LIBERTARIANISM AND THE REALITIES OF GOVERNANCE

Colleen Zenger
Graduate Center for Public Policy & Administration
California State University Long Beach

Edward J. Martin
Graduate Center for Public Policy & Administration
California State University, Long Beach

Abstract

Libertarianism is an economic theory that bases its tenets on the normative assumptions that individual freedom will maximize personal and societal wealth. These assumptions are in turn based on the rationality of the "free market" being the most efficient method for the distribution of wealth and resources for individuals and countries. However, the failure of libertarian theory is demonstrated in the recent movement to deregulate the economy, specifically the deregulation of electricity in California and the deregulation of the banking industry in the United States.

Introduction

In critiquing libertarianism, it is necessary to look at the theory in its historical context. Theories, whether they are political, social, or economic, do not appear in a vacuum but are born of the time in which their protagonists lived. Ludwig von Mises, considered the progenitor of modern libertarianism, and his avid and prolific student, Friedrich von Hayek, were highly influential in libertarian thought and, in the last 30 years, public policy (Twentieth-Century Literary Criticism, 2001; Hudson, 2008; Butler, Eamonn, 2010). Mises lived through the effects of Nazism, Fascism and Communism. These three political ideologies place the state in a preeminent role in controlling the economy either directly through state owned enterprises or other government agents and indirectly through economic planning. As manifested in Europe in the early 20th century, nations considered by the world to have had strong democratic roots, chose tyranny, war, and genocide. Mises, who was Jewish, escaped to the United States in order to avoid the fascist policies of Austria and Germany (Ebeling, 2005; Hudson, 2008; Butler, 2010). He thus concluded that the State could not be trusted and that if given power, government would inevitably evolve into a totalitarian regime; therefore it was critical to limit the power of government Ebeling, 2005). It was Mises' and Hayek's conclusion that an unregulated economy (free market) would perfectly provide for a meaningful and vibrant democratic society with government activities limited to protecting its citizens from physical harm and ensuring that contractual agreements between citizens were upheld.

Tenets of Libertarianism

There are five major tenets of libertarianism: freedom, the market, individualism, labor, and property. A brief description follows and a more detailed review of the tenets is provided in the next section.

Freedom is defined by libertarians as the absence of constraint, particularly government constraint, and viewed in this way is a negative freedom (Berlin, Isaiah, 1969). Others view freedom as the potential or possibility for positive action, or positive freedom. Libertarians view the market as an end in itself, an absolute good, that left unfettered, would easily provide societal needs with the utmost efficiency and effectiveness. While libertarians deny the existence of market failures such as asymmetrical information and negative externalities, they nevertheless argue that individualism is essential in a free market as individuals must be left free to pursue their own self-interest and, by each person doing so, an efficient and effective market will be sustained. If individuals are limited in their actions (economic, social, political), the market is harmed.

Libertarianism maintains that individuals act according to three assumptions: (1) individual actions are not judged by other individuals or government; (2) individuals always act rationally; (3) individuals receive and understand all necessary information in order to act in their best self-interest. Because libertarians believe that competition in the market must be unfettered and free from State interference in order to reach maximum production and consumption, government intervention that sets limitations on the market is an obstacle to competition and should not be allowed. Labor is viewed as just another economic commodity and treating it as otherwise will harm the market. Libertarians understand property ownership as a natural right and as such cannot be imposed upon by the State (other than government's assistance to ensure contractual agreements between citizens regarding property ownership are upheld). Also, because individuals know what their self-interest is, it must follow that they will know how to best use their property. Property may have at one time meant landed property, but later libertarian theorists included all property, including income. Taxes remove income (property) from its best use, as determined by the individual, thus inefficiencies are introduced into the economy.

Deregulation is a definitive libertarian goal as it is assumed government regulation always hinders the market from providing goods and services in the most efficient and effective manner. Government involvement in the economy only results in higher prices and lower quality which not only harms the market itself, but is also injurious to the individual and the individual's quality of life. In looking at the deregulation of electricity in California and the banking sector in the United States, for example, it is evident that corporate actors, especially their top level executives, benefited greatly whereas a large proportion of consumers (citizens) were seriously harmed. In these two very dramatic cases, individuals and the market did not behave according to libertarian assumptions and instead behaved according to historical precedent (stagflation, recessions, depressions) when markets were largely unregulated in the United States in the late 19th century and early 20th century.

Historical Route to Libertarianism

According to Sibley, during the Enlightenment in the 18th Century, the idea of economic liberalism arose based on the belief that "all human beings are born free and equal"; thus any person is "entitled to enter freely into any contract with any other person by mutual agreement" (Sibley, 2011, page 19). Restraint, of any kind, imposed on the individual regarding her ability to make contracts with another person, must be avoided, especially State intervention such as regulations and taxes. in the *Wealth of Nations*, Adam Smith, known as the father of modern economics, advocated the use of the free market to improve the economic quality of life for a much larger proportion of the populace than what could be currently achieved by maintaining feudalism, still the dominant economic system in Europe (Smith, 1776). In order for a market to be free, Smith asserted, individuals must be able to freely enter into contracts with others for their labor and for the production of goods. This laissez-faire economic model, or Classical School, became the dominant economic system in industrialized nations through the 19th century. Due to escalating societal problems stemming from the unregulated Industrial Revolution there were several intellectual challenges to the Classical School's laissez-faire economic model. In Germany, the main challenge came from the Historical School of economists who, according to Sibley, believed "that the science of economics should be based on observations of what actually happens in real-life economies, rather than on theoretical models of economic activity favored by the Classical School" (Sibley, 2011, p. 23). Sibley notes, in the Historical School's view, "economics as a discipline was more akin to history and to psychology" (Sibley, 2011, p. 61).

In response to the Historical School's intellectual challenges to the Classical School of economics, the Austrian School of economists stated that historical and empirical analyses of economic systems was of no value, advocated for the implementation of an economic system based on theory alone, and stated that the one best theory that should be implemented was libertarianism. Two of the most influential early Austrian School economists were Ludwig von Mises and his student, Friedrich von Hayek. Mises argued that economic theory should be developed by means of deduction from certain basic principles and that this deduction would be based on certain assumptions of human and market behavior (Mises,1962). Just as with economic systems, human behavior was not to be studied empirically and instead was assumed to act under certain absolute rules.

Mises lived through the effects of Nazism and witnessed first-hand the effects of Fascism and Communism. He was born into a wealthy Jewish family in Austria and eventually attended the University of Vienna with a doctorate in law and taught at the university until 1934, when he fled to Switzerland to avoid persecution by Nazis. After Hitler annexed Austria and the start of World

War II, fearing his safety was at risk in Switzerland, Mises fled to New York City. His book *Omnipotent Government: The Rise of the Total State and Total War* (Mises,1944), was a critique of statist ideology based on the rise of Nazism (Ludwig **v**on Mises Institute). Hayek expanded libertarian theory, eventually winning the Nobel Memorial Prize in Economics in 1974 (Nobel Media, n.d.).

All three political ideologies, Nazism, Fascism, and Communism, place the State in a preeminent role in controlling the economy through state owned enterprises or other government agents and through economic planning. The economy is subordinate to the goals of the authoritarian political leadership of the State. Although theoretically Communism was to eventually result in a worker owned economy, those nations which instituted Communism never moved beyond the state controlled economic stage to a proletariat economy and are currently transitioning to a capitalistic economy (see Russia, China, North Vietnam, and Cuba; Myanmar has recently signaled it may be open to political changes conducive to capitalism; North Korea seems to be the remaining communist nation).

It would be naive to look at libertarian's major tenets, or for that matter any ideology's tenets, detached from its historical context. According to Sibley, ideas do not formulate in a vacuum and certainly Mises' ideas were heavily influenced by his personal experiences of the political landscape of the early 20th century as well as the current views at that time regarding labor and natural resources (Sibley, 2011). It would also be a discredit to the libertarian ideology to dismiss it out of hand by arguing its tenets are merely an ideological backlash born out of personal hardship, or by suggesting its tenets are subjective. Before the libertarian based policies of deregulating electricity in California and deregulating the banking industry in the United States are examined, it is necessary to understand the major principles of libertarianism.

Tenets of Libertarianism

The libertarian tenets of freedom, individualism, property, labor, and the market provide the theory's framework. However not all libertarians are in complete agreement as to the exact meaning of these tenets. There are libertarians who allow for the existence of certain market failures and the reluctant need for a minimal amount of government intervention to mitigate the worst effects of an unfettered market, and there are other libertarians who expound that market failures do not exist thus there is no need for any economic management by government.

Freedom

Sibley argues that the libertarian concept of freedom is a “negative” one, based almost entirely on "the absence of constraints" or a freedom *from* interference (Sibley, 2011). What the libertarians fail to address, according to Sibley, is the concept of “positive” freedom which is a freedom *for* attaining something of fundamental human need in service of "what is good and just" and that the freedom for the pursuit of the good and just cannot be done alone but must be done cooperatively with others; thus, positive freedom is both an individual quality and a social quality (Sibley, 2011). Sibley refers to Aristotle's *Politics* in furthering the idea of positive freedom as the "freedom ... [that] is found in a life willingly directed towards the good of the republic, inspired by a shared understanding of goodness" (Aristotle, n.d., pp. 126-127). Sibley contends that, the libertarian understanding of freedom "loses contact with goodness and justice, becoming simply the absence of constraints imposed by" others (Sibley, 2011, page 49). Positive freedom ultimately is rooted in law and policy, grounded in justice, based on human rights, at the very core of what it means to be human with particular human needs that must be met. Even the founding father of classical economic liberalism, Adam Smith, did not completely espouse the “negative freedom” that the libertarians do, and in *The Theory of Moral Sentiments,* wrote "the wise and virtuous man ... is willing that his own private interest should be sacrificed to the public interest" (Smith, 1790, page 213).

Libertarians respond to the concept of positive freedom by emphasizing its use by the State for coercion leading inevitably to totalitarianism, as demonstrated by the Nazis use of the phrase “Arbeit macht frei” or “work is freedom” which Sibley notes meant that, "we are making you free by obliging you to collaborate with our good projects" (Berlin, 1969, p. 9; Library of Congress, n.d.; Auschwitz.org, n.d.; Sibley, 2011, p. 50). Sibley notes that this forced collaboration was a technique used by Nazis and other totalitarian regimes and he counters that the definition of positive freedom must include individuals and society choosing "to pursue good ends" and does not mean the "compulsion to do good"(Sibley, 2011, p. 51). For a good and just society, the State is obliged to provide opportunities and possibilities to its citizens to do good things. A minimum level of education and healthcare are examples of how a State would provide opportunities and possibilities to its citizens. Sibley also counters the libertarian notion that positive freedom is a thin veil for government coercion by stating that positive freedom "does not depend on the assumption that there is a unique system of good and just objectives" (Sibley, 2011, p. 52), but that these objectives must be deliberated and determined by society and that these objectives are not static and may change over time. As an example of positive freedom, at one time it was economically and morally acceptable to buy and use slaves in the United States. This became morally unacceptable to society and this type of labor was removed from the market.

Market

For libertarians the ideal market is understood as laissez-faire capitalism - meaning there is no government intervention in the market other than the minimal protection by law of contractual arrangements between parties. Simplistically, most types of modern economies can be seen as being on a continuum between the one extreme of a planned economy in which the State controls all aspects of production and distribution and the market plays no part, to the other extreme wherein all aspects of production and distribution are determined by the market and the government plays no part. In between these two extremes can be found mixed economies in which both government and the market manage the production and distribution of goods, labor, and capital.

Libertarians assume that markets provide all necessary information to consumers and that all necessary information is distilled in the price of a good or service. This is false. In an unregulated market, the price of a good reflects production costs and does not include negative externalities, a consequence of an economic activity that is negatively experienced by unrelated third parties. This is because of two types of market failure: asymmetrical information and free riders. In the case of asymmetrical information, unregulated markets provide sellers an incentive to pass along potential costs in the product or service to consumers. As an example, a toy manufacturer who knowingly uses lead paint on its toys, because lead paint is cheaper than non-lead paint, does not disclose that there is lead paint on the toy because if he did, no one would buy his toys. He also does not include in the price of the toy the health and social costs to consumers such as children becoming ill and in some cases dying (U.S. Consumer Product Safety Commission, 2007). In the libertarian theoretical model, the price of the toy would fully reflect the health and social costs of illness and lives lost resulting in a very high price for the toy. In fact it would be so expensive that no consumers would buy it. Thus the health of children would not be adversely affected. The libertarian scenario illustrates that the theoretical model has no relation to how unregulated markets work.

Libertarian theory extols the market as the ultimate provider of all needed goods, including social goods, with no need for government intervention. This is not the case. The market does not provide public or social goods. In the case of the "free rider" market failure, there are two types: under or non-production of a “public good” and excessive production of a “public bad.” In the first instance market free riders have an incentive to not take on the cost of providing a public good, such as national security, and in the latter case, market free riders are incentivized to pass along the cost of public bads to others, such as pollution. Either condition means that laissez-faire capitalist suppliers of goods and services are not burdened with the costs of their choices. A characteristic of a public good is that the exclusion of its benefit is not feasible; once the public good is made available, it is not possible to exclude those who did not pay for it from using or benefiting from it. Because of this, there is no market incentive to provide public goods such as clean air, neighborhood parks, designated open spaces, or national highways. If left to the market, as libertarians propose, the production of public goods would not materialize. This is evident in other nations with weak national tax systems; their infrastructure is crude, non-existent, or dangerous. As just one example, Guinea is a mineral rich nation with a weak government and tax system (absence of big government), and comparatively unregulated market. Yet contrary to libertarian assumptions, this country has few roads, no national electrical grid, or other standard infrastructural public goods. Guinea's lucrative market for rich minerals did not foster private investment in these types of free rider goods (Encyclopedia of the Nations, n.d.; International Business Times, 2011).

There is also no market incentive to provide social goods. A social good is something that effects the betterment of society. Examples are literacy, health, citizen participation, and non-discrimination. These types of goods support a stable and strong democratic society. Libertarianism does not address how an unregulated market would provide such social goods. A characteristic of a public bad is that an unregulated market is incentivized to pass along its cost to a diffuse, uninformed (asymmetrical information - see above), and unorganized consumer base. Such is the case with the lead paint example used previously. Pollution is another example. There are numerous empirical instances in which corporations dump polluted effluvium into local rivers poisoning those that ingested the water downstream as well as killing the river's fish and surrounding wildlife.

Libertarianism also assumes that there continues to be an abundance of natural resources and a shortage of labor. An abundance of natural resources will keep prices of necessary goods within reach of the poor and a shortage of labor will ensure that wages stay above a subsistence level. Both are necessary assumptions for the libertarian tenet that an unregulated market will provide all necessary goods with no need for government subsidization of basic foodstuffs or for government to set a minimum wage. Natural resources in the 18th and 19th century seemed bottomless. It was assumed that natural resources would always remain bountiful always and the cost of extracting them and using them would be limited to only the production cost. This is not true. Natural resources are limited, becoming more costly to extract, and their use has become much more costly due to escalating negative externalities such as pollution. The current global consumption level of non-renewable natural resources cannot be sustained. Libertarians also assume that the resource of labor will always be in short supply. This may have been true in the 18th century and periodically thereafter but, as is typical, the level of economic inputs fluctuate over time, and during these times, labor became more plentiful and wages declined to below subsistence levels. Thus the libertarian's assumptions of unending abundant natural resources and a sustained labor shortage do not reflect the realities of the market.

Lastly, the libertarian view of an optimal market relies on the assumption that all or most participants have equal power in contractual arrangements. This is not true. Ironically, the libertarian "one penny, one vote" vision of democracy in action through the market demands that those with the most pennies have the most votes. Corporations have an enormous amount of wealth which they vigorously wield to shape the market to their monetary advantage. Lobbying, political donations, price collusion, cartels, monopolies, bribery - these are all rational outcomes of an unregulated capitalist market based on naked self-interest.

Individualism

Libertarianism states that individuals must act with as little constraint as possible in order to be able to fulfill their best self-interest. In order for this to occur, three suppositions must be made. First, the actions of individuals must not be judged, or as Mises states, "nobody is in a position to substitute his own value judgments for those of the acting individual, it is vain to pass judgment on other people's acts and volitions" (Mises,1949, page 19). Secondly, "human action is necessarily rational" (Mises, 1949, p. 19). The libertarian meaning of rational, that all decisions and behavior of individuals are rational unless an individual is constrained by government, disregards other actors and focuses solely on government. The constraints of the market and cultural and societal norms on the individual do not exist and thus do not interfere with an individual's ability to pursue their best self-interest. Why one societal actor's constraints on an individual's behavior is to be avoided (the State) while other societal actors' constraints are ignored (market, cultural, social), is not explained in libertarian theory. Third, the individual has received and understands all information required to know what is in her own best self-interest which is another way to say that there is a complete absence of asymmetrical information.

As with other libertarian suppositions, these three assumptions must exist in the absolute (never judged, always rational, always informed) and all three must co-exist simultaneously. Just as a three legged stool, if one leg is absent (if one assumption does not hold), then the entire principle of individualism falls. For instance, if an individual's action is without judgment and the same individual acts rationally but the individual is not fully informed, then the individual cannot act in her own best self-interest. Thus it is the libertarian view that government is the only viable societal actor who has the ability to limit the fruition of these three suppositions and when it does so, it impedes the individual from realizing her self-interest. It is true that government does impede one or more of these three suppositions through such actions as laws, regulations, or fines. Libertarian theory postulates that a free market does not in any way impede the realization of these three suppositions. This is false. The market is consistently an obstacle to them.

It is important here to examine the first supposition, that the actions of the individual must not be judged. This is exactly what corporations do. The market does its best to manipulate individual behavior to increase profits (this is the fundament of capitalism) and there is an abundance of evidence that the market's manipulation of consumer values has been and continues to be a great success. Corporations work very hard to engender certain values or judgments that support the purchase of their product. It is hoped that the consumer will adopt, or substitute their own values with the values put forth by the corporation. The tobacco industry is a skilled marketer of a lethal and addictive drug, nicotine, as a product that will make the consumer, attractive, elegant, fun, thinner, wealthy, hip, and urbane. This strategy has worked extremely well for decades.

The second supposition, that all individual action is rational when there is no interference from government is false. There is a vast empirical field of study called behavioral economics that investigates the bounds of rational behavior of individuals in the market and uses social, cognitive and emotional factors in understanding the economic decisions of individuals. In his book "bounded rationality," Nobel Laureate Herbert Simon attempts to explain how individuals, irrationally seek satisfaction instead of maximizing their best self-interest (Simon, 1955; Simon 2008). Bounded rationality means that there are limits to the individual's ability to act rationally due to the cognitive limitations of their minds, and the finite amount of time one has to make a decision (Simon, 1955; Simon 2008). Moreover, corporations rely upon and use bounded rationality in order to maintain profits. Stock market bubbles and subsequent market crashes are exemplary illustrations of irrational behavior.

The third supposition, that there is no occurrence of asymmetrical information in an unfettered market runs headlong into economic reality. As noted above, in the field of behavioral economics, the norm in markets is asymmetrical information, especially so in highly complex industrialized nations. The assumption that the individual has received and understands all information required to know what is in her own best self-interest is devoid of fact. Ironically, an unfettered market relies upon and uses asymmetrical information in order to maintain profits. It would not be in the tobacco industry's best self-interest to disclose that smoking tobacco causes cancer; this information was known to tobacco corporations and, under the profit motive, was understandably withheld from the consumer. Many deaths which occurred might have been prevented if the consumer had been informed. In an unregulated market, corporations are loathe to disclose anything adverse to consumers, as transparency might negatively impact profits. This has been clearly seen historically in the United States, e.g., the robber barons at the turn of the century, the meat packing industry, and the tobacco industry (Public Broadcasting Service, n.d.; U.S. Department of State’s Bureau of International Information Programs, 2008; U.S. Food and Drug Administration, 2009; Centers for Disease Control and Prevention, n.d.). This is currently being witnessed in China which has a minimally regulated market, e.g., lead paint on children's toys, melamine in infant formula and pet food, and shoddy school construction (U.S. Consumer Product Safety Commission, 2007; U.S. Food and Drug Administration, 2008; U.S. Food and Drug Administration, 2007; BBC News, 2008; Xinhua News Agency, 2008). The impetus for the creation of the Securities and Exchange Commission was to ensure a minimum of financial disclosure by companies so that potential investors would be able to make a more informed decision as to their investment in a company. Many government regulations, or constraints on the market, are intended to mitigate the more egregious effects of an unfettered market.

Labor

According to Sibley Libertarians believe that the market must be completely free, or nearly so, from government intervention in order to reach maximum production and consumption because "any arrangement that might restrict production and consumption is socially injurious" (Sibley, 2011,– page 79). Thus, the enforcement of subsistence wages is an obstacle to competition and should be removed which is contrary to the Classical School which advocated for subsistence wages (Sibley, 2011, pp. 81, 102, 117). Carl Menger, founder of the Austrian School, states in his book *Principles of Economics,* "... neither the means of subsistence nor the minimum subsistence of a laborer can be the direct cause or determining principle of the price of labor services"(Menger,1871, p. 171). Interestingly, Menger also mentions in *Principles* that "a seamstress working fifteen hours a day cannot earn what she needs for her subsistence," the implication of which is that she will remain in extreme poverty and at great risk of starvation (p. 170). Thus Sibley concludes the Austrian School treats labor as a commodity whose value is determined in the market just like coal, wheat, or beef. Libertarianism sees no difference between the resource of human labor and the resource of cattle (Sibley, 2011). Yet treating these as equivalents is socially injurious to both the individual and the community. Without an enforced subsistence wage, it follows that, in an abundance of labor, a certain proportion of the population will live in poverty (with all its attendant negatives) and some may even starve to death. To amplify the meaning of that last sentence: it may be necessary that a certain number of infants and children starve to death in order that the market remain competitive as a free competitive market provides for the greater good. This is surely not the arrangement contemplated in any rational social contract. Jonathan Swift's satire *A Modest Proposal* comes to mind when he suggested the use of cannibalism as a solution to an Irish famine in that children when no longer useful as a labor commodity, should be used as a food commodity (Swift, 1729).

To further substantiate labor as a commodity, Sibley contends that work is treated by libertarians as a means to an end by rejecting the idea that the worker "may find a certain satisfaction in the execution of his work" (Sibley, 2011, p. 96). For libertarians, work serves no other purpose than to produce things for consumers. Empirically this is seen as false as workers even in the most repetitive and mindless type of work take pride in their abilities and cultivate social connections with fellow workers. It would be astonishing to spend so many hours a day at work and not seek a certain level of fulfillment in the work itself and camaraderie in the work environment.

In *Human Action: A Treatise on Economics,* Mises states, "Labor is the most scarce of all primary means of production" … "there are buyers for every supply labor offered" (Mises, 1949, p. 135). Sibley notes that Mises does not explain why labor would always be in short supply, that it is simply assumed to be true. Historical fluctuations in unemployment and the accompanying drop in wages to below subsistence levels are not addressed by libertarians. In *Human Action,* Mises conceives of an economic world that in his view could never exist, yet he describes very well the current state of many nations. Mises asserts that this imagined world would not exist, let alone function according to libertarian economic theory. He merely dismisses further discussion by saying it is a paradox, an absurdity:

> We may try to imagine the conditions within a world in which all material factors of production are so fully employed that there is no opportunity to employ all men or to employ all men to the extent that they are ready to work. In such a world labor is abundant; an increase in the supply of labor cannot add any increment whatever to the total amount of production. If it were a market society, wage rates paid would not be enough to prevent starvation. Those seeking employment would be ready to go to work for any wages, however low, even if insufficient for the preservation of their lives. They would be happy to delay for a while death by starvation. There is no need to dwell upon the paradoxes of this hypothesis and to discuss the problems of such a world. Our world is different. Labor is more scarce than material factors of production. [..] in our world there is no abundance, but a shortage of manpower, and there are unused material factors of production i.e., land, mineral deposits, and

> even plants and equipment. (Mises,1949, p. 136).

Sibley recaps libertarian's ideal capitalist market economy: labor is necessarily a commodity and by extension those who provide labor, workers, are also a commodity, to be used as efficiently as possible in order to sustain and increase profits (Sibley, 2011, p. 81).

Property

Libertarians oppose redistributive taxes, with some libertarians opposing all taxes, based on the concept of individual property rights. "Libertarians believe that a society of individual property owners will more intelligently and efficiently use that property for productive purposes than if it were under collective control or regulation" (Hudson, 2008, page 9). Libertarians use the word property not only to denote physical property such as land, but also anything owned by the individual including income. Therefore if the most effective and efficient use of property is by the hand of the individual, it is wasteful and ineffective to apportion some of this property to government, i.e., taxes. Use of one's property must not cause harm to others but the event of harm must be thoroughly proven and be clearly traceable to a particular property owner before the property owner can be penalized.

Libertarians view property rights as a natural right vested in one's existence, rights which a person possesses without intervention of agreement and which would exist in the absence of political and legal institutions. If examined closely, the notion of the ownership of property is a human construct and cannot exist if not adjudicated by government. Since property rights are defined by society and protected via law, then government is within its purview to act upon a person's property such as taxation or eminent domain. Jeremy Bentham succinctly stated that “natural rights is simple nonsense: natural and imprescriptible rights, rhetorical nonsense,— nonsense on stilts” (Bentham, 1843a, p. 914; Bentham, 1843b, p. 556); that there are no natural rights and that all such designated innate rights are societal constructs, e.g., the idea of property is a legal construct. The relevance of slaves and the arduous fight for the equality of women and minorities demonstrates that the right of equality was not innately provided by nature, or even society but was, after great struggle, provided by the establishment of law (see Constitutional Amendments 13, 14, 15, and 19). Left to our own devices, we do not inherently respect the "natural" rights of others, requiring government intervention to ensure said "natural' rights are enjoyed by all. Assuming taxes were eliminated, those who own the most property (the wealthy or corporations) would stand to gain the most from its absence with those who have no or little property (the poor) receiving much less benefit.

Effects of Libertarianism on Public Policy – Deregulation

Two libertarian public policies have affected the avid pace of deregulation since the 1980s. The first is the deregulation of electrical utilities and the second is the deregulation of the banking sector. Deregulation is a definitive libertarian goal as government regulation hinders the market from providing goods and services in the most efficient and effective manner. Libertarian theory asserts that government interference pushes prices upwards and downgrades the quality of goods and services. Therefore, it is in the best interest of citizens that markets be unregulated. In the libertarian view, once a sector is unregulated, competition between service providers and manufacturers will follow, driving prices downwards. At the same time, the quality of the good or service will increase as companies, motivated by profit, will need to meet the demands of consumers or by 'voting with their feet', consumers will go elsewhere to make their purchases.

Using this market model for utilities is at odds with what economists define as a natural monopoly: it is less costly to produce the product within a single firm than when it is produced by multiple firms (Hudson, 2008). This is partially due to the need for extensive physical infrastructure, economies of scale, and product standardization. As Hudson illustrates, having competing electric companies stringing their own electrical lines to different buyers' homes makes no sense (Hudson, 2008). Additionally, the competitive market model does not work well with natural monopolies as these services are wanted by all citizens thus demand is near 100%, abating only when prices become onerous. The demand is this strong because citizens consider the service a basic necessity, and as such, there is great profit incentive for providers to out-compete (under price) against others in order to corner the market and become a monopolist. If a company does become a monopolist and there is no regulation, prices will skyrocket to the injury of the consumer. Even if a company does not attain the goal of monopoly, it can still increase profits by collusion with other providers or by forming a cartel. In an unregulated market with near 100% demand, the allure of massive wealth is undeniable.

To review the characteristics of a public utility: extensive infrastructure, economies of scale, standardization, 100% demand, and a basic necessity. Several services with these characteristics are sewerage, water, gas, electricity, and trash removal. Because these services ensure public health and safety, provision must be made to indigent citizens, at below cost if need be, so that living conditions do not become squalid. Meeting this goal results in scaled pricing dependent on income as well as subsidization built into the pricing for non-indigent citizens, i.e., a redistribution of wealth. If these requirements are all apparent, then the service is better provided by a government regulated monopoly.

Libertarian views gained traction beginning in the early 1980s and in 1998 California deregulated its electrical utilities. California politicians with libertarian leanings saw an opportunity to break apart the vertical integration of the governmental electrical monopoly by de-linking the seller of electricity from the supplier of electricity and introducing competition by "requiring utilities to obtain their power from competing private power suppliers and simply charge a fee for the use of their grid for transmitting power to customers" (Hudson, 2008, page 108). Hudson notes, by "2000 [...] average wholesale prices were four times what they had been in 1998" and in 2001, Californians "experienced repeated periods of rolling blackouts because of a lack of sufficient supply of generated power" (Hudson, 2008, p. 109, 77).

This open competition model ignored the fact that electrical suppliers remain monopolists because of barriers to market entry to other potential suppliers. Barriers are in place due to the enormous infrastructure costs of building an electrical supply facility and saturation of available resources for creating electricity. Consider the economic waste with duplication of enormously costly facilities just so that there could be multiple suppliers in the market. Bearing in mind the cost of duplication and risk involved if there were no buyers for the electricity produced, it is dubious that companies would invest capital in such a high risk project. There were very few large rivers that were not yet been dammed and ready for new market entrants to electrical suppliers. If there are a sufficient number of large rivers available, consider the economic impact to the local environment and attendant legal constraints with building a dam. Also, the electrical power wanes the longer the distance it is physically transmitted. This means that for California, it would not be cost effective to buy electricity from east coast suppliers limiting the number of suppliers to a narrow geographical range. None of this was taken into account prior to deregulation. As prices soared after deregulation and rolling blackouts became frequent, the Federal Energy Regulatory Commission reinstated regulations and prices immediately dropped and blackouts discontinued. Hudson notes, the "true cause of the crisis proved to be the market manipulation of Enron and other energy traders" and that given "the profit potential to generators when supply is tight, it was naive to think that some would not find ways to manipulate supplies to produce" price gouging and supply volatility (Hudson, 2008, p. 111).

Were the tenets of libertarian theory fulfilled by the deregulation of California's electricity market? Freedom was provided if narrowly defined as negative freedom via the absence of regulations. If the definition of freedom includes positive freedom, or that which is in service of what is good and just, then this deregulation hindered freedom as it fostered rampant fraud. Individualism should have been provided but was not. Libertarian theory asserts that once deregulation occurred and competition between electricity providers entered the market, consumers would have the ability to buy their electricity from the lowest price provider. This did not occur as utilities are natural monopolies: the cost to newer entrants to the market would be staggering, duplicative and inefficient and the investment highly risky. Additionally, individuals could not rationally pursue their best self-interest because of asymmetrical information. Due to overwhelming market incentives (which libertarians argue do not exist) to cheat and steal, electrical suppliers colluded on setting astronomical prices as well as disrupting the flow of electricity. Consumers were unaware of these factors. Since government intervention in the market for electricity was removed did it then follow, as libertarians assert, that this market was able to reach maximum production and consumption with attendant falling prices? No. The opposite occurred, prices skyrocketed and supply dwindled. After de-regulation, the libertarian notion of property, including income, as a natural right worked well for the electrical suppliers but not so well for consumers. The difference between the electricity market before and after deregulation for consumers is that before deregulation, consumers paid a small subsidy for the poor and modest profit to the electrical utility provider and afterwards consumers paid a fantastic profit to the private corporations supplying electricity.

The latest deregulation disaster involved the banking industry and the global banking crisis that emerged in 2008 and continues today. The United States is still in recession; Europe continues to struggle financially, economically, and politically as one EU member nation after another reaches the precipice of default and falls into deeper recession; most industrialized nations' GDP is extremely low with high accompanying unemployment. Riots and protests, centering on the themes of high long term unemployment and income inequality, have become commonplace in Europe and in the United States. The current global crisis has been given the epithet 'the Great Recession' as the phrase 'The Great Depression' was already taken.

The 1933 Glass-Steagall Act was enacted to mitigate financial speculation by banks, a major factor in the stock market crash of 1929 and its aftershocks leading to The Great Depression (United States Congress, Glass, Steagall, 1933). Prior to the Glass-Steagall Act, banks were unregulated, and strongly motivated by profit, engaged in high risk investments and at times fraud. Banks could do this because at the time, there was no separation between retail banking and investment banking. This meant that when depositors put their money in an interest bearing savings account, the bank might invest those funds in high risk stocks which were under management in its investment services division and which the bank often owned. An obvious conflict of interest was inherent in being able to take people's money and invest that money in stocks the bank owned. The Glass-Steagall Act was repealed in 1999 with the Gramm-Leach-Bliley Act which removed the barrier between retail and investment banking. The repeal of the Glass-Steagall Act is blamed for re-establishing the conflict of interest inherent between retail and investment banking and encouraging the growth of 'too big to fail' institutions. Just as was done in 1932, in response to the effects of The Great Recession, in 2009 Senators John McCain and Maria Cantwell, proposed re-enacting the Glass- Steagall Act's barrier between retail and investment banking to address the conflict of interest between safeguarding customer's assets (retail banking) and using customer assets in profit seeking ventures (investment banking).

The effects of repealing the Glass-Steagall Act have been and continue to be devastating: numerous and ongoing retail and investment bank failures with depositors losing their savings; sustained high rates of unemployment that many economists estimate will continue for at least several more years; countless homeowners losing their homes due to unemployment and subprime mortgage loans; cities declaring bankruptcy; municipal bonds defaulting; major cities declaring bankruptcy (Detroit most recently), and a massive increase in federal debt (Sibley, 2011, p. 139; Hudson, 2008, p. 106; United States Bankruptcy Court Eastern District of Michigan, 2013). Sibley states, "the object of ... this deregulation has been to bring financial services into line with the ideology of maximum commercial freedom, and to enhance competition" (Sibley, 2011, p. 139). As libertarians hoped, the deregulation encouraged competition between banks; yet this competition followed empirical market behavior and did not adhere to libertarian normative theory. Banks developed "…increasingly complex investments as each [sought] to gain competitive advantage by offering something new and different" consequently banks held "large quantities of investments which are innovative, intricate, poorly understood products, whose value ... is highly uncertain" (Sibley, 2011, p. 138). Unregulated competition also encouraged speculative lending resulting in a "profusion of dubious subprime mortgages" (Sibley, 2011, p. 139). Just as happened in the unregulated banking environment prior to 1932, the profit motive drove banks to indulge in speculative decisions resulting in an enduring and painful global crisis.

Were the tenets of libertarian fulfilled by the deregulation of the banking industry? Freedom was provided if narrowly defined as negative freedom via the absence of regulations. If the definition of freedom includes positive freedom, or that which is in service of what is good and just, then this deregulation hindered freedom as it fostered fraud and speculation on such a scale as to cause a global economic crisis that four years later still eludes recovery. Individualism was rampant with self-interest in high gear. People who did not have the income sufficient to pay a mortgage in the long term were offered creative loan products so complex it was beyond the ability of most people to understand what they were buying (asymmetrical information); yet people did not act prudently and deemed it was in their best self-interest to purchase a house (bounded rationality). Brokers selling the complex loan products were being paid on commission so loan volume and loan size were key to higher pay. It was in the loan broker's self-interest to sell loans to everyone who walked in the door and, if need be, finagle the information on the loan applications to ensure they passed the underwriter's review. Banks no longer had to keep the loans on their books and therefore had no financial stake in the quality of the loans; the loans were packaged, or securitized, and sold to investors who were typically large institutional investors, such as pension funds, insurance companies, and mutual funds, who relied solely on the originating banks for quality control of the loans underlying the securities. It was in the bank's best self-interest to create as many loans as possible as fees from the securitization process are lucrative.

Libertarian theory asserts that once deregulation occurred and competition between banks entered the market, consumers would have the ability to buy banking services at the lowest price. The initial cost to consumers for mortgage loans was low and obscured the real cost of the entire loan. Many of the complex loan products sold were adjustable rate mortgages offering initial interest rates that were ridiculously low, but with set triggers that could escalate rates astronomically. Investors will not buy loans if the loans do not pay, over the life of the loan, a sufficient cash flow to attract the investor. Initial low interest rates obscure the true interest rate cost of the loan over its entire 30 year life. This long term cost was not explained to consumers (loan brokers themselves may not have been able to understand this concept much less calculate it for the consumer) thus asymmetrical information was unconstrained. Several years after moving into their house, consumers' mortgage payments quickly rose beyond their income capacity. Their inability to pay for the long term interest rate costs was a known factor before the borrower signed his mortgage agreement. Yet banks, due to the pressing needs of their self-Interest refused to forgo the short term gains in selling deceptive products.

Since government intervention in the banking Industry was removed did it then follow, as libertarians assert, that this market was able to reach maximum production and consumption with attendant falling prices? The answer is yes if we view maximum production and consumption as an end in itself. If we consider that what was produced and consumed were bad products (bad loans), then there is no benefit to anyone outside of the investment banks who received incredible amounts in securitization fees. The libertarian notion of property, including income, as a natural right worked well for investment banks but not so well for consumers and retail banks.

Conclusion

At its most fundamental level, libertarian theory is concerned with the allocation and control of power. For libertarian ideology, the potential for unchecked power resides wholly within the State. Thus, once the State's power is removed, or greatly diminished, and power shifts to the market, the misuse of power to inflict harm on the community is also removed. This is mistaken. And yet, libertarians simultaneously acknowledge that a purely market economy will result in economic inequalities with high concentrations of wealth and at the same time deny the existence of economic power and its attendant abuses, which are shown empirically time and again. This paradox is not resolvable in libertarian theory.

The major tenets of libertarianism can best be understood as a reaction to the societal ravages and well-founded fear of the authoritarian regimes that took hold in Europe in the 1920s. In this light then, early proponents of libertarianism were highly concerned with the deterioration of Europe's social goods (including justice, equality, independent thought, and social responsibility) and relied on the concept of an efficient market as a means to justify the removal of most, if not all, State power and therefore its ability to harm the community. In their despair and desperation of the atrocities surrounding them, it made sense to portray the State as inevitably evil and without the capacity to continue to be a positive stakeholder for the provision of and maintenance of economic and social goods. Ironically, in order to rationalize the rejection of the State, libertarians found it necessary to transmute economic goods into social goods. Thus in attempting to save social goods from being destroyed by the State, libertarian theory ultimately confounded its own goals by stating that a capitalist economy, by virtue of its basic impetus of individual self-interest, would better provide social and economic goods than if these goods were provided in a partnership between the market and the State.

Libertarians had to justify the removal of government intervention and regulation of the economy by removing the State as a viable economic actor. The justification for the removal of the State was supplied by non-empirical, unsubstantiated assumptions underlying their five major tenets of freedom, individualism, the market, labor, and property. In essence Mises constructed a model of economic and implied social theory on the basis of fear, refuting observed factual information that was contrary to his theory's proposed normative outcomes.

The practical consequence of the libertarian fear of State tyranny is the equally fearsome prospect of tyranny of the market. Libertarian theory and its attendant public policies must lead directly to where they most wanted to avoid: degradation of democratic institutions through the abuse of power. The libertarian credo of relying on the market's invisible hand to remove dangerous concentrations of power by dispersing power among citizens through a free market based on self-interest has not and cannot be realized. It has been empirically and consistently demonstrated that a capitalist market, left unregulated, concentrates wealth and power into the hands of a small percentage of the population, expands the rate of poverty, and harms the modern middle class. The growing disparity between the wealthy and the poor works against a democratic society. Economic power must be balanced and not left to self-regulation. The only societal actor powerful enough to act as a safeguard to the excesses of a capitalist market is the State. Libertarians are correct when they state that a government which controls much of the economy is on the path to tyranny, but it is not true that a democratic government which participates in the provision of economic and social goods will doom itself by becoming a totalitarian regime. In this respect, we can look to the Nordic countries of Sweden Norway, and Finland as successful examples of the balance between the State and the market.

Once it is understood that social goods are necessary for a vital democratic society, that an unregulated market will not provide social goods, that an unregulated market will not equitably provide economic necessities, that an unregulated market will overproduce economic bads, and that the location of unbalanced power, in the political or economic realm, does not prevent certain detrimental political and economic effects, then the tenets of libertarianism collapse.

References

Aristotle.(n.d.). *Politics*. Retrieved October 30, 2011 from http://socserv2.mcmaster.ca/~econ/ugcm/3ll3/aristotle/Politics.pdf

Auschwitz.org. (n.d.). *Arbeit macht frei* . Retrieved November 14, 2011 from http://www.auschwitz.org/

BBC News. (2008). *China anger over shoddy schools*. Retrieved November 8, 2011 from http://news.bbc.co.uk/2/hi/asia-pacific/7400524.stm

Bentham, Jeremy. (1843a). *Anarchical fallacies; being an examination of the declarations of rights issued during the French revolution.* Retrieved November 15, 2011 from http://files.libertyfund.org/files/1921/Bentham_0872-02_EBk_v6.0.pdf

Bentham, Jeremy. (1843b). *Principles of morals and legislation, Fragment on Government, Civil Code, Penal Law*. Retrieved November 15, 2011 from http://files.libertyfund.org/files/2009/Bentham_0872-01_EBk_v6.0.pdf

Berlin, Isaiah. (1969). *Two concepts of liberty*. Retrieved November 1, 2011 from http://www.wiso.unihamburg.de/fileadmin/wiso_vwl/johannes/Ankuendigungen/Berlin_twoconceptsofliberty.pdf

Butler, Eamonn. (2010). *Ludwig von Mises – a primer* The Institute of Economic Affairs. Retrieved November 1, 2011 From:http://www.iea.org.uk/sites/default/files/publications/files/upldbook514pdf.pdf.

Centers for Disease Control and Prevention. (n.d.). *Tobacco-related legal requirements and obligations*. Retrieved November 13, 2011 from http://www.cdc.gov/tobacco/basic_information/tobacco_industry/reporting/laws_regs/index.htm

Ebeling, Richard. (2005). *Ludwig von Mises and the Vienna of his time (part 1).* Retrieved November 1, 2011 from http://www.fee.org/the_freeman/detail/ludwig-von-mises-and-the-vienna-of-his-time-part-1#axzz2bbokRU54

Encyclopedia of the Nations. (n.d.). *Equatorial Guinea- economic development.* Retrieved November 15, 2011 from http://www.nationsencyclopedia.com/Africa/Equatoriai-Guinea- ECONOMIC-DEVELOPMENT.html

Hudson, W. E. (2008). *The libertarian illusion ideology, public policy, and the assault on the common good.* Washington D.C.: CQ Press.

International Business Times. (2011). *Guinea to use 35% of $700M windfall from Rio Tinto on national infrastructure.* Retrieved November 15, 2011 from http://www.ibtimes.com/articles/232347/20111017/guinea-tax-gold-bauxite-iron-diamond.htm

Library of Congress. (n.d.). *Czechoslovakia -Theresienstadt - interor of concentration camp looking toward arch with sign "Arbeit macht frei".* Retrieved November 10, 2011 from: http://www.loc.gov/rr/frd/Military_Law/NTindictments-1.html

Ludwig von Mises Institute. *Biography of Ludwig von Mises (1881-1973)*. Retrieved November 8, 2011 from http://mises.org/page/1468/Biography-of-Ludwig-von-Mises-18811973

Menger, Carl. (1871). *Principles of economics*. Retrieved October 29, 2011 from http://mises.org/Books/mengerprinciples.pdf

Mises, Ludwig von. (1944). *Omnipotent government: the rise of the total state and total war*. Retrieved October 30, 2011 from http://mises.org/books/og.pdf

Mises, Ludwig von. (1949).*Human action: a treatise on economics*. Retrieved October 30, 2011 from http://mises.org/books/humanaction.pdf

Mises, Ludwig von. (1962). *The ultimate foundation of economic science*. Retrieved October 30, 2011 from http://library.mises.org/books/Ludwig%20von%20Mises/Ultimate%20Foundation%20of%20Economic%20Science.pdf

Nobel Media. (n.d.). *Friedrich August von Hayek – facts*. Retrieved October 30, 2011 from http://www.nobelprize.org/nobel_prizes/economic-sciences/laureates/1974/hayek-facts.html

Public Broadcasting Service. (n.d.). *The credit mobilier scandal*. Retrieved November 18, 2011 from http://www.pbs.org/wgbh/americanexperience/features/general-article/tcrr-scandal/

Schofield, P. (2003). *Jeremy Bentham's nonsense upon stilts*. Retrieved November 18, 2011 from http://journals.cambridge.org/action/displayFulltext?type=1&fid=3372512&jid=UTI&volumeId=15&issueId=01&aid=3372504&bodyId=&membershipNumber=&societyETOCSession=

Sibley, A. (2011). *The poisoned spring of economic libertarianism.* Washington D.C.:Pax Romana.

Simon, H. A. (1955). *A behavioral model of rational choice*. Retrieved November 15, 2011 from http://cowles.econ.yale.edu/P/cp/p00b/p0098.pdf

Simon, H. A. (2008). *Rationality, bounded*. The New Palgrave Dictionary of Economics. Retrieved November 15, 2011 from http://www.dictionaryofeconomics.com/article?id=pde2008_B000176&q=behavioural%20economics&topicid=&result_number=4

Smith, Adam. (1776). *The wealth of nations*. Retrieved November 15, 2011 from http://www2.hn.psu.edu/faculty/jmanis/adamsmith/wealthations.pdf

Smith, Adam. (1790). *The theory of moral sentiments*. Retrieved October 20, 2011 from http://www.ibiblio.org/ml/libri/s/SmithA_MoralSentiment_p.pdf

Swift, J. (1729). *A modest proposal.* Retrieved November 15, 2011 from www.pagebypagebooks.com/Jonathan_Swift/A_Modest_Proposal/A_Modest_Proposal_p1.html

Twentieth-Century Literary Criticism. (2001). *Friedrich August von Hayek, - Introduction*. Ed. Scott Darga Assistant Editor. Vol. 109. Gale Cengage. Retrieved November 8, 2011 from http://www.enotes.com/friedrichaugust-von-hayekessays/hayek-friedrich-august-von/introduction

United States Bankruptcy Court Eastern District of Michigan. (2013). *City of Detroit bankruptcy filing*. Retrieved August 11, 2013 from http://www.mieb.uscourts.gov/news/city-detroit bankruptcy-filing

United States Congress and Glass, Carter, Steagall, Henry. (1933). *Public Law 66, 73d Congress, H.R. 5661: an Act to Provide for the Safer and More Effective Use of the Assets of Banks, to Regulate Interbank Control, to Prevent the Undue Diversion of Funds into Speculative Operations [Banking Act of 1933]*. Retrieved November 19, 2011 from http:fraser.stlouisfed.org/publication/?pid=991

United States Consumer Product Safety Commission. (2007). *AAFES expands recall of "Soldier Bear" toy sets due to lead poisoning hazard*. Retrieved November 18, 2011 from http://www.cpsc.gov/cpscpub/prerel/prhtml07/07239.html

United States Consumer Product Safety Commission. (2007). *Fisher-Price recalls licensed character toys due to* *lead poisoning hazard*. Retrieved November 18, 2011 from http://www.cpsc.gov/cpscpub/prerel/prhtml07/07257.html

United States Consumer Product Safety Commission. (2007). *Mattel recalls "Sarge" die cast toy cars due to violation of lead safety standard*. Retrieved November 18, 2011 from http://www.cpsc.gov/cpscpub/prerel/prhtml07/07270.html

United States Consumer Product Safety Commission. (2007). *RC2 corp. recalls various thomas & friends™ wooden railway toys due to lead poisoning hazard*. Retrieved November 18, 2011 from http://www.cpsc.gov/cpscpub/prerel/prhtml07/07212.html

United States Department of State's Bureau of International Information Programs. (2008). *Discontent and reform*. Retrieved November 18, 2011 from http://iipdigital.usembassy.gov/st/english/publication/2008/06/20080603144734eaifas0.7577478.html#axzz241DzUZpn

United States Food and Drug Administration. (2007). *Melamine pet food recall*. Retrieved November 8, 2011 From http://www.fda.gov/AnimalVeterinary/SafetyHealth/RecallsWithdrawals/ucm129575.htm

United States Food and Drug Administration. (2008). *Melamine contamination in China*. Retrieved November 8, 2011 from http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm179005.htm

United States Food and Drug Administration. (2009). *The 1906 food and drugs act and its enforcement*. Retrieved November 18, 2011 from http://www.fda.gov/AboutFDA/WhatWeDo/History/Origin/ucm054819.htm

Xinhua News Agency. (2008). *Provincial authority outlines school collapse reasons*. Retrieved November 8, 2011 from http://www.china.org.cn/china/wenchuan_earthquake/2008-05/29/content_15535635.htm