

Libertarianism Defended

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Preface

Ever since the late Robert Nozick penned *Anarchy, State, and Utopia* in the mid-1970s, libertarianism has been treated with some measure of respect within political philosophy, science, and economics circles. But libertarianism and Nozick's version of it have been regarded as nearly identical, resulting in little attention to ideas and arguments other than his – despite the fact that Nozick himself acknowledged that there are impressive libertarian thinkers other than himself.

Yet while Nozick's version of libertarianism has occupied stage front, he has not formally responded to the many critical discussions of his work. Meanwhile, though, other libertarians have continued to talk. Jan Narveson, Loren Lomasky, Eric Mack, Douglas B. Rasmussen and Douglas J. Den Uyl, and many others have marshaled impressive arguments in support of the libertarian idea that a political system is just when it successfully secures the rights of individuals as understood within the Lockean tradition of (or the regime of individual liberty as conceived of by Adam Smith, John Stuart Mill, Herbert Spencer and other) classical liberals. I have contributed to the discussion as well. So, why yet another work in defense of libertarianism?

When a proposed 'paradigm' is not widely favored in a discipline, those who do find it promising need to advance their arguments – and apply them to innumerable problems and controversies – if their view is to achieve visibility and, perhaps, prominence. Proponents of the mainstream view are certainly not under any great pressure to hash out the implications of the minority view. Meanwhile, the mainstream positions gain constant support and exposition from think tanks, research centers and, most of all, academic scholarship. Thus, for example, wherever public finance is studied, tax policy will be a very well traveled area of discussion, while those who regard taxation as unsavory can expect little such academic work devoted to their ideas. So it is up to research centers and scholars supporting the contrarian paradigm to keep churning out the studies and the arguments that can give their position a chance.

There is another fate such fringe – or radical – positions must endure: the fate of being dismissed with offhand comments in major books and other publications, as if their contribution could be dispatched so easily. And it is my awareness of innumerable such nettling offhand dismissals that prompted me to work on the present book. The introduction addresses several examples of these cursory comments, while the body of the work takes up other topics that fail to be discussed from a libertarian standpoint in mainstream forums.

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Res Publica for the use of materials in this book that appeared in their journals. Jim Chesher, Douglas J. Den Uyl, Douglas B. Rasmussen, Randy Dipert, Nick Capaldi, Tom G. Palmer, J. Roger Lee and quite a few others deserve thanks for the many discussions we had that helped me to get clear on some of the ideas in this book. Some of these were developed and scrutinized in the course of my work as public policy advisor for Freedom Communications, Inc. of Irvine, California. I am grateful for the cooperation of many of the current and former associates of this company – in particular the late Jim Rosse, Sam Wolgelmouth, Ken Grubbs, Steve Greenhut, Cathy Taylor, Skip Foster, Steve Buckley, Ray Sullivan, Jennie Lambert and other editors and publishers of FCI's newspapers across the USA – for their very helpful criticism and challenges of my rendition of libertarian ideas.

I thank Freedom Communications, Chapman University, and the Hoover Institution for their continued support of my work. I also wish to thank David M. Brown for his editorial help.

People, I thought. These are people. Their general uniformity was interrupted only by their individual variety.

Steve Martin, *The Pleasure of My Company*

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Introduction

Defending Libertarianism

[P]olitical philosophy, when it has an impact on the world, affects the world only indirectly, through the gradual penetration, usually over generations, of questions and arguments from abstruse theoretical writings into the consciousness and the habits of thought of educated persons, and from there into political and legal arguments and eventually into the structure of alternatives among which political and practical choices are actually made.

Thomas Nagel, 'Justice, Justice, Shalt Thou Pursue, The rigorous compassion of John Rawls' *The New Republic* (October 25, 1999), pp. 36–37

When I speak of defending libertarianism, I have in mind taking up various challenges of the position and showing why they are misguided or unfounded. Most of the chapters that follow address one or another more or less widely entertained charges against the fully free society. But some deal with issues that any political position needs to address, and still others consider certain controversies within the libertarian school of political thought itself.

Often, people who tend to be taken quite seriously simply dismiss libertarianism with a kind of wave of their intellectual hand, making only the briefest reference to some line of argument they are relying upon – as if it were axiomatic that the libertarian option can't cut it. I will show in this work that the libertarian alternative deserves better treatment and that these dismissals stem from wishful thinking that aims to hoodwink rather than rationally persuade. I will also take on some of the more developed criticism of libertarianism.

In our time libertarianism has gained notoriety, if not always respect. Not only is there a political movement afoot by that name across the globe – with academicians, pundits, publications, and think tanks helping to forge its ideas – but there are also libertarian and classical liberal political parties fielding candidates throughout the United States and elsewhere. Moreover, there is a rich literature of libertarian theory in nearly all the social sciences and humanities, even though in political theory proper it is almost exclusively the position of the late Robert Nozick that receives any serious attention.¹

All this has led to public discussion of the substance of this political viewpoint, as well as some serious misrepresentations of it. The most clear-cut example of the former have been books and scholarly papers in which the position is briefly mentioned and dismissed; and of the latter, the charges leveled by some communitarians – for example, Thomas A. Spragens, Amitai Etzioni, Charles Taylor, Michael Sandel, and others – that libertarianism (or

its previous incarnation, classical liberalism) rests on an untenable and indeed ridiculous rationalism, scientism and, especially, atomism.

According to this charge, libertarianism assumes human beings to be almost preternaturally self-sufficient and able to choose whether or not to take part in social life at all. In other words, libertarianism supposedly assumes that human beings are asocial atoms. The association of libertarianism with such atomism has been repeated so often that among certain thinkers it has become a mantra, in no need of elaboration or support.² This, what some call the rugged-individualist approach, deriving from the work of Thomas Hobbes, is taken to be the only one given in support of libertarianism.

Others claim that libertarianism is hedonistic; or that it lacks an honorable political creed; or that it cannot support patriotism; or that it does support patriarchy; or that it promotes recklessness toward the environment and crass corporatism, spawning business scandals.

More ingeniously, some claim that what libertarianism's philosophical underpinnings support is not a free-market, *laissez-faire* system at all but rather something libertarians routinely oppose: the welfare state. By this account, libertarians are confused.

As an example of these dismissive cursory attacks on libertarianism, consider Cass R. Sunstein's criticism of free-market economics:

A familiar problem with unrestricted free markets is that they can produce pervasive injustice. A less familiar problem is that free markets often trap people, including the well-off, into wasteful and continuing struggles for better positions. It is in the very nature of the problem that even reasonable people may be unable to extricate themselves from those struggles without collective help. In the face of struggles of this kind, free markets should not be identified with freedom, properly understood.³

Did you get that? Not only is freedom unjust, but it isn't even freedom proper – a claim Marx made repeatedly in his own critique of classical liberal ideas:

This kind of liberty [free competition] is thus at the same time the most complete suppression of all individual liberty and total subjugation of individuality to social conditions which take the form of material forces – and even of all-powerful objects that are independent of the individuals relating to them. The only rational answer to the deification of free competition by the middle-class prophets, or its diabolisation by the socialists, lies in its own development.⁴

Both of these are indeed pregnant assertions, even if in Sunstein's case they are offered as an apparently self-evident aside. His statement has the virtue of revealing the basis for much antagonism toward not only the free market or capitalism, but also toward the United States of America (which rhetorically, at least, stands for the free market). It also shows how persistent the Marxian conception of capitalism continues to be among American intellectuals.

The alleged 'pervasive injustice' of the free market has nothing to do with injustice as ordinarily understood. Injustice in the political realm involves the violation of individual rights – not, as some prominent theorists have claimed, unfairness or inequality or even indecency. To commit an injustice is to kill, assault, kidnap, rape, enslave, molest or steal from someone – to treat him or her other than is due to a human being as such. It is to burglarize someone's home or business or trespass on their property (including, some would argue, their intellectual property). All of this is prohibited and severely punished in the courts of a free capitalist society, which pursue justice when they function as they ought to. Cass Sunstein cannot be ignorant of this. So why is he saying that the free market by its nature produces injustice?

Because he uses the term 'justice' idiosyncratically or in a question-begging way. He deploys what has come to be prominent in academic political theory since the publication of the late John Rawls's *A Theory of Justice* in 1971, according to which 'injustice' in the sense of rights violation became influentially transformed into 'unfairness.' Rawls's famous motto, 'justice as fairness,' guides the thinking of the bulk of academics on political economic matters.⁵ Here's where the question-begging comes in. It isn't that the free market does – or rather encourages – anything really *unjust*, only that it fails to provide everyone with what is '*fair*' or rather with what many academics believe would be right if only the world could be managed fairly. And what would that come to?

Accordingly to Rawls, taking justice as fairness requires that no one in a society possess more than another, except where that 'more' would also result in more for those who are the worst off – by giving incentives to producers, for example. This idea of justice as fairness makes sense because for Rawls, quite idiosyncratically, there is nothing anyone has that he or she deserves to have; let alone more than what others have.

The most fundamental reason for this is that Rawls discounts free will entirely. For him, 'Those who have been favored by nature, whoever they are, may gain from their good fortune only on terms that improve the situation of those who have lost out.'⁶ To those who might protest, motivated by common sense and a long-embraced conception of justice, that this is to neglect the frequent justice of greater gains in a free market system and how those who create those gains are responsible for them, Rawls replies that the assertion that we 'deserve the superior character that enables us to make the effort to cultivate our talents is ... problematic; for such character depends in good part upon fortunate family and social circumstances in early life for which we can claim no credit.'⁷

When social life is understood this way, everyone is seen to be a member of a team, equally significant and thus equally deserving or due equal consideration of his or her needs, wants, hopes, aspirations, capabilities and the like. One person's advance is determined by factors that might just as easily have promoted the advance of another. It is all a matter of luck. So to take the wealth from those who happen to have it and treat it as common to

all makes perfect sense, except when some inequality could foster a common advantage.

Per Rawls himself, the free market is much more fair than other more collectivist economic orders. For while not everyone enjoys the same level of wealth in a free market, the discrepancies do tend to improve the lot of everyone. By Rawls's own standards, the free market, though unfair, can make people much better off than alternative and fairer systems.

But despite the prominence (and often exaggeration) of Rawls' ideas, 'fairness' is not the right standard of justice in a legal order. Because of that prominence, the libertarian idea, which takes very seriously the possibility and denies the injustice of numerous inequalities, is often given short shrift. Yet character is not, *pace* Rawls, mostly a matter of luck. It is instead the result of how persons act in the world and what they thus freely choose to make of themselves, very often in the face of major obstacles (including the lack of advantageous family circumstances). Yet this possibility is deemed naïve by many Rawlsians, probably because their understanding of the world rests on a rather strict determinism according to which none of us can really make any *bona fide* choices at all. Presumably, we are all driven or molded to be who we are. What we do is a necessary consequence of that molding, not a matter of choice.

Furthermore, the world is *inherently* 'unfair' – and, thus, 'unjust' in Rawls's (and Sunstein's) sense of the term. Some are born more beautiful, more talented, healthier, in better locations, in nicer times, and/or with greater material resources than are others. This is the main complaint of egalitarianism: nature itself is not 'fair', and never mind whether a moral concept such as 'fairness' can, strictly speaking, apply to nature at all. But somehow all ought to be made fair, via politics.

The paradox of how fully determined people, lacking any power of choice or *self*-determination, can remake the world seems not to bother most Rawlsians. In any case, contrary to what egalitarians believe, there is a significant kind of human equality in nature, at least most of the time: we are all faced with our lives to run. And how well or badly we do this will leave its mark on us for better or for worse. In this sense, we are all in the same boat. The beauties of the world can make a great mess of their lives, as can the rich and talented. Or they can do the best they can or just slide by in mediocre fashion. No human, at least not under normal circumstances, can escape the quintessentially human task of having to attend to life to have a chance at flourishing in it.

Nor is it the case that if some do enjoy advantages as a matter of luck others become justified in 'rectifying' this, engaging in evening things up, as it were. Someone's good health, numerous talents or great looks is no justification for taking from that individual what it gains and turning it over to someone less fortunate. At most it could occasion a moral imperative to share some of it, which is by no means facilitated by coercive wealth redistribution, quite the contrary.⁸

An unavoidable problem with any collective-coercive attempt to eliminate unfairness – a problem even from the radical egalitarian's own perspective – is that it introduces the most dangerous form of unfairness, namely, giving some people power over others. How do you equalize things without creating powerful equalizers? These equalizers must be armed, otherwise many of those who are deemed to be advantaged will not yield to the effort to be equalized. The only result must be some version of George Orwell's fable *Animal Farm*, in which although all animals are supposed to be equal, some end up far more equal than others.

What about the claim that 'free markets often trap people'? The fact is, we do often allow ourselves to develop bad habits when we are free. We splurge when we go shopping; we might not save enough money for rainy days; we purchase goods that we do not really have much use for simply because this is what we did before; we fail to be prudent as we buy or sell our labor and products; we indulge in numerous vices such as greed, gluttony, immoderation, intemperance, and so forth. Indeed, free men and women often fall prey to temptations like this.

Now all this is true but what of it? Arguably, the most addictive habit of all is political power. Thus the collective help that Sunstein recommends as a remedy for such temptations poses precisely the worst temptation of them all.

Instead, what we need is common sense, civility, friendly reminders, maybe a harsh talking to once in a while from friends, family, editorialists or social and religious leaders. Above all, the fact of our own individual responsibility for our own lives, and for the consequences of our choices, should be acknowledged and respected. The last thing we need to combat bad habits is for a bunch of people to arm themselves and impose their idea of prudent living on the rest of us by force. Such enforcers are exactly what a free society must seriously resist.⁹

The possibility of lapsing into bad habits is just the sort of risk that free men and women face all the time. We need not be victimized by it. Responsible conduct is evident enough in the area where Sunstein himself does so much of his work, namely, scholarship, which is relatively free of bureaucratic edict. In the realm of intellectual expression there is virtually no government regulation, at least not in the United States, in virtue of the First Amendment. Thus this sphere affords us an instructive illustration of how men and women who are free will likely fare. They in fact perform their share of untoward and blameworthy deeds, but they also produce extremely varied and worthy works. And they cope with all this in a (relatively) civilized fashion, namely, through vigorous criticism and without recourse to coercion and the activities of vice squads (although there is growing evidence of some of this in the name of political correctness). There aren't many conferences at which the participants take shots at each other aside from those that are verbal. Only if one believes men and women to be inherently impotent, merely impelled by circumstances beyond their control, will one be tempted to intrude upon

them with one's utopian plan and prevent them from making their own plans. Yet, why blame anyone then, even those who allegedly perpetrate unfair manipulation via advertising or marketing? They, too, are helpless, after all, in carrying on as they do!

In two respects, the price of our capacity for free action is, indeed, eternal vigilance. We need to be vigilant both to keep our freedom safe from those who would act aggressively against us for various high sounding reasons, and also to deal responsibly with our precious liberty. In the first instance, of course, it is in response to people like Rawls, Sunstein, Nussbaum and all their followers, as well as those in government who carry out their interventionist task in the belief that they are acting properly, that we need to be vigilant. In the second instance, it is our own weaknesses and temptations that require vigilance from us.

The number of distinct stances that can be taken against individualism and the free market is quite wide-ranging and prolific – a tribute to the creative ability of humankind, really. Yet many of them boil down to the same assumption that along with freedom comes helplessness rather than empowerment. Some, for example, claim that while men may benefit from unfettered freedom – or at least middle-class men – women do not, or at least not as much. Martha Nussbaum charges: 'A simple "get the state off our backs" position may look attractive when we are thinking about the sex lives of middle-class men, but it is clearly inadequate to deal with the situation of women and other vulnerable groups. There is no consent where there is pervasive intimidation and hierarchy.'¹⁰ Such a stance implicitly disparages the ability of women to join in voluntary efforts to fend off male 'intimidation and hierarchy.' While in some cases, when women are being coercively assaulted, Nussbaum is right;¹¹ she is wrong if she conflates these, as many feminists do, with cases such as insulting women or not paying them high enough wages.¹² Such equivocations invite the intrusions of the Nanny State, not the protection of women from those who would violate their rights. Furthermore, is there any good reason to think that if the culture embraces such intimidation, the state, with all its men, wouldn't also embrace it? In fact, to the extent that there is such prejudice, less centralized spheres of the culture could often offer ways to escape it. When relations are voluntary, options are expanded, not shrunk.

Other criticisms of libertarianism are less substantive and cannot be dealt with at any length in this Introduction. Some, in fact, are worth only a mention here because of their curiously hostile tone and *ad hominem* character. For example, social philosopher Alan Wolfe, in a discussion of the values of conservatism, states that the 'young and the childless are rarely conservative, but they are often libertarians. Libertarianism is a political philosophy for Peter Pan, an outlook on the world premised on never growing up ...'¹³ Such comments – actually, they are best dubbed *slurs* – cannot be answered apart from noting that they serve to dismiss the substance of libertarianism, perhaps because the author has little or no interest in dealing with the arguments

and so prefers the way of insults and intimidation. They do alert us to the distressing fact that some of the most prolific and industrious public thinkers are utterly contemptuous of the tradition of individual liberty, a fact that may be of greater concern today than it was a few decades ago. Since September 11, 2001, there has been much consternation about how others in the world not only misunderstand but actively resent, even hate, the central elements of Western liberalism, namely, its individualism, capitalism and at least rhetorical commitment to the ideal of individual rights to life, liberty and the pursuit of happiness. But the plain fact is that many in the United States of America do so as well.

There are many other challenges the libertarian must cope with, including some that focus on how certain prominent classical liberals, whose arguments are sometimes deployed to help support the libertarian position, did not advance a fully consistent or pure case for negative liberty. Thus, for example, Filimon Peonidis, a philosopher from Aristotle University of Thessaloniki, Greece, has argued that John Stuart Mill permitted major exceptions to his version of limited government. One area was education, another circumstances in which 'by the force of opinion and even by that of legislation' people's freedom appears to be limited – especially by media companies that present to their customers the fare the companies want them to experience.¹⁴ In such cases, Peonidis argues, Mill would allow government to interfere. Ergo, the case for a complete *laissez-faire* in the media business must be unsuccessful.

Of course, Mill has never been a pure classical liberal, let alone libertarian, so a strenuous claim that he was inconsistent is somewhat beside the point. There has always been his famous, though usually misunderstood, example of 'paternalistic' interference, as when one prevents someone without consent from stepping on a bridge about to be blown up. (This, however, cannot reasonably be construed as an example of anti-libertarianism in his thought.¹⁵) More significantly, Mill argued for some measure of state redistribution of wealth as well as government monopoly for certain 'natural' monopolies such as public utilities. Mill's compromises with respect to individual liberty are well known and don't tell us whether some case might be made against such compromises. We can in any case note that 'hard cases make bad law,' so that while certain exceptions might be made to the principles of limited or minimal government as a matter of juridical discretion, they should not be officially encoded in the legal system.

Even apart from the work already extant in which libertarian ideas are developed and shown to have certain public policy implications, it is now time to mount a rebuttal to some of these assaults. This book aims to address many such charges and anticipates questions.

One fact about the intellectual defense of libertarianism to keep in mind is that not all elements of a *defense* of libertarianism need be elements of libertarianism *per se*, which is a political position barring coercion from human social life. Just why coercion should be barred from social life is

a complicated matter. The best answer may emerge from various areas of philosophy, economics, sociology, history, and other disciplines. This is one reason that sometimes very different – though not all equally successful – defenses can be advanced for libertarianism. What I say here is, of course, not the last word, nor is it set forth as such. I believe my approach is more successful than many others, a matter in any case the reader will have to assess, however.

I hope that with the responses that follow on the record, the discussion of the libertarian position will be advanced. And perhaps also its adoption. Once the misrepresentations are cleared up, it will at any rate be possible to consider whether the position is sound on its own merits. For that is really what is most important about a political idea.

Notes

- 1 Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974). This work by a Harvard University professor, educated at Princeton University and formerly someone with Leftist credentials, was an anomaly in the 1970s, even though it became widely discussed and even popular (winning, as it did, the National Book Award). Arguably Nozick broke through in part because of his pedigree, which is not to take away from his ingenious and brilliantly articulated arguments. But since Nozick did not return to political theory during the rest of his sadly short life – he died at 63 from stomach cancer – the discussion of libertarianism by the prestigious statisticians in the field ended with consideration of his original position alone. The likes of John Rawls, Ronald Dworkin, Thomas Nagel, and others who treat the topic paid attention only to Nozick and continue to do so. Yet dozens of other political theorists also became convinced of libertarianism and produced numerous works making a case for it. This suggests that a kind of Kuhnian sociology of knowledge phenomenon has been at work, with prominence of a position being treated as more important than substance.
- 2 Most notable among these is Amitai Etzioni, a prominent academic who has been a widely published popularizer of communitarianism, and Charles Taylor, a much more formidable critic of radical individualism and defender of communitarianism. See Amitai Etzioni, *The Spirit of Community* (New York: Crown Publishing Co., 1993) and Charles Taylor, *Philosophy and the Human Sciences* (Cambridge, England: Cambridge University Press, 1985), especially his essay ‘Atomism.’ See also Robert Bellah et al., *Habits of the Heart* (New York: Harper & Row Publishers, 1985).
- 3 Cass R. Sunstein, *The New Republic*, March 29, 1999, p. 45. It is odd how readily intelligent folks will dismiss freedom in light of the fact that when we are free, we do face some temptations that may result in regrettable consequences. People who are free are subject to all sorts of pressures, inclinations, habits and oversights. Yet, as public choice theorists have observed, getting ‘collective help’ – that is, government regulation – to prevent these is far more hazardous than letting free people deal with the problems in their own various creative ways. We can’t get around the fact that human survival and well-being is a complex matter, and one that hinges most basically on our ability to make individual choices. You can’t get it out of a box of Crackerjacks.

The trust in coercive power rests, probably, on the belief that to guarantee the achievement of a desired goal, brute force is the best approach (as when we finally slap a friend who is being hysterical). The libertarian admits that in personal relations such a technique may work now and then. The libertarian denies, however, that it is at all productive as a long-range approach to dealing with human problems. For more, see

- Tibor R. Machan, *The Passion for Liberty* (Lanham, MD: Rowman & Littlefield, 2003), Chapter 3, 'Against Utilitarianism – Why not Violate Rights if it would do Good?'
- 4 Karl Marx, *Grundrisse* (New York: Harper & Row, 1970), p. 131. Marx, too, had no confidence in the creative initiative of free men and women as far as solving their personal and social problems is concerned. Instead, he thought we are captives of (mostly economic and technological) forces that act upon us and that these forces had to be met with even greater force, namely, that of the state. This has been a powerful legacy of not just socialist but modern liberal politics: when a problem arises, invoke the power of the state to solve it.
 - 5 Even for Rawls 'justice' can have other senses. It's only that he had wanted to explore it as it relates to fairness.
 - 6 John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), p. 101. This idea is extensively developed in Serena Olsaretti, *Liberty, Desert and the Market, A Philosophical Study* (Cambridge: Cambridge University Press, 2004), suggesting that the thrust of the defense of the free market rests on the belief that all those who own wealth or assets deserve it. (I will return to this point in several sections of this book.)
 - 7 Ibid., p. 104.
 - 8 See, Tibor R. Machan, 'Why liberty is necessary for morality,' *Think*, Issue Nine (Spring 2005), pp. 87–89.
 - 9 Just how influential this line of thinking has become, consider the currently popular practice of legal prosecution of those who make available, via the market place, a source for yielding to the temptation to overindulge – in immoderate smoking, eating, and who knows what else. The thesis advanced by John Kenneth Galbraith, in his famous book, *The Affluent Society* (Boston: Houghton Mifflin, 1958), that consumers lack sovereignty, has made its impact by now into the legal order (as per Thomas Nagel's point at the beginning of this Introduction).
 - 10 Martha C. Nussbaum, 'Experiments in Living' (review of Michael Warner, *The Trouble with Normal*), *The New Republic*, January 3, 2000, p. 33.
 - 11 Nussbaum suggests, quite properly that 'We need to protect people not only against physical force, but also against intercourse accomplished by threat or intimidation, and by the abuse of positions of authority. [Thus] a high school principal who said to a student "Pay me \$500 or you will not graduate" would surely be convicted of a crime; but a principal who said "Sleep with me or you will not graduate" was acquitted of rape because the woman did not say "no." Extortionate offers should be criminal, Schulhofer argues, in sex as in other realms of life, whether we call such cases rape or criminal assault. And Schulhofer extends his analysis to a defense of sexual harassment laws in the workplace, and of professional bans on intercourse between doctors and patients, lawyers and clients Warner never wrestles with these difficult cases. Had he spent more time confronting a wide range of feminist writings, he would have had to face the fact that law does not just compromise sexual autonomy, it also protects it. A simple "get the state off our backs" position may look attractive when we are thinking about the sex lives of middle-class men, but it is clearly inadequate to deal with the situation of women and other vulnerable groups. There is no consent where there is pervasive intimidation and hierarchy.' None of this warrants attributing to libertarians an attitude of 'who cares' since it is indeed mainly by dint of their conception of individual rights that such untoward conduct can come under legal scrutiny and resistance.
 - 12 See, for example, Catherine MacKinnon, *Only Words* (Cambridge, MA: Harvard University Press, 1993).
 - 13 Alan Wolfe, 'The Revolution that Never Was,' *The New Republic*, June 7, 1999, p. 41.
 - 14 Filimon Peonidis, 'Mill's Defense of Free Expression – Its Contemporary Significance,' *Journal of Social Philosophy*, Vol. XXXIII, No 4 (Winter 2002), pp. 606–613.
 - 15 See, Tibor R. Machan, 'Prima Facie v. Natural (Human) Rights,' *Journal of Value Inquiry*, Vol. 10, No. 1 (1976), pp. 119–31, for why there are extraordinary circumstances in which even the most basic rights may be *disregarded*.

