Journal of Libertarian Studies
Volume 22 (2011): 537-580

Illiberal Libertarians: Why Libertarianism is Not a Liberal View, and a Good Thing Too; Reply to Samuel Freeman

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Libertarianism is a political philosophy concerned with the justified use of force. Libertarian law is guided by the non-aggression axiom, which stipulates that it ought to be legal for adults to do whatever they please provided they do not aggress against the person or property of another. (Mercer, 2004)

Libertarianism is not about morals, per se. Libertarianism is a political philosophy concerned with the justified use of force. Libertarian law is guided by the non-aggression axiom, which stipulates that it ought to be legal for adults to do whatever they please provided they do not aggress against the person or property of another.

Thus the legality or illegality of an act in libertarian law turns not on its morality or immorality but only on whether an act of aggression has been committed. In fact, no libertarian would argue against man's moral duty to exercise his dominion over the earth wisely and well, only that a moral duty is not to be confused with an enforceable legal imperative, at least not in law. (Mercer, 2004)

Waco. Ruby Ridge. Murrah building. 9/11 - World Trade Center. Haiti. Rwanda. Iraq. Afghanistan. Israel-Palestine Wars. World War I. World War II. Nazi death camps. Soviet gulags. Murder. Rape. Theft. Kidnapping. Slavery.

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I. Introduction

Why the juxtaposition of the two quotes and then the long list of man's inhumanities to man? It is to illustrate that the libertarian philosophy is logically incompatible with the latter. If people would simply refrain from "aggressing against the person or property of another," while the world might well not be a perfect place,[1] at least we would be spared the listed horrors. For this litany of acts all have one thing in common: persons and their property are subjected to invasion, or initiatory violence, or uninvited border crossings against their property in themselves or in physical objects. Uphold the one, fully, without exception, and the other disappears. Not "all but" disappears, either. Totally, and completely ends.

Now, surely, all men of good will wish for the total complete and utter end of such inhumane activities as initiatory violence, or coercion? If you thought that, you reckoned without Freeman (2002), who charges that libertarians are not "liberal," and likens libertarianism to, of all things, feudalism.

Libertarianism has been widely misunderstood, and the present essay under review is no exception. Libertarianism is a political philosophy, not a philosophy of life. It essentially asks but one single solitary question, and gives one single, solitary answer. The question: under what conditions is the use of force or violence legally justified? And the answer: only in response (defense against, retaliation against, punishment of) to the prior use of force or violence against a person or his legitimately owned property. It shall be the purpose of the present paper to defend this libertarian philosophy of nonaggression against Freeman's attacks and correct his misconceptions of it. We follow his outline: section II Institutional Features of a Liberal Constitution 1. Equal rights to Basic Liberties; 2. Equality of Opportunity; 3. Markets, Allocative Efficiency and the Social Minimum; 4. Public Goods; 5. The Public Nature of Law and Political Authority; III. Libertarianism's Formative Principles; IV. Why Libertarianism is not a Liberal View; 1. The Full Alienability of Basic Rights; 2. Absolute Property and Invidious Discrimination; 3. Markets and Monopolies; 4. The Libertarian Rejection of Public Goods and the Social Minimum; 5. Political Power as a Private Power; V. Conclusion.

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[1] Victimless crimes would still exist. Drug addiction, prostitution, pornography, gambling, excessive alcohol consumption, incest between consenting adults, etc., would no doubt continue with the cessation of physical aggression against non aggressors.

II. INSTITUTIONAL FEATURES OF A LIBERAL CONSTITUTION

With this introduction, we are now ready to consider, and reject, pretty much the entire corpus of Freeman (2002). This author starts out his rejection of libertarianism as follows:

> Liberalism as a philosophical doctrine can be distinguished from liberalism as a system of social and political institutions. Philosophical liberalism maintains that, first, there is a plurality of intrinsic goods, and that no single way of life can encompass them all. There are then different ways of living worth affirming for their own sake. (2002, 105)

Reading this through one set of eyeglasses, one can readily agree with Freeman. There is indeed a world of difference between the two philosophies, and it is a good thing too.[2] That is because the two of them are, properly, concerned with very different issues, and if they were identical on this point, they could not both be doing their jobs. In this manner we could also say that there is a world of difference between fish and bicycles,[3] and this is also a good thing; they each have very difference essences, jobs to perform, etc. Here, liberalism, a philosophy of life, stresses "each to his own," or "different strokes for different folks," while libertarianism, essentially a theory pertaining to what the criminal law ought to be, simply takes no cognizance of any such issues.

However, there are other sets of eyeglasses. Looking through an alternative one, we discern a not so subtle put down of libertarianism, in favor of liberalism. The latter allows for a myriad of lifestyles, the former, seemingly does not. Well, to be sure, libertarianism does not "allow" for murder, theft, etc. If there is any difference between the two on this score, liberalism is so "open" that it does. Freeman may not welcome this particular conclusion, but in the analysis to follow, we will demonstrate that it holds true.[4] However, short of

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[2] With apologies to Fish (1994).

[3] No apologies to the so-called feminists. I characterize them as "so-called" since I do not at all think that what passes for mainstream leftist feminism really defends women's rights (see Walker, et. al, 2004; Block, 1991; Block and Walker, 1985). In contrast, I highly regard libertarian or individualist feminists (no "so-called" here) such as the Association of Libertarian Feminists (http://www.alf.org/), and such individuals as Wendy McElroy (http://en.wikipedia.org/wiki/Wendy_mcelroy) and Candice E. Jackson (http://en.wikipedia.org/wiki/Candice_E._Jackson).

[4] To anticipate ourselves, Freeman correctly maintains that liberals are archists; e.g., statists. But as we will demonstrate, government is the monopoly of

uninvited border crossings, in the libertarian legal code, *all* non-invasive acts, no matter how abhorrent to anyone else, would be permitted by law. Can liberalism match that level of "liberality?" Hardly.

But this does not sufficiently distinguish liberalism from libertarianism. For in yet another sense, they do not conflict; the former is just a limited aspect of the latter. Here libertarianism is a more logically consistent and all encompassing philosophy than liberalism. Take their two views on sex. Liberalism says: "Any sexual act between consenting adults should be legal." In contrast, for the libertarian, *any* act between consenting adults, sexual, social and even commercial, should be legal. Thus libertarianism in this case accepts the basic premise of liberalism, but applies it far more widely, fully and consistently.

Freeman (2002, 106) wishes "to situate on the map of political conceptions three contemporary views, each of which is called 'liberal': (1) classical liberalism (2) what I will call 'high' liberalism,' and (3) libertarianism." He uses "the term 'classical liberalism' in the Continental sense to refer to a liberalism that endorses the doctrine of laissez-faire and accepts the justice of (efficient) market distributions, but allows for redistribution to preserve the institutions of market society."

Let us stop here, since there are already problems. According to the *Columbia Encyclopedia*,[5] "laissez-faire" means "leave alone, in economics and politics, (a) doctrine that an economic system functions best when there is no interference by government. It is based on the belief that the natural economic order tends, when undisturbed by artificial stimulus or regulation, to secure the maximum well-being for the individual and therefore for the community as a whole." On the one hand Freeman claims that classical liberalism is a laissez faire philosophy; well and good, it is. But on the other hand, he claims it "allows for redistribution" of income, surely a policy logically incompatible with "no interference by government" in markets.

And, as for "preserv(ing) the institutions of market society," it is difficult to see how this can be accomplished by violating these very institutions, that is, by employing government interference to these supposed ends. Using government to uphold market society by coercive redistribution of money is like a protection racket offering security to its "clients." This, logically, *cannot* be done, for its "clients" are

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initiatory force within a given geographical area, and, as such, is *necessarily* involved in theft from those it is pleased to call its "citizens," and murder when and if they properly resist.

[5] http://www.bartleby.com/65/la/laissezf.html; accessed on 4/9/04.

really victims. Nor can our author's scenario occur either, for as soon as the government steps in to the market with its invasive hands, supposedly in order to "preserve" markets, it thereby, and necessarily so, *violates* them.

A better schema needs to be employed, if we are even to be able to communicate instead of passing each other like ships in the night. I offer the following. At one end of the spectrum is anarcho capitalism. Here, there is no government at all, no "political means";[6] all is private, all is voluntary. There are no taxes at all in such a system. The most incisive spokesmen for this view are Murray Rothbard (1982), Hans Hoppe (2001) and Lysander Spooner (1870). Next in line is libertarian minarchism; from this perspective, government is limited to upholding the non-aggression axiom of this philosophy. To this end it employs three means: armies, to defend against foreign interlopers, police, to shield against the domestic variety, and courts to determine guilt or innocence. Taxation would either be absent entirely, and government functions financed voluntarily, or would be severely limited to the amount necessary to performing such functions. Typically, the percentage of the GDP taken up by taxes would be in the neighborhood of 5–10%. The names most prominently associated with this position are Robert Nozick (1974) and Ayn Rand (1957). These two, together, comprise and exhaust libertarianism. After that, in the direction of increasing statism, are the classical liberals. In this view, in addition to the three institutions already mentioned, numerous other interventions would be justified, including but by no means limited to government creation of money, involvement in education, in the setting up of a relatively low income safety net below which incomes would not be allowed to fall, public roads and highways, harbors, mosquito abatement, plus numerous other functions and interferences incompatible with the non aggression axiom such as antitrust, eminent domain, etc. Prominent advocates of this position include Milton Friedman (1962), James Buchanan and

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[6] Stated Oppenheimer (1975, p. 12):

> There are two fundamentally opposed means whereby man, requiring sustenance, is impelled to obtain the necessary means for satisfying his desires. These are work and robbery, one's own labor and the forcible appropriation of the labor other others. . . . I propose . . . to call one's own labor and the equivalent exchange of one's own labor for the labor of others, the "economic means" for the satisfaction of needs, while the unrequited appropriation of the labor of others will be called the "political means." (As cited by Rothbard, 1998, pp. 49–50, ft. 4)

Gordon Tullock (1962) and Friedrich Hayek (1944).[7] Although there are no specific tax percentages emanating from this quarter, one gets the sense from reading in between the lines that 20–30% would be acceptable. We then arrive at what Freeman calls high liberalism, more accurately characterized as left liberalism, or socialist liberalism, or liberal socialism.[8] This view adds a whole host of other rights violations (from a libertarian perspective) such as affirmative action, laws against freedom of association, rabid support for coercive unionism, etc. As of this writing, the proportion of the GDP funneled through the public sector is about 35%. Since left liberals want an increase, particularly for more welfare and public works and a larger civil service, we can characterize their goal as perhaps 45–65%. These are the liberals who never met a government program of which they did not approve.[9]

Lest there be any mistakes about this outline, there are undoubtedly overlaps between the positions outlined above. But this is a more accurate political typology than the one presented by Freeman.

Another difficulty with Freeman (2002, 106) arises with regard to his claim that redistribution "preserves the institutions of market society." A "market society," if it means anything, is a social order under which incomes reflect the contributions as others (buyers) seem them, of participants in the free enterprise system. "Redistribution," on the other hand, is merely an obfuscatory synonym for theft. It alters incomes so that they reflect not economic productivity, but political power, i.e., pure naked aggression.

The two are logically incompatible. What would Freeman mean, then, by his assertion that the one can "preserve" the other? After all, squares cannot preserve circles, nor vice versa.[10] However, whatever the merit of this claim, it must be acknowledged at least that war cannot preserve peace while the war is ongoing. Perhaps it can later be attained. At least then, Freeman must acknowledge, the market cannot be "preserved" as long as redistribution continues to occur. At most, perhaps it can later be attained.

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[7] For a critique of this, see Block 1996.

[8] It is indeed curious as to why he would want to characterize this view as "high." Perhaps for obfuscation. Apart from foreign policy, the neo conservatives fall into this category.

[9] Except, of course, for anything pertaining to the military, the police, or to groups such as the CIA and the FBI.

[10] Peace cannot attain war, but some might argue that (just) war is needed for (true) peace.

Likely, this author means that redistribution preserves markets in the same manner in which Franklin Delano Roosevelt was reputed to have "saved capitalism" with the New Deal. This president did no such thing, of course, since his socialistic interventions, W.P.A., Social Security, Tennessee Valley Authority, Smoot Hawley, Civilian Conservation Corp. etc., were the very anathema of free enterprise (Rothbard, 1963). But did they not create democratic socialism, or the mixed economy, and thereby obviate outright socialism, or communism, an even greater departure from capitalism? Not a bit of it. Rather, they rendered this far more likely.

In similar manner, the U.S. was a far more capitalist country before the advent of the coercive transfer of funds from some to others. I resist saying from rich to poor, because this is by no means clear. Yes, some welfare goes to the poverty stricken. But an inordinate amount of it consists of financial aid to corporate welfare bums, transfers in the very opposite direction. It is an empirical claim, and a rather rash one, to assert that bribing poor people[11] is the best or only way to quell anti private property rights revolutions. In any case, virtually all revolutions are fomented by groups other than the very poor, and further laissez faire creates *greater* equality than interventionism (Gwartney and Lawson, 2000, 17).

States Freeman (2002, 107): "Correctly understood, libertarianism resembles a view that liberalism historically defined itself against, the doctrine of private political power that underlies feudalism." We shall have occasion, below, to dissent from this viewpoint. At present, only a few words are necessary. "Private political power" is a veritable contradiction in terms,[12] not unlike "square circle." If there is any political power, it must of necessity stem from government. Private individuals, who eschew statism in all of its manifestations, can only be counted as participants in markets.

1. Equal rights to Basic Liberties

According to Freeman (2002, 108) "The most characteristic feature of a liberal society is it toleration of beliefs and diverse ways of life. Dissent, nonconformity, and an assured space of independence are accepted as normal in social life." It cannot be denied that this

[11] We are now assuming, only arguendo, that the direction of the welfare payments is on net balance from those at the upper end of the income distribution to those at the other.

[12] We here abstract from individual muggers, thugs, and small groups of gangsters.

statement has a certain resonance when it comes to classical liberalism (in the 19th century sense of this word), or libertarianism. But as far as Freeman's brand of left liberalism (in the 20th century sense of this word) is concerned, this applies only to civil or personal liberties and social, not economic rights, centered around deviant practices involving victimless crimes. For example, pornography and prostitution,[13] outlandish hair and clothing styles, drugs, homosexuality, miscegenation, gambling, free speech, etc. Here, the two contending philosophies, libertarianism and liberalism,[14] are in substantial agreement. Certainly, the various civil liberties associations can be counted upon to rise to the defense of such acts.

However, with regard to what Nozick (1974, 163) has characterized as "capitalist acts between consenting adults," ordinary commercial activity such as profit maximizing, charging interest, attempting to compete so as to drive one's competitors out of business,[15] then the very opposite is the case. Here, the left ("high") liberals are viciously *intolerant* of non conforming behavior. "Assured space of independence" is a will o' the wisp. Note that Freeman himself hedges his claim of liberal tolerance with the proviso "with prescribed limits" (2002, 108) and no truer words were ever said.

Freeman (2002, 108) makes much of liberalism's "freedom of religious beliefs" but forgets all about these "prescribed limits." The former do not amount to a hill of beans, in the liberal lexicon, when they conflict with politically correct shibboleths mandating the hiring of gays, females, blacks, etc. Even his much vaunted "freedom of speech, press and opinion, and inquiry into all subjects (2002, 109) vanishes like a puff of smoke when confronted with the specter of holocaust denial, or racial differences in I.Q. Fie on so called (left) liberal toleration. "Freedom of association" melts away like snow in the Sahara in the face of coercive unionism, affirmative action and nondiscrimination laws (Epstein, 1992; Levin, 1997; Block, 1998; Williams, 1982; Whitehead and Block, 2001).

States Freeman (2002, 109, fn. 11):

> a person's freedom of speech can be limited if it causes imminent violence or fear thereof (e.g., threats, conspiracies, or inciting to

[13] To the extent that modern liberalism has been overtaken by feminism, these first two no longer apply.

[14] Henceforth, I shall use this word to depict modern or left liberalism; i.e., socialism.

[15] To say nothing of being a middleman, sweat shop operator, landlord, inner city merchant, speculator. See on this Block (1976).

> riot), or deceptions regarding property (prohibitions against fraud or false advertising) or unjustifiable injury to personal integrity (restrictions against private libel or breach of privacy).

There is so much wrong here it is hard to know where to begin. We can start in with the fact that our author mixes oranges and apples and watermelons. His fruit salad approach does not distinguish between so called positive rights (e.g., the "right" to be fed, housed, clothed, at the expense of others) and real negative rights (for example, the right not to be murdered, raped or robbed). Instead, Freeman confuses the one with the other. Then he does not take cognizance of the fact that libertarians, too, would oppose by law threats, fraud, false advertising, and other real rights violations.

A third error is that Freedman glosses over his contradiction between championing "freedom of speech" (Freeman 2002, 108–109) and his desire to render illegal such things as incitement and libel, two paradigm cases of free speech. Take the first. Prohibitions against incitement imply a lack of free will. For if I can "incite" you, I can then control you, and you lack independent judgment and responsibility.

According to Rothbard (1982, p. 80):

> Should it be illegal . . . to "incite to riot"? Suppose that Green exhorts a crowd: "Go! Burn! Loot! Kill!" and the mob proceeds to do just that, with Green having nothing further to do with these criminal activities. Since every man is free to adopt or not adopt any course of action he wishes, we cannot say that in some way Green *determined* the members of the mob to their criminal activities; we cannot make him, because of his exhortation, at all responsible for *their* crimes. "Inciting to riot," therefore, is a pure exercise of a man's right to speak without being thereby implicated in crime.

Precisely. The outlawry of incitement is predicated upon the denial of free will. It assumes the hearer (and subsequent rioter) to be an automaton, completely suggestible. If so, why not outlaw all advertising, just merely the fraudulent variety? Worse, why not prohibit *all* speech, in that all it does is make slaves of ourselves to each other? But this is contrary to all of political philosophy. If man cannot make decisions for himself, how can it be justified to treat him as an adult, a member of society?

Now consider the prohibition of libel. The difficulty with such legislation is that it entails that people properly own their own reputations. But this is highly problematic (Block, 1991, 59–62). For if I owned my reputation, then your critical movie or book review of my efforts would constitute an undermining my property rights in my

own person. Paradoxically, our reputations consist of the thoughts of *other* people, and one cannot own another's thoughts. The reputation of A is not dependent upon what A thinks of himself. Rather, it is entirely based upon what others, B, C, . . . Z think of him. But, as A does not own the thoughts of these others, B, C, . . . Z, he does not, he *cannot* own his own reputation. Yes, he may sell it, in the form of good will, and he may work hard to make it a good one, but, notwithstanding these undeniable facts, he still logically cannot own his own reputation.

Another paradox: under a libertarian regime of full free speech,[16] reputations would be *safer* than they are at present. For, currently, when someone engages in libel, the remedies against it are, to say the least, imperfect, especially if the libeler is a rich and powerful corporation, such as the *New York Times*.[17] Under libertarian rules, in contrast, the libels would come so thick and fast that no longer would the average listener reason "where there is smoke there must be fire." In addition to newspaper columns featuring help wanted ads, houses and cars for sale, lost pets, etc., there would be libel columns. They would be filled with charges such as "John takes a bath with a rubber duckie," "Pete is a philanderer," "Joe is a rapist," etc. There would likely be thousands and thousands of such accusations aired. But their sheer enormity would cancel out their present power. No longer would a mere allegation suffice to harm a reputation. Under such a legal regime, those making charges would have to back them up with actual evidence. That is, libel alone would be rendered relatively impotent, and reputations would be safer.

At this point in his essay, Freeman (2002, 109) launches into a discussion of inalienability. He insist that liberals of his ilk maintain that rights are "both fundamental and inalienable . . . which means they have absolute priority over other political values; they cannot be sacrificed or weighed off against non basic rights."

Raising this issue is as unnecessary as it is mistaken. Why the former? This author is presumably attempting to draw a wedge

[16] This does *not* include the right to threaten anyone else, since that constitutes initiatory violence, and it is the essence of the libertarian philosophy that that, and that alone, be proscribed.

[17] Were someone to engage in libel against such a firm, matters would be reversed. Here, people must step gingerly around the institution that features "all the news fit to print" lest they find themselves as defendants in such a lawsuit.

between libertarianism on the one hand, and (left) liberalism[18] on the other. The proper way to do this, of course, is to focus on areas where the two perspectives are at odds. The problem with inalienability in this regard is that while all left liberals may favor it, this applies to the overwhelming majority of libertarians as well. In fact, in all of my research on the subject, I have been able to unearth only one other libertarian beside myself (Block, 2003) who favors the alienability side of this dispute: Nozick (1974).[19] In contrast, libertarians in good standing who join liberals in opposing alienability of basic rights include Murray Rothbard, Randy Barnett, David Gordon, George Smith, Stephan Kinsella and Richard Epstein (Block, 2003). Why, then, beat about the head libertarians on inalienability when virtually all agree with Freeman's position? Perhaps he revels in argument for argument's sake, or, is unaware that virtually all libertarians agree with him on this issue.[20]

However, since Freeman raises this issue, and uses it as a stick with which to beat up on libertarians, and, I take the opposite point of view, it may not come entirely amiss for me to critically examine his arguments.

The case in favor of alienability of basic rights[21] is as follows. If you own something, you have a right to sell it, or give it away; in a word, to alienate it from yourself. If you cannot do any of these things, your ownership of the right in question is to that degree rendered tenuous, or, even, nonexistent.

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[18] Actually, he is trying to show that classical and left liberalism are on one side of the political economic divide, while libertarianism belongs on the other. In my view, the correct characterization is that they all belong on a continuum, where the criterion of distinction is degree of coercion allowed by the specific philosophy. In this regard libertarianism takes a position on one extreme (opposed to all initiations of violence), left liberalism is located on the other (maximum use of state power) and classical liberalism is in the middle, but far closer to the libertarian ideal of limited government.

[19] Feinberg (1988) also takes a similar position, but he cannot properly be characterized as a libertarian.

[20] Note to my fellow libertarians who disagree with me on alienability: Freeman (2002) agrees with *you*. That alone ought to give you pause for further reflection on this issue.

[21] Whatever they are. In the present discussion we abstract from the fact the Freeman has in mind all sorts of both positive and negative rights, while my libertarian opponents on this issue focus, of course, on only one right: freedom, or liberty.

Take a case in point. My child is gravely ill. Fortunately, there is a cure for his disease. Unfortunately, it costs $5 million, and I am a poor man. Fortunately for me and my son, you have long wanted me to be your slave. So, we strike a deal.[22] You give me the $5 million I need, and I turn this over to my son's doctors. Then, I come out to your plantation, to do your bidding. I subject myself to your every whim (or at least the contractually specified ones). You may use violence upon me (up to the amount agreed upon in advance) if I displease you in any way. I gain, to the extent that I value my son's life more than my freedom. You benefit to the extent of the difference in value you place on my services (of greater benefit to you) and your lost $5 million (lower in your estimation).[23]

Any attempt by well meaning paternalistic[24] liberals, or people who are libertarian on all other issues but this one, to stop this trade by declaring it illegal, or unenforceable, will mean that your desire to own me is thwarted, and, perhaps of greater weight to tender liberal sensibilities, the poor man's child dies.[25] Further, we can use the liberals supposed devotion to live and let live, to "toleration" of diverse ways of life (Freeman, 2002, 108) against him. Why not allow and enforce these contracts for the minority alienability community that wishes to do so? Why force all people to adopt the majority (read white male) consensus?

What are Freeman's arguments against legalizing alienability of basic rights are as follows. First, he calls upon Kant (1965) who claims it would be a violation of "dignity" and that it "disrespects one's own humanity (Freeman, 2002, 111). But where is the "dignity" in standing idly by while your beloved child dies? Why is it to disrespect the poor man's humanity to allow him through his own actions to save his child's life?

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[22] It should be apparent that the slavery we are now discussing has nothing to do with the "curious institution" in operation before 1861 in the U.S. But, we live in such politically correct times it is perhaps necessary to say this.

[23] Unlike liberals, libertarians know full well that *all* marketplace transactions, without exception, are mutually beneficial in the *ex ante* sense of anticipations. Free enterprise is *not* a zero sum game, where one person exploits the other; where one man's gain comes at the cost of the other. Rather, *both* benefit.

[24] The road to hell is paved with precisely these motives.

[25] As long as the child is not a fetus, liberals can be counted upon to shed crocodile tears under such circumstances. For a libertarian analysis of abortion rights, see Block and Whitehead (2005).

According to Kant (1965, 98; VI: 330): "No one can bind himself by a contract to the kind of dependency through which he cases to be a person, for he can make a contract only insofar as he is a person."

But this is mistaken. This eminent philosopher (Kant, that is, not Freeman) fails to reckon with the fact that there are actually two distinct time periods in play in our little scenario. First, there is a "person" who is able to make contracts by Kant's own admission, since he is a "person." Second, at an entirely different time period, there is this slave, who is no longer a (legal) person. He must do as he is bid by his master. Of course, this second person, this slave, cannot make a contract any more, since he is no longer a (legal) person. But so what! There is no logical conflict here. At time t1 Mr. Jones, say, sells himself into slavery, for reasons good and sufficient to himself. He is a legal person, with all rights attaching to him, including that allowing him to sell himself into slavery. Yes, at time t2 he is no longer such a (legal) person; he may no longer sign contracts (apart from under orders from his master, we may suppose).

Freeman's second argument is based upon "freedom of association."[26] In his view, the master—slave relationship is all well and good, for those who wish it, provided that it remain purely a matter of private relationships. But it cannot, for such a contract "imposes duties not just upon the transferor, but also upon society and its members to respect and uphold such transactions. We are called upon to ignore the moral fate and political status of others as equals, and to participate in their civic and moral debasement" (Freeman, 2002, 112).

But Freeman does not properly distinguish between force and coercion. The former may or may not be justified, the latter, by its very nature, can never be, since it is defined as *unjustified* force. It is hardly *coercive* to force people to live up to their freely undertaken contracts. A and B agree that the former will well to the latter his ring for $100. A hands over the ring, first. Whereupon, he holds out his hand, expecting the $100 to be placed in it by B. Instead, this latter walks off with the ring, without paying for it. Yes, force could indeed properly be employed to compel B to give A the $100 as specified in the contract (or, at the very least, to return this jewel). If so, however, this could not properly be called coercion. For it would be entirely justified. In this scenario B is a thief, and A is completely in the right

[26] This comes with particular ill grace from a modern day liberal, whose entire philosophy is predicated on undermining this right; through compulsory government edicts which force us to associate with one another whether we wish to do so or not, on the basis of considerations such as race, sex, gender, national origin, etc.

in utilizing force to stop him. If there is anyone employing coercion, here, and there certainly is, it is B, the thief, not A, the victim.

Similarly, if I contractually obligate myself to be your slave (I have already taken your $5 million and turned it over to my child's doctors) and I then renege, say, by trying to escape, or disobeying you, I have *stolen* your money. In attempting to force me to obey you, or to have me returned to you, you may be using force, but, never, coercion.

Forget about the "public and political realm" for the moment. Suppose there are only three people on our island society. The rich would be slave master, the poor man and his son (we can suppose that the doctor is the rich man). Is it *right* that the poor man sign a slave contract with the rich one in return for the performance of the latter in saving his son's life, and then renege on the deal after the operation is concluded? Of course not. No more right than when B ran off with A's ring without paying for it. If we are to have just law, it *must* compel thieves to disgorge their ill gotten gains, and/or live up to their contracts.

Either the law is just or it is not. If it is, then it deserves to be publicly upheld. If this means we are called upon to "ignore the moral fate and political status of others as equals," and participate in their moral and civic debasement, then so be it. Yes, the slave, but also the punched boxer in the ring as well as the prisoner justifiably placed in jail, are in some sense "debased." If you don't like this, don't go to boxing matches, and join a society of absolute pacifists. Better yet, get over it. This is the logical implication of *having* laws. But do not use coercion against the aggressive boxer, the jailor who watches over the properly convicted, *nor* the legitimate slave owner who achieves this status through voluntary contract with the slave. None of these people are guilty of breaking any law that deserves to be in force. And the same goes for "mutual assistance of others in distress (Freeman, 2002, 112)." The pummeled boxer, the justly incarcerated prisoner, and the voluntary slave are all now in "distress." Too bad. They owe their present "distressed" state of affairs to their own past choices. They made their beds; it is only fit, proper and ethical that they now be made to lie in them.

Next consider Freeman's (2002, 112, fn 18) attempt to pull at our heartstrings with his misunderstanding of the concept of rape:

> suppose slave contracts are accepted as legally and morally binding. I agree to grant refuge to an abused runaway who is contractually bound to slavery due to youthful exuberance, indiscretion or desperation. Am I under a legal and moral obligation to turn her in? Wouldn't I be guilty of more than one crime if I did not: not simply aiding and abetting, but also crimes of property such as conver-

> sion and receiving stolen goods? . . . Suppose the slave's owner is a pimp. Does this mean forcing the slave to engage in involuntary intercourse is not rape so long as her/his owner consents? Or, if it is still rape, do "johns" nonetheless have a right to rape with the owner's permission?

First of all, let us not posit any "abused" runaways. If they are really abused, this means they were treated more harshly than their slave contract allows. If so, then I too join with Freeman in opposing the slave owners. They are contract violators. No. Let us suppose that the slave was whipped or in other ways "abused" only within the parameters set forth in the slave contract, or, that there were no such stipulated limitations, in which case it would be logically impossible for the master to "abuse" the slave.

Then, yes, under these assumptions Freeman is indeed under a legal and moral duty to turn in this slave.[27] If not, he is in effect harboring, or concealing, or receiving stolen property. Further, there can be no such thing as "involuntary intercourse" for the female slave whose owner is a pimp. In her slave contract, she has *already* agreed to alienate her body for such sexual services. Yes, it is indeed, and only, rape if her *owner* does not consent to this sexual intercourse. And, if the woman in question objects, which she has no right to do, ask her if she really wishes she had not made the contract in the first place, and instead allowed her child to die.[28] If she still maintains her position, then the contract, as it turned out, was not beneficial to her in the *ex post* sense, selfish unworthy parent that she was. But, necessarily, this contract *did* improve her welfare, as she saw it then, in the *ex ante* sense, otherwise she would not have agreed to it.

But this is in the very nature of commercial agreements. They are always welfare enhancing *ex ante*, and usually so also, but not always, *ex post*. That people sometimes regret deals they made in the past is no reason for the law not to uphold them after the fact.

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[27] Or at the very least not to hide her and refuse to give her up. Strictly speaking, under libertarianism there are no positive obligations, so Freeman would not have to go out and seek her rightful owner.

[28] Freeman speaks of the antecedents of the contract in terms of "youthful exuberance, indiscretion or desperation." Very unlikely. First, "youths" cannot sign *any* binding contract, let alone one as important as this. Second, "indiscretion" seems an unlikely motive for in effect throwing away one's life, or, at least, putting it under the control of another person. Not bloody likely. Third, yes, "desperation" fills the bill entirely. A mother would have to be desperate to give up her freedom, or even life, to save her child. But this seems *admirable*, not the opposite.

According to Freeman (2002, 113):

> Liberalism holds that consenting adults do not have the rights or powers to impose such extraordinary duties upon others as a result of their private agreements. Beneficiaries of servitude pacts and other bargains alienating basic rights cannot ask government to recognize and enforce them. It may be in an agent's interests at the time to alienate her basic rights; nevertheless, the private demand to publicly recognize this agreement as a binding contractual relationship conflicts with others' moral duties and interests (as liberals perceive them).

If (left) liberals truly see duties and interests in this way[29] then they are sounding the death knell for the sick child of our example. Let us never forget nor sweep under the rug this sick child. Sick child! Sick child! Sick child! How can the liberals (and mistaken libertarians) be so heartless as to favor a legal regime which in effect does not allow the mother to trade away her freedom for the *life*, the very life, of her beloved child. This is heartless and evil. For, make no mistake about it. If this "private contract" which Freeman disparages will *not* be upheld by the forces of law, the $5 million of our example will certainly not be forthcoming. Moreover, in opposing the "agent's interests . . . to alienate her rights" Freeman type liberals put themselves on record as being against allowing the mother her self actualization. Some liberals!

Here is another example of the fallacious reasoning of Freeman (2002, 113, fn. 19):

> The public recognition of all as civic equals and as free is crucial here. This means that the liberal case for inalienability does not depend simply on the idea that liberal government and its citizens are not to be complicit in the enforcement of servitude contracts were to say: "Okay, so do not exercise the coercive powers of the state to enforce servitude contracts. All we ask is that beneficiaries have immunity from criminal laws when they seek self enforcement. . . . No one else need dirty their hands." The liberal position is that servitude contracts are absolutely void, not deserving any legal recognition. The fact that the beneficiary of an involuntary (sic)[30] servitude contract seeks to coercively enforce the contract himself is reason enough for government to intervene. (After all, it is a violent assault on a person.)

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[29] To be fair, as we have seen above, virtually all libertarians agree with Freeman on this (Block, 2003). If on only these grounds, Freeman's attempt to disparage libertarians fails, dismally.

[30] Surely, Freeman meant "voluntary," not "involuntary" here.

But so is the punch by one boxer to the proboscis of another "a violent assault upon a person." So does the imprisonment of a guilty prisoner by a warden constitute "a violent assault upon a person." Would Freeman ban boxing? Incarceration? Consensual adult sadomasochism? Not bloody[31] likely. If so, then he contradicts himself by refusing to have the forces of law and order uphold consensual voluntary slavery contracts. The logic of the matter is impeccable: boxing agreements are no more and no less than (highly rule stipulated) short term mutual voluntary slave contracts. How else can it be just for each of them to pummel the other? In any other context, this would constitute assault and battery.

Now consider the following (Freeman, 2002, 113): ". . . liberals do not respect the outcome of just any given private agreement as a valid enforceable contract." But this applies to libertarians, as well. For example, there is a body of libertarian literature that disputes the validity of fractional reserve banking contracts (Block and Garschina, 1995; Hoppe, et. al. 1998; Hoppe, 1994; Hülsmann, 2002; Rothbard, 1962; de Soto, 1995, 2001) on the ground that this constitutes theft: creating more titles to property than there is property. And, certainly, there is no libertarian who thinks murder for hire contracts are valid. Wife E hires hit man F to murder her husband, G. This would be an illicit contract. Certainly, it should not be enforced, since it is inherently coercive.[32] Both E and F should be punished to the full extent of the law, for, of course, there is no consent on the part of G. But this is in sharp contrast to voluntary slave contracts which feature mutual consent.

According to Freeman (2002, 114): ". . . the right to enter binding contracts . . . is . . . basic for liberals." I find this more than passing curious, in light of the fact that this author has spilled so much ink *opposing* voluntary slave contracts. Freeman (2002, 114) also favors "eminent domain procedures if necessary for the public good (so long as fair compensation is made.)" In this our high left liberal joins a bevy of classical liberals,[33] but *not* libertarians.[34] But

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[31] No pun intended here.

[32] A contract to buy or sell a square circle is not inherently coercive, but it is meaningless.

[33] For example, see Epstein (1985). For a debate on this issue between Epstein and the present author, see http://maroon.uchicago.edu/news/articles/2004/05/04/block_epstein_will_d.php; 5/4/04; http://www.mises.org/blog/archives/002009.asp

[34] At last, in this example Freeman succeeds in drawing a line in the sand which includes left and classical liberals on one side of it, and libertarians on the other.

how can coercive compensation be "fair?" Surely, it cannot be. Suppose a philosophically oriented robber approaches me, gun drawn, and demands my wallet. I give it to him, but protest that this is thievery.[35] The robber agrees with me, and apologizes for his rash act. Whereupon he gives me a paper clip, or a rubber band, or a bottle top in return for my wallet and calls this just compensation. Who is to determine "fairness?" In markets, very much including slave markets, this is done by mutual consent. In the present scenario, this is ruled out. Yet, Freeman opposes slave contracts which are mutually agreed upon, and supports eminent domain, where, patently, it is not. So much for the liberals' adherence to consent.

Take another case. I own a small house with a burial ground in the back, ever so precious to me. I wouldn't sell it for any price, not for all the tea in China. Recently, I had an offer of $10 million for the property, which I adamantly turned down. Now, the government seizes this for me, and decides that fair compensation is only $10,000. Is this fair? No. I am being robbed, here, to a far greater extent, than the difference to me between my wallet and the paper clip. If robbery occurred in the gunman case, it certainly did in this one, too.

If eminent domain is unjust, it is also unpragmatic.[36] Land can be amassed for roads and highways, and the like, despite "hold outs,"

[35] Such repartee, we posit, is actually welcomed by philosophically oriented robbers.

[36] If the government were a legitimate institution, if we all had previously agreed to set it upon a unanimous basis, then it is *not* the case that eminent domain would be unjust. Rather, it would be a logical impossibility. For if the articles of confederation we had all signed included a provision allowing our government to take over land belonging to the citizenry at prices reasonable, unilaterally, to them alone, then I had already *agreed* to be bound by this procedure. I am no more violated by this condemnation than if I sign a condominium agreement stipulating no white picket fences allowed, and then have this condition later "imposed" upon me through "coercion." No, it is not coercion on the part of the condo association to use violence to ensure I live up to my agreement not to install a white picket fence. No, it is not coercion on the part of the condo association to use violence to ensure I live up to my agreement not to install a white picket fence. Rather, it is coercion on *my* part if I insist upon violating the agreement in this way. But the same can be said for the slave contract. For the argument that government is not a legitimate institution, see Spooner (1870), Hoppe (2001), Rothbard (1982).

by buying options along several parallel routes, and abandoning any that encounter this difficulty. This problem can also be overcome by bridging over, or tunneling under, holdout property (Block and Block, 1996).

States Freeman (2002, 115): "Rights of property are not . . . fundamental: they can be regulated and revised for reasons other than protecting and maintaining rights and liberties."

But this is mere code for saying that this author stands ready to support theft of property. It is predicated on the aphorism: "Personal rights before property rights." This, however, is misleading. For it is only *persons* who can have property rights. Violating them is an abrogation of a man's control over his own body and those parts of nature he has managed to acquire through peaceful and legitimate means.

2. Equality of Opportunity

Freeman (2002, 116) defines this concept as follows: "Discrimination in allocating positions that are based on race, gender, and other natural or social attributes unrelated to job performance would . . . be legally prohibitable."

One difficulty with this position is that it makes a hash of this author's (2002, 109, 117) supposed adherence to freedom of association. It is an utter impossibility to "freely associate" with one's fellow man if one is ordered by government who to associate with (minority members) and who to shun (white males, presumably).

Further, why limit this to "job" performance? If the right not to be discriminated against is a basic liberty (Freeman, 2002, 117), it should permeate our entire social order. It should apply to employment, of course, but also to friendship, marriage, social clubs, etc. One can just picture a Freemanian state marriage bureau prohibiting the matrimonial association of an oriental couple on the grounds that ethnicity or race is immaterial to marriage, and there have been too many couplings of orientals with one another. Then, too, heterosexuality could come under attack, as could homosexuality, for *both* of them feature discriminatory behavior. Followers of the first perversion exclude all same sex members from consideration of romantic relationships; followers of the second shun all members of the opposite sex in this regard. No, it is only bisexuals who are innocent under such a logical extension of this "liberal" philosophy, which thus implies compulsory bisexuality would be imposed by law.

As well, there are numerous other objections to non-discrimination laws (Epstein, 1992): they lead to quotas, loss of freedom, economic inefficiency, arbitrariness, general disrespect for law, etc.[37]

3. Markets, Allocative Efficiency and the Social Minimum

In this section of the paper Freeman embraces allocation of goods based upon market considerations, but rejects utilizing these institutions as a means of distribution. He plans, in other words, to take advantage of market efficiency, overriding the fact that the factors of production are *owned* by various individuals. For them, the back of his hand. Liberalism will expropriate their property when and as it sees fit. Is such a principle of systematic theft worthy of sober comment from an ethical point of view? At bottom it amounts to no more than pure naked theft. He (2002, 117) justifies his defense of such robbery on the ground that "A basic tenet of high liberalism[38] is that all citizens, as a matter of right and justice, are to have an adequate share of material means so that they are suitably independent." But why stop at expropriating physical property? Why not carry this principle of "right and justice" to its logical conclusion? To wit: suppose there were a machine that could transfer IQ points from one person to another.[39] For example, we could push two individuals into it, one with an IQ of 60, the other with 160, flip the switch and transfer 50 points from the latter to the former; both would emerge from the machine with IQs of 110. What could be fairer than that? Surely, if all citizens, as a matter of right and justice, are to have an adequate share of material means so that they are suitably independent" then they must also have an adequate share of societies' IQ points, to this same end. What good will it do the person with a score of 60 to be given some "material means?" He will scarcely know what to do with them. In that way, he will *never* be "suitably independent." How many liberals will step into such a machine and give up 50 of their IQ points? I hereby challenge Freeman to assert that he would, upon pain of hypocrisy and self contradiction. We have already established the "high" liberal principle: it is all right to steal people's physical property, for good egalitarian ends. Property is a social construct, anyway. It is no leap in

[37] Given that most laws are illegitimate since they are not confined to upholding the non aggression axiom of libertarianism, this last flaw is actually a mixed blessing. When most laws are illicit, it is difficult to oppose a general disrespect for all of them.

[38] This sounds like a particular pernicious version of *low* liberalism.

[39] I am again inspired in my invention of this machine by Nozick (1974).

logic to look upon intelligence in the same way. Is it fair that A has an IQ of 60, and B has 160? Surely not. The heavens call out for redress of such injustice.

Freeman (2002,118) also mischaracterizes Milton Friedman's version of the thievery he espouses as "public charity." It is no such thing. The Friedmanian (1962) negative income tax differs from his own redistributive scheme in no matter of essentials. It is a pure power grab, just as is his own. In this regard, Friedman, like Freeman, are "high" liberals. But this sort of "public charity" is a contradiction in terms, like a married bachelor. For the "charity" part of this phase indicates voluntary contributions, from donor to donee. But the "public" part of it denotes a coercive governmental tax subsidy scheme, where wealth is seized without permission from some, and given to others.

4. Public Goods

Freeman takes the view that public goods justify government action, either to provide them on its own account, or to ensure that the free enterprise system will do so. He contends that the latter suffers from market failure which needs to be overcome by the state apparatus if things like defense, lighthouses, sanitation, police and fire protection, streets and canals are to be provided.

This claim is marred by the empirical fact that, without exception, each and every one of these goods and services has been provided under laissez faire capitalism;[40] that is, without government provision either directly or indirectly.

Further, the argument cuts against the existence of government itself, at least in the eyes of its advocates, so it is logically illicit to use it to buttress that very organization. For, based on the public goods argument, I will not start up a government, since you will free ride on it, and garner its benefits without fully paying me for them. On the other hand, you will not start up a government either, since I will free ride on your initiative, and garner the benefits afforded by the state without fully paying you for them. But this means that, based on the public goods argument supposedly in support of government, that very institution cannot come into being in the first place. It is not true that the market cannot create roads, lighthouses, defense, etc.,

[40] See Barnett and Block, unpublished; Block, 1983; Hoppe, 1993, 2003; Hummel, 1990; Sechrest, 2004

because of the public goods argument, but this will do quite nicely in demonstrating that the *government itself* cannot arise in this manner.[41]

Another difficulty with Freeman's (2002, 120) analysis at this point is that he completely obliterates the meaning of the term "laissez faire," and renders it in a manner opposite to its true meaning. He states: ". . . laissez-faire . . . to the classical economists of the Scottish or English schools who advocated it . . . did not mean rejection of government's redistributive powers and acceptance of the 'night watchman' state." But this is precisely what it meant then, and means now.[42] How did Freeman bring himself to define this term in the exact opposite to its true meaning? He was intent upon showing that economists such as Adam Smith, who are widely credited with advocating this form of capitalism, did not deserve such an appellation. True enough (Rothbard, 1995a, 1995b). But this is no reason to pervert the meaning of a basic concept such as this.

5. The Public Nature of Law and Political Authority

Freeman (2002, 120) maintains that "political power" should be used to "impartially issue and enforce common public rules that apply to everyone." No argument from libertarians, who believe that proper law should be generalizeable, and apply to all, equally.

He (2002, 120–121) is not sure whether or not "coercive sanctions are needed to enforce these rules" for he adds to this proviso, "then again, they may not be." Here the libertarian diverges from the

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[41] A very astute referee realizes that this argument shows not that government cannot arise at all (that would be very strange indeed, given the undoubted existence of more governments than you can shake a stick at) but that it cannot arise *based on the public goods argument*. Instead, the state could have been born of conquest, an idea I readily support. See on this Rothbard (1961). This referee also maintains: "And it still might be that, now that (government) is here, its justification, as distinct from its origin, is that it has come to be a provider of public goods, which all of are better off with than without." Here, again, I agree with this referee: nothing stated in the referenced paragraph rules out such a possibility. However, for the case that we are not "better off" with statist provision of so called public goods, see ibid.

[42] According to the Columbia Encyclopedia, 2001, sixth ed. (http://www.bartleby.com/65/la/laissezf.html), "(ls fâr) (KEY) [Fr.,=leave alone], in economics and politics, doctrine that an economic system functions best when there is no interference by government. It is based on the belief that the natural economic order tends, when undisturbed by artificial stimulus or regulation, to secure the maximum well-being for the individual and therefore for the community as a whole."

Freemanian liberal, for "coercion" is *unjustified* force, and hence must be banned from civilized societies.

Another difference between the two visions is that Freeman (2002, 121) claims that political power "is continuous." But this means, if we interpret him strictly, and how else can we interpret an author, it can never end. But in the libertarian view, secession and rebellion are a right when "Governments become destructive of these ends." Then, we can "alter or abolish them" (Declaration of Independence, http://www.ushistory.org/declaration/document/index.htm).

Another difficulty arises with regard to the so called social contract. According to Freeman (2002, 121) "Legitimate political power" arises as a result of the "social contract" (which) is conceives as a (*hypothetical*) agreement among equals, by everyone with everyone else" (material in the first parenthesis added by present author; emphasis was added to material in the second parenthesis by present author.)

But why "hypothetical?" This is more than passing curious. Either it was an agreement by all involving all, or it was not. The fact that Freeman adds "hypothetical" indicates his concession that this event never took place at all. But if an agreement never took place, if it was only "hypothetical" it cannot serve as the foundation for law.

In sharp contrast, a vastly preferable foundation for law, and a philosophically valid one, is supplied by an eminent libertarian, Hoppe (1993, 204–207) in his "argument from argument." This author demonstrates that anyone who *denies* the libertarian law of non aggression against non aggressors, coupled with homesteading as the basis for private property rights, is committing a performative contradiction.[43] He is *using* his body, and the property it occupies, to *deny* the right of ownership in bodies and property.

Favoring this nonexistent "social contract," "Freeman (2002, 121–122) specifically rejects "a mutually beneficial contract of government between ruler and ruled" on the ground that "this is very different from a private contract between (unequal) parties for mutual benefit, which is the economic model used for contracts of government."

There are several problems here. First, if it is really a mutually beneficial voluntary contract through the market to provide defense services, fire protection, roads, public health, etc., then it *cannot* include *government* as one of the commercial interactors. This is

[43] See also Kinsella's (1992, 1996) estoppel approach, which is very complementary with the Hoppe insight.

because the "G" word is reserved for cases where the party of the first part (the state) *compels* the party of the second part (the citizen) to an arrangement *not* agreed upon by the latter. If we are to avoid confusion, we must characterize the institution that offers defense, lighthouses, police, sewers, education, etc., as a defense company, or a police agency, or a private school, etc. Second, in the market for goods and services of this sort, there is no "ruler and ruled." In all market interaction, specifically including this one, there are firms and clients, or sellers and buyers, or companies and shoppers, or businesses and customers. Third, contrary to Freeman, in the market, therefore, there are *equal* parties; *each* has the same rights as the other, *both* must agree before any activity occurs. It is only with regard to the apparatus of the *state* that there is inequality of this sort. And, then, there is not "mutual benefit," but rather pillage and exploitation.[44]

Then, too, Freeman (2002, 122) exposes himself as, of all things, an advocate of

> Democracy, or a universal franchise with equal rights o political participation, is a natural extension of (the) idea (of the rule of law, representative assemblies . . ., separation of powers); for it what affects all concerns all, and assuming that adults are normally best situated to understand their own interests, then it is natural to conclude that each person ought to have a share of political authority.

However, if we have learned anything from Hoppe (2001), it is that this system is a snare and a delusion. Giving practically unlimited power to a presidential despot is practically an invitation to rapine. Far better, if dictatorship we must have, is to grant it permanently, or at least for long periods of time, so that the rapaciousness which naturally arises in such contexts will at least be tempered by a somewhat lower time preference rate. That is, if the "leader" knows he owns the country over the long run, and can hand it over to his progeny when he passes, he will at least have some incentive not to engage in ruinous wars, and to interfere with the economic freedom that can make him rich. Imagine the very opposite scenario; suppose there were an election for president every *week* with tenure lasting only for those seven days. Given that his self interest lies in "making

[44] Says Schumpeter (1942, 198) in this regard: "The theory which construes taxes on the analogy of club dues or of the purchase of the services of, say, a doctor only proves how far removed this part of the social science is from scientific habits of mind."

hay while the sun shines" there will be practically no limit to his voraciousness.

There is also the problem that if "adults are normally best situated to understand their own interests," how can we reconcile democracy with the plethora of paternalist legislation emanating from this quarter? How can it be that people smart enough to be given the franchise must nevertheless be *forced by law* to wear seat belts, motorcycle helmets, pay for social security, use ladders of only certain approved specifications, and *prevented by law* from using drugs without prescriptions or FDA approval, or addictive substances. Logic demands that if "adults" deserve to vote in elections, they be capable of making these choices for themselves. And, if they are incapable of so doing, that we not allow them in the voter's booth. What rational person would entrust a madman, or a fool, with such power?

III. LIBERTARIANISM'S FORMATIVE PRINCIPLES

Freeman (2002, 123) acknowledges that libertarians do make some good points. They "endorse individual rights, individual freedom, and the liberal idea that people ought to be free[45] to determine their conduct and lives as they see fit, so long as they do not violate others' rights." So far, so good.

But then this author completely misconstrues the essence of coercion, and thus misinterprets libertarianism. He (2002, 124) states: "But libertarians do not condemn all coercion or aggression, or hold that no one can be forced to act in ways she (sic) has not chosen to. Libertarians clearly endorse the coercive enforcement of personal and property rights and contractual agreements."

Take ownership of the human body first. Libertarians maintain that each of us is the natural and proper owner of that organism we inhabit or occupy,[46] and only that one. Along comes a rapist, demanding access to a given woman's body, against her will. The intended victim, instead of mildly succumbing, shoots the would-be evil perpetrator in the very act of physically assaulting her. Libertarians would "clearly endorse" this act of hers. Heck, they would wildly cheer her on. Can this properly be characterized as "coercive enforcement of personal . . . property?" Only a lunatic would argue in this manner. Yes, this innocent woman is using force

[45] Why "women" in all these examples? Well, if Freeman can tug at our heartstrings, so can I.

[46] Here we assume no voluntary slave contract to the contrary.

against the rapist. But she is not *initiating* it. Rather, the *rapist* commences the hostilities or rights violation; the victim acts only in self-defense. This is not *coercion*, the unjustified use of violence. Rather, it is an instance of the *justified* use of force.

Now, take property rights. A woman is innocently walking down the street. A mugger runs by, and tries to grab her purse. She kicks him in the crotch, and he runs away. This woman, too, has "enforce(d) . . . property rights." Libertarians, and indeed all men of good will, would warmly support her heroic act. Freeman, and the "liberals" he represents, would presumably denigrate her, for her "coercion."

Now consider "contractual agreements." Man A sells his bicycle to woman B for $100. Woman B hands over the agreed upon amount of money to man A. Whereupon woman B asks man A for the bicycle. He refuses. At this point woman B overpowers man A, and seizes the bicycle (or the $100, it does not matter for our present purposes) from him. Woman B has now engaged in the "the coercive enforcement . . . of contractual agreements" much to Freeman's dismay. But, to anyone who understands the concept of justice, she is entirely within her rights. Man A was a *thief*, an evil contract violator, almost on par with the rapist of our first example, or the mugger of our second.

I must admit that Freeman (2002, 124) is aware of this sort of response. He dismisses it (2002, 125), however, on the ground that "Any political conception prohibits the unjustified use of force against others, and this is what the libertarian constraint against aggression or coercion really amounts to." And this is indeed true: even the communists and Nazis never used what they considered as *un*justified violence. But why should libertarians be castigated from something that applied to all political visions?

Next, Freeman (2002, 125) complains that "Despite their emphasis on consent, voluntariness and contract, libertarians are averse to appeals to consent or social agreement to justify their preferred list of rights and duties" such as "to respect the lives and physical integrity of others' persons, and their freedom of action and extensive property claims, our obligations to keep our contracts, avoid fraud. . . ." Yes, 'tis true. I admit it. Libertarians claim that we all have obligations to keep our mitts off of the persons and property of others without their permission—even though robbers, rapists and murderers have never agreed to any such restriction on their "liberties." This stems from the very meaning of ownership over persons and property. It implies that others have a duty to respect this. If this is repugnant to "high" liberals, then so much the worse for them.

Freeman (2002, 126–127) castigates libertarians for assigning "far less importance than does liberalism to freedom as individual independence and autonomy, the degree to which people are self-sufficient and can control their options and important aspects of their lives." But, again, this merely indicates that this author is confused between negative and "positive" rights, between wealth and power on the one hand, and liberty on the other. It is simply not true that libertarianism assigns "far less importance than does liberalism" to these things. Rather, libertarians allocate *no importance at all* to them. For remember, libertarianism is *solely* a theory about just law. It consists of *no more* than the postulate, given suitable property rights, of non-aggression, of non-coercion. True, implicit in that philosophy is that if these strictures are followed, then wealth, or "individual independence and autonomy"[47] will be maximized. Else, how explain the popularity of the libertarian saying, "Justice, though the heavens fall." This would be rendered not merely false but *meaningless* were it not the case that libertarianism focuses solely on negative rights, not so called positive ones, on *liberty*, not wealth.

Freeman (2002, 127) is mightily unhappy with libertarianism's support for "the unrestricted liberty to accumulate and to transfer to whomever one pleases full property rights." Why, he asks, "should this set of liberties be important, let alone fundamental?"

In order to see this, let us ask why we need property rights at all, and why unrestricted private property is the only rational alternative. We need them in the first place because, if we are to live in society, we must know, beforehand, which are legitimate actions, and which are illegitimate. Do I, for example, have a right to use this bicycle or not? Or do you? Or, perhaps, a third person? As long as there is scarcity, we must have a way of easily settling such potential disputes, or civilization is impossible.[48]

What are the alternatives to private property, based on homesteading (Block, 1990; Hoppe, 1993; Locke, 1948; Rothbard, 1973, 32) and on legitimate title transfer (Nozick, 1974), such as purchase, gift, trade?

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[47] Libertarians have no truck, in contrast, with self-sufficiency. If people wish to trade, to take advantage of the benefits of specialization and the division of labor, and reject self-sufficiency, this is well within their rights.

[48] Note, this is a mere utilitarian argument, unworthy, perhaps, of even being mentioned. For a more principled answer to this question, see Hoppe's (1993, 204-207) argument from argument, and Kinsella's (1992, 1996) estoppel approach.

One possibility is that Jones and his family (or the Aryans, or the proletariat, or the *ubermenchen*) own all property, and that the rest of us exist solely on their sufferance. This would be all well and good if there were something unique and relevant about such people, but there is not. Further, and invidious distinctions between people of this sort violates the generalizability requirement of all ethical systems: they must treat all people alike, unless a relevant difference can be shown. So this is rejected out of hand.

The second alternative is that each of us owns 1/n of all property. That is, if there are six billion of us, then we each own one six billionth of everything; persons, physical property, land, whatever. The difficulty here is purely pragmatic: it would mean the death knell for all of mankind; and if the necessary condition for a human ethic is that we, at least, survive, this cannot pass muster.

Why such a critical condemnation of this pure egalitarian scheme? If, literally, no one owned anything outright, but, instead, each of us owned 1/n of everything, then ordinary every day activities would be rendered impossible. Before I could so much as use a bicycle, I would have to get permission from n/2 + 1 of all its owners. Production, commerce, would all grind to a halt. Matters are even more difficult with regard to ownership of bodies. If I only owned 1/n of mine, I couldn't even vote for anything, for to do so would required the use of other people's property; e.g., the arm attached to the body I occupy, or vocal chords in this body.

And that is it. All other options are but them and variations on these three.[49] So. Which is it to be, Mr. Liberal? Let the ubermenchen own everything, consign the human race to death through large committee meetings, or follow the libertarian ideal?

Based on these considerations, we can now see our way to rejecting Freeman's (2002, 128) "suspicion that libertarianism is not so much about liberty as property." The two, of course, are but opposite sides of the very same coin. Liberty is but the right to use property: land, products, and human bodies. There *must* be property in this sense, if mankind is to live, since, to do so, he needs to utilize these things. *All* political philosophies, liberalism certainly included, must of necessity acquiesce in property rights; namely, agree that human beings may use their bodies, and the physical world around them.

[49] Ownership by claim, as opposed to homesteading, or by the government, is but a version of option 2, the ubermenchen alternative. There is simply no non-arbitrary way to distinguish the minions of the state, the lords, from everyone else.

So, there is no sense in berating property rights, or wailing about the necessity for their existence. The only question is, *who* is to have the right to such usage: homesteaders, traders, or those who initiate violence to take these things away from their first users.[50]

Freeman (2002, 129) asserts that property is a lot more complicated than simplistic libertarianism would make it out to be: "Systems of property differ depending upon how (complex) rules are defined. Actions permitted under one property system (such as full rights to sell or bequeath one's estate) might be prohibited under others."[51]

No. Matters are quite simple. Full rights in the above situation alone comprise a private property rights system. When there are prohibitions in force, those must emanate from some source or other. Whatever the genesis of these rules, they are a clear *violation* of the property rights of the now constrained owner. If this is done by a single rule, then we have a case of arbitrary monarchical rule; if under democracy, this is merely tyranny of the majority. In any case, this is an unwarranted seizure of part of the property rights of the original owner.[52]

Freeman (2002, 130) charges that libertarians "take it as self-evident that property involves unrestricted rights to use and dispose of things." This is just plain silly. There is certainly no advocate of this philosophy who would support me "disposing" of my garbage on your lawn; this is a clear case of trespass, or property rights *violation* (Anderson, 1989). I am certainly "restricted" in libertarian law as to the direction in which I can shoot my gun. If I so much as aim it at you, this alone constitutes a rights violation. To think that libertarians would not legally proscribe one person shooting another bespeaks a very much less than full understanding of this system.

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[50] Even our ownership over our human body can be explained in this manner. The baby, initially, does not establish ownership in his own person; he is too young. But, eventually, perhaps at roughly age 2, he begins to assert such rights by saying "No" to parents who wish to kiss him.

[51] Material in the first parenthesis supplied by present author.

[52] We assume, arguendo, that the original rights were just ones, and that the latter rules cannot be defended on the basis of self defense considerations.

IV. WHY LIBERTARIANISM IS NOT A LIBERAL VIEW

The Full Alienability of Basic Rights

Freeman (2002, 132) adds several misconceptions to his earlier discussion of alienability.[53] He avers that according to libertarian theory, voluntary slave contracts must be enforced "against the unfortunate person who one consented to enslavement, but who now, quite understandably, has had a change of mind." But market transactions are "for keeps." If people always had the option of reneging on contracts, there could be no such thing as a contract. Perhaps the voluntary slave in Freeman's scenario is a thief. He takes $5 million from the rich slave owner to save his child. Now that the operation of the latter is a success, he wants to run away; e.g., steal an important asset of his benefactor. Surely, this would not be allowed in any just society.

Freeman (2002, 133) also charges libertarians with the ubermenchen theory: "the world and all within it can be someone's (or more likely some class's) property, with all but one (person or group) devoid of freedom. . . ." But this is nonsense on stilts. As we have seen matters are the very opposite. It is the *libertarian* who insists upon generalizability; treating all people alike, in setting up a property rights system. The first user can be anyone, from any group. In contrast, it is the *liberal* who sets up the ubermenchen,[54] and supports him or it riding roughshod over people who earned their property honestly.[55]

2. Absolute Property and Invidious Discrimination

According to Freeman (2002, 135) the Jim Crow episode was one of almost complete laissez faire. The plight of the blacks who suffered from this system can fairly be laid at the door of free enterprise,

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[53] Freeman (2002, 109–113) has already dealt with the topic of inalienability. I have previously responded to him on this issue (see text accompanying fn. 18). He now raises it again. (Perhaps this is part of liberal essay organization.) Since this paper is intended as a detailed refutation of his article, I have no choice but to reply again.

[54] For democratic socialists of the Freeman stripe, this is invariably the majority in an election. One wonders how he and others of this ilk would deal with the fact that Hitler came to power as a result of just such an occurrence.

[55] Freeman says much more about alienability contracts in this section, but as virtually all of it is repetitive, I content myself with these few remarks.

private property rights, the libertarian legal code, and the "invisible hand."

He is very much mistaken. This legal regime of this era was about as different from that advocated by libertarians as it is possible for it to be (http://www.jimcrowhistory.org/resources/lessonplans/hs_es_jim_crow_laws.htm; http://www.britannica.com/blackhistory/micro/303/18.html; http://www.spartacus.schoolnet.co.uk/USAjimcrow.htm). Here is a statement from a teacher's guide for first graders in elementary school: "During the years of Jim Crow, state laws mandated racial separation in schools, parks, playgrounds, restaurants, hotels, public transportation, theatres, restrooms, and so on" (http://www.yale.edu/ynhti/curriculum/units/1996/1/96.01.01.x.html). This is certainly true. There were literally *hundreds* of laws, all of them incompatible with the free enterprise system, which prohibited commercial interaction between whites and blacks, and on the part of the latter. Without them, the inexorable quest for profit on the part of market participants would have lead to a very different result.

Take as an example laws prohibiting blacks from riding in the front of the bus. Why did not some entrepreneur[56] set up an alternative competing bus line, which would allow blacks to sit wherever they wanted, or that served members of all races? This would have been illegal, as a franchise, or permit from the government was needed for such an operation, and it was not forthcoming. If it were, the invisible hand of the market would have solved this difficulty in short order.[57]

Freeman (2002, 136) waxes righteously indignant at the refusal of libertarianism to condemn "racial, ethnic, gender, or religious discrimination." He thinks that because this philosophy will not incarcerate anyone from engaging in such activities,[58] "it follows that there is nothing unjust" about them, for libertarians. But such a conclusion would be invalid. It is a perfectly respectable libertarian position to censure such discrimination, but not to prohibit it by law.

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[56] White or black it matters not; all that is important that this person be interested in the color green.

[57] Most probably, had such a business enterprise been undertaken during this epoch, gangs of whites would have stopped it with physical violence, and the authorities would have done nothing to protect it. But this is hardly the libertarian ideal of free enterprise.

[58] This is because they do not constitute initiatory violence.

In any case, before the liberal goes on the warpath against folk who are not themselves initiating violence against innocent people, merely choosing their friends, marriage partners and yes, commercial contacts on a prejudiced basis, let them beware that they, too, live in glass houses. Or, are they ready to embrace bi sexuality?[59]

3. Markets and Monopolies

This section indicates that Freeman is innocent of even the most basic of economic insight. He (2002, 136) bemoans the fact that ". . . if market activities are left unregulated, freely associating individuals can just as well enter agreements designed to restrict others' options. But every market transaction precludes, or restricts at least some one other person's alternatives. I buy some bread. You are now unable to purchase that exact loaf. Joe Nerd works for Microsoft; he cannot also be employed by I.B.M. For this we need regulation?

Chicken Little-like, Freeman (2002, 137) fears the imposition of "economic serfdom" from unregulated free enterprise, since "someone may . . . acquire . . . complete control over some scarce natural resource . . . and charge others whatever he pleases." But in a market, *everyone* charges what he pleases; whether he can attract a buyer is of course entirely a different matter. I can charge you $1 million for the rubber band I hold in my hand, if I wish. But the same can be said of the "monopolist" of oil or water or timber; he, too, can ask for an astronomical figure for his property. Whether anyone will pay it is a different story.[60]

The reason these sorts of things do not occur in free markets has nothing to do with government regulation. Any attempt to "corner the market" will be met by higher and higher prices, as more and more of the good in question is purchased. Eventually, sellers will demand such high prices that it will no longer pay to even try.

No, the only true monopoly is that set up by Freeman's favorite institution: government. In the good old days, the king would grant a monopoly over certain goods in a given area, e.g., candles in London, or salt in Paris, to the duke who fought the good battle. In

[59] See text following fn. 36.

[60] For a refutation of the view that market concentration leads to higher prices and/or reduction in consumer welfare, see Anderson, et. al. (2001), Armentano (1972, 1982, 1991), Armstrong (1982), Block (1994), Block and Barnett (unpublished), Boudreaux and DiLorenzo (1992), DiLorenzo (1997), DiLorenzo and High (1988), High (1984-1985), McChesney (1991), Rothbard (1970), Shugart (1987), Smith (1983)

the modern era, monopolistic elements are contributed to the economy via such things as the post office, the motor vehicle bureau, tariffs, bailouts, business protections, etc. If Freeman is looking to the free enterprise system for the source of monopoly, he is barking up the wrong tree.

Freeman (2002, 137) also takes issue with the libertarian notion of homesteading private property by citing the Lockean Proviso (1948): "that others not be made worse off by an initial taking." In one interpretation, this could be the death knell for *all* of homesteading. For if we construe "worse off" in a very literal sense, then *every* time *anyone* mixes his labor with land *anywhere* he is making *every else* worse off in the sense that that particular resource is not longer potentially available for them. The problem with this is that it would not be actionable in a libertarian, or, indeed, any sane society. For *all* actions would have to be legally prohibited, and our species would end. Take for example my purchase of a loaf of bread. This drives up the price of this commodity, very slightly to be sure, but, still, it renders all other consumers *worse off*.

At the other end of this spectrum we could say that *no one* is ever made worse off by *anyone* homesteading *anything*, even if the material in question is the very last unowned possession on the entire planet. This is because if A grabs up the last little bit, then B, C, . . . Z have demonstrated (Rothbard, 1956) by their very inactivity in this matter that they prefer to do other things. It is only in this understanding that man can continue to live.

4. The Libertarian Rejection of Public Goods and the Social Minimum

In this section of his paper, Freeman (2002, 138) misconstrues libertarianism. He sees it as being composed, entirely, of limited government advocates, or minarchists: "The role of the libertarian state exclusively is to protect and maintain rights and entitlements against infringement, to enforce contractual agreements, and to resolve disputes." However, also part of the libertarian movement are the anarcho capitalists, or free market anarchists. For them, the state has no proper function at all, and these tasks are all to be assigned to the free enterprise system. One would think it an obligation of a critic of libertarianism to at least present an accurate depiction of this philosophy.

5. Political Power as a Private Power

One problem with Freeman's (2002, 138–149) criticism of libertarianism under the present rubric of lack of public law is that he focuses almost solely on Nozick (1974). He seems not to be aware of the fact that the analysis of this latter author has been subjected to

withering criticism from other libertarians (Barnett, 1977; Childs, 1977; Evers, 1977; Rothbard, 1977; Sanders, 1977).

Another are his specific critiques, to which we now turn.

According to Freeman (2002, 139), libertarianism sees a need for adjudicative and executive but not legislative powers: "One peculiar feature of strict libertarianism is the absence of legislative authority, a public institution with authority to introduce and amend rules and revise social conventions." That is, there must be public courts and police, but new law making is unnecessary. This is not even true for limited government libertarians, let alone libertarian anarchists. In the former case, there is indeed a democratically elective legislative assembly, which is limited to administering the only three legitimate governmental institutions: courts, armies and police. For the latter there are really only two rules (one, really given that they are but different aspects of the essence of the philosophy): the first specifies how property legitimately comes into being (homesteading) and the second forbids anyone from interfering with owners' peaceful use of their possessions. The anarcho capitalists would ask, Why this fetish for new laws? This one will do just fine. It cannot be denied that from time to time new technology comes along, which appears to cry out for new legislation. For example, the discovery of radio waves, and the invention of radio and television.

But the case for new laws vanishes upon examination. All that was needed, in these new era, was to establish boundaries in the ether between different contending property owners, and this could have been done, by the *courts* based on the principle of "first come, first served." There is no difference in *principle* between setting up property boundaries on land, a problem with which courts have dealt for centuries, and in the air (Coase, 1962, 1965, 1966, 1998).

Another difficulty arises with Freeman's (2002, 139) statement, that for libertarians, "Political power is privately exercised." As we have seen above, in that philosophy, this is an internal contradiction. There is no better perspective on this than that of Oppenheimer (1926, 24–27):

> There are two fundamentally opposed means whereby man, requiring sustenance, is impelled to obtain the necessary means for satisfying his desires. These are work and robbery, one's own labor and the forcible appropriation of the labor of others. . . . I . . . call one's own labor and the . . . exchange of one's own labor for the labor of others, the "economic means" for the satisfaction of need while the unrequited appropriation of the labor of others will be called the "political means." . . . The State is an organization of the political means.

> No State, therefore, can come into being until the economic means has created a definite number of objects for the satisfaction of needs, which objects may be taken away or appropriated by war-like robbery.

Something else that sticks in Freeman's (2002, 140) craw is the fact that in the fully free society, those who do not pay for protection "are not shielded from aggressive" people. As a matter of fact, this would not be true. For, remember, in the libertarian vision, *all* property would be private. This includes roads, streets, highways, parks, libraries, forests, etc.[61] Take the case of a weak poor person. He, say, cannot afford to pay a defense agency to protect him from malefactors. But he has a (poorly) paying job, rents an apartment, uses the bus, walks to the store on the street, etc. There will be very wealthy entrepreneurs who own each and every one of these amenities. They will have a strong incentive to ensure that clients use them in safety. Their own continued economic prosperity depends intimately on the job they do in this regard. Proof? Which place do you think is safer: California's Disney Land, or New York's Central Park? To ask this is to answer it: the former, of course. For were a rape or a mugging to occur on those premises, millions of dollars of good will would be lost. But in the latter case, no one in a position of authority stands to lose a penny of his personal fortune if a user of the facility is brutalized.

But suppose this phenomenon of the poor free riding on the largess of the rich, safety wise, did not exist. Posit, arguendo, that the poor had to pay for their own protection. What of it? Non-invasion is indeed a right, in the libertarian philosophy. But guarding is entirely a different matter; an element of positive "rights" or wealth. If the poor want bread, let them pay for it themselves. If they want safety, the same applies. However, it is no accident that in capitalist societies where everyone has to pay for what they want, the poor tend to be both safer and relatively richer (Gwartney, et al., 1996) than in those where government plays a larger role in the economy.

Yes, "libertarianism resembles feudalism" (Freeman, 2002, 141, fn. 73) just as seduction resembles rape. The latter two both involve sexual intercourse, and the former two are both political systems. But there the resemblance abruptly ends. For in each case, the first of these pairs, libertarianism and seduction are *voluntary* activities, while rape and feudalism are *coercive*. Did you hear that old joke:

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[61] If he is too poor to avail himself of these amenities, he has no choice but to depend upon private charity (Olasky, 1992).

"Do you know the difference between a living room and a bathroom? No? Well, then don't come to my house." In like manner we can say, "Do you know the difference between seduction and rape, between trade and theft, between coercion and mutually agreed upon interaction? No? Well, then don't discuss political economic philosophy or law."

Freeman, unfortunately, cannot make this distinction, the most elemental and basic in the arena under discussion. The serf did not *agree* to "belong" to the manner, and do the master's bidding. Rather, he was *forced* into such behavior. A similar relationship obtains all throughout the feudal hierarchy.[62] In sharp contrast, the employee *agrees* to his job contract with the employer, and vice versa. The housewife *agrees* to her purchase from the grocer, and vice versa, and so on all throughout the free economy. The only one who does not agree to be bound by civilized order are the robbers, rapists and muggers. So, yes, the libertarian advocates the use of force against *them*. Thus, it must be admitted that libertarianism and feudalism are similar in that both use force. But the former confines the use of violence strictly to defense, and the same cannot at all be said of the latter.

Freeman (2002, 142) finds it "difficult to see how the countless sophisticated rules that make up the modern institutions of property, contract, securities, negotiable instruments, patents and copyrights,[63] and so on, could effectively evolve simply by the Invisible Hand." The explanation for this difficulty is perhaps that this author does not believe in the efficacy of this concept in the first place. But private law[64] (the law merchant, the American Arbitration Association, the private orthodox Jewish courts Bet Din) has not proven itself behindhand when it comes to applying basic rules to new conditions.[65] Indeed, they have one advantage denied their

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[62] This is not to say that there were not *some* elements of voluntary agreement in feudalism. To that extent, this system resembles libertarianism. Of course, there were *some* elements of voluntary agreement in Nazism, Communism, etc. Presumably, Freeman will garner great delight in my admission that libertarianism resembles these systems, too, in that one regard. For more on feudalism see: http://www.infoplease.com/ce6/history/A0818585.html; http://www.britainexpress.com/History/Feudalism_and_Medieval_life.htm; http://en.wikipedia.org/wiki/Feudalism.

[63] There would be no patents under libertarian law, and non contractual copyright protection would be non existent. See on this Kinsella (2001).

[64] See Benson 1989a, 1989b, 1990, 1993; Stringham 1998-1999, 2002, 2003; Stringham and Boettke, 2004.

[65] See the discussion, above, concerning radio and television.

public counterparts: the need to attract customers. It is no accident that judges in these venues are known for their sagacity, while those ruling over the public courts, if they are known for anything it is for being failed politicians.

Look at matters this way. There is at present no world government.[66] Each country is, therefore, sovereign. Does this spell the death knell for international law, international trade? Not at all. Except for a few rogue nations that invade others, when the latter have not realistically threatened them, peace reigns. International courts commonly settle commercial disputes. The relations between Iceland and Japan, Canada and South Korea, Australia and Norway, are properly described in such a manner. Well, in the libertarian vision, *individuals*, not nations, would be sovereign. This would not spell the end of civilization. Yes, there are rogue people, just as there are rogue states. But civilized discourse is still not an incoherent notion, as Freeman makes it out to be.

Freeman (2002, 144) charges that libertarians advocate using power "against persons who have not consented to its exercise against them." This seems to be unfair to a person such as he with liberal sensibilities. This charge is true enough. Free enterprise defense agencies would indeed use force against (some of) those who had not consented to any such thing. But this would be limited to criminals of the order of kidnappers, murderers, rapists and thieves; in other words, people who first initiate violence against others. Where is the problem?

He claims for his own liberal system (Freeman, 2002, 144) legitimate ". . . jurisdiction over parties and particular grievances and disputes, as well as the validity of judicial judgments based in an authorized body of laws." But given jurisdiction by whom? authorized by whom? The Constitution is of no licit authority, as no one living now has agreed to be bound by this document (Spooner, 1870) nor is its application limited to, as is libertarian law, criminals. Rather, politicians and bureaucrats presume to rule over, tax, regulate, *innocent* people convicted of no crime at all. Can a greater outrage of justice be imagined?

Our author (2002, 145) criticizes libertarian law for lacking a fiduciary nature:

> Economic contractual relations normally are driven by private interest; parties are indifferent about the good of one another and

[66] The United Nations is a debating club, with no power independent of its constituent elements, the various member countries.

> negotiations are conducted at arms length. Economic contractual relations are not fiduciary relations, which by their nature require acting for another parties' interests even at the expense of one's own.

But when is that last time government acted in any such manner? That politicians and bureaucrats act in their own personal self interest is the core finding of the Public Choice School of political economy (Buchanan and Tullock, 1962). How else did that joke gain currency: "I'm from the government, and I'm here to help you."

Then there is the impartiality criterion. In the view of Freeman (2002, 146): "People receive only those protection, arbitration, and procedural rights they can afford to pay for. Political power is not then *impartially* administrated." Yes, this is true for protection and arbitration services. In the market, you get only what you pay for,[67] and a good thing too. This is the very ethic of the free enterprise system. To deny this is to embrace forced egalitarianism. Try this "logic" with any other good or service: "People receive only those (carrots, bicycles and pencils) they can afford to pay for. (Economic) power is not then *impartially* administrated." Here, it is clear, this is no more than a naked claim for forced egalitarianism at the point of a gun, hardly worthy of sober comment.

What about procedural rights? These are different. Any free market court that wishes to long continue in business must gain and hold a reputation for fairness, probity, justice. If they were to utilize different procedural rules for different people, this would vanish in a moment. For example, suppose a court subjected poor people to the procedural rule utilized for "witches": hold them under water for 30 minutes; if they live, this proves they are witches. If they die, well that is just too bad for them. Who would patronize such an establishment? Remember, on the market, courts would be dependent upon satisfying customers, and no one, no one at all would patronize an establishment that could be so arbitrary.

Freeman (2002, 148) bewails the fact that under the libertarian legal code, "there is no notion of a uniform public law that is to be impartially applied to all individuals." But this is a bit harsh, given his prior complaint that this system would have no way to change to meet new conditions. Previously, he (2002, 139) called for ". . . legislative authority, a public institution with authority to introduce and amend rules and revise social conventions."

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[67] Apart from free riding on rich property owners of roads, parks, apartment buildings, etc., when you are a customer.

But this is simply incompatible with full uniformity. If revisions, emendations, alterations in law are to be the order of the day, and there are to be various state court systems, and different regional jurisdictions, then it is *impossible* that there be full uniformity of law.

In any case, this is a condition that his own system, too, fails to meet. At present, under statist law, there are numerous different systems. Internationally, there is the English system of law, the French, the Roman, Sharia. Even within the U.S., the first two of these are represented; the second in Louisiana, the first everywhere else. Even within the U.S., apart from Louisiana vs. the other forty nine states, before the Supreme Court has spoken, there are different laws in operation in the several lower court districts.

V. CONCLUSION

In the ideal political system, no one would initiate violence against anyone else. Justice requires no less. The state is an organization that necessarily violates this stricture. Therefore, government is necessarily unjust. This is the position of anarcho-libertarianism, and nothing said by Freeman (2002) undermines the case for this system of natural liberty.

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