and other goods. The principle *de gustibus non est disputandum* is perfectly applicable here. The only way how Rothbard-Block version of libertarianism can be "killed", is that no one finds it attractive. My aim was to show that one may find it unattractive without accepting logical inconsistency.<sup>5</sup>

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#### 54 NOTES

- 1 Callahan criticizes Rothbard's and Block's narrow definition of justice; my view is that the issue of definition is of minor importance: It does not make a difference whether the argument is framed as: "law should take into account more broadly defined justice" or as: "law should take into account also other goods than narrowly defined justice". I choose the latter route accepting Rothbard's and Block's concept of justice.
- 2 Austrian criticism of indifference (e.g. Block, 1980; Hudík, 2011) is irrelevant here, since the indifference curves can be interpreted as behavioral lines in Samuelson's (1948) sense.
- 3 Or as put by Block (2008, xiv): "The uniqueness of Libertarianism is found not in the statement of its basic principle but in the rigorously consistent, even maniacal manner with which the principle is applied".
- 4 An alternative way how to interpret Block's argument is that he is afraid of a slippery slope effect: if liberty is sacrificed in one situation, it is in practice more difficult to defend it in other situations. This interpretation is precluded by Block's statement that he (and Rothbard) are concerned only with justice, regardless of consequences (Block, 2015, p. 5).
- 5 I am grateful to Petr Bartoň, Walter Block, and Gene Callahan for their helpful comments. Any mistakes are, of course, mine alone.





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