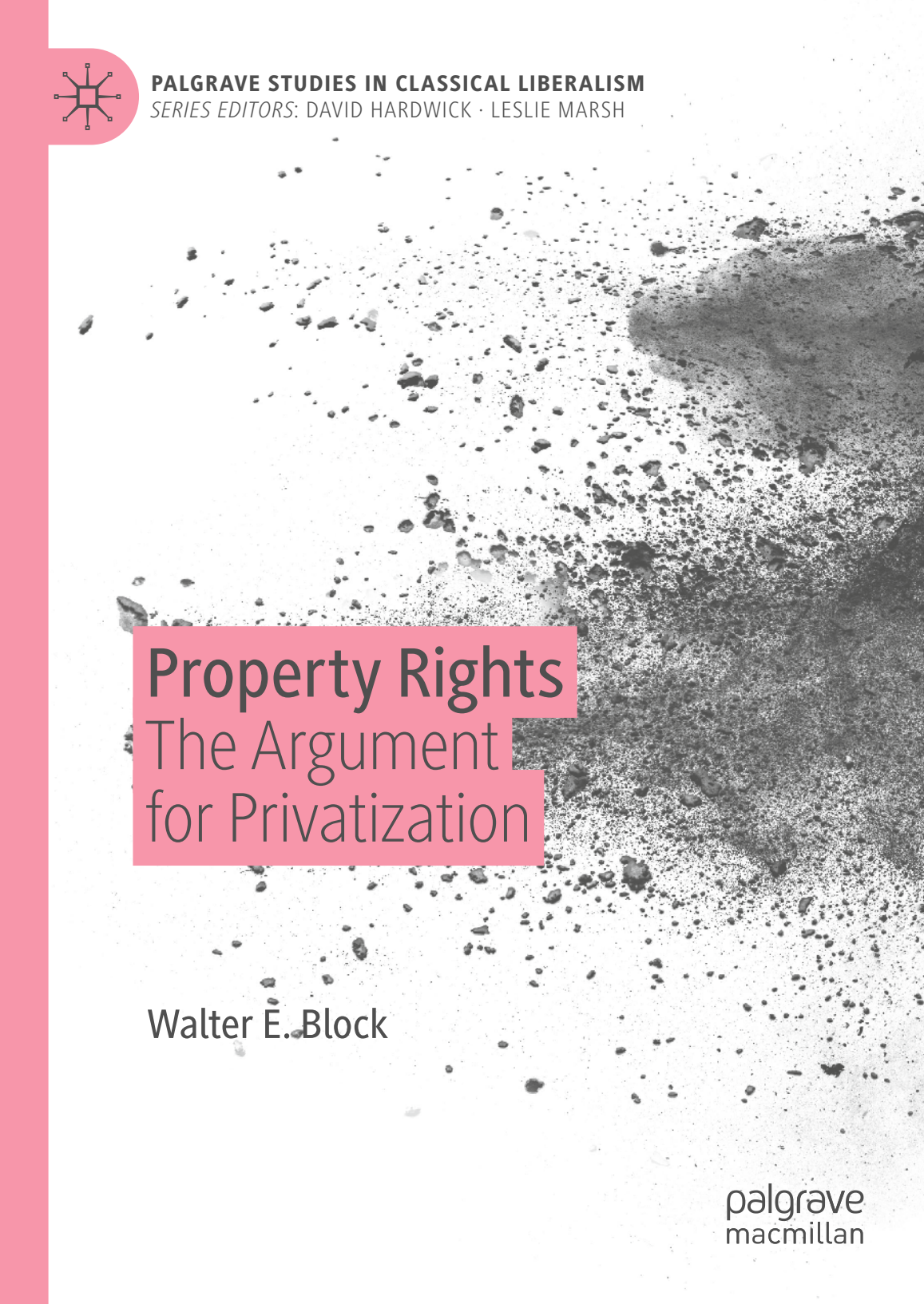

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Property Rights
The Argument for Privatization

Walter E. Block

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Walter E. Block

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Foreword

Dr. Walter Block is one of the most impressive, and productive, students of my late friend and advisor Murray Rothbard. Like Murray, and myself, Dr. Block's work is rooted in Austrian Economics as taught by the man I consider the greatest thinker of the twentieth century, Ludwig Von Mises. In *Private Property Rights*, Dr. Block applies his mastery of Austrian economics to explain why private property rights must be respected if we are to obtain economic prosperity, individual liberty, and a civilized social order. Even more importantly, Dr. Block exposes the fallacies in the arguments of those who oppose private property rights.

Perhaps the most useful service Dr. Block performs is his analysis of the fallacies that cause some non-Misesian libertarians to take positions undermining private property and a free society. Hopefully, Dr. Block's arguments will cause these well-meaning but misguided libertarians to reexamine and ultimately adopt the Misesian paradigm.

One of the most impressive aspects of this book is Dr. Block's demonstration that respecting private property rights helps resolve areas of social conflicts. For example, if the government controls schools, then there will inevitably be quarrels about how the students shall dress, what they should read, what shall be taught, and how the institution should deal with other controversial issues. But when parents control education, then students can receive an education that reflects their needs and the wishes of their parents.

Even those who disagree with some of Dr. Block's conclusions will benefit from studying this publication. Buy this book, and an extra copy for a friend with a thirst for an exhilarating intellectual adventure encompassing the sort of legal theory, economics, history, and political philosophy that we must adopt if we are to have a truly free society.

Former U.S. Congressman (R, Texas) Dr. Ron Paul

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Introduction

Private property rights are the bedrock not only of the economy but of civilization itself. They may not be a sufficient condition to justice and prosperity, but they are certainly a necessary condition. And yet private property rights have been widely denigrated not only by economists and philosophers characterized as of the left but of the right as well. This book presents a radical and unflinching defense of private property rights and a critique of its intellectual enemies.

New Orleans, 2019 Walter E. Block

Part I

Philosophy

1

Property and Exploitation

1. Property Rights

Whenever one says "I own a house," what one normally means is: I have the right to determine how that particular resource—described in objective, physical terms—is to be employed; I am free to employ it for any purpose whatsoever, provided that in so doing I do not impair the physical integrity of resources owned by others; I am likewise entitled to expect that the physical integrity of my resource, my house, remains unaffected by the actions others perform with the physical resources at their disposal. Property rights, then, are commonly conceived of as extending to specific, physical objects. These objects are economic goods and hence have value; otherwise, no one would claim them. Yet it is not to the value attached to a specific resource that property rights extend, but rather exclusively to the physical integrity of such a good. I do not own the value of my house. I own a physically specified house, and I have the right to expect that others will not physically damage it.

W. E. Block, *Property Rights*, Palgrave Studies in Classical Liberalism,
https://doi.org/10.1007/978-3-030-28353-7_1

2. Physical Property, Yes; Values, No

Plausible as this theory of property is,[1] in much of contemporary political economy and philosophy, confusion abounds on the issue of whether property rights concern the value of physical things or, instead, it is the physical things themselves which are of value.[2] It is thus necessary to clarify why the common notion of property rights as extending exclusively to physical things is indeed correct, and why the notion of property rights in values is flawed.

First, it should be noted that these theories are incompatible with each other. It is easily recognized that every action of a person may alter the value (or price) of another person's property. If A enters the labor or the marriage market, this may impair B's value in these markets. And if A changes his relative evaluation of beer and bread, or if A decides to become a brewer or a baker himself, this may change the property values of the—other—brewers and bakers. According to the view that value-impairments constitute rights violations, it follows that A's actions may represent punishable offenses. Yet if A is guilty, then B and the brewers or bakers in turn must be entitled to defend themselves against A's actions. Their right to defend themselves can only consist in their (or their agent) being permitted to physically attack or restrict A and his property: B must be entitled to physically bar A from entering the

[1] See, for instance, Armen Alchian, Economic Forces at Work, Indianapolis: Liberty Fund, 1977, pp. 131–132; notes Alchian: "although private property rights protect private property from physical changes chosen by other people, no immunity is implied for the exchange value of one's property … Private property, as I understand it, does not imply that a person may use his property in any way he sees fit so long as no one else is 'hurt.' Instead, it seems to mean the right to use goods (or to transfer that right) in any way the owner wishes to long as the physical attributes or uses of all other people's private property is unaffected. And that leaves plenty of room for disturbance and alienation of affections of other people."

[2] The idea of property-in-values underlies, for instance, John Rawls' "difference principle," that is, the rule that all inequalities among people have to be expected to be to everyone's advantage—regardless of how they have come about (Rawls, A Theory of Justice, Cambridge: Harvard University Press, 1971, p. 60, pp. 75f, p. 83); and also Robert Nozick's claim that a "dominant protection agency" has the right to outlaw competitors regardless of their actual behavior, and his related claim that "non-productive exchanges," in which one party would be better off if the other did not exist, may be outlawed—again regardless of whether or not such an exchange involved any physical invasion (Nozick, Anarchy, State, and Utopia, New York: Basic Books, 1974, pp. 55f, pp. 83–86).

labor or marriage market; and the brewers or bakers must be allowed to physically hinder A from spending his own money as he pleases, for example, from using his own possessions for the operation of a brewery or bakery. Based on this theory, the physical damaging or restricting of another person's property use obviously cannot be said to constitute a rights violation. Rather, physical attacks and physical restrictions on the use of private property then have to be classified as lawful defenses. On the other hand, suppose that physical attacks and physical property restrictions constitute rights violations. Then B and brewers or bakers are not allowed to defend themselves against A's actions. For A's actions—his entering the labor or marriage market, his changed evaluation of beer and bread, and his opening of a brewery or bakery—affects neither B's bodily integrity nor the physical integrity of other brewers' or bakers' property. If they engage in physical resistance against A's actions nonetheless, then the right to defense rests with A. In this case, however, it cannot be considered a rights violation that a person's actions impair the value of another person's property. No other, third alternative exists.

These two theories of property are not only incompatible, however. The alternative view—that a person may own the value (or price) or scarce physical goods—is also "praxeologically" impossible[3]; that is, it is a theory that we cannot put into effect even if we wanted to; as well, it is as argumentatively indefensible. For while every person can, in principle, have control over whether or not his actions cause the physical attributes of other persons' property to change, control over whether or not his actions affect the value of other people's property rests with other people and their evaluations. Consequently, it would be impossible to ever know in advance if one's planned actions were permitted or not. One would have to interrogate the entire population to make sure that one's planned actions would not impair the value of anybody else's property; as well,

[3] On the concept of "praxeology," and the systematic reconstruction of economic theory as a "logic of action," see Ludwig von Mises, Human Action. A Treatise on Economics, New Haven: Yale University Press, 1949 (3rd ed. Chicago: Regnery, 1966); idem, Theory and History: An Interpretation of Social and Economic Evolution, New Haven: Yale University Press, 1957 (reprint: Auburn University, Alabama: The Ludwig von Mises Institute, 1985).

one would have to reach a universal agreement on who was permitted to do what, with which goods.

Mankind would be long dead before this was ever accomplished. Hence, the theory breaks down as nonoperational. Moreover, the proposition that a person may own the value of a physical thing involves an internal contradiction. For simply in order to propose this theory it would have to be presupposed that its proponent is allowed to act.

He must do so prior (and simultaneously) to making his proposition or seeking agreement for his proposal regarding how to protect property values from value-intrusive actions. He cannot wait, and suspend acting, until an agreement is reached; rather, he must be permitted to employ at least his own physical body (and its standing room) immediately.

Otherwise he could not even make his proposal. Yet if one is permitted to assert a proposition—and no one could deny this without falling into a contradiction—then this is possible only because there exist objective (physical) borders of property. Every person can recognize these borders as such on his own, without having to agree first with anyone else with respect to one's subjective system of values and evaluations. Prior to even beginning the intellectual endeavor of proposing property theories, then, as its very own praxeological foundation, there must be an acting (e.g., speaking) man, defined in terms of physical or human resources. Value of utility considerations, agreements, or contracts—all things that contemporary political philosophers and economists typically regard as fundamental to their various theories of justice or property—already presupposes the existence of physically independent decision-making units. Also presupposed is a description of these units in terms of a person's property relations to definite physical resources—otherwise there would be no one to value or agree on anything, and nothing on which to agree or about which to make contracts. Anyone proposing anything other than a theory of property in physically defined resources would contradict the content of his proposition merely by making it. He could not even open his mouth if his theory were correct; and the fact that he does open it disproves his claim.[4]

[4] See also Hans-Hermann Hoppe, A Theory of Socialism and Capitalism, Boston: Kluwer Academic Publishers, 1989, ch. 7; idem, The Economics and Ethics of Private Property, Boston: Kluwer

3. Exploitation

The notion of property in values is praxeologically impossible (nonoperational) if formulated as a theory of justice, that is, as a system of rules that applies universally to each and every person alike. It becomes operational if—and only if—it is employed instead as a theory of exploitation. It is at least logically coherent as a system of rules that privileges one person or group of persons at the expense of another, underprivileged person or group. No one could act, if everyone owned the value attached to what he regarded as his.

Acting is possible, however, if B owns the value of the resources presently at his disposal and is entitled to determine what others, A, may or may not do with resources they control so as to not impair his, B's, property values. This would perforce include A's compensatory delivery to B of resources presently possessed by A. On the other hand, A is then entitled to own neither the value nor the physical integrity of his possessions and has no claim against B except that B allows him to do anything as long as it is to B's advantage.

Although praxeologically possible, such a system of rules does not even qualify as a potential human ethic, because it fails to meet the universalizability criterion. By adopting this system, two distinct classes of persons are created—super-humans or exploiters such as B, and sub-humans or the exploited such as A—to whom different "law" applies. Accordingly, it fails from the outset as a universal, human ethic. It is not—not even in principle—universally acceptable and thus cannot qualify as law. In order to be considered lawful, a rule must apply universally, for everyone equally. The idea of property in values, then, is not only praxeologically impossible—if universalized—but also inhumane—if not universalized.

Academic Publishers, 1993, part II; idem, 'Man, Economy, and Liberty,' Review of Austrian Economics, Vol. 4, 1990, esp. pp. 260–263. Hoppe, Hans-Hermann, Democracy – The God that Failed: The Economics and Politics of Monarchy, Democracy, and Natural Order, Rutgers University, N.J.: Transaction Publishers, 2001.

4. Examples

From this conclusion far-reaching consequences follow: (1) Discrimination; (2) defamation and libel suits; (3) comparable worth, parity, and affirmative action policies; and (4) the notorious "ex-lover seeks compensation for no longer being loved" suits would then have to be regarded as scandalous if at times amusing perversions of law and justice. Likewise, institutions such as (5) licensing laws; (6) zoning regulations; (7) anti-trust laws; and (8) insider trading laws represent legal outgrowths of the property-in-values theory.

Ultimately, they all involve restricting A's control over specified resources by correspondingly expanding B's control over them. This holds true even though A had not physically damaged, and was not in the process of physically damaging, any of B's possessions in doing whatever A wants to do with the means presently at this own disposal. B's claim against A is based not on physical losses caused by A, but rests solely on B's assumption that A's actions, unless restricted, impose a value loss on him. In this theory B owns the value of his property and hence is entitled to reassure his value-integrity by imposing physical restrictions on A's actions. One party seeks material compensation from another for the crime of non-material value damages suffered from having one's expectations regarding another's actions disappointed. Disappointed hopes, of which life offers an unlimited supply, are used by one person as a justification for trying to physically enrich himself at the expense of another.

Let us now illustrate the exploitative character of each of these legal practices in some more detail.

4.1. Discrimination

Strictly speaking discrimination is the refusal to deal with, trade with, live next to, buy from, sell to, engage in any commercial or non-commercial activity whatsoever, with another person. In discriminating against B, A undoubtedly reduces B's economic well-being, compared to what it would have been had A not so discriminated.[5] The value of B's physical

[5] A reduces his own wealth, too, apart from the psychic income gains that accrue to him, which is the reason he indulges his preferences in this manner.

property, as well as his "human capital,"[6] falls below the level otherwise attainable. Nevertheless, since B can only own his person plus his physical property, he can have no just claim against A for shunning him.

There exists a categorical distinction between physical invasion and the refusal to deal with, or discrimination.[7] A's actions are that of a boycott and do not constitute physical intrusion. But many commentators, unfortunately, fail to make this vital distinction. All too often it is thought, for example, that rape and discrimination against women are on a continuum. Or that lynching blacks is different only in degree to ignoring them. But a moment's reflection will show that these activities are night and day compared to each other. The physical assault of B on A (as "retaliation" against A's prior discriminatory action) always involves losses in value terms. But it also robs A temporarily or permanently of the very means to recover such losses. In contrast, while discrimination may likewise be unpleasant, in leaving B's physical possessions unimpaired, it strictly limits B's value losses. For example, if no one will hire ugly women to be secretaries, the wages they command will tend to decline. But at lower compensation levels, these females—their physical integrity and hence their job skills being unimpaired—will become more of a bargain in the labor market. This, presumably, will counter the negative effect of the initial discrimination. They will not be consigned to unemployment, the first result, but will rather find jobs, albeit at lower wages than absent discrimination. However, once on the payroll, they will be able to demonstrate their "true" productivity (perhaps even in excess of that of their more beauteous competitors) and can in this way recoup at least in part their initial salary losses. In sharp contrast, had physical invasion been directed against them (or, as a retaliatory action, against their more beautiful competitors), none of these ameliorative reactions could have come into play.[8]

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[6] Gary Becker, Human Capital, New York: National Bureau of Economic Research, 1964.

[7] See Walter Block, 'The Economics of Discrimination,' The Journal of Business Ethics, Vol. 11, 1992, pp. 241–254.

[8] One must also distinguish between discrimination on the part of a private property owner and that engaged in by the State. In the former case, as we have seen, the law of private property assures that value losses may be recovered by the "victim." But this does not apply when government engages in discriminatory behavior. If the civil service shuns ugly secretaries, their wages will fall as a result. But this will not make them more attractive to the bureaucracy, since their access to

4.2. Defamation and Libel

Most commentators have argued that one has a legitimate ownership right to one's reputation. But this is not so. For the simple reason that one's reputation consists of the thoughts of other people.[9] That is, A's reputation consists solely of the thoughts of B, C, D, and B's reputation of those of A, C, D, and so on. But since no one can own the thoughts of other people, one cannot, paradoxically, own one's own reputation.

While there can be no universal right to one's reputation, and libel and defamation do not constitute exploitation per se, the right of a person to engage in libelous or defamatory action is not unrestricted. For while everyone has an unrestricted right concerning his thoughts, the right of free speech is not absolute. For example, no one has the right to tell another person "unless you hand over to me your wallet, I'll shoot you." This sort of speech would be strictly forbidden in a private property society. It is a threat to engage in initiatory violence. As well, no one, including any of my detractors, has a right to come to my living room to give me a speech or tell me what he thinks about me and when I tell him to leave object on the ground of his right to freedom of speech. A trespasser has no free speech rights whatsoever—on my property. Free speech rights, so called, are really but an instance of private property rights. I can say anything I want on my property and so can anyone else, including any libelous person, on his own property.

4.3. Comparative Worth and Parity Policies

Most advocates of Equal Pay for Equal Work (EPFEW) or of Equal Pay for Work of Equal Value (EPFWOEV) legislation maintain that these enactments are necessary in order to combat employer discrimination

coercive levies from the citizenry (e.g., taxes) shield them from any concern for profit. To the extent that the government engages in discrimination, then, the victims are in a far worse position than when this occurs in the private sector.

[9] See Murray N. Rothbard, Power and Market: Government and the Economy, Menlo Park, Cal.: Institute for Humane Studies, 1970; idem, For a New Liberty, Macmillan: New York, 1973; idem, The Ethics of Liberty, Humanities Press: Atlantic Highlands, N.J., 1982; see also Walter Block, Defending the Undefendable, New York: Fleet Press, 1976.

between males and females. Even were this the case, there would be nothing that should be legally untoward in such a situation, for women own only their labor power, not the price placed upon it by others. Did they but have a right to the latter, as we have seen, it would be impossible for anyone at all to engage in human action, lest they advertently or inadvertently impact on the value of any women's effort.

But it is not at all the case that women earn less than men due to employer discrimination. On the contrary, this state of affairs is due to the asymmetrical effects of marriage: it enhances male wages and reduces that of females. Due to unequal responsibilities in the average family for child care, shopping, cleaning, laundering, cooking, and a whole host of other such activities, the average wife earns only some 40% of her husband's salary. In contrast, there is no pay gap at all between females and males who have never been touched by the institution of marriage; the salaries of the never married are virtually identical. The much noted and reviled by feminists income ratio of 60%–75% is actually an amalgam of the experiences of these two very different groups of people.[10]

Contrary to the views of feminists, private property and markets are the institution, par excellence, which assures not only EPFEW, but EPFWOEV as well. Suppose, for example, that a man and a woman had equal productivity of $20/hour and that the man were paid this amount of compensation.[11]

[10] See Thomas Sowell, Race and Economics, New York: Morrow, 1983. See also Walter Block, 'Economic Intervention, Discrimination, and Unforeseen Consequences,' in: Walter Block/Michael Walker, eds., Discrimination, Affirmative Action and Equal Opportunity, Vancouver: Fraser Institute, 1982, pp. 101–125; idem, Focus on Employment Equity: A Critique of the Abella Royal Commission on Equality in Employment (with Michael Walker), Vancouver: Fraser Institute, 1985; Michael Levin, Feminism and Freedom, New Brunswick, N.J.: Transaction Books, 1987. Epstein, Richard A., Forbidden Grounds: The Case against Employment Discrimination Laws, Cambridge: Harvard University Press, 1992.

[11] That wages tend to equal productivity levels is one of the best established propositions in all of economics. This result can be illustrated in our example. If the man's productivity is $20 and his wage is higher than that, say, $25, the firm employing him will lose $5/hour. If they persist in this behavior, and especially if they apply it to other workers as well, they will go bankrupt. On the other hand, if the wage is below this level, say at $12, then a profit opportunity of $8 exists. Any competitor would be glad to woo these workers away from his present employer for, say, $12.25. But if one company offers that amount, another will up the ante to $12.50. Where will this bidding process end? As close to the productivity level of $20 as search and transportation costs will allow.

Suppose further that the women were paid only $12, 60% of the male wage, exemplifying the supposedly discriminatory "pay gap." This would set up the same irresistible profit opportunities as in the case of the male paid less than his productivity level. Any "male chauvinist" employer who hired the man at $20, rather than the equally productive woman at $12, would place himself at a serious competitive disadvantage. He would be a prime candidate for bankruptcy.

EPFEW and EPFWOEV, then, equate wages between equally productive males and females. The reason women earn only some 60% of what males do is because, on average (due, perhaps largely, to marriage asymmetries), they are only 60% as productive. So EPFEW and EPFWOEV have already been attained on the market. There is no discriminatory wage gap. But this is not at all what the advocates of pay "equity" demand. Their view, predicated on the notion that people have a right not merely to their own persons and property but to the value thereof, is in effect that males and females should receive the same compensation, despite differences in productivity. Imagine that their wish were granted. That is, suppose that the law requires a male with productivity of $20, and a female with productivity of $12, both to be paid the former amount. Now, incentives will all be turned around. Instead of having a financial interest in hiring the woman, the firm now will be led "as if by an invisible hand" to avoid her at all costs. The result will be greatly enhanced unemployment rates for women, a result which obtains whenever the legal system artificially prices factors of production out of the market.

4.4. Affirmative Love

Most people can see through lawsuits seeking damage for alienation of affection. These are properly regarded as a scandal and a disgrace. People cannot own the love of others. The very notion is contradictory; true affection must be given voluntarily, while ownership implies the right to take it from another person, whether or not he is willing to bestow it. So these suits, too, are an instance of the confusion over physical ownership vs. property in values. An ex-lover seeking financial compensation from her no longer amorous suitor is really asserting that she has the right to

control his feelings. If this were true his ownership right over his person would be null and void, since he could not even choose the object of his desires.

4.5. Licensing Laws

This legislation is an attempt to restrict the actions of others so that the value of one's own property can be enhanced or stabilized. If entry into the industry of potential competitors can be precluded, one's wealth increases. Naturally, this motivation is disguised, hidden behind a plethora of "public interest" billingsgate. Accordingly, taxi license holders wax eloquent about the reduced traffic congestion afforded by this system, and members of the American Medical Association take pride in the enhanced quality of medical services thus engendered. But this is empty rhetoric. Taxi cab medallions sell for many thousands of dollars, attesting to the value of government-imposed monopoly, not to the ease of traffic flows. And the salary levels achieved by doctors have little to do with the nation's health; if anything, the very opposite is true.[12] For example, consider the Viennese doctors—the best in the world at that time—who came to the United States to escape the ravages of National-Socialism in the 1930s. It was no coincidence that the AMA did everything in its power to hinder the process whereby they could practice their profession. They insisted on loyalty oaths, but this had nothing to do with patient care. They compelled familiarity with the English language—as if there were no German-speaking sick people or translators. They demanded residence periods, as if these were anything but a blatant attempt to forestall unwanted competition.[13]

But licensing laws do not even go far enough if the values of taxis, medical equipment, and skills are to be maintained and enhanced. Strictly speaking, there should also be requirements on the demand side as well.

[12] See Milton Friedman, Capitalism and Freedom, Chicago: University of Chicago Press, 1962, ch. 9; Ronald Hamowy, Canadian Medicine: A Study in Restricted Entry, Vancouver: Fraser Institute, 1984. Henderson, David R., The Joy of Freedom: An Economist's Odyssey, Financial Times, Prentice Hall, 2001, ch. 15.

[13] A similar situation took place with regard to Cuban doctors who fled Castro. The AMA placed obstacles in their way of attempting to practice medicine in the United States as well.

That is, the temporarily unemployed cabbies should be able to commandeer the man on the street, force him into the taxi, and drive him, if need be right back to the point of embarkation, so as to maintain revenues. And if ever revenues decline, doctors ought to be allowed to inflict diseases on innocent people—so that they can charge them for cures. After all, according to the property-in-values theory, people who do not get sick, and/or refuse to ride around in taxis, are really stealing from doctors and cabbies, respectively.

4.6. Zoning

Who has not yielded to the temptation—at least in thought—of wishing to maintain, if not upgrade the value of his real estate holdings? One way to do this is through entrepreneurial action (including insurance). A person purchases a home in a large-scale condominium development, for instance, where all owners are precluded from any activity (painting a house with polka dots, ripping it down, and putting in a cement factory) which might conceivably lower property values. Alternatively, a restrictive covenant can be signed with neighbors to the same end. But this costs money, time, and effort. There are "transactions" costs involved. Frequently it is much easier to rely on the political process. If a law is passed requiring a minimum one-acre lot size for single family dwellings, hordes of "undesirables" can be kept out. For the only chance of the poor successfully bidding against wealthy people is in the form of multiple dwelling units. They can "gang up" on the rich by more intensive land settlement. But if this is precluded by zoning laws, that option is not available to them. Better yet, inaugurate the no growth philosophy, ostensibly for environmental ends; this obstructs any new building, for whatever purpose, the better to maintain property values. Why rely on an "imperfect" market when legislative enactments can attain such ends?[14]

City planners (who owe employment to the existence of zoning laws) argue that this system keeps "incompatible" land uses separated from one another. But private property rights can achieve the same ends, without

[14] See William Tucker, The Excluded Americans: Homelessness and Housing Policy, Chicago: Regnery-Gateway, 1990.

the use of force and compulsion.[15] The reason filling stations do not locate in cul-de-sacs is that there is too little traffic to support them there. Likewise, cement factories are prohibited by marketplace considerations from setting up shop in downtown areas. High real estate prices relegate them to the periphery. When land use bureaucrats err, they do so on a colossal, city-wide scale. They lose millions for the citizenry but not a penny of their own personal funds. The benefits of marketplace zoning, as is illustrated most drastically by the failure of the Soviet economic system, is that private investors, who risk their own money, tend to be more careful with it. The drawbacks of central planning apply to cities as well as to countries.

4.7. Anti-trust

Anti-trust laws serve many purposes. From the point of view of the expert in law and economics, for instance, they function as a full employment bill, calling forth millions of hours of highly paid expert testimony. From the perspective of the neo-classical economist it furnishes an opportunity to demonstrate manual dexterity with average and marginal cost and revenue curves, "dead weight losses" and "resource misallocations," the better to dazzle naive students. For the political ideologue, the theory of monopoly, upon which anti-trust laws are based, provides the "scientific legitimation" for the permanency of so-called market failures; it is a stick which can be used to beat up on the private property (capitalist) system.

For our purposes, anti-trust laws illustrate yet another instance of defining property in terms of values, not physical criteria. If company A sells a better product, or the same one at a lower price, how does it "hurt" its competitors? Only in value terms, not physical ones. As in the case of witch craft, or heresy during the period of the inquisition, there is no defense against the charge of monopoly. Promotion of consumer welfare is no defense; indeed, it is part of the indictment. Selling at a price lower than competitors' is prima facie evidence of cutthroat competition; selling at a higher price indicates monopolistic profiteering; selling at the

[15] See Bernard Siegan, Land Use without Zoning, New York: Lexington, 1972.

same price as everyone else is evidence of collusion. Since there is no fourth alternative, any firm is theoretically guilty as charged, no matter what its behavior. Similarly with quantity sold. Too much is pre-emptive, too little is monopolistic withholding, and the same as others is collusive dividing up of the market. Heads the anti-trust division and the Federal Trade Commission win; tails, the business concern loses.[16]

4.8. Insider Trading

The last instance of the property-in-values theory we shall discuss are laws prohibiting "insider trading." The complaint on the part of the advocates of such laws is that the knowledge possessed by someone, when acted upon in a commercial matter, is a violation of the rights of others. Previously we had asserted that "no one could act, if everyone owned the value attached to what he regarded as his." With insider trading we see a paradigm case of this.[17]

The legally established contention here is that a knowledgeable state of mind can convert what would otherwise be a legitimate purchase of stock into an illegitimate one, provided that the information relied upon is not homogeneously spread throughout the population. Since it never is, virtually any commercial activity with regard to stocks and bonds can be deemed unlawful. The situation is indeed worse than that. A rigorous pursuit of the "logic" of insider trading prohibitions could potentially be used to preclude any market transaction.

Did a woman buy an umbrella because she heard a newscast that if would rain tomorrow? Unless everyone turned into the same weather program, and listened as attentively as did she, this would give her an unfair advantage over other people. And what of the person who attended horrors! a course on the case and feeding of stocks and bonds? Such

[16] See Anderson, William, Walter Block, Thomas J. DiLorenzo, Ilana Mercer, Leon Snyman and Christopher Westley, 'The Microsoft Corporation in Collision with Antitrust Law,' The Journal of Social, Political and Economic Studies, Vol. 26, No. 1, Winter 2001, pp. 287–302.

[17] See Henry A. Manne, Insider Trading and the Stock Market, New York: Free Press, 1966; idem, 'In Defense of Insider Trading,' Harvard Business Review, 113, Nov./Dec. 1966. See also Walter Block and Robert McGee, 'Information, Privilege, Opportunity and Insider Trading,' Northern Illinois Law Review, December 1989, Vol. 10, No. 1, pp. 1–35.

studies would surely give the student an "inside track" vis-à-vis those who had not attended the lectures. If the crime of excessive information[18] can be applied to umbrellas and stocks and bonds, it can be applied to anything: to real estate, to amenities, to human capital, to factors of production. Moreover, this doctrine calls into question the acquisition of any knowledge (unless, of course, it is evenly spread throughout the entire world community). Those particularly at risk include doctors, lawyers, economists, college professors, Nobel Prize winners.

[18] Another 'market failure' beloved by interventionists is 'lack of perfect information.' Let's see if we have this straight. Too little information is no good, because it violates the requirement of perfect information. Too much information is problematic, because it is incompatible with the strictures against insider trading. How about 'the same amount of information as everyone else?' Aha. A lacunae in the theory. So far, to the best of knowledge of the present authors, this state of affairs has not been subjected to legal prohibition. But who knows? A theoretical breakthrough may be lurking in these intellectual thickets.

2

The Moral Dimensions of Poverty, Entitlements, and Theft

The Ideal World

For the limited government, free enterprise-oriented classical liberal, there is only one type of entitlement the citizen may properly receive from the state: security of his person and property. This entitlement entails an army to protect him from foreign despots, a police force to shield him from domestic villains, and a court system to determine who is and who is not an initiator of violence against another person or his property. Any and all other entitlements are illegitimate—at least from the perspective of this economic philosophy.[1] One defense of this limited notion of government is that entitlement programs[2] are counterproductive,

[1] Observe that this conclusion is similar—but not precisely equal—to the vision of appropriate entitlements as provided for in the US Constitution. There, in addition to the aforementioned courts, armies, and police, the citizen is also entitled to a post office and other public enterprises. These services and institutions would be strictly prohibited under a libertarian limited government vision, the model we shall assume for the purpose of this chapter.

[2] Now and henceforth, we use the term "entitlement program" to refer to other initiatives of the state over and above armies, courts, and police. These latter three we characterize not as entitlement programs, which are always illegitimate uses of government force, but as the sole legitimate functions of government. For a critique of this limited government philosophy from within libertarianism, see Bruce L. Benson, The Enterprise of Law: Justice Without the State (San Francisco: Pacific

W. E. Block, *Property Rights*, Palgrave Studies in Classical Liberalism,
https://doi.org/10.1007/978-3-030-28353-7_2

which means they actually hurt their presumptively intended beneficiaries.

The list of such instances is long and woeful. Perhaps the most egregious is the welfare program Aid to Families with Dependent Children (AFDC). Originally introduced as a means of helping the needy,[3] AFDC has instead promoted dependency, eviscerated personal ambition, and created whole generations of unwanted and often abused children.[4] These

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Research Institute, 1990); "The Impetus for Recognizing Private Property and Adopting Ethical Behavior in a Market Economy: Natural Law, Government Law, or Evolving Self-Interest," The Review of Austrian Economics 6, 2 (1993): 43–80; "Customary Law as a Social Contract: International Commercial Law," Constitutional Political Economy 2 (1992): 1–27; "An Evolutionary Contractarian View of Primitive Law: The Institutions and Incentives Arising under Customary Indian Law," The Review of Austrian Economics 5, 1 (1991): 41–65; "Enforcement of Private Property Rights in Primitive Societies: Law Without Government," The Journal of Libertarian Studies IX, 1 (Winter 1989): 1–26; "Legal Evolution in Primitive Societies," Journal of Institutional and Theoretical Economics 144 (1988): 772– 88; "The Lost Victim and Other Failures of the Public Law Experiment," Harvard Journal of Law and Public Policy 9 (1986): 399–427; Anthony De Jasay, The State (Oxford: Basil Blackwell, 1985); David Friedman, The Machinery of Freedom: Guide to a Radical Capitalism, 2nd ed. (La Salle, Ill.: Open Court, 1989); "Private Creation and Enforcement of Law: A Historical Case," Journal of Legal Studies 8 (1979): 399–415; Hans-Hermann Hoppe, The Economics and Ethics of Private Property: Studies in Political Economy and Philosophy (Boston: Kluwer, 1993): "The Economics and Sociology of Taxation," in Taxation: An Austrian View, ed. L. Rockwell (Boston: Dordrecht, 1992); A Theory of Socialism and Capitalism: Economies, Polities, and Ethics (Boston: Kluwer, 1989); David Osterfeld, "Anarchism and the Public Goods Issue: Law, Courts, and the Police," The Journal of Libertarian Studies 9, 1 (Winter 1989): 47–68; Joseph R. Peden, "Property Rights in Celtic Irish Law," The Journal of Libertarian Studies 1, 2 (Spring 1977): 81–96; Murray N. Rothbard, For a New Liberty (New York: Macmillan, 1973); Power and Market: Government and the Economy (Menlo Park, Calif.: Institute for Humane Studies, 1970); The Ethics of Liberty (Atlantic Highlands, N.H.: Humanities Press, 1982); Lysander Spooner, No Treason (Larkspur, Co.: Tannehill, Morris, and Linda, 1966 [1870]); The Market for Liberty (New York: Laissez-Faire Books, 1984); William C. Woolridge, Uncle Sam the Monopoly Man (New Rochelle, N.Y.: Arlington House, 1970).

[3] For an alternative Marxist perspective, one which analyzes welfare as enabling capitalists to control labor markets, see Piven and Cloward, 1971.

[4] See Thomas Sowell, The Vision of the Anointed (New York: Basic Books, 1995); Race and Economics (New York: Longman, 1975); Ethnic America (New York: Basic Books, 1981); The Economics and Politics of Race: An International Perspective (New York: Morrow, 1983); A Conflict of Visions: Ideological Origins of Political Struggles (New York: Morrow, 1987); Race and Culture: A World View (New York: Basic Books, 1994); Charles Murray, Losing Ground: American Social Policy from 1950 to 1980 (New York: Basic Books, 1984); In Pursuit: Of Happiness and Good Government (New York: Simon & Schuster, 1990); Walter F. Williams, "Good Intentions—Bad Results: The Economic Pastoral and America's Disadvantaged," Notre Dame Journal of Law, Ethics, and Public Policy 2, 1 (1985): 179–99; Gary M. Anderson, "Welfare Programs in the Rent Seeking Society," Southern Economic Journal 54 (1987): 377–86; Martin Anderson, Welfare: The