

IS THERE AN “ANOMALOUS” SECTION OF THE LAFFER CURVE?

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Suppose we are on the upper part of the Laffer curve. That means that if the tax rate is lowered, greater tax revenues will accrue to the government.¹ Stipulate that the state is an evil institution. This is a libertarian analysis, after all. Thus, we arrive at what must count at least, as an anomaly. A reduction in the tax rate is ordinarily counted as a pro liberty phenomenon. And here, yes, GDP will rise. We will all be richer. Deontology, at least from a libertarian perspective, along with utilitarian considerations of wealth maximization, speak with one united voice at such a prospect. This is a good thing from both perspectives. However, and this is a big exception, from the libertarian point of view, government coffers, too, will be enhanced, and this is a *bad* thing.

There is nothing to get too excited about here, at least not yet. This is hardly the first case on record where something positive from the libertarian perspective is accompanied by a result that can only be viewed as negative. For example, were addictive drugs to be legalized, and placed on the same footing as that of alcohol, government would be able to tax these products. Drug legalization is certainly a step in the direction of liberty, while, again, an increase in statist wealth is clearly not.²

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¹ As well as to the citizenry, of course.

² We have heard supposed libertarians favor the decriminalization of addictive substances *on the ground* that tax revenues would thereby be increased. Such a stance is undoubtedly incompatible with this philosophy. In other words, the fact that more revenues will accrue to the state is an argument *against* drug legalization.

So, in these two cases, Laffer curve,³ drug legalization, we have exceptions to the general rule that utilitarianism, broadly construed, and libertarianism, always work in the same direction. Here, tax rate decreases, and the legalization of drugs, although they undoubtedly enhance wealth, liberty and prosperity⁴ are also accompanied by reduced welfare: the state has more wherewithal with which to increase the scope of its depredations.

So far, so good. No libertarian would likely disagree with the foregoing. But, is there more to this issue than a mere anomaly? Is there a case for questioning whether, under these circumstances, libertarians should give their entire and undivided support to lower tax rates (and de criminalizing drugs)? To even broach this question leads us into complicated thickets, I contend.⁵

Before pursuing this line in inquiry, let us place one more case on the table: the military draft that occurred during the Viet Nam war. Here, I posit that the U.S. participation in this conflagration was unjust. Our government fought a country 10,000 miles removed from our shores, one that posed no danger whatsoever of invading us. This was an imperialist war, plain and simple. We assume, further, that had there been a voluntary military at the time, that the U.S. would have been able to pursue its murder of these foreign innocent victims for a longer duration, and to a much greater degree than was actually the case.⁶ Thus, the draft saved lives by ending this unjust war earlier than otherwise would have been the case.⁷

We have in the balance, here, interference with the convenience of an age cohort of American citizens who are drafted, and, yes, the deaths of more than a few of them,⁸ versus murder on a massive scale of innocent Vietnamese, both in the north and in the south.⁹

³ For a different but not incompatible analysis of the Laffer curve, see Barnett and Block, 2005.

⁴ The take home pay of taxpayers increases, people are no longer brutalized for placing chemicals in their own bodies. Consenting adults are not any more imprisoned for buying and selling these substances.

⁵ I *told* you that things would get more "exciting."

⁶ For an argument in favor of the volunteer military on the ground that this labor force policy allows the government to pursue wars libertarians consider unjust more effectively, see Boudreaux (1993). This author, no libertarian he, actually opposed the military draft on this very ground. For a critique of that viewpoint, see Block (1969).

⁷ When graduates of Ivy League colleges were forced to take on the burdens and risks of the fighting, this sounded the death knell for U.S. involvement in Viet Nam.

⁸ Actually, some 50,000 of them (<http://thewall-usa.com/summary.asp;www.vhfcn.org/stat.htm>).

⁹ The best estimates (<http://answers.google.com/answers/threadview?id=5096>) are about 4 million civilians, and over 1 million military personnel, and this does not include deaths in Laos and Cambodia, also due to U.S. imperialism. Many more Vietnamese than

What all three of these cases have in common is a clearly libertarian policy¹⁰ that was followed, in a cause and effect relationship, by anti libertarian results.¹¹ Should libertarians, therefore, oppose these three initiatives? Specifically, should we as libertarians resist lower tax rates when we are located in the upper section of the Laffer curve? Do we as supporters of laissez faire capitalism contest drug legalization on the ground that it will aggrandize government wealth, and thus enable it to pursue even more evil deeds than at present? Should the freedom movement, perish the thought, actually *favor* a military draft?

“Not bloody likely” would be the typical response emanating from this quarter. And, indeed, these positions do indeed seem counter intuitive, indeed, wildly so. However, let us attempt to tip the balance in the direction of utilitarian considerations, and away from what appears, at least initially, as the correct deontological answers to these questions.

Suppose that if any of these three libertarian policies were accomplished the all powerful Martians would blow up the entire earth, and all on it would perish. Why? Because the US government had the following advantages: its additional revenue mulcted from the long suffering taxpayers due to a fall in the tax rate, and supplementary money forthcoming to it from drug legalization, plus, a voluntary military which did not call forth massive protests against its rule. With these benefits, the US government, as was its wont, attacked Mars, we may now suppose. Without these extra revenues, America would have been forced to follow a policy of peace with the fourth planet. Unbeknownst to the US authorities, instead of picking on relatively defenseless countries, in Mars, they found more than they could chew.

So, are lower tax rates, etc., even *compatible* with libertarianism, let alone required by this philosophy, under such conditions?

It is time to consider the philosophy of liberty in more detail. At first glance, libertarianism may be defined as the embodiment of the non aggression axiom coupled with the homesteading theory of property rights (Rothbard, 1973, 1998). Here, libertarianism would rule out of consideration higher taxes, drug prohibition and the draft. They all violate the non aggression principle (NAP). It is my contention, however, that although this definition will suffice for the overwhelming majority of “ordinary” cases, it is only a first approximation to the truth. It leaves our beloved philosophy

American soldiers perished, presumably due to the technological advantages enjoyed by the latter.

¹⁰ Lower tax rates, legalized drugs, an end to the military draft.

¹¹ The government has increased funding with which to pursue its evil deeds, including pursuing unjust wars.

vulnerable to the Martian example. “Justice though the heavens fall” (the earth is destroyed) cannot, must not, be all there is to libertarianism.

I therefore propose an alternative, or, rather, a further explication of libertarianism. In this view, libertarianism becomes a theory of punishment, in its more well-developed format. Punishment for what? Why, of course, for the violation of the NAP.

We must cleave to *some* vestiges of traditional libertarianism in this new understanding of it. In this alternative dispensation, the libertarian would in effect say to the would-be murderer or rapist: it is a matter of irrelevance to us whether or not you engage in the acts you are now contemplating. *Qua* libertarians, we do not really care one way or the other.¹² However, if you engage in such acts, we will punish you to the full extent of the law.¹³

There are two problems that immediately arise with this interpretation that must be addressed. First, is it really true that it is a matter of irrelevance whether or not the NAP is violated? Well, according to the old adage, “Don’t get mad, get even,” there is indeed a sense in which we really do not “care.” All the “caring” in the world, after all, will not protect against violations of the NAP. As moralists we can still inveigh against such dastardly deeds. But, if we really want to stop people who cannot be dissuaded from them by considerations of civilized behavior, only a credible threat of force, actually carried out with a high probability, will suffice. That is really all society has to employ against marauders, when you come down to it, in any case. Second, will such an interpretation support the NAP, or will it run counter to it? My claim is that not only will this interpretation undergird the NAP, it is the *best* way to do so. I cannot think of a better way to promote obedience to the NAP than to threaten physical sanctions against those who violate it.

¹² As ethicists, we of course oppose murder, rape, and other uninvited border crossings.

¹³ Libertarian punishment theory calls for rather Draconian measures. On this see Block, 1999, 2002–2003, 2003, 2004a, 2004b, 2006, forthcoming; Block, Barnett and Callahan, 2005; Gregory and Block, forthcoming; Olson, 1979; Rothbard, 1998, 88; Whitehead and Block, 2003. In the view of Rothbard (1998, p. 88, ft. 6):

It should be evident that our theory of proportional punishment—that people may be punished by losing their rights to the extent that they have invaded the rights of others—is frankly a *retributive* theory of punishment, a “tooth (or two teeth) for a tooth” theory. Retribution is in bad repute among philosophers, who generally dismiss the concept quickly as “primitive” or “barbaric” and then race on to a discussion of the two other major theories of punishment: deterrence and rehabilitation. But simply to dismiss a concept as “barbaric” can hardly suffice; after all, it is possible that in this case, the “barbarians” hit on a concept that was superior to the more modern creeds.

Here, then, is the denouement. The government is contemplating lowering tax rates. We libertarians know (I stipulate) that if they do, they will gain additional monies necessary to provoke the Martians, who will end it all for all of us.¹⁴ So, the libertarians somehow over rule this reduction in the tax rate, thus saving the planet from destruction.¹⁵ But, of course, those libertarians responsible for the rescinding of the tax reduction¹⁶ are guilty of a crime. They have in effect stolen the additional revenue that would have accrued to the long suffering tax payers, under the tax rate reduction plan. So, they must be punished, for violating the NAP. We first hold a ticker tape parade for these criminals,¹⁷ fete them all over the (grateful) world (since they have saved humanity). They were truly heroes, since, not only did they save us, but, as libertarians, they acted against the beloved NAP. But, then, given our new interpretation of libertarianism, we punish them to the full extent of the law, and, with their acquiescence!¹⁸ They full well know what they were doing when they refused to lower tax rates, or to legalize drugs, or when they organized a draft, all to keep the Martians off our backs. They were saving the human race, by violating the NAP. Thus, as good libertarians, who are also utilitarians, they *welcome* their punishment. In this way, *only* in this way, can we eat our utilitarian cake, and keep our deontological cake, too.

There is one fly in the ointment, however. The Martians, clever folks, diabolical beings that they are, are determined that we libertarian earthlings *not* have our cake and eat it too. They do not wish to allow us to save the earth, and stick to our NAP too. Or, at least, to punish those who violate it. So, they send out the following message: “if you punish those heroic libertarians who were trying to save the planet, and their NAP too, by prohibiting drugs, or instituting the draft, or opposing tax rate reductions, if you so much as touch a hair on their heads, we will renew our unstoppable threat to kill you all.” Well, this is too much for even the present author. If the Martians, armed with their irresistible might, are willing to go so far, we cannot maintain our NAP and save the world to boot.¹⁹

¹⁴ Were it just the white males of us, this would be tolerable. But, women, blacks, homosexuals and other protected victim groups will *also* be slaughtered, and this no civilized, well, politically correct, order can tolerate.

¹⁵ The Greens, at least, will support us on this one. They may not care too much about humanity, but they *love* Gaia.

¹⁶ Think of a Ron Paul type “politician.”

¹⁷ No scare quotes around this word. These libertarians are indeed criminals; they have violated the NAP.

¹⁸ They still revere the NAP, even as they violate it. They *welcome* their punishment.

¹⁹ Although we have seemingly compromised with the NAP in this article, I am still extremist enough to tell the Martians at this point, to “go take a hike,” “publish and be damned,” etc. “Justice though the heavens fall” can be put off only for so long.

Yes, if the Martians are that determined to drive a wedge between utilitarianism and libertarian deontology, we mere mortals cannot stop them. So, what did we gain by interpreting the libertarian NAP as but the first approximation of libertarianism, and calling libertarian punishment theory a more sophisticated and truer version of our philosophy? We achieved one important step in the argument. As long as we libertarians “merely” had to inaugurate a military draft, raise tax rates and/or oppose drug legalization, our reconciliation was possible. We could cleave to our punishment theory version of libertarianism, when the plain old simplistic NAP surely could not. It was only when the Martians (clever rascals) wheeled out their heavy intellectual artillery that we were forced to retire from the field in disarray, compelled to acquiesce in the destruction of the entire third planet, or renounce the punishment theory interpretation of libertarianism.

Let us try to make this point in yet another way. In the movie, *Dr. Strangelove*,²⁰ there is a scene where the characters need some change to use for a coin operated telephone. Their call is very important; it will, to hark back to the Martian example, save the world from nuclear destruction. The problem is that none of the characters have any coins. However, there is a Coke machine sitting right there, just chock full of change. One character points to it, and tells a soldier with a gun to shoot at the machine, so that they can avail themselves of the means necessary to make this vital telephone call. Horrified, another character says, splutter, splutter, “But you can’t do that. This coke machine is *private property* (paraphrase).” This line garners, perhaps, the biggest laugh in the entire movie. It is a direct attack on the NAP. Consider for a moment Kant’s categorical and hypothetical imperatives. The NAP takes the position of the former. It states, in effect, “Thou shalt not break into to Coke machines to get change, no matter if the fate of the entire world hangs in the balance.” If this is the essence of libertarianism, then it is susceptible to just this sort of objection. And, it is truly a powerful one, as witness the heartfelt laughter of every audience who ever saw this movie at this scene.

In contrast, the Kantian hypothetical imperative would state the following: “*If* you break into the proverbial Coke machine, you rotten immoral person, *then* you are going to have to pay some very serious damages for your destruction of private property.” My claim is that this is a far more palatable stance for the philosophy of libertarianism to embrace. To conclude this section of the paper. The NAP, simpliciter, implies that *never, ever* should we oppose the legalization of drugs, *no matter what* the consequences. The more sophisticated version of libertarianism, punishment theory, states

²⁰ www.imdb.com/title/tt0057012/

something very different. If the consequences are great enough in terms of rights violations, then, indeed, it is appropriate for a libertarian to oppose drug legalization, provided that those who oppose it are made to pay the proper penalty. Ditto for lowering tax rates, assuming our location on the top part of the Laffer curve. If this will give the evil government sufficient means to engage in serious enough rights violations, then libertarian heroes should oppose it, and be willing and ready to pay the penalty for cooperating with theft. And, yes, even the draft is justified if the consequences of the voluntary military are dire enough.

Let us now consider several more cases so as to clarify this viewpoint. Strictly speaking, pushing someone out of the way of an onrushing truck that will kill him if he remains where he now is, constitutes assault and battery. If someone wants to be heroic enough to do this, he should be willing to (possibly) pay the penalty for so doing.²¹ If the rescuer shoves hard enough, the saved person may have his arm broken. It might seem churlish of this person to sue his rescuer for damages, but that would be his right under this present interpretation of libertarianism.

Let us take yet another hack at this difficult issue. In the narrow, limited, strict, dare we say simplistic interpretation of NAP, it is illicit and improper to violate the NAP, period. No exceptions. Anyone who does so, or advocates that this be done, is that extent not a libertarian. In Kantian terms, we have a categorical imperative: one may not violate the NAP, case closed.

In contrast, our wide, loose, open, complex, interpretation is that the NAP is the lodestar of libertarianism. But, in my view, it is sometimes legitimate to violate the NAP, but, if so, one is obligated to take on the punishment for doing so. In Kantian terms, we interpret the NAP as a hypothetical imperative, not a categorical one.

Our claim is that the other perspective not only can not handle wild eyed cases such as nasty Martians, and Dr. Strangelovian shootings of Coke machines, it fails in a whole host of other examples too. Consider the following.

A is drowning. I stipulate that A will soon die. B can save him. But, if B does this, he will be committing assault and battery on A. I assume that A struggles during B's efforts to save him, the only way B can save A is to punch his lights out, and render A unconscious. In the other view, B may not do this. It is incompatible with libertarianism's NAP. In my opinion, B *may*

²¹ It cannot be denied that some people will act heroically in this manner but only if they do not face any possible legal repercussions.

do this, but is then obligated to pay off B for the harm, rights violation, he has committed on him.²²

Another case: C is about to commit suicide, by jumping off a bridge. D see this, and grabs C in a bear hug, drags him away from the bridge, and tries to talk him into not taking his own life. D holds C captive for one day, after which, he allows C to do with his life exactly what he wants. But, in the meantime, D is guilty of slavery, kidnapping, assault. In the traditional libertarian view, it was improper to do this. It violated the NAP, and it thus was anti libertarian. In my perspective, it violated the NAP alright, but, as long as D was willing to pay the penalty for his NAP violation, his actions were compatible with libertarianism; heroic, even.

A third case. The simplistic view is compatible with that of Rothbard (1998, 176–78) on Calhoun; net tax consumers are the bad guys, net tax payers are the victims. Period. In my understanding, in contrast, this is only a first approximation. We have to take a more complex, measured view on this. I previously taught at Baruch College, Rutgers University and the University of Central Arkansas, all public institutions. Murray Rothbard was on the faculty at the University of Nevada Los Vegas, another public university. According to the limited, narrow interpretation of the NAP, neither Murray Rothbard nor I can claim to be libertarians. That, alone, seems to me like a refutation of this theory.

During the 1930s, the Nazis came to a Jewish town, with the following proposal-threat.²³ If the Jews would turn over one member of their congregation to the Nazis, for execution, their choice, they would allow the rest of the town to live. If they refused, the entire populace of the town would be killed. Let us stipulate that the Nazis are not lying. According to the Talmud the prescription would be, do not violate the NAP. Don't cooperate with the Nazis in any way, manner, shape or form. In my view, the head Rabbi should either turn himself in, or offer the Nazis any volunteer from the town, for this execution. If so, he would thus save lives. Fewer rights would be violated.²⁴

Suppose E gives F a gun for safekeeping. Then, one day E comes to F in a drunken rage, and demands his weapon back, so that he can either kill himself, or murder innocent person G. Clearly, it would be improper for F to

²² If A insists, which would be unlikely. Even more unlikely would be any private court defense agency being too supportive of A's lawsuit.

²³ As told to me by my friend and Chassidic Rabbi, Lipa Dubrawsky.

²⁴ We posit that the world ends right after this decision is made, to obviate any possible negative implications for the future. Maybe the Martians got into the act at this point. You never can tell, with Martians.

give back E his pistol, and, that if F refused, he would owe E some sort of (financial) penalty for keeping E’s property against E’s will. That is, F violated the NAP, if we interpret it in the narrow manner.

To conclude. The narrow interpretation of the NAP is the traditional one in libertarian circles. In this perspective, it is a slam dunk to always favor tax rate reductions, even when on the “wrong side” of the Laffer curve, to support drug legalization, and to oppose the military draft. In the wider understanding the NAP I propose in this paper, these issues are by no means as easy to analyze.

Is there any foolproof, knock-down drag-out argument that can fully reconcile pure deontological libertarianism in the narrow sense with broad utilitarianism (we must stop all end of the world scenarios). No. The “Martians” can always say, “if you adhere to your libertarian principles, we’ll pulverize the entire earth.” This bifurcation cannot be overcome, or, at least, I see no way to fully deal with it. I have no knock out punch against it. But, there are better and worse ways of dealing with challenges of this sort, plus the suicide, coke machine and other such cases. One way is with narrow libertarianism: don’t violate the NAP, period. If you do, in any way, manner shape or form, you are to that extent not a libertarian. I have rejected this option, as inferior to what may be characterized as “punishment libertarian theory.” Is the latter perfect? Foolproof? Water tight? No. As David Gordon has pointed out to me, it makes something of the same mistake as does utilitarianism, when faced with the sadist. Do we take *his* utility into account? And if so, what about the utility *monster* who enjoys torturing people, we stipulate, *more* than the victims suffer from it.²⁵ The response, “Well, we just don’t *count* such utility” cries out for the response, “Why ever not? What is the difference, based on your theory?” In similar manner, we may ask of the theory I am putting forth in the present paper, “Why punish, at all, the ‘perpetrator’ of the violation of the NAP who shoots the coke machine, or saves the would-be suicide, or kills a few innocent people so that the Martians will stay off our case? If this person is truly a hero, why punish him?” The response, “Because he violated the NAP” is not fully convincing, because, in this case it is *good* to violate the NAP. However, imperfect as is this response, I think it is a good deal better than acquiescing in the notion that it is *bad* from the libertarian point of view to save people from suicide, shoot coke machines, etc.

²⁵ Do not object, gentle reader, and point out the impermissibility, impossibility of cardinal utility, let alone interpersonal comparisons of utility. We are now stipulating all these measurements.

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