Euvoluntary or Not, Exchange is Just

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Prepared for the Liberty Fund Symposium on "Liberalism and Capitalism," April 29 – May 2, 2010, Hilton Garden Inn, Perrysburg, Ohio. I acknowledge helpful comments from Geoffrey Brennan, David Henderson, Clemens Kauffmann, Hans-Jörg Sigwart, and John Tomasi. All errors and misinterpretations are entirely my own responsibility.

There is a paradox in the analysis of the moral and ethical basis of capitalism. How can the sum of many individually moral actions be immoral in the aggregate?

Most observers consider voluntary, informed exchange among equals to be morally unobjectionable, even praiseworthy. By definition, any *truly* voluntary (hereafter*, euvoluntary*) exchange leaves both better off than before. But differences in welfare that are the product of many exchanges, as in the case of a trader or "middleman," are often held to be morally objectionable. Differences in wealth that result from many trades, even if each is euvoluntary, elicit calls for taxation or redistribution..

So how can the sum of many positives be negative? How can differences in wealth that result from exchanges that *in every instance leave the other party better off* be a justification for coercive policies designed to correct the inequity?

There are at least two answers in the literature. The first is the standard Rawlsian[1] objection that a just liberal system cannot function with profound differences in wealth, regardless of the source of the inequalities. Those who hold this position would concede that the holders of disproportionate wealth may in fact have engaged in no single blameworthy action. Such a position must claim that my "paradox" is a category mistake: there is no necessary connection between individually just actions and the justice of the aggregate distribution of wealth and power. Justice is an aggregate concept as well as an individual concept, and can be applied (though presumably on different grounds) to societies as well as to individuals.

The second claim is much less clear in the literature, but I believe one can find it by looking carefully. That claim is to deny that there is a paradox, but give a *de minimus* response. That is, if exchanges *were* euvoluntary, then there might be no basis for remedial state action. But exchanges are not voluntary, and the position one has in society, and one's relation to the ownership of the means of production (Marx's conception of "class"), are morally arbitrary, and therefore indefensible.

The novel portion of this paper is to highlight an implication of this second view, one that has received too little attention. I will state the claim as starkly as possible here, though I will admit to some qualifications later. The claim is this: *All objections to the morality and justice of the uses of voluntary market exchange are mistaken. In fact, they are really objections to imbalances in the distribution of power and wealth. Euvoluntary exchanges always justified, and are always just. Further, even exchanges that are not euvoluntary are generally welfare improving, and they improve most of all the welfare of those least well off. Restrictions on exchange harm the poor and the weak.*

Social Justice

The first claim is an important one, but it has been widely examined elsewhere. My own view is probably closest to that of Hayek (1978; p. 78):

> *It might be objected that, although we cannot give the term 'social justice' a precise meaning, this need not be a fatal objection because the position may be similar to that which I have earlier contended exists with regard to justice proper: we might not know what is 'socially just' yet know quite well what is 'socially unjust' ; and by persistently eliminating 'social injustice' whenever we encounter it, gradually approach 'social justice'. This, however, does not provide a way out of the basic difficulty. There can be no test by which we can discover what is 'socially unjust' because there is no subject by which such an injustice can be committed, and there are no rules of individual conduct the observance of which in the market order would secure to the individuals and groups the position which as such (as distinguished from the procedure by which it is determined) would appear just to US. 21 It does not belong to the category of error but to that of nonsense, like the term 'a moral stone'.*

There are clearly problems with this view, and as Tomasi (2007) points out it is hard to claim that even Hayek believed it fully. I will acknowledge this perspective, and leave it aside, because the distinction is semantic, though important, and the different sides of the argument are well represented elsewhere.[2]

In the remainder of this essay, then, I will consider only the second claim, that exchange is unjust because it is not euvoluntary. The objection is mistaken. Unjust distributions of wealth do not *result* from euvoluntary exchanges, but rather *precede* them. My conclusion, to foreshadow, is that markets actually reduce, rather than increase, the social injustices that most people are concerned about.

Euvoluntary Exchange

A philosophical response to my main thesis above is likely to be that this is simple question-begging, since the answer is hidden in "euvoluntary." Obviously, I disagree, but it is clearly important to offer a definition.

Euvoluntary exchange requires (1) conventional ownership of items, services, or currency by both parties, (2) conventional capacity to transfer and assign this ownership to the other party, (3) the absence of regret, for both parties, after the exchange, in the sense that both receive value at least as great as was anticipated at the time of the agreement to exchange, (4) neither party is coerced, in the sense of being forced to exchange by threat, and (5) neither party is coerced in the alternative sense of being harmed by failing to exchange.

In the political world, "power" is measured by the capacity of one person or a group to impose his, or its, will on others through the threat of violence. That is the sense of "coercion" in number 4 above. In the economic world, power in an exchange relationship is measured by the disparity in outcomes if no exchange is agreed upon. More simply, economic power is the disparity in welfare at the reversion points, or the best alternative to a negotiated agreement.[3] Let's call this the "BATNA" for short.

Suppose I am considering buying a bottle of water. If I am in a grocery store, and notice that the price is $1,000 per bottle, I laugh and push my cart along. I'll buy the water somewhere else, or get some from the tap, or choose any of many alternatives. I am almost indifferent, in fact, between buying water at Kroger or buying it at Food Lion, for the market price of $0.90. I have choices. And, I have money, and we all agree that I own that money and can transfer, and we all agree that each store owns the water, and can transfer it. Finally, the water is not poisonous, and tastes good, so I won't regret purchasing it, if I choose to do so. So the exchange is euvoluntary.

Now, let's suppose instead that I am far out in the desert, and am dying of thirst. I happen to have quite a bit of cash on me, but I can't drink that. A four wheel drive taco truck rolls over the hill, and pulls up to me. I see that the sign advertises a special: "3 tacos for $5! Drinks: $1,000. 3 drinks for only $2,500"

I argue with the driver. "Have a heart, buddy! I am dying of thirst!" He asks if I have enough money to pay his price, and I admit that I do. The driver shrugs, and says, "Up to you! Have a nice day!" and starts to drive off.

I stop him, and buy 3 bottles of water for the "special" price of $2,500. Was the exchange euvoluntary?

It was not. The exchange violates part 5 of the definition, relative equality of BATNAs. My BATNA was death, from thirst. The driver was little affected by whether a deal was consummated (though he got a bit richer), while I was enormously affected. Even though in most important senses the exchange was voluntary (I could have said no), it was not euvoluntary. The precise definitional line between almost equal BATNAs (and therefore euvoluntary exchange) and unequal BATNAs (and therefore not euvoluntary exchange) may be hard to draw, but I hope the distinction is clear enough for analytic purposes.

Let me drive one stake, a marker for this stage in argument, because we will come back and find it. Did the driver make me worse off? What if high prices for water were outlawed, by the kind of "anti-gouging" laws common in many U.S. states, and he had stayed home? Would anyone seriously argue that having access to a market, even if the exchange was not euvoluntary, made me worse off? To remind the reader, my sustained thesis in this paper is that the objection to market exchange as unjust always depends on a disparity in BATNAs. But that disparity rests on conditions that *preceded* market exchange, rather than being *caused by* access to the exchange. Market exchange always reduces the disparity in outcomes, even if it is not euvoluntary.

The Mancgere and Wilt Chamberlain

To clarify euvoluntary exchange, and the claims about its justice or injustice, let us consider someone whose entire livelihood is derived from negotiating and consummating exchanges—the "middleman." A middleman is a trader who buys as cheaply as possible, and then sells dear, doing nothing—absolutely nothing—in the meantime to improve the product being sold. Middlemen are everywhere, and probably have been since the very first series of repeated and routinized exchanges. Traders on the "Spice Road" were middlemen. So is EBAY, today.

The roots of the English word "monger," a common merchant or seller of items are quite old. In Saxon writings of the 11th century, described in Sharon Turner's magisterial three-volume <u>History of the Anglo-Saxons</u> (1836), we find a very striking passage[4] where a merchant (mancgere) defends himself on moral grounds.

> *"I say that I am useful to the king, and to ealdormen, and to the rich, and to all people. I ascend my ship with my merchandise, and sail over the sea-like places, and sell my things, and*

buy dear things which are not produced in this land, and I bring them to you here with great danger over the sea; and sometimes I suffer shipwreck, with the loss of all my things, scarcely escaping myself."

"What things do you bring to us?"

"Skins, silks, costly gems, and gold; various garments, pigment, wine, oil, ivory, and orichalcus, copper, and tin, silver, glass, and suchlike."

"Will you sell your things here as you brought them here?"

"I will not, because what would my labour benenfit me? I will sell them dearer here than I bought them there, that I may get some profit, to feed me, my wife, and children."

Quite a story, actually—risk, greed, adventure, and profit. The mancgere openly admits he does nothing to change or improve the product. All he does is transport it, and then sell it at a much higher price. In fact, he consciously and unabashedly sets out to sell it at the highest price he can obtain.

Are these exchanges euvoluntary? Probably. Many of the items being resold are luxuries. The buyers may be disappointed that they can't afford the costly baubles, but their physical situations are not harmed by being unable to consummate an exchange. And there is no reason to believe that the merchandise itself is shoddy or that the claims for its worth are fraudulent.

Suppose that the mancgere is very good at what he does, and works very hard. It is easy to imagine (since this happened in many cases in medieval Europe, the middle east, and Asia) that he and his sons might have built up a great trading empire, with enormous wealth.[5] But isn't it still true that since each separate exchange was (suppose, for the sake of argument) euvoluntary, then the result must also be just, and morally defensible.

Obviously, I am paraphrasing, with only a few flourishes, Nozick's argument from *Anarchy, State, and Utopia*. Nozick famously posited that even if each individual exchange were morally justified (in a way I have tried to spell out by requiring the exchanges to be euvoluntary), one might still expect to see enormous disparities of wealth. He gives the example of Wilt Chamberlain, a roundball artist of such talent that people happily give him a quarter extra, per fan, to watch. These myriad euvoluntary transactions sum to a great fortune. In effect, Nozick is arguing that if the initial distribution of income and wealth is just, and each transaction is individually just, then any consequent subsequent distribution is also just.

The only way to prevent disparities in income, when euvoluntary exchanges are physically possible, is to outlaw such exchange. As Nozick put it,"The socialist society would have to forbid capitalist acts between consenting adults."[6]

The Wilt Chamberlain example is useful, but only as an existence proof. That is, Nozick was trying to prove that there might exist, at least in principle, a just society with a morally defensible distribution of income that was nonetheless extremely unequal. Nozick's proof allows one to argue that the case "inequality requires redistribution" is not *prima facie*; it depends. One would have to inquire about two things: (a) the justice or injustice of the initial distribution of wealth, before exchange started, and (b) the euvoluntary (or not) nature of the each of the exchange transactions along the path from one distribution to another.

I actually think that Nozick's example does not do the work he wants for it, however. Wilt Chamberlain is *sui generis*. One might set aside a preference for egalitarianism for the narrow case of god-figures, truly unique performers. But what about someone who is in no way unique, but just tries harder? What about the mancgere? There is a famous example of a "middleman" in action, in an account of a POW camp in Germany in World War II.

Middlemen I: The Parable of the Itinerant Padre

The British economist R.A. Radford was captured by the German Army in 1943, during WWII, and later wrote about the experience.[7] Radford noticed the universality of exchange in (among other things) the contents of Red Cross packets: tinned milk, jam, butter, biscuits, tinned beef, chocolate, sugar, treacle[8], and cigarettes.

Exchange, if euvoluntary, always makes both parties to the exchange better off. I have argued that the initial endowments, or the BATNAs, of the parties is a central consideration. The interesting thing about the prison camp setting is that each prisoner had precisely the same endowment or total wealth, before initiating any trades. That is, everyone's BATNA was identical, and composed of two parts: (a) daily rations from what Radford delicately calls "the detaining power," the German army; and (b) once a month, the full contents of a Red Cross packet, whose contents I listed above.

> *One trader in food and cigarettes, operating in a period of dearth, enjoyed a high reputation. His capital, carefully saved, was originally about 50 cigarettes, with which he bought rations on issue days and held them until the price rose just before the next issue. He also picked up a little by arbitrage; several times a day he visited every Exchange or Mart notice board and took advantage of every discrepancy between prices of goods offered and wanted. His knowledge of prices, markets and names of those who had received cigarette parcels was phenomenal. By these means he kept himself smoking steadily – his profits – while his capital remained intact.*
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> *Sugar was issued on Saturday. About Tuesday two of us used to visit Sam and make a deal; as old customers he would advance as much of the price as he could spare us, and entered the transaction in a book. On Saturday morning he left cocoa tins on our beds for the ration, and picked them up on Saturday afternoon. We were hoping for a calendar at Christmas, but Sam failed too. He was left holding a big black treacle issue when the price fell, and in this weakened state was unable to withstand an unexpected arrival of parcels and*

> *the consequent price fluctuations. He paid in full, but from his capital. The next Tuesday, when I paid my usual visit he was out of business.*
>
> *Credit entered into many, perhaps into most, transactions, in one form or another. Sam paid in advance as a rule for his purchases of future deliveries of sugar, but many buyers asked for credit, whether the commodity was sold spot or future. Naturally prices varied according to the terms of sale. A treacle ration might be advertised for four cigarettes now or five next week. And in the future market "bread now" was a vastly different thing from "bread Thursday." Bread was issued on Thursday and Monday, four and three days' rations respectively, and by Wednesday and Sunday night it had risen at least one cigarette per ration, from seven to eight, by supper time. One man always saved a ration to sell then at the peak price: his offer of "bread now" stood out on the board among a number of "bread Monday's" fetching one or two less, or not selling at all – and he always smoked on Sunday night. (Radford, 1945, p. 196-7)*

Note how naturally exchange would appear in such a setting of pure equality. If I like carrots more than milk, and you like milk more than carrots, we can trade. Because everyone has exactly the same endowment, trading is universally approved, and praiseworthy. There is no increase in the total amount of food in the area, but the total welfare of the group is improved. And people don't have to be told this. They recognize it quickly, on their own. As Radford puts it, in the prison camp, "Very soon after capture people realized that it was both undesirable and unnecessary, in view of the limited size and the equality of supplies, to give away or to accept gifts…'Goodwill' developed into trading as a more equitable means of maximizing individual satisfaction." Opponents of exchange, then would have to deal with the claim that trade is more equitable than relying on gifts. And the reason is that voluntary trades always leave both parties better off, whereas gifts rely on sacrifice.

It is important to extend Nozick's argument, from an existence proof based on many trades and a unique performer (Chamberlain) to a setting where only the "many trades" aspect is preserved. In the prison camp setting, since each person had precisely the same initial endowment, but different preferences, allowing exchange made everyone better off. But there might be a difference between (a) value in use, where I exchange something I don't much want for something I want more, and (b) value in exchange, where I am exchanging for the sake of accumulating a surplus.[9]

Why this might be a problem is rather paradoxical, however. If I make one trade, and I am better off, than no one begrudges the improvement, so long as my trading partner is also better off. But if I make many trades, as the mancgere does, then I appear to be acting badly, even if as before each of my trading partners is left better off. That is what the middleman does: buys low, and sells high, and profits from having made a large volume of trades If someone is sharp-eyed and energetic, he might make a very large amount of profit, either in currency or goods. How could that be a problem?

The prisoners in the Radford's POW camp in Germany thought it was a problem. Radford mentions the story of a priest with a sharp eye for exchanges.

> *"Stories circulated of a padre who started off round the camp with a tin of cheese and five cigarettes and returned to his bed with a complete (Red Cross) parcel in addition to his original cheese and cigarettes…." (p. 198)*
>
> *"…Public opinion on the subject of trading was vocal if confused and changeable, and generalizations as to its direction are difficult and dangerous. A tiny minority held that all trading was undesirable as it engendered an unsavory atmosphere; occasional frauds and sharp practices were cited as proof... But while certain activities were condemned as anti-social, trade itself was practiced, and its utility appreciated, by almost everyone in the camp.*

> *More interesting was opinion on middlemen and prices. Taken as a whole, opinion was hostile to the middleman. His function, and his hard work in bringing buyer and seller together, were ignored; profits were not regarded as a reward for labor, but as the result of sharp practices. Despite the fact that his very existence was proof to the contrary, the middleman was held to be redundant…" (p. 199).*

We have finally arrived at the heart of the paradox that I led off with. The padre never made a fraudulent claim, or misrepresented what he was offering to trade. The commodities were standardized, and interchangeable (one tin of cheese is just like any other; cigarettes are machine-made, and indistinguishable, a tin of jam is always the same). At each and every step, in every transaction, the exchange with the padre made the other party better off. *And yet*…and yet the padre accumulated "profit" of a full Red Cross parcel, a small fortune in the setting of the camp.

Just like the Saxon "mancgere" in 1050 AD, the wandering padre created value. It might seem he only *took* value, buying cheap, selling dear, and changing or improving none of the products he exchanged. But in fact he created value, at every step in the process. He did this by finding A, who would pay 6 (or fewer) cigarettes for a tin of beef, and then finding another man B, who would sell a tin of beef for 3 (or more) cigarettes. Admittedly, if these two fellows met each other, they might have exchanged directly, and cut out the middleman. But finding just the right person to trade with, in a vast teeming prison camp, is hard. The mancgere/padre, by searching across trades, can arbitrage the difference: he sells the beef to A for 5 cigarettes, after buying it from B for four cigarettes. A is better off by at least one cigarette, and B is better off by at least one cigarette, and the padre "profits" one cigarette by finding the exchange opportunity.

The padre, by making many of these trades, was able to have everything he started with, plus another full parcel, a large amount of stuff. Yet, if you went back and asked every one of the trading partners in the chain, not one would complain of having been cheated…until you mentioned the padre's profit. Then every one of the trading partners would likely be outraged, and demand to be compensated. The question is whether this demand is morally justified. That is really the question that Nozick was asking. And my answer, even if we are talking about a trader instead of Wilt Chamberlain, is "no," so long as the trades were euvoluntary.

A similar argument, it should be pointed out, was made much earlier (1850) by Frederic Bastiat, in Chapter 6, "The Middlemen," of his essay *What is Seen and What is Not Seen*. It is worth quoting at length:

> *[The] schools of thought are vehement in their attack on those they call middlemen. They would willingly eliminate the capitalist, the banker, the speculator, the entrepreneur, the businessman, and the merchant, accusing them of interposing themselves between producer and consumer in order to fleece them both, without giving them anything of value. Or rather, the reformers would like to transfer to the state the work of the middlemen, for this work cannot be eliminated. [Regarding the famine of 1847,] "Why," they said, "leave to merchants the task of getting foodstuffs from the United States and the Crimea? Why cannot the state, the departments, and the municipalities organize a provisioning service and set up warehouses for stockpiling? They would sell at net cost, and the people, the poor people, would be relieved of the tribute that they pay to free, i.e., selfish, individualistic, anarchical trade.*
>
> *... When the stomach that is hungry is in Paris and the wheat that can satisfy it is in Odessa, the suffering will not cease until the wheat reaches the stomach. There are three ways to accomplish this: the hungry men can go themselves to find the wheat; they can put their trust in those who engage in this kind of business; or they can levy an assessment on themselves and charge public officials with the task.*

It may take a moment to realize that the problem here is exactly the same as the problem of the itinerant padre. There are three ways of getting food from farm to market. First, every *consumer* goes off on his own, with a cart. This is inefficient and too slow to answer the needs of the hungry. Second, *middlemen* can buy, transport, and resell the products. Third, *the state* can buy, transport, and resell the products, or give the products away for free.

Those concerned about equality might claim that the state can always perform the function of middlemen more because the motivation is public service, not by profit. And the state can always do it more cheaply because the costs of profit are not part of the process. But this is disastrously wrong. First, agents of the state are not, in fact, motivated by the public interest. They are no better than anyone else, and act first to benefit themselves. Second, without the signals of price and profit provided by middlemen, no one knows what products should be shipped where, or when. In short, without middlemen, the state would act more slowly, less accurately, and at the wrong times.

Further, profit is crucial, and beneficial. It is *because* of profit that middlemen create value. And the seeking of profit by middlemen, buying cheap and selling dear, ensures that, as Bastiat put it, the "wheat will reach the stomach" faster, more cheaply, and more reliably than any service the state could possibly create. The system of middlemen performs what seems like a miracle:

> *"Directed by the comparison of prices, [middlemen distribute] food over the whole surface of the country, beginning always at the highest price, that is, where the demand is the greatest. It is impossible to imagine an organization more completely calculated to meet the needs of those who are in want..." (Bastiat, 1850, Chapter 6)*

The fact is that middlemen don't require perfect markets, or the conditions of perfect competition. Instead, middlemen are the means by which markets become "perfect." Arbitrage and bargain-hunting is the discipline that ensures a single price, providing accurate signals on relative scarcity and engendering enormous flows of resources and labor towards their highest valued use.

Middlemen II: The Parable of the Ice

Hurricane "Fran" hit North Carolina at about 8:30 pm, 5 September 1996. It was a category 3 storm, with 120 mph winds, and enormous rain bands. It ran nearly due north, hitting the state capital of Raleigh about 3 am, and moving out of the state by morning, dropping ten inches of rain. In some counties, nearly every building was damaged; total reconstruction cost and damages were later calculated at more than $5 billion.

In the Triangle (Raleigh, Durham, and Chapel Hill), more than a million people were without power the next morning. Thousands of homes were damaged by falling pines and powerful winds, and many roads were blocked by large fallen trees. Few residences had any kind of back-up power. Within hours, food in refrigerators and freezers started to go bad. Insulin, baby formula, and other necessities immediately began to spoil heat. More than a million people needed ice. And they needed it now.

The Governor declared a state of emergency. One might think that thousands of entrepreneurs in the surrounding areas, little touched by the storm, would load trucks and head to the disaster area. After all, they owned, or could obtain, all the things that the residents of central North Carolina needed so desperately. Ice, chain saws, generators, lumber, tarps for covering gaping holes in roofs; these were just some of the needs.

But no such mass movement of resources to their highest valued use took place. North Carolina had an "anti-gouging law," General Statute 75-36[10], a law whose sole object was, in Nozick's terms, to prohibit capitalist acts between consenting adults.

(a) It shall be a violation of G.S. 75-1.1 for any person to sell or rent or offer to sell or rent at retail during a state of disaster, in the area for which the state of disaster has been declared, any merchandise or services which are consumed or used as a direct result of an emergency or which are consumed or used to preserve, protect, or sustain life, health, safety, or comfort of persons or their property with the knowledge and intent to charge a price that is unreasonably excessive under the circumstances

The law had been interpreted to limit price increases to less than 5%. Each violation of this law could result in a fine of up to $5,000. So, ice that happened in Charlotte, *stayed* in Charlotte. Why drive three hours to Raleigh when you can only charge the Charlotte price, plus just enough for gas money to break even?

The problem for Raleigh residents was all about price, at that point. The prices of all the necessities needed to "preserve, protect, or sustain" lives had shot up to infinity. Within a day after the storm, there were no generators, ice, or chain saws to be had, none. But that means that anyone who brought these commodities into the crippled city, and charged *less than infinity*, would be providing an important service.

Some service was, in fact, on the way.[11] Four young men in the town of Goldsboro, an hour east of Raleigh and largely untouched by the storm, noticed that the freezers at the Circle P's, the Stop Marts, and the Handee Sluggos were brimming with ice. Convenience stores had stocked up, expecting a more easterly course for the storm. Now, there was an ice surplus in Goldsboro, and a shortage in Raleigh. These young men rented two small freezer trucks, paid $1.70 each for 500 bags of ice for each truck and set off, filled with a sense of charity and bathed in the sweet milk of human kindness.

That's a fib. They were filled with greed, and they were only bringing the ice so they could make money. But who cares? If there had been a benevolent, omniscient social planner, she would have been yelling: *(1) Raleigh is desperate for ice. (2) If you have ice, take it to Raleigh.* And, for whatever reason, these young men were bringing in ice.

Our icemen came to the outskirts of Raleigh, and headed downtown. The path was blocked by fallen trees, but these young men were country folk. Country folk carry chain saws, big ones, probably even on dates. They rolled the cut logs off the road so their trucks (and, by the way, other cars and emergency vehicles) could pass.

One truck apparently parked in Five Points, near downtown, and another parked a bit west, near wealthy St. Mary's Street, and opened for business. I have not been able to find a definitive claim about price, but it was more than $8. On reaching the front of the line, some customers were angry that the price was so high, but almost no one refused to pay for the ice. Those who did refuse to pay simply reverted to their BATNA, same as before the trucks arrived.

Of course, the police must uphold the law, even the dumb ones (laws, not police). Someone must have made a call, because within an hour two Raleigh police cars and an unmarked car pulled up to the Five Points truck. The officers talked to the sellers, talked to some buyers, still holding their ice, and confirmed that the price was much higher than the "allowed" price of $1.75 (the cost of a bag of ice before the storm). The officers did their duty, and arrested the middlemen. Apparently the truck was then driven to the police impoundment lot in downtown Raleigh, as evidence. The ice may or may not have melted (accounts vary), but it certainly was not given out to citizens.

And now we are back to where I started: the citizens, the prospective buyers being denied a chance to buy ice... *they clapped.* Clapped, cheered, and hooted, as the vicious ice sellers were handcuffed and arrested. Some of those buyers had been standing in line for five minutes or more, and had been ready to pay 4 times as much as the maximum price the state would allow. And they clapped as the police, at gunpoint, took that opportunity away from them.

Which suggests two important questions. First, was the exchange of ice for money euvoluntary, or exploitative, or something else? Second, even if the exchange was not euvoluntary, should it be illegal? In other words, do anti-gouging laws have a legitimate purpose?

Objections to Consequences are Really Objections to Preconditions

I have now sketched out a number of examples, certainly enough examples to be able to argue my point. It is true that the taco truck driver in the desert stood to make a lot of money selling me water. It is likewise true that the mancgere expected to make a large profit selling spices, gems, and silk, and that the itinerant padre was trying hard to accumulate extra cigarettes and food through his trades. Finally, the ice sellers were motivated by greed, not charity, in bringing ice to Raleigh.

But in every case the seller made the (potential) buyer better off. Still, the cases divide into two very different groups, according to whether the exchange was euvoluntary. Buying water in the desert, or buying ice after the hurricane, is not euvoluntary, because both needs were desperate. Buying silk, rather than linen, or trading for treacle in the POW camp, are euvoluntary, because the alternative to a negotiated agreement, or trade, is much more equal.

Should we have anti-gouging laws? If a trade is not euvoluntary, should it be outlawed? Those who would argue "yes" are confusing cause and effect, or so I am claiming. The disparity in conditions is a measure of need. Our emotional reaction is that the man in the desert *should not have to pay* $1,000 for a bottle of water; the people of Raleigh *should not have to pay* $11 for a bag of ice.

So we pass laws saying that they *will not be able* to do so. And we make moral objections to capitalism, and to market exchange, based on a belief that we are protecting citizens. But the effect of these laws is to force people to accept the BATNA that we wanted to avoid in the first place!

Without an incentive to search the desert for the thirsty, the taco truck driver would stay in town, at a busy corner. The traveler dies of thirst. Without an incentive to buy ice and truck it to the disaster zone, hurricane refugees must accept that the price of ice is infinity, because none is available.

Consequently, it is in those instances where market exchange is not euvoluntary that access to market exchange is most important. Anti-gouging laws, restrictions on organ sales, and other rules designed to suppress markets are based on the idea that the BATNA for the poor, the needy, and the desperate, is unacceptably low. But those laws then ensure that the unacceptable BATNA is the only possible outcome for those same people. Restrictions on market exchange reify and instantiate precisely the harms they purport to avoid. What is the basis for such confusion?

Liberal Objections to Capitalism

There are many objections to capitalism and exchange, and there are thorough reviews of this literature, both elsewhere and in this special issue. I will offer a brief summary, as a way of contrasting the objections with the argument so far. Karl Marx, in volume I of *Capital* especially, makes two distinct arguments—exploitation and the inequality.

The exploitation argument is based on the claim that wage labor alienates the product of labor from its true owner, and no compensation could be sufficient.

The second argument is more interesting, for my purposes at least. In Chapter 26 of Volume I, Marx asks why some men work, but own little capital, and others own large amounts of capital, but do little work.

> *We have seen how money is changed into capital; how through capital surplus-value is made, and from surplus-value more capital. But the accumulation of capital presupposes surplus-value; surplus-value presupposes capitalistic production; capitalistic production presupposes*

the preexistence of considerable masses of capital and of labour-power in the hands of producers of commodities. The whole movement, therefore, seems to turn in a vicious circle, out of which we can only get by supposing a primitive accumulation (previous accumulation of Adam Smith) preceding capitalistic accumulation; an accumulation not the result of the capitalist mode of production, but its starting point.

This primitive accumulation plays in Political Economy about the same part as original sin in theology. Adam bit the apple, and thereupon sin fell on the human race. Its origin is supposed to be explained when it is told as an anecdote of the past. In times long gone by there were two sorts of people; one, the diligent, intelligent, and, above all, frugal élite; the other, lazy rascals, spending their substance, and more, in riotous living. The legend of the logical original sin tells us certainly how man came to be condemned to eat his bread in the sweat of his brow… Thus it came to pass that the former sort accumulated wealth, and the latter sort had at last nothing to sell except their own skins. And from this original sin dates the poverty of the great majority that, despite all its labour, has up to now nothing to sell but itself, and the wealth of the few that increases constantly although they have long ceased to work.

This argument is philosophically powerful and rhetorically clever. Marx is saying that defenders of capitalism explain inequality as a kind of "original sin." The sin was committed, not in the Garden of Eden, but when your dissolute ancestors decided to spend all their money in bars and brothels instead of investing it. Thus, while this generation may be blameless, their poverty can be morally justified, because the pitiless gods of capitalism visit the sins of the fathers upon the children.[12]

Marx clearly believes that the wage / labor contract is not (in my terms) euvoluntary. The worker can only choose work, or starvation. Where the taco truck driver, or ice sellers, in my previous examples could charge arbitrarily high prices, the capitalist in Marx's example can pay arbitrarily low wages. Labor is coerced to work, at a price that enriches the wealthy and further impoverishes the laborer.

What this suggests, as I have maintained throughout, is that *the objection to capitalism is not to the process of exchange itself*. Presumably even Marx would see little objectionable in labor exchanges for wages among wealthy capitalists. The problem occurs when exchanges are negotiated among parties with profound differences in wealth and power. To repeat: even this objection is not a rejection of the justice of exchange, per se. It is an indictment of inequality, because the exchange is not euvoluntary.

But then I must repeat the second portion of my main argument: if inequality is the real problem, then markets and access to exchange reduces the problem, rather than making it worse. When comfortable American college students rally to protest "sweat shops" in developing nations, their clearly stated objection is that workers *should not have to work in those conditions*. But outlawing sweat shops means *those workers will not be able to work*, at all. The reason for the conditions is inequality, not capitalism. And access to jobs, even sweat shop jobs, is the way to put the poorest societies on the long, steep stairway toward widely shared prosperity.

Modern liberal thinkers are the heirs to different versions of Marx's second objection (inequality), though not the first (exploitation), perhaps because Marx embedded the exploitation claim in a cumbersome and unworkable labor theory of value.[13] John Rawls, and followers of Rawls, are the mostly widely cited expositors of the conflicts between liberalism and capitalism. According to John Freeman, one can usefully categorize three different, though mutually reinforcing, problems with capitalism for the Rawlsian liberal.[14]

First, the "social minimum" is too small, and the income of the wealthy too large, to satisfy the Rawlsian "difference principle." Of course, for this claim to be persuasive, one has to credit the difference principle as a fundamental moral law. Rawls gives two distinct justifications for the difference principle. (a) Every citizen has an equal claim on society's resources, and so increased resources for the better off can be justified only if there is some consequent improvement in the welfare of the worst off. (b) In the original position, where the chooser does not know his welfare level, a rational person would choose equality, subject only to the kinds of differences accounted for in (a).

The objection is that the social minimum has nothing to do with justice, and instead is cynically calculated at just the minimum amount to forestall revolution. The poor are bought off, with a level of income just slightly greater than would make them indifferent between revolution and quiescence. In the rational choice literature, in fact, this is an explicit assumption in recent works such as Acemoglu and Robinson (2006). So, the welfare of the poor is treated as a constraint to be satisfied rather than part of the objective function to be improved.

But this objection fundamentally misunderstands the nature of exchange. The poor in wealthy countries are, by nearly any material measure, better off than the wealthy in poor nations. The reason is that exchange makes both parties better off. Being denied access to exchange actually harms the poor more than the wealthy, since the wealthy are likely to have other means of satisfying their needs and wants.

The second major Rawlsian objection is an aggregate level claim, that inequality is unacceptable as a primitive value. The reason is that the political freedoms on which liberalism depends for its existence are ruled out by gross inequalities of income. These concentrations of economic power inevitably can be translated into concentrated, or at least disproportionate, political power. Therefore, as the argument goes, inequality is inconsistent with liberal democracy, and the solution is to reduce inequality.

The problem with the argument is that it assumes a large, powerful, and dangerous government apparatus. It is perfectly true that an aggressive and intrusive government, with few restrictions on its power, is likely to be dominated by the wealthy. But why would this lead us to conclude, "So get rid of the wealthy"? Does it not follow at least as directly that the correct answer is "Limit and constrain the power of government to do damage to the rights of citizens"?

The debate recalls the humorous "Chicago Marxist" moniker that some have attached to George Stigler, and the "Economic Theory of Regulation." A number of passages in Chicago-style literature on regulation sound as if they might have been written by Marx, since they emphasize that regulation will generally be created, or else later transformed, to benefit industry. But the solution of Marx was, "so, get rid of capitalism." The solution of Stigler, Peltzman, et al is "so, get rid of regulation, as it will generally make things worse." It makes no sense to say that we are scared of government so get rid of the rich. If you are scared of government, then get rid of government!

The third and final objection is that economic inequality in the unregulated market society is too great even to preserve economic freedom. Contrary to the myth of equal opportunity, citizens do not in fact have any reasonable prospect of bettering themselves or achieving great wealth. The wealthy are born wealthy, and capital is concentrated in only a few hands. Most workers have no substantial control over their own working conditions, and because capitalists control the banking system then those workers have no chance of obtaining the loans they need to compete with existing concentrated industries Finally, the fact that workers may own stocks in their retirement accounts or 401k's cannot solve the problem, because their voting rights are too diffuse, and the power of the elite board of directors too concentrated and aloof, to allow effective participation or real opportunity.

For some reason, I have encountered many opponents in debates who consider this objection to capitalism to be devastating, and in fact unanswerable. But the claim is absurd on its face. It is perfectly true that a system based on politics, or elitism, or power, such as racial domination or class conflict, might have just the sort of effects posited here. That would be to forget that capitalism is based on none of these things. Instead, it is based on self-interest, or more starkly, on greed.

Branch Rickey broke the color line in baseball not because he was an altruist, but because he was a notorious capitalist who considered every angle and sought out every advantage. The fact was that African-American baseball players, beginning with Jackie Robinson, had enormous talent and could be signed to contracts at prices much less than comparable white players. Black players were a bargain. A racist would, indeed, work to suppress black labor. But a capitalist motivated by profit will purchase labor of the highest quality at the lowest price. And in a competitive system even a racist cannot afford to indulge in racism, because he will go bankrupt.

The fact is that any system *other* than capitalism suppresses ambition and constrains social and economic mobility. Perhaps capitalism is the second worst system for fostering economic welfare, but only if all alternatives are tied for worst. Greedy bankers are happy to loan to small businesses that are likely to succeed; greedy venture capital lenders are happy to sign contracts with unknown inventors from Hicksville, people who lack an Ivy League education, if those lenders think they can loan money to those inventors.

That's not to say that there is no racism, no discrimination, because there is. But it exists only because our system is not fully capitalist. There are pockets of protection for banks and for prospective employers, protections that allow them to indulge preferences for prejudice. Competition and self-interest are the surest way of eliminating discrimination, not the cause of discrimination.

John Maynard Keynes is often used as an authority to favor liberal critiques of capitalism. But Keynes' critique was subtle, and his understanding of markets quite deep. Consider this passage, where he discusses the consequences of monetary inflations following the first world war.

> *…There is no subtler, no surer means of overturning the existing basis of society than to debauch the currency. The process engages all the hidden forces of economic law on the side of destruction, and does it in a manner which not one man in a million is able to diagnose.*
>
> *In the latter stages of the war all the belligerent governments practised, from necessity or incompetence, what a Bolshevist might have done from design. Even now, when the war is over, most of them continue out of weakness the same malpractices. But further, the governments of Europe, being many of them at this moment reckless in their methods as well as weak, seek to direct on to a class known as 'profiteers' the popular indignation against the more obvious consequences of their vicious methods. These 'profiteers' are, broadly speaking, the entrepreneur class of capitalists, that is to say, the active and constructive element in the whole capitalist society, who in a period of rapidly rising prices cannot but get rich quick whether they wish it or desire it or not. If prices are continually rising, every trader who has purchased for stock or owns property and plant inevitably makes profits. … The profiteers are a consequence and not a cause of rising prices. By combining a popular hatred of the class of entrepreneurs with the blow already given to social security by the violent and arbitrary disturbance of contract and of the established equilibrium of wealth which is the inevitable result of inflation, these governments are fast rendering impossible a continuance of the social and economic order of the nineteenth century. But they have no plan for replacing it.*[15]

Final Words

It is useful to reprise the main themes I have tried to advance. First, I inquired about the paradox of the aggregation of exchange, related to Nozick's justification of markets: if each exchange is individually mutually praiseworthy, how can the results be blameworthy? More simply, if each exchange is good, how can all exchange be bad?

Next I sought to define a notion of exchange in which any trade or negotiated outcome would be morally acceptable. I called this concept "euvoluntary," or truly voluntary, exchange. Then this concept was used to argue that all objections to the morality and justice of the uses of voluntary market exchange are category mistakes. In fact, they are really objections to imbalances or excessive inequalities in the distribution of power and wealth.

Thus, I tried to argue two main points, using this apparatus. First, euvolunatry exchanges are always justified, and if consummated are always just. Second, and more important, even exchanges that are not euvoluntary are generally welfare improving, and they improve the welfare of the least well off most of all. The confusion that arises in judging exchanges that are not euvoluntary is understandable, but unfortunate. The observer, seeing the degree of inequality, or desperation of one of the parties to a potential exchange, is actually perceiving a disparity in levels of welfare of the respective BATNAs, or "Best Alternatives to a Negotiated Exchange." This disparity is a consequence of differences that come before exchange is contemplated, and are not caused by the exchange.

But the confused observer seeks to help the less well off party by outlawing the exchange. The observer, believing that the party should not have to exchange on such terms, blunders in and dictates that the party should not be allowed to exchange on such terms. The problem is that this ensures that party is marooned at his grossly inferior BATNA, an outcome that access to exchange could have avoided. In short, interference with "capitalist acts among consenting adults" has effects exactly the opposite of its supposed intent.

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MS. Tib. A 3, or Manuscript Cotton Tiberius A, part 3 is a reference to a fragment of an 11th century psalter, probably produced at Christchurch, Canterbury.

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NOTES

[1] Rawls (1971).

[2] See, e.g., Galston (1980) or Gaus (1983; 1994)

[3] This concept of the "Best Alternative to a Negotiated Agreement," or BATNA, comes from Fisher and Ury, 1981.

[4] Turner, Sharon. 1836 (Sixth Edition). The History of the Anglo-Saxons. London, England: Longman, Rees, Orme, Brown, Green, and Longman. pp. 115-6; original in MS. Tib. A 3. Portions of this discussion are adapted from Munger (2009). Note: "orichalcus" is brass.

[5] See, e.g., Greif (2006).

[6] Nozick, 1974, p. 163.

[7] Radford, 1945

[8] Molasses.

[9] Aristotle makes this distinction most clearly, in arguing that value in use is different from, and superior to, value in exchange. Aristotle (1981).

[10] (Later amended to be even more restrictive, outlawing price changes reflecting cost increases up the supply chain, August 2006, SL2006-245, GS 75-38)

[11] Parts of this story may be apocryphal. I did the best I could to gather eye-witness accounts, and news accounts, in my essay on these events (Munger, 2007), but accounts vary.

[12] Euripides, in the Phrixus Fragment 970, said "The gods visit the sins of the fathers upon the children." Collard and Cropp, 2009, p. 436.

[13] The relation between liberalism and Marx's theory of exploitation are rather complex, and beyond my scope in this essay. But see Buchanan (1979, 1982) for an extensive critical review.

[14] Samuel Freeman, *Rawls*, New York: Routledge, 2007 pp. 262-264)

[15] Keynes (1919), Chapter VI, p. 236)