

Libertarianism in the Crosshairs

by Tom G. Palmer

It's a sign of success when your ideas and proposals generate lots of detractors. Judged by that criterion, libertarianism is back in the mainstream of political debate, after being intellectually and institutionally eclipsed for much of the 20th century by various forms of statism and collectivism. And the Cato Institute, as a high-profile advocate of libertarian ideas, is a frequent target of those criticisms.

There are, of course, many hundreds of books published every year that make the positive case for expansive state power and are therefore implicitly critical of libertarianism. The core libertarian ideas of individual rights, of order emerging spontaneously from the enjoyment of rights, and of limited government to protect rights and allow order to emerge are rejected in favor of other conceptions of moral and legal relations, the sources of social order, and the role of government. What is striking is the number of recent works that explicitly engage libertarians, realizing that their arguments must be addressed—or denounced.

In the past few months, I've read a large stack of such books, nine of which I've selected to discuss in this short essay. Some of them are popular works, some are journalistic, and some are scholarly and academic. I'm going to start with the silly, to give the reader an idea of how strange academic criticism can be, and proceed to more serious work deserving of careful study and consideration.

Bad Enough to Make Grown Men (and Women) Cry

In *Cato's Tears and the Making of Anglo-American Emotion*, University of Michigan English professor Julie Ellison offers an investigation of "the cultural history of public emotion" (p. 2), a worthy project in the course of

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Andrei Illarionov, author of a new Cato book chapter (see p. 15) and adviser to Russian president Vladimir Putin, and José Piñera, co-chair of Cato's Social Security Privatization project, hold a news conference in Moscow to discuss economic reform. (They are flanked by an Interfax representative and a translator.) Piñera's observations on Putin and Russia will appear in the September–October issue of *Foreign Affairs*.

which she attacks libertarianism in an unconscious parody of academic literary criticism. The book's title refers to Cato the Younger's tears at the end of the Roman Republic, as depicted in Joseph Addison's play *Cato*, which inspired the writers of "Cato's Letters," which inspired the American Founders and—two centuries later—the Cato Institute, which brings us to her chapter on "Liberal Guilt and Libertarianism." According to Ellison, "The Cato Institute represents a stoical opposition to liberal sensibility, an exhilarating adamancy that, as we know by now, is historically inseparable from sympathy" (p. 189). (Come again?) Libertarians oppose coercive wealth redistribution "both in itself" (a phrase that is not entirely clear) "and as a metaphor for the expenditure of feeling" (pp. 189–90).

In a critique of an essay of mine on individualism, Ellison congratulates me for understanding "that the individual is a social construct" (p. 190)—something I do not believe. The concept of the individual, like all con-

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cepts, is a social achievement, but “the individual” is not. She then rakes me over the politically correct coals: “Group identities such as those of race, ethnicity, and gender are erased through the machinery of libertarian ‘abstraction’ into judicial essences whose unequal social and economic histories are constitutionally irrelevant. Clearly it is not abstract thinking per se that I oppose, but the link here between masculinity, rationality operating in the service of the individual who wants to ‘produce order,’ and that individual’s resentment of losing control to government that might ‘command’ him” (p. 190). The closest thing to an actual argument in Ellison’s critique is an *ad hominem* argument commonly invoked by collectivist academics, the imputation of sinister motives to apologists for libertarianism (“multinational corporations” figure prominently) and the reduction of statements that could be judged on their logical rigor, historical accuracy, or plausibility to “deft psychological maneuvers” (p. 190).

From Comedy to Historical Tragedy

A more substantive but nearly as amusing critique of libertarianism is offered in *A Necessary Evil* by Garry Wills. Wills relies on guilt by association, lumping together a wide variety of people whose only common characteristic is a “distrust of government.” For quite different (in fact, opposed) reasons, that list includes criminals and terrorists, as well as Henry David Thoreau, pious pacifists, and advocates of constitutionally limited government. Wills lumps them all together, but his main target is the last group, those who favor limited government, and accordingly the main thrust of the book is to rebut the claim that the American Founders sought to establish a government of strictly limited powers. Wills employs his keen insight to establish that the Constitution of the United States does not, in fact, check, balance, separate, or limit the powers of government. To assert that it does would be to “interpret the document in terms of concepts and words that are not in the document. Nowhere, for instance, does the Constitution mention checks, or balances, or separation of powers, or co-equal branches (or even branches) of government,

or states’ rights (or *any* rights in the original, unamended document)” (p. 57). That strikes me as a pretty weak argument. A document doesn’t have to contain the word “document” to be one, and a constitution doesn’t have to contain the words “separate,” “check,” or “balance,” to do those things.

Philosophy is clearly not Wills’s forte; maybe he does better as a historian. Unfortunately, he is so wedded to his belief that government is a “necessary good” (p. 317) that he twists himself (and the historical documents) into intellectual pretzels in his efforts to rebut the idea that the American constitutional order is one of delegated, enumerat-

point” of Madison’s efforts or not, he does inadvertently show that Madison supported limits on the powers of *both* the federal government and the states, an unsurprising position for an advocate of limited government.

Wills glues together a number of historical claims with a theory of absolutism that is profoundly inconsistent with the general tradition within which the American Founders instituted their constitutional system. He argues that sovereignty is indivisible and absolute, hence not separated and checked: “The idea that sovereignty is indivisible is not vague or mystical, but practical and observable. There cannot be two powers to conclude the whole” (p. 67). Wills suggests, on the basis of such musings, that government cannot be limited by law, since government makes law, and government would then be limiting itself, just as King James argued in 1598: “[A]lthough a just Prince will not take the life of any of his subjects without a clear law; yet the same laws whereby he taketh them, are made by himself, or his predecessors; and so the power flows always from himself. . . . the King is above the law, as both the author and giver thereto.” That’s the very philosophy so many Britons came to America to escape. Wills’s enterprise is a case of political philosophy driving history; the Founders simply *must* have grasped the truth as Wills knows it.

Books Discussed in This Essay

- Barber, Benjamin R. *A Place for Us: How to Make Society Civil and Democracy Strong*. New York: Hill and Wang, 1998.
- Bird, Colin. *The Myth of Liberal Individualism*. Cambridge: Cambridge University Press, 1999.
- Borsook, Paulina. *Cyberselfish: A Critical Romp through the Terribly Libertarian Culture of High-Tech*. New York: Public Affairs, 2000.
- Ellison, Julie. *Cato’s Tears and the Making of Anglo-American Emotion*. Chicago: University of Chicago Press, 1999.
- Holmes, Stephen, and Cass R. Sunstein. *The Cost of Rights: Why Liberty Rests on Taxation*. New York: W. W. Norton, 1999.
- Lessig, Lawrence. *Code and Other Laws of Cyberspace*. New York: Basic Books, 1999.
- Lieberman, Trudy. *Slanting the Story: The Forces That Shape the News*. New York: New Press, 2000.
- Willis, Ellen. *Don’t Think, Smile! Notes on a Decade of Denial*. Boston: Beacon Press, 1999.
- Wills, Garry. *A Necessary Evil: A History of American Distrust of Government*. New York: Simon and Schuster, 1999.

ed, and therefore limited powers. Thus, to defend the supremacy of the federal government over the states, Wills insists that “the real point” (p. 105) of James Madison’s switch to supporting a bill of rights (after Madison’s earlier argument that enumerating and therefore limiting the *powers* of the federal government made an enumeration of *rights* redundant) was “to give the federal government power to forbid these incursions to *the states*” (p. 105). Whether Wills has revealed “the real

Power, Power, Everywhere

Ellen Willis, a journalist now affiliated with New York University, offers a more interesting critique of libertarian ideas. In *Don’t Think, Smile*, Willis critically reviews David Boaz’s *Libertarianism: A Primer* and Charles Murray’s *What It Means to Be a Libertarian: A Personal Interpretation*. She takes the authors to task for what she calls their “resolutely pre-Freudian mentality,” which asserts the rational character of human nature and therefore cannot “see morality for what it is—a structure of internalized coercion” (p. 187). Willis, in contrast, sees the world of human relationships as it really is: a system of coercion and power through and through. Thus, offering me a higher wage to induce me to work for you is a form of coercion, just as is threatening to kill me to induce me to work for you. In both cases you wield some power over me (carrots, sticks, whatever). Further, what seems like self-limitation through the achievement

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of moral virtue and self-restraint is merely another form of coercion. Willis does not oppose morality per se, but that is because she apparently does not oppose coercion per se: “This is not to say that all moral imperatives are oppressive, any more than all laws are: only that morals are no less socially imposed than laws, and should be no less subject to examination and criticism” (p. 187).

Although Willis takes leftist intellectuals to task for failing to grasp how the omnipotent states they support can crush freedom, she insists that any inequality between or among persons is a source of power, and power of any sort is incompatible with freedom. Thus, “[w]hile it’s unlikely that social coercion—governmental or otherwise—will ever be entirely surpassed, my measure of a good society is the extent to which it functions by voluntary cooperation among people with equal social and political power” (p. 193). Much could be said in criticism of this perspective (and of the historical and economic beliefs in the background), but a central problem with Willis’s approach was expressed by F. A. Hayek in *The Road to Serfdom* and George Orwell in *Animal Farm*: To eliminate such distinctions among persons as ability or wealth, someone must be empowered to do so, and that person or those persons will be unequal in political power to the rest of us, which means that one kind of inequality will merely have been substituted for another. And, given what we know of human motivation and history, such political power will soon be converted back into inequalities of wealth and status, thus compounding the inequality.

Big Government as Ally of the Little Guy

Like Willis, political scientist Benjamin Barber in *A Place for Us* tries to grapple with libertarian ideas, but he often relies on historical claims that seem implausible. Thus, he writes, “Big government has always been an ally of the little guy” (p. 5). I wonder, on what planet? Not the one whose history I have studied. Unlike big government, markets are “private, rapacious, and uncivil” (p. 5). According to Barber, “Libertarians think of civil society as a play space for private individuals and for the voluntary and contractual associations they choose to contract into, and treat it as little more than a condition for solitude”

(p. 23). How is being in a voluntary association such as a church, a bowling league, or a Girl Scout troop “a condition for solitude”? Barber sets up a dichotomy between liberty and community and then seeks to take the best and avoid the worst of both, thus articulating a “strong democratic” approach that promises “a place for us between big government and commercial markets, where citizens can breathe freely” (p. 10). Barber is a good and decent man, but his work rests so much on a rather shaky grasp of economic principles (e.g., “People need wages to sustain the buying power upon which their consumption in a market society depends, but productivity does not necessarily need wage earners to sustain it” [p. 128]) and a similarly undefended (and odd) version of the history of the 20th century, indeed, of the past several millennia, that it does not engage directly the other perspectives he considers and rejects, including libertarianism and communitarianism.

Law as Porridge: The Goldilocks Thesis

Harvard law professor Lawrence Lessig, author of *Code and Other Laws of Cyberspace*, is sorely vexed by the prominent place of “cyberlibertarianism” in the world of high tech. “Cyberlibertarians” apparently fail to understand that “code is law” and that “[t]his code represents the greatest threat to liberal or libertarian ideals, as well as their greatest promise” (p. 6). The problem with “code” or “architecture” as it is now is that it is not subject to political determination: “[I]sn’t it clear that government should do something to make this architecture consistent with important public values?” (p. 59). It turns out that sometimes rules of conduct (private property, freedom of contract, and all that) lead to *too much* privacy and sometimes to *too little* privacy, sometimes to *too much* accountability and sometimes to *too little* accountability, when in fact what we should want is *just the right amount* of privacy and accountability. And, of course, it’s through politics that the Goldilocks option is discovered: “Politics is the process by which we *reason* about how things ought to be” (p. 59).

For Lessig, the problem of Goldilocks is solved by a literal deus ex machina: computers themselves. In a discussion of how political bodies could regulate Internet gam-

bling, offshore banking, and the like, Lessig states: “Rules imposed by local jurisdictions could be made effective through their recognition by other jurisdictions. Servers, for example, would recognize that access is conditioned on the rules imposed by jurisdictions” (p. 57). According to Lessig, we can leave the actual determination of what’s *just right* to... “servers.”

In a very personal attack on a libertarian journalist in a chapter titled “What Declan [Declan McCullagh of *Wired Online*] Doesn’t Get,” Lessig insists: “We need to think collectively and sensibly about how this emerging reality will affect our lives. Do-nothingism is not an answer; something can and should be done. I’ve argued this, but not with much hope. So central are the Declans in our political culture today that I confess I cannot see a way around them. I have sketched small steps; they seem very small. I’ve described a different ideal; it seems quite alien. I’ve promised that something different could be done, but not by any institution of government that I know. I’ve spoken as if there could be hope. But Hope was just a television commercial” (p. 233). (The book came with no decoder ring to decipher it.)

More could be said about Lessig’s call for collective reasoning, but I merely suggest that he reread the third book of David Hume’s *Treatise on Human Nature*, where Hume explains the importance of stable rules of property: “The convention concerning the stability of possession is enter’d into, in order to cut off all occasions of discord and contention; and this end wou’d never be attain’d, were we allow’d to apply this rule differently in every particular case, according to every particular utility, which might be discover’d in such an application.” We could title this “What Larry Doesn’t Get.”

How Libertarians (Especially Those at the Cato Institute) Dominate Everything

Paulina Borsook, in *Cyberselfish*, also laments the prominence of libertarianism among the high-tech set. Rather than a work on law, hers is a very personal (and highly abusive) attack on libertarians involved in the computer and software industries. (Libertarians are called or compared to nerds, sexual “nervets,” “neo-hippies,” Christian

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fundamentalists and “neo-pagans,” terrorists, pornographers, “ungrateful adolescent offspring of immigrants,” and so on—a motley collection, indeed.) In a bow to substantive criticism, Borsook restates Lessig’s main point: “The technolibertarian worldview likes to pretend that there are not social decisions embedded in code, to pretend that technology is neutral” (pp. 239–40). To support that assertion, Borsook points out that search engines don’t always find what you’re looking for. If you want to understand the world around us, set aside Milton Friedman and F. A. Hayek and turn to “Marx and his pal Engels,” who had “relevant things to say about the spread of global capitalism (and much more accurate for the description of what is happening at the end of our own century than at the end of his)” (p. 44). Perhaps Borsook had in mind the theses of the immiseration of the masses and the inevitability of socialist revolution, but if she means only to highlight that Marx noted that the world was changing awfully fast, well, so did everyone else.

Borsook specializes in “color” paid-by-the-word journalism rather than accurate

reporting: “Cato, with its menhir of a HQ smack in the middle of D.C., is among the sleekest and most fearsome of the right-wing, free-market, think-tank conquistadors. Hugely funded since the late 1960s and early 1970s [Cato was founded in 1977 with a budget of \$800,000], it has colonized political discourse in the United States” (p. 66). When done well, color journalism can be enlightening.

Another journalist incensed by libertarians is Trudy Lieberman, director of the Center for Consumer Health Choices at Consumers Union. She devotes a chapter of her book *Slanting the Story*, which describes how terrible people with bad ideas “shape the news” and “dominate public policy debates,” to the Cato Institute’s “1993 assault on Head Start, one of the crown jewels of Lyndon Johnson’s Great Society” (p. 99). That assault consisted of publishing one policy analysis by John Hood, “Caveat Emptor: The Head Start Scam.” But even that is too much for Lieberman, for “Cato’s analysis was an attempt to discredit Head Start by focusing on its weaknesses and offering the right wing’s solutions for fixing them—in this case, eliminate the program” (p. 101). According to Lieberman,

what saved Head Start from Cato’s “assault” was that “the think tank soon turned its attention to Social Security” (p. 113). (A bit more research would have revealed to our crack journalist that Cato published its first book on the case for personalizing Social Security in 1980.) Lieberman portrays the Cato Institute as being like the dastardly Snidely Whiplash, cackling as he ties a damsel to the railway tracks, until his eye is caught by the chance to carry out an even more nefarious deed. The damsel (Head Start) may be saved for now. But beware! “Cato, by its own admission, is in for the long haul. This time destroying Head Start wasn’t worth the effort. But who is to say that Cato won’t try again when Head Start’s sugar daddy [President Clinton] leaves office?” (p. 115). Indeed. And with all of that blatant media bias in favor of limited government, individual rights, free markets, and liberty on their side, who knows what the Cato Institute might accomplish?

Taxes as the Foundation of Liberty

Distinguished politics and law professors Stephen Holmes and Cass R. Sunstein have launched a frontal assault on the core libertarian idea of individual rights in *The Cost*

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explained why Smith’s nomination was controversial: “What is Smith’s ‘crime’? In his scholarly writings, he has challenged the conventional wisdom by arguing that past campaign finance reforms have made the system worse and that most proposed reforms would do the same—and, more important, would violate the First Amendment. He urges an end to limits on both contributions and spending—but with full disclosure. Although Smith’s critics call him ‘radical,’ their attack has raised a question: Just who is the radical? For in case after case, the courts have been on Smith’s side, not on the side of his critics. Indeed, what his critics plainly fear is that Smith, on the FEC, will not be ‘radical’ enough, will not press the ‘robust enforcement’ the courts have repeatedly struck down.”

◆ On May 15 presidential candidate George W. Bush proposed a far-reaching plan to allow

Americans to invest some of their Social Security taxes in privately managed retirement accounts. While he gave few details, the general idea paralleled proposals long put forward by Cato Institute scholars, notably in the 1998 book *A New Deal for Social Security* by Peter J. Ferrara and Michael Tanner.

◆ Palm Pilot and Windows CE users can now get Cato’s Daily Commentary and Daily Dispatch downloaded automatically with AvantGo software. AvantGo comes preinstalled on many hand-held computers, but it can be downloaded free at www.avantgo.com. Users can sign up for the Cato daily downloads at www.cato.org.

◆ Copies of the Cato pocket Constitution were distributed to all state legislators in the 50 states—more than 7,000 in all. Copies were also given to 2,000 local and national officials from Russia late last year. The officials were brought to the United States under the aus-

pices of the Library of Congress to observe American democracy and civil society. Librarian of Congress James H. Billington accepted Cato’s offer to provide the pocket Constitutions. More than 1.5 million copies of the pocket Constitution have been distributed in the United States, and boxed copies will be showing up in bookstores around September of this year.

◆ Throughout May and June, *The Satanic Gases: Clearing the Air about Global Warming* by Patrick J. Michaels and Robert C. Balling Jr., led the global-warming bestseller lists on Amazon.com. When *Cato Policy Report* went to press, the paperback edition of *The Satanic Gases* was no. 1 and the hardcover edition was no. 2 among 303 books on global warming. The Cato book didn’t quite reach the top of the environmental studies list, but it was running well ahead of the Earth Day 2000 reissue of *Earth in the Balance* by Vice President Gore. ■

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of Rights. (I reviewed their book at greater length in the Fall 1999 *Cato Journal*, available at www.cato.org.) They believe that rights are grants from the state and that “all legal rights are, or aspire to be, welfare rights” (p. 222). According to Holmes and Sunstein, “Rights are costly because remedies are costly. Enforcement is expensive, especially uniform and fair enforcement; and legal rights are hollow to the extent that they remain unenforced. Formulated differently, almost every right implies a correlative duty, and duties are taken seriously only when dereliction is punished by the public power drawing on the public purse” (p. 43). Even “the right against being tortured by police officers and prison guards” (p. 44) is, contrary to traditional liberal thinking, not a “negative” right not to be harmed, but a “positive” right to have monitors hired by the state to supervise the police officers and prison guards: “A state that cannot arrange prompt visits to jails and prisons by taxpayer-salaried doctors, prepared to submit credible evidence at trial, cannot effectively protect the incarcerated against torture and beatings. All rights are costly because all rights presuppose taxpayer-funding of effective supervisory machinery for monitoring and enforcement” (p. 44).

That is but one example of the logical chaos of their alternative to libertarianism, for their theory generates an infinite regress. They argue that I cannot have a right not to be tortured by the police unless the police have an obligation not to torture me, and the police can have an obligation not to torture me only if there are some taxpayer-funded persons (monitors) above the police who will punish them (since “duties are taken seriously only when dereliction is punished by the public power drawing on the public purse”). But do I have a right that the monitors exercise their power to punish the police for torturing me? According to Holmes and Sunstein, I would have such a right only if the monitors had a duty to punish the police, and the monitors would have a duty to punish the police only if there were some other taxpayer-funded persons above the monitors who could (and would) punish the monitors for failing to punish the police, and so on, ad infinitum. For there ever to be a right of any sort, by their reasoning, there would have to be an infinite hierarchy of people threaten-

ing to punish those lower in the hierarchy. Since there is no infinite hierarchy, what Holmes and Sunstein have offered is, not a more sophisticated understanding of rights, but an argument that rights are impossible: If there are rights, then there must be an infinite hierarchy of power; there is not an infinite hierarchy of power; therefore there are no rights.

A Serious Critique

I finish with one of my favorite books of the year, *The Myth of Liberal Individualism*, a truly thoughtful critique that grapples with libertarian ideas seriously. By thinking through his careful arguments, I learned a good deal from Colin Bird of the University of Virginia, who notes that “it is libertarian, not communitarian, ideas that have had a more direct impact on the politics of the Western countries over the past twenty-five years” but warns that “the secret of libertarianism’s recent success lies precisely in its appeal to an alliance between liberalism and individualism, an alliance that even the critics of liberalism have so far been unwilling to question” (p. 19). For Bird, that alliance is “an unstable alliance of antagonistic principles and ideals” (p. 3) concocted by “cold war liberals” (Mises, Popper, Hayek, and Berlin) to combat Nazi and Bolshevik totalitarianism.

According to such “cold war liberals,” Bird claims, collectivism rests on an untenable belief in a kind of collective entity; but if you don’t believe in collective entities, you’re an individualist, and if you’re an individualist, you have to be a liberal. Bird, however, attempts to deny the connection between liberalism and individualism (which merely reflects “the confusion of cold war rhetoric” [p. 25]); I don’t believe that he succeeds, but in the process of trying he offers a very thoughtful exploration of what individualism means. Although his project involves “liberating us from these cold war assumptions about the priority of the individual over the collectivity,” the argument “is in no way intended as an apology for those regimes that have inflicted horrifying injustices on individuals in the name of a certain view of the common good” (p. 46). Here I believe that Bird has erred, for the fact that collectivist regimes *exterminated* millions of people (e.g., allegedly racial or class enemies) implies that their “view of the common

good” did not refer to a *good common to all of the individuals*. It must instead have referred to the good of a collectivity that exists in some way independent of the individuals, who are dispensable, or to the good of a race, nation, or class whose good is opposed to that of “its” enemies. The Holocaust and the Gulag resulted, not merely from an erroneous “view of the common good,” but from an idea of the *Volk* or the proletariat as collective entities that necessarily excluded Jews, liberals, capitalists, rival collectivists, and others as implacable enemies and that considered even constituent individuals as purely dispensable means to its own ends. (It should also be noted that the arguments connecting individualism and liberty were formulated long before the Cold War, although Bird seems unaware of this.)

Bird considers liberal individualism a “myth” because “there may be no way for a set of public principles to remain neutral about how one ought (not) to act towards oneself *and* for them to embody a claim about the moral inviolability of individuals strong enough to underwrite the ideal of inviolable libertarian rights” (p. 183). That is to say, if you articulate reasons why individuals should be respected, then you cannot consistently argue that those reasons should not be used to override the choices of individuals; if the value of autonomy is the reason we should respect rights, then using your rights to undermine your own autonomy (by becoming intoxicated, for example) is not an allowable use of your rights. On the other hand, if rights are primary and to be respected, then we should violate rights whenever their violation would result in a net diminution of rights violations. I did not find Bird’s argument persuasive, for more reasons than I could develop here (wait for my longer review elsewhere), but I found his arguments far more challenging and well crafted than others I have read recently.

Conclusion

A movement that calls forth lively criticisms is a movement that is alive and well. The more critiques, the better off libertarians are, especially if they take note of the critiques and learn from them. Who knows, we may be wrong, and a commitment to truth should keep us open to that possibility. ■