

## My earlier response to another Non-Libertarian faq

Long ago, Mike Huben webbed a non-libertarian faq and I wrote a detailed response. Here are his points in the original faq and my responses. For more details of his arguments, of which I have given only a shortened version, you can go to either his original faq or his current wiki.<sup>1</sup> As in the previous chapter, I am putting what the author of the faq wrote in italics.

### A Non-Libertarian FAQ

*1. They are utopian because there has never yet been a libertarian society (though one or two have come close to some libertarian ideas.)*

A utopia is an ideally perfect society, not merely a society that has never existed.

To see the difference, consider a writer in 1600 describing the sort of mass franchise liberal democracy that is currently the standard form of political organization for developed societies. No such societies existed in 1600 or ever had existed. Yet such a society is by no means ideally perfect — indeed, most of us agree that there are quite a lot of things wrong with it, although we disagree about just what they are and what should be done about them.

No doubt some libertarians (and some socialists and some liberals) believe that their preferred institutions would work flawlessly, but utopianism is not an essential feature of libertarianism. For evidence, consider my book *The Machinery of Freedom*. In it I propose quite a radical version of libertarianism — a society with private property but no government. Having done so, I then describe possible circumstances in which those institutions would produce unlibertarian results — specifically, laws against the use of some drugs. I defend the institutions not on the grounds that they are perfect but on the grounds that they are likely to produce better results than any other institutions I can think of.

There is at least one important sense in which libertarianism is less utopian than modern liberalism. Liberal political rhetoric often assumes that the existence of any bad outcomes — someone who is poor, some child who is not educated — is a strong argument for government intervention to fix the problem. Implicit in that is the utopian assumption that if only we had the right institutions, nothing really bad would ever happen. Most libertarians take it for granted that even under the best of institutions, some bad outcomes will happen — although, of course, they expect fewer bad outcomes to happen under their preferred institutions. That is the point of the phrase "Utopia is not an option," which Mike attributes to libertarians later in the FAQ.

A second mistake in the quoted sentence is that it identifies being a libertarian with holding the political goal of a perfectly libertarian society. No doubt many libertarians hold such a goal and regard it as achievable. But one can also be a libertarian in the sense of wanting a more libertarian society but not expecting ever to get and maintain a perfectly libertarian one. Robert Heinlein, who has had a substantial influence on libertarianism, seems to have held that position. His most

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<sup>1</sup> The faq is at <https://theworld.com/~mhuben/faq.html#defend>

The wiki is at [http://critiques.us/index.php?title=Critiques\\_Of\\_Libertarianism](http://critiques.us/index.php?title=Critiques_Of_Libertarianism)

Mike, as far as I know, never responded to my criticisms, but Jonathan Andreas did. The whole sequence — Mike's original comment followed by my response followed by Jonathan's rebuttals followed by my re-rebuttals — can be found at: [http://www.daviddfriedman.com/Libertarian/rebutal\\_re\\_huben.htm](http://www.daviddfriedman.com/Libertarian/rebutal_re_huben.htm).

libertarian work, *The Moon is a Harsh Mistress*, describes an attractive anarcho-capitalist society which has come into existence more or less by accident and, given the opportunity, proceeds to convert itself into a conventional democracy — a change the protagonists disapprove of but cannot prevent.

## 2. Are libertarians serving their own class interest only?

What class interest? Libertarians are not a class in any economically relevant sense. They include authors, academics, students, workers — even a few capitalists. The most overrepresented profession is probably Mike's.

*3. "Evangelists (those trying to persuade others to adopt their beliefs) generally have extensively studied which arguments have the greatest effect on the unprepared. Usually, these arguments are brief propositions that can be memorized easily and regurgitated in large numbers.*

*... Evangelists, who tend to be more interested in effect than in accuracy,*

*Small wonder many people are not interested in entering "discussions" with evangelists!"*

Mike seems to forget in this passage that he himself is, by his definition, an evangelist, and his FAQ, among other things, an evangelistic document — while he is not evangelizing for his own political beliefs, he is evangelizing for his belief in the errors of libertarianism. Both he and it provide counterexamples to the derogatory generalizations above. Evangelistic arguments can be simplistic or sophisticated or (like his) sometimes one and sometimes the other. Some evangelists are willing to sacrifice honesty for rhetorical effectiveness, others are not.

4. I think the best way to interpret the constitution is the way the founders explicitly specified in the Constitution: look to the courts, especially the Supreme Court.

There are two problems with this. The first is that the principle of judicial review — that the Supreme Court gets to determine what laws are constitutional — is not explicit in the Constitution, although one can argue that it is implicit in Article III Sections 1 and 2. It first appears explicitly in *Marbury v Madison* — a decision of the Supreme Court.

A more serious problem is that this way of interpreting the constitution leaves a Justice with no basis for deciding what is or is not Constitutional — by its definition whatever he decides is what the Constitution says. I can find no support in the Constitution, explicit or implicit, for the idea that the Constitution was defined as whatever the Supreme Court said it was. Even if we accept the principle of judicial review, it is clear that the Court, like existing common law courts, was supposed to discover meaning, not invent it. If so, it is entirely legitimate for other people to argue that the Court has, intentionally or unintentionally, misinterpreted the document.

Mike recognizes this problem when he writes that "This begs the question of how to judge the interpretive philosophies of the possible justices, but libertarians seldom get that far." This leaves him in the odd position of adopting a position that he recognizes as incorrect and justifying it, apparently, on the grounds that most libertarians won't notice.

I am curious as to how far Mike is willing to take his form of interpretation. Does he endorse the verdict in *Lochner v NY*, for example, which held that state regulation of the hours of work of bakers was unconstitutional? Is it his view that such regulations were inconsistent with the constitution during the first third of the twentieth century, but consistent before and after that period?

Consider the implication of the same approach for an ordinary criminal case. The Constitution provides procedures by which someone can be tried for murder. Is it Mike's position that if a criminal defendant is convicted he is by definition guilty? That makes precisely as much sense as saying that if the Supreme Court approves of a law then the law is, by definition, consistent with Constitution.

*5. The foremost defenders of our freedoms and rights, which libertarians prefer you overlook, are our governments.*

This is presented as if it is a fact when it is actually an interpretation, and a highly contestable one at that. Let me offer a few scraps of evidence to the contrary:

A. There are at least two different government agencies in the U.S. (Customs and DEA) each of which annually seizes about as much property as is taken in all private robberies (at least as measured by the FBI statistics).

B. If we include taxation in property seizures, the U.S. government annually takes about two orders of magnitude more than all private criminals.

C. Governments in general in this century (although not the U.S. government) have killed many more of their own citizens than private murderers.

Mike can, of course, respond that private theft, robbery and murder would be enormously higher if it were not for government — but that is an interpretation, not a fact. What we know is that private theft and robbery under regimes (the U.S. and Britain in the 19th century) where governments spent about a quarter as much of the national income as they do in the U.S. at present were trivial compared to current government takings. There is also some evidence<sup>2</sup> that the murder rate in 18th century England, where most of what we think of as law enforcement (catching and convicting criminals) was private, was not radically different from the rate a century later, under modern institutions. Finally, we have at least one example of a society with no government expenditure on law enforcement at all (Saga period Iceland),<sup>3</sup> where the level of rights and rights protection appears to have been at least as high as in contemporary societies with more conventional institutions.

*6. ... public defenders, the Constitution and the Bill Of Rights, etc. all are government efforts that work towards defending freedoms and rights.*

Mike omits to note that this part of his list consists almost entirely of government efforts to protect rights and freedoms from infringement by the government. It is rather as if we observed an

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<sup>2</sup> [http://www.daviddfriedman.com/Academic/England\\_18thc./England\\_18thc.html#Part%20III](http://www.daviddfriedman.com/Academic/England_18thc./England_18thc.html#Part%20III)

<sup>3</sup> <http://www.daviddfriedman.com/Academic/Iceland/Iceland.html>. For a later and improved version, see the chapter on Iceland in my *Legal Systems Very Different*, which also contains descriptions of other societies where law enforcement was private and decentralized.

unusually moderate thief, who had adopted a policy of never stealing everything his victim owned, and described his moderation as a private effort that worked towards defending property.

*7. Lots of other organizations (many of which you would not want to be associated with, such as Scientologists) also fight for freedom and rights. I prefer the ACLU.*

The problems with this, in the case of both the Scientologists and the ACLU, are that it confuses rhetoric with reality and, more seriously, blurs real disagreements about what freedom and rights are.

For a simple example, consider the issue of fair housing legislation — over which my father quit the ACLU many years ago. The ACLU would claim that in supporting fair housing legislation it is supporting the right of blacks, jews, etc. to buy or rent housing. Libertarians would respond that nobody has the right to buy something that the owner does not wish to sell, and that the ACLU was actually attacking the right of an owner to decide whom he would rent or sell his property to. Hence whether the ACLU's position was a defense of rights or an attack on rights depends on what rights you believe people have.

This is the point that Mike is getting at later in this section when he writes "Nor might we need or want to accept the versions of "freedom" and "rights" that libertarians propose." But instead of actually arguing it, he rhetorically points out that libertarianism is not egalitarianism — which while true, is not obviously relevant to the question of what rights people do or should have. Perhaps I was too quick, earlier in this response, to offer Mike as a counterexample to his own comments on evangelists.

*8. It would be foolish to oppose libertarians on such a mom-and-apple-pie issue as freedom and rights: better to point out that there are EFFECTIVE alternatives with a historical track record, something libertarianism lacks.*

On the contrary, libertarianism, in its earlier and somewhat more moderate incarnation as classical liberalism, has a historical track record unmatched by any alternative in recorded history. That record includes the abolition of the slave trade, the institution of large scale free trade, the destruction of guild restrictions on employment — most of the progress of the 19th century, some of it reversed in the 20th.

*9. Arguments about "mixing of labor" with the resource as a basis for ownership boil down to "first-come-first-served". This criticism is even accepted by some libertarians, and is favorably viewed by David Friedman. This justifies property taxes or extraction taxes on land or extractable resources if you presume that the government is a holder in trust for natural resources.*

Two problems.

A. Mike neglects to mention my estimate that, in the U.S. at present, total income from unproduced resources totals only a few percent of national income. I suggest, as a moderate compromise between his position and mine, that we reduce government expenditure to the level that can be supported by taxing that income. After observing the result of that experiment for a few decades, we can then argue about whether further cuts are in order.

B. While I agree that private claims to unproduced resources are morally problematical, I don't see how a government's claim is any less problematical.

10. The second is that taxation is part of a social contract. Essentially, tax is payment in exchange for services from government. This kind of argument is suitable for defending almost any tax as part of a contract. Many libertarians accept social contract (for example, essentially all minarchists must insist on a monopoly of government.) Of course they differ as to what should be IN the contract.

While it may be true that minarchists need a social contract to justify their support of a government monopoly over the use of retaliatory force, my experience is that very few of them, at least in the online population, make that argument.

The obvious reason not to is that the social contract argument doesn't work very well as anything more than a metaphor. Contracts get their moral force, in the view of most people, including most libertarians, from the agreement of the parties. But the "social contract" has the form "I will give you these services and you will pay me for them, whether you agree to or not."

The standard response, and Mike's, is that you "implicitly agree" by remaining in the country. But this works only if the government already has the right to throw you out of the country — i.e. if the government is somehow the owner of the entire territory it rules. Without a social contract, it is hard to see how you can justify such a claim. And until you can justify it, you can't get your social contract.

I could, after all, propose a contract to Mike under which he agrees to pay me a thousand dollars a month in exchange for the valuable services I am providing by critiquing his FAQ. I could also inform him that by breathing, he agrees to accept that contract. But unless he already believes that he has no right to breath without my permission, it is hard to see why he should feel obligated to pay.

**11. *If you don't pay your taxes, men with guns will show up at your house, initiate force and put you in jail.***

*This is not initiation of force. It is enforcement of contract, in this case an explicit social contract.*

"Explicit social contract" presumably means "tax law passed by Congress." If I and my friends pass a law saying that Mike owes us tribute, will he then interpret our showing up at his front door, armed, to collect as merely enforcement of an explicit contract?

Or in other words, he is claiming that the obligation exists without having given us any good reason to believe it. Absent the obligation, the libertarian description of the process is correct. Mike begins to respond to these arguments in:

12. *The constitution and the laws are our written contracts with the government.*

*There are several explicit means by which people make the social contract with government. The commonest is when your parents choose your residency and/or citizenship after your birth. In that*

*case, your parents or guardians are contracting for you, exercising their power of custody. No further explicit action is required on your part to continue the agreement, and you may end it at any time by departing and renouncing your citizenship.*

This assumes that the government already owns the country, and thus has the right to require you to leave if you don't agree to the contract. Where did it get that right?

*13. Immigrants, residents, and visitors contract through the oath of citizenship (swearing to uphold the laws and constitution), residency permits, and visas.*

Again, this only works if the government already has the right to keep people out — which is one of the things you need the social contract to get. Otherwise the "contract" is void on grounds of duress.

My five-year-old<sup>4</sup> occasionally decides that he is a toll gate and demands a penny toll for permitting me to go through a door or up the stairs. Suppose that twenty years from now, by which time he will be stronger and Mike feebler than they now are, he decides to do the same thing at Mike's front door when Mike is trying to come home — and charge a higher price. No policeman being in sight, Mike writes him a hundred dollar check, goes through the door, and calls up his bank to stop payment. Is Mike violating a contract? If not, how is an immigrant violating a contract when he decides not to pay taxes?

*14. Some libertarians make a big deal about needing to actually sign a contract. Take them to a restaurant and see if they think it ethical to walk out without paying because they didn't sign anything.*

The act by which one agrees to an implicit contract is an act that the other party has the right to control — in this case, coming into his restaurant and being served dinner. That leaves Mike with two alternatives:

A. It is proper to treat an act that you do not have the right to control as agreement to an implicit contract, without the other party's assent. That implies that you can impose a penalty (the amount you set as due on the contract) on that act, which amounts to controlling it.

B. The government has the same rights with regard to the territory of the U.S. that the restaurant owner has with regard to his food and restaurant. But that is the conclusion he wants to get from his argument, so starting with it makes his argument circular.

*15. You are not coerced to accept US government services any more than you are coerced to rent or purchase a place to live. If pretty much all territory is owned by governments, and pretty much all houses and apartments are owned, well, did you want them to grow on trees?*

Again, Mike has the problem of justifying the claim of governments to own territory. Early in his FAQ he points out, correctly, that there are problems with private claims to unproduced resources. But the implication of that, insofar as there is an implication, is not government ownership but

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<sup>4</sup> This was written a very long time ago.

commons — if I can't get ownership of the land and you can't, then we can't, so the land remains unowned.

Insofar as there are justifications for ownership, they start with private actions and private ownership. Mike has still offered no plausible mechanism for getting from that to a government claim of ownership. As he presumably realizes, the real historical mechanism, in almost all cases, was conquest.

***16. Extortion by the state is no different than extortion by the Mafia.***

*This is a prize piece of libertarian rhetoric, because it slides in the accusation that taxation is extortion. ... The key difference is who owns what. The Mafia doesn't own anything to contract about. The landowner owns the land (in a limited sense.) And the US government owns rights to govern its territory.*

The Mafia don replies that of course he owns the territory — if you don't believe him, go ask the current capo di capi. If you don't like it, you are free to move to the territory of a different don; if you remain, you are implicitly agreeing to accept his "taxes." Why is his claim any less justifiable than the government's? He provides you with protection against other dons, just as the government provides protection against other governments.

[All of this accepts the conventional picture of the nature of the Mafia embedded in Mike's discussion; I am by no means sure that picture is accurate]<sup>5</sup>

***17. Think how much wealthier we'd be if we didn't pay taxes.***

*This is a classic example of libertarians not looking at the complete equation for at least two reasons. (1) If taxes are eliminated, you'll need to purchase services that were formerly provided by government. (2) If taxes are eliminated, the economics of wages have changed, and wages will change as well.*

The response to (1) is that most of the services provided by government cost far more than they would if provided privately, and that quite a lot of them would be a bad bargain even if they cost nothing. That includes the service of making it illegal to consume various medical and recreational drugs, the service of making it illegal to compete with existing firms in various industries (less common now than a few decades back, but still common), the service of making it harder to buy goods from foreign countries, the service of holding up the prices of agricultural products, ... .

The response to 2 is that if a reduction in taxes resulted in a drop in pre-tax wages (which might or might not happen, depending in a complicated way on the relevant supply and demand curves) that would result in either lower prices or higher returns to other factors of production, such as land and capital. All versions of that story result in the gain eventually going to "us," although different versions differ in the form we get it in and the distribution among "us." Government

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<sup>5</sup> For a more accurate picture, see Gambetta, Diego, *The Sicilian Mafia: The Business of Private Protection*.

taxation represents a real consumption (or transfer) of resources, since the government spends that money; ending it would free up those resources for alternative uses.

The only versions of economics I can think of that gives the result Mike needs for his argument (that a drop in taxes results in drop in wages but no permanent gain to anyone) are 18th and 19th century ones based on the "iron law of wages" — the idea that population pressure always drives wages to subsistence. While that idea played an important role in the development of economic theory, it doesn't seem to have much to do with how real economies have functioned in the past two centuries. And even with that model in its sophisticated form (Ricardo), you end up in the very long run (capital and labor both at equilibrium) with the benefit from abolishing taxes going to the landowners.

*18. We lived in a fairly libertarian society in the US 150 years ago.*

...

*Yes, the Federal government had a much lighter hand then. However, state and local governments had a much greater influence. There is not one class of positive duty or obligation in the US today that did not exist 200 years ago at state or federal level.*

*All the biggies were there except income tax. The equivalent of income tax was property tax (on all possessions) or head tax by many states. There was involuntary conscription, eminent domain, etc. As a matter of fact, things got much better when powers of states were interpreted to be restricted by the US constitution (much later.)*

Local governments were more powerful relative to state and federal governments but less powerful in absolute terms, at least as measured by expenditure. In 1902 local government expenditure was about 3% of GNP. By 1973 it was almost 10%.<sup>6</sup>

State governments were less important in the past than they are now both relative to total government and absolutely, again as measured by expenditure. In 1902, about 11% of all government expenditure was by states; in 1973, about 20%.

It is true that 19th century America was not a perfectly libertarian society, even for white males. But the relevant question is how it compared to the situation at present. Measured by government expenditure, it was more libertarian at every level of government. Mike provides no alternative measure.

*19. As a matter of fact, things got much better when powers of states were interpreted to be restricted by the US constitution (much later.)*

Not "much later." 150 years ago is just before the Civil War; the doctrine of incorporation is just after.

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<sup>6</sup> I gave the figure for 1902 because that is as far back as my source of information, the Statistical Abstract of the United States, provides it.



I assume Mike realizes that the Justices who supported the doctrine of incorporation, most notably Stephen Field, the principle architect of the "Lochner era," wanted to use it to (among other things) impose constitutional restrictions on state economic regulation. I am curious as to whether Mike agrees with that objective. Under those doctrines, applied at both the state and Federal level, quite a lot of the government activity that libertarians disapprove of would be unconstitutional.

*20. "Self government" is libertarian newspeak for "everybody ought to be able to live as if they are the only human in the universe, if only they believe in the power of libertarianism."*

You don't need the power of libertarianism — standard neoclassical economics gets you most of it. To first approximation, the price system allows each individual to use his resources to achieve his objectives without imposing net costs on others — for details see the chapter on "What is Efficient" in my Price Theory.<sup>7</sup>

One can make arguments for regulation based on the second approximation — externalities and the like — but it is hard to justify anything approaching the current level of government on that basis. And the arguments for even a much lower level of government become a great deal weaker when you start including market failures on the political market in the analysis — or in other words, when you drop the assumption that government will automatically make the right regulations and instead try to figure out what regulations it will be politically profitable to make and what their consequences will be.

*21. They [libertarians] support the initial force that has already taken place in the formation of the system of property, and wish to continue to use force to perpetuate it and make it more rigid.*

...

*Beyond this perceived class interest, libertarian dislike of "initiation of force" isn't much different than anyone else's.*

I'm still waiting for Mike's explanation of "class interest." Precisely what class does he believe would be better off if we abolished private property? What class is better off as a result of the infringements on strict private property that are incorporated in current legal and political institutions? What class do libertarians (all libertarians?) belong to?

Off hand, the only identifiable group I can think of that is benefitted by the present system consists of lawyers (and law professors, so libertarian law professors are included in the class that should, on grounds of class interest, oppose libertarian proposals).

*22. The US government was NOT in the business of proclaiming people free or slaves: that was a private sector responsibility until that Evil Statist Lincoln stole that sacred private right for the State.*

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<sup>7</sup> The chapter is webbed: [http://www.daviddfriedman.com/Academic/Price\\_Theory/PThy\\_Chapter\\_16/CHAP16.html](http://www.daviddfriedman.com/Academic/Price_Theory/PThy_Chapter_16/CHAP16.html)  
The entire book is webbed: [http://www.daviddfriedman.com/Academic/Price\\_Theory/PThy\\_ToC.html](http://www.daviddfriedman.com/Academic/Price_Theory/PThy_ToC.html)

A somewhat tidier version is available from Amazon as both kindle and print.

State governments restricted emancipation, sometimes quite strictly, so the business of proclaiming slaves to be free was not entirely a private sector responsibility. And, of course, it was the state courts that accepted and enforced the slaveholder's claim to own his slaves. Furthermore, state governments subsidized slaveholding by taxing the general population (in part through conscription for anti-slave patrols). For details, see Jeff Hummel's book *Freeing Slaves, Enslaving Free Men*.

One might argue that a slave society in which slaves had voluntarily sold themselves — an example would be indentured servitude as a way of paying the cost of migrating to the U.S. in the 17th and 18th centuries — is consistent with libertarianism, although many libertarians would disagree. But black slavery as it historically existed is consistent with private property and free enterprise only if you ignore the question of what can be owned and how ownership can be acquired. A society in which slaves are taken by force is more nearly consistent with Mike's position than with libertarianism. All we have to do is to view the African tribes that captured and sold the slaves as governments, cut and paste Mike's arguments in this FAQ about the rights of governments and the social contract, and ... .

Mike does suggest one possible constraint on the rights of governments that is relevant — freedom of out migration. In order to justify black African slavery in his world, we may have to require the slave owners to permit any slave who can transport himself outside the relevant jurisdiction to do so. Of course, we might also permit the U.S. to conquer Canada and Mexico, so as to make it a little harder.

*[23.](#) Don't be surprised if you receive some ad-hominem abuse from libertarian evangelists when you don't accept their arguments. It's no different than if a communist called you bourgeois or a Bircher called you a commie lover. ...*

Or if Mike Huben accuses you of believing things because it is in your class interest.

**[24.](#) "A man is none the less a slave because he is allowed to choose a new master once in a term of years."**

*When you contract for government services, you are a customer, not a slave. If you think you cannot change with whom you contract, you have enslaved your self.*

And if you think you are a customer and can "change with whom you contract" by any means short of leaving the country, you haven't been following the argument.

**[25.](#) "Sometimes it is said that man cannot be trusted with the government of himself. Can he, then, be trusted with the government of others? Or have we found angels in the forms of kings to govern him? Let history answer this question." (First Inaugural Address)**

*...Jefferson clearly had more confidence in government than the initial quotation out of context would imply. If libertarians want to adopt this position (as some do), they'd be better off supporting it with something more than an appeal to the inconsistent authority of Jefferson.*

The point of the quote is not the authority of Jefferson but the force of his argument. A large fraction of the arguments for government regulation of individual action depend on the implicit assumption that individuals act on their own self-interest under conditions of limited information in market contexts but that government actors are fully informed and benevolent — with no theory to derive the latter from the former.

26. James A. Donald

**"We have the right to defend ourselves and our property, because of the kind of animals that we are. True law derives from this right, not from the arbitrary power of the omnipotent state."**

*The two red-alert-for-a-whopper phrases in this quote are: "the kind of animals that we are" and "true law".*

*People who compare us to animals usually know little about animals and less about people. If we look to animals for models we can find all sorts of unacceptable (and conflicting) behaviors which are entirely natural.*

People who answer arguments without reading them are unlikely to produce useful rebuttals. James is making a point not about "animals as models" but about the particular sort of animals humans happen to be. The point may be right or wrong — his .sig obviously summarizes a longer argument — but Mike's response is irrelevant.

Beyond that, I will leave James to defend himself. Why should I have all the fun?

27. "Utopia is not an option."

*This is the libertarian newspeak formula for overlooking problems with their ideas. Much like "Trust in Jesus". Used the way it commonly is, it means "libertarianism might do worse here: I don't want to make a comparison lest we lose."*

I think I may have originated this phrase; in any case I am happy to defend it. Mike starts his discussion by criticizing libertarians for being utopians; he is now criticizing libertarians for not being utopians.

The implication of "Utopia is not an option" is "libertarianism might do worse here than a Utopia would, but since Utopia is not an option that does not imply that it does worse than some real world alternative would." It is a proper response to anyone who says (as many do) "under libertarianism bad result X will occur, therefore we should reject it," without offering an alternative set of institutions under which neither X nor some equally bad Y that does not occur under libertarianism would occur.

Mike writes:

*According to Perry Metzger, who claims to have popularized the phrase, the correct usage is "you \*have\* to make a comparison of libertarianism against the existing system rather than against*

*your ideals of what you'd like your system to do." However, since there is no real example of libertarianism, that would be comparing the real current system against an ideal libertarian system. That's hardly a fair or valid comparison.*

1. There are real examples of more or less libertarian societies, and of societies that in particular respects were entirely libertarian, so we do have real world evidence to go on.
2. In any case, even if we are talking about a hypothetical libertarian society, hypothetical is not the same as ideal. The sort of comparison Perry is talking about is not between the outcomes libertarians want and some alternative but between the outcomes that the critic claims (perhaps correctly) libertarianism would produce and some alternative.
3. I would disagree with Perry's position (as described by Mike) in one way. It is legitimate to compare the outcomes libertarianism would produce with the outcomes an alternative, also hypothetical, would produce. The crucial error is to take as the alternative not the outcomes you have good reason to think that your preferred system would produce but the outcomes that you want it to produce — which I think was Perry's point.

### **Some general comments**

At the beginning of his FAQ, Mike points out that since not all libertarians hold the same views an argument which is correct against one libertarian may be irrelevant to another. It does not seem to have occurred to him that the same thing is true of the people libertarians argue with. Thus he attacks particular libertarian arguments on the grounds that there exist some anti-libertarian arguments to which that particular libertarian argument is irrelevant, without noticing that those are not the ones it is aimed at. For example:

The argument about "self government" (20 above) is largely irrelevant to a defense of the EPA based on the problem of externalities. But it is highly relevant to arguments for government action based on paternalism, which are common, and somewhat relevant to arguments that propose to use some combination of internalized norms and social pressures to deter activities that are undesirable but ought not to be illegal.

The quote from Jefferson (25 above) is irrelevant to some attacks on libertarianism but highly relevant to attacks that implicitly assume a philosopher king government — as many do.

"Utopia is not an option" (27 above) is irrelevant to arguments that claim to show that libertarianism works worse than some practical alternative but relevant to arguments that point out some undesirable outcome of a libertarian society as if that by itself were sufficient grounds to reject it.

### **What Mike Leaves Out**

Early in his FAQ, Mike points out, I think correctly, that there are some problems in the libertarian derivation of initial ownership of property. He then goes on to argue as if libertarians had no views at all on how things can justly become property.

He thus omits a major component of the libertarian approach to moral theory, leaving a fragment that is not merely incoherent but empty — and much of his FAQ is merely the repeated demonstration of that emptiness. Any set of acts, by government or by private individuals, can be "justified" by appropriate assumptions about what belongs to whom. Government taxation is

merely the enforcement of the government's property rights — if you start with the assumption that the government has a property right to my income. Slavery is merely the enforcement of private property rights — if you start with the assumption that the slave owner has a right to own the slave. On precisely the same basis, the Mafia protection racket (16 above) is merely the enforcement of property rights if you believe that the local don has a property right to tribute from those living in his territory, although at this point in the argument Mike unaccountably refuses to follow out the logic of his own position.

Thus what Mike is attacking in much of his argument is not only not libertarian moral theory, it is not a moral theory at all, since it can equally well demonstrate any act to be legitimate or illegitimate according to what rights you assume the actors have. To adequately answer libertarian arguments, Mike has to take account of libertarian views on how things justly become property — more generally on how rights are acquired. Those views are inconsistent with slavery as it actually happened. They are also inconsistent with most of Mike's social contract arguments. In order to deal with those views, Mike will have to either broaden his attack into a rejection of all moral theory — which I take to represent his real views — or show why some alternative is more convincing than the libertarian version.

### **Why This is an Odd Argument for Us to be Having**

There is one peculiar feature of this argument that is worth pointing out. Most of it is about moral philosophy — arguments that claim to show why things libertarians disapprove of are or are not wrong. But Mike, so far as I can tell, does not believe in moral philosophy, seems to regard all arguments about right and wrong as mistaken. While I do not share that view, I do believe that arguments about moral philosophy are on the whole less useful than arguments about economics, that we are more likely to generate both truth and agreement by trying to figure out what consequences institutions will have than by trying to figure out what consequences we should desire. Thus the whole debate has an odd element of shadow boxing. We are offering arguments and rebuttals in a field which he does not believe in at all and which I regard with sufficient scepticism to prefer to base my arguments elsewhere.