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EUVOLUNTARY OR NOT, EXCHANGE IS JUST*

By Michael C. Munger

I. Introduction

There are two paradoxes in the moral and ethical basis of our understanding of exchange. The first, long commented on and analyzed by philosophers and political economists,[1] is characterized by the question, "How can many greedy actions, taken as a whole, imply a benefit for the community?" In other words, can selfishness be moral? This debate, often focusing on the distinction between intent and consequence, has been developed over the last two hundred fifty years until the arguments on both sides are well understood.

The second paradox is the inconsistency between many morally acceptable exchanges and the unequal distributions of wealth that accumulate as a consequence of those exchanges. In what follows, I discuss the precise nature of the paradox, and I specify the requirements for "voluntary" exchange. In doing so, I suggest that a new concept, to which I give the name "euvoluntary exchange," may be useful in discussing disagreements about the ethical acceptability of exchange, because such disagreements often hinge on whether exchanges are "well" and "truly" voluntary. This suggests that euvoluntary exchange needs to be clearly defined.[2]

Even those who might concede the resolution of the first paradox—that selfish actions might be moral at the individual level—retain a concern with so-called "social justice," or the distribution of the benefits or economic surplus created by market institutions. No less a liberal theorist than John Stuart Mill famously uncoupled exchange and distribution. He wrote: "The laws and conditions of the production of wealth, partake of

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[1] Versions of this apparent paradox have been described variously by Adam Ferguson, *An Essay on the History of Civil Society* (1767), available on the Web site of the Constitution Society, http://www.constitution.org/af/civil.htm; Bernard Mandeville, *The Fable of the Bees or Private Vices, Publick Benefits*, 2 vols., with a commentary by F. B. Kaye (Indianapolis, IN: Liberty Fund, 1988), http://oll.libertyfund.org/title/1863; and Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, vol. I, ed. R. H. Campbell and A. S. Skinner, vol. II of the Glasgow Edition of the Works and Correspondence of Adam Smith (Indianapolis, IN: Liberty Fund, 1981), http://oll.libertyfund.org/title/220.

[2] The Greek prefix "eu-" means good, well, true, or pleasing. Thus, "euvoluntary" captures the meaning of being essentially or truly voluntary, as well as being good for or pleasing to both parties to the transaction.

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the character of physical truths. There is nothing optional, or arbitrary in them . . . [T]his is not so with the distribution of wealth. That is a matter of human institution solely. The things once there, mankind, individually or collectively, can do with them as they like."[3]

This quote illustrates the second paradox quite well: "The things," as Mill puts it, are the revenues resulting from exchanges that made both parties better off, and that were undertaken under conditions in which property rights were private and exclusive. But after a number of exchanges have been made, and some traders have accumulated large surpluses, those private property rights are somehow transfigured into collectively defined common property. Simply put, that which was yours is now ours. And the reason is that if we were to allow private property to remain private, we would have to accept an inequitable distribution of goods, even though there was nothing unjust about any one of the exchanges that led to that distribution.

That seems paradoxical. 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 redistribute wealth and correct Mill's "optional" maldistributions of wealth?

There are at least two answers in the literature. The first claims that social justice is unrelated to individual actions; the second claims that exchange is not euvoluntary. I will consider each claim in turn.

The social-justice objection is the standard Rawlsian argument that a just liberal system cannot function with profound differences in wealth, regardless of whether the sources of the inequalities were themselves blameworthy.[4] Those who hold this position would concede that the holders of disproportionate wealth may in fact have engaged in no unethical action. But that has nothing to do with social justice, because there is no necessary connection between individually just actions and the justice of the aggregate distribution of wealth and power. Social justice, in this view, is a property of the distribution of wealth, not a property of its creation or acquisition. A number of authors have addressed the social-justice argument and its problems, and I will not consider it further in this essay.[5]

[3] John Stuart Mill, *The Collected Works of John Stuart Mill, Volume II—The Principles of Political Economy with Some of Their Applications to Social Philosophy (Books I–II)*, ed. John M. Robson, introduction by V. W. Bladen (Toronto: University of Toronto Press; London: Routledge and Kegan Paul, 1965), http://oll.libertyfund.org/title/102/9661.

[4] John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), 303–5.

[5] Perhaps the earliest modern statement of the consequences of individual decisions for the justice of the overall distribution was John Locke's 1695 "Venditio," reprinted in David Wooten, ed., *John Locke: Political Writings* (Cambridge: Hackett Publishing Company, 2003), 442–46. My own view is probably closest to that argued by F. A. Hayek: "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 obser-

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The second claim—that exchange is not euvoluntary—is much less clear in the literature, but I believe one can find it by looking carefully. This argument concedes that there *would* be a paradox, if in fact exchanges *were* euvoluntary. One might even concede that if exchanges were euvoluntary, there might be no basis for remedial state action. But exchanges in the real world of markets, in this view, are rarely euvoluntary. The position one has in society, and one's relation to the ownership of the means of production (Karl Marx's conception of "class"),[6] are morally arbitrary, and therefore indefensible as a basis for private property claims.

The aim of this essay is to rebut the second ("not euvoluntary") claim, which has been accepted uncritically. I will state the counterclaim as starkly as possible here, though I will admit to some qualifications later. The counterclaim is this: All objections to the morality and justice of the uses of voluntary market exchange are mistaken, because they are misdirected. Euvoluntary exchanges are always justified, and the consequent distributions of wealth are always just. But even exchanges that are not euvoluntary are beneficial, and they benefit most of all the welfare of those who are least well off. Euvoluntary or not, exchange is just, and restrictions on exchange harm the poor and the weak.

II. Euvoluntary Exchange

The objection to markets that I wish to address is this: Exchange is unjust because it is not euvoluntary. Therefore, it is not only acceptable, but morally required, for the state actively to redistribute wealth, because the current distribution of wealth results from an accumulation of unjust exchanges.

This objection is mistaken. Unjust distributions of wealth do not *result* from exchanges, euvoluntary or otherwise, though unjust distributions might well *precede* them. My conclusion, to foreshadow, is that allowing exchange reduces (rather than increases) the social injustices that most people are concerned about. The first step in making this argument is to

vance 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.* It does not belong to the category of error but to that of nonsense, like the term 'a moral stone'." Friedrich A. Hayek, *Law, Legislation, and Liberty, Volume 2: The Mirage of Social Justice* (Chicago: University of Chicago Press, 1978), 78; emphasis in the original. There are clearly problems with this view, and, as John Tomasi points out, it is hard to claim that even Hayek believed it fully. See John Tomasi, "Hayek on Spontaneous Order and the 'Mirage of Social Justice,' " (New York: Hayek Lecture, Manhattan Institute, June 20, 2007). See also William Galston, *Justice and the Human Good* (Chicago: University of Chicago Press, 1980); Gerald F. Gaus, *The Modern Liberal Theory of Man* (New York: St. Martin's Press, 1983); and Gerald F. Gaus, "Property, Rights, and Freedom," *Social Philosophy and Policy* 11, no. 2 (1994): 209–40.

[6] Karl Marx, *Capital: A Critique of Political Economy* (1867), trans. Ben Fowkes (New York: Penguin, 1992). The Marxist conception of class has both objective and subjective elements, the complete treatment of which is well beyond the scope of the present essay.

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give a clear definition of euvoluntary exchange, elaborating on what it means to be "truly voluntary."

Euvoluntary exchange requires the following:[7]

(1) The conventional ownership of items, services, or currency by both parties;
(2) The 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 when they agreed to the exchange;
(4) That neither party is coerced, in the sense of being forced to exchange by threat ("If you don't trade, I will shoot you!"); and
(5) That neither party is coerced in the alternative sense of being harmed by failing to exchange ("If I don't trade, I will starve!").

Items (1) through (3) are standard requirements for a valid contract in the common law.[8] Likewise, item (4) could be summarized as "no duress"—also a requirement for valid contracts under the common law.[9] And item (4) is also a routine aspect of "voluntary" acts for political scientists. In the political world, "power" means that a person (group) can impose his (its) will on others through the threat of violence.[10] That is the sense of "coercion" in item (4) above.

In the economic world, power is different. This difference is captured in item (5): harm caused by failure to exchange. Most of us have a sense that monopoly is not only economically inefficient, but immoral. Of course, the decision of a consumer to purchase or not to purchase a product marketed by a monopoly is not coercive in the same sense as political power is coercive. But if the product is desperately needed, the choices of the consumer faced with a monopoly do not seem voluntary, and they are surely not euvoluntary.

[7] For exchange to be voluntary, it must also be true that there are no large-scale or dangerous externalities. In a private property regime with small numbers, this assumption is easily met by Coasen bargaining. If property is common and numbers are large, however, state action may be required. But this is more a problem with the property rights regime than with exchange itself. See Ronald Coase, "The Problem of Social Cost," *Journal of Law and Economics* 3 (1960): 1–44. The problem of conceiving of "property" in this context is illustrated by Eric Mack's imaginative article on blackmail. Eric Mack, "In Defense of Blackmail," *Philosophical Studies* 41, no. 2 (1982): 273–84.

[8] Henry C. Black, *A Treatise on the Rescission of Contracts and Cancellation of Written Instruments* (Kansas City, MO: Vernon Law Book Co., 1916), chaps. 2, 4, and 5.

[9] Ibid.

[10] Thomas Hobbes argued that coercion must be relegated to government, not to private bargaining, because "covenants being but words, and breath, have no force to oblige, contain, constrain, or protect any man, but what it has from the public sword. . . ." Thomas Hobbes, *Leviathan* (New York: Penguin Classics, 1982), Part Two, chapter XVIII, p. 44.

Fortunately, there is a way of making this notion of power in an economic setting precise. Imagine Jane and Bill are considering an exchange of a product for a sum of money. Jane has power over Bill if Bill suffers more from a failure to exchange than Jane does, and vice versa. In some sense, each has a voluntary choice to make: Jane can sell or not sell, and Bill can buy or not buy. But if the consequences of failing to consummate the transaction are far more dire for one than for the other, then the exchange is not euvoluntary.

Economists call the state of the individual in the absence of an exchange the "Best Alternative to a Negotiated Agreement," or BATNA for short.[11] One might think of the value of the BATNA as the level of welfare of the person without access to exchange. So, formally, Jane has *power* over Bill, and Bill's exchange decision is *not euvoluntary*, if

$$\text{Value}\,(\text{BATNA}_{\text{JANE}}) - \text{Value}\,(\text{BATNA}_{\text{BILL}}) \geq \text{Disparity Threshold}$$

The exact level of the "disparity threshold"—that is, the point where this difference implies that exchanges are not euvoluntary—is not obvious. But at some level, if Jane is indifferent between exchanging and not exchanging, and Bill must either exchange or suffer great harm, then Jane has power over Bill.

A more extended example is useful at this point. Suppose I am considering buying a bottle of water. If I go to grocery store *A*, one among many possible grocery stores, and notice that the price at this particular grocery store is $1,000, I laugh and push my cart along, choosing not to buy. This is a voluntary choice, because I know that other groceries offer water at a much lower price. It is quite true that I need water, and in fact I will die without it. But I know that I can buy water somewhere else, or get some from the tap, or choose any one of many alternatives. Potable water is identical, or nearly so, regardless of the source, aside from very slight differences in taste. And since there are many sources of water, I am not obliged to pay the $1,000 price being asked by store *A*. Still, if I did decide to pay the $1,000 at store *A*, we can all agree that this would be a euvoluntary action. I had other alternatives, the water is not poisonous, it tastes good, and I will not regret making the purchase on health grounds. It is the presence of alternatives at a much lower price that implies that my decision to buy the water at $1,000 is euvoluntary.[12]

[11] This concept of the "Best Alternative to a Negotiated Agreement," or BATNA, comes from Roger Fisher and William L. Ury, *Getting to Yes: Negotiating Agreement without Giving In* (Boston, MA: Penguin Books, 1981).

[12] This example highlights another feature of markets, one that economists call "consumer surplus." If I am denied water, I will die. But if I am denied one opportunity to purchase water, my welfare is little affected, as long as there are other competing opportunities to purchase water. This idea that competition creates value for the consumer, in ways not

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Now, let us suppose instead that I am 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: "Three tacos for $5! Drinks: $1,000. Three drinks for only $2,500."

I argue with the driver. "Have a heart, buddy! I'm 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 three bottles of water for the "special" price of $2,500. Was the exchange euvoluntary?

It was not. The exchange violates item (5) in the definition of euvoluntary exchange, which requires that neither party be coerced in the sense of being harmed by failing to exchange (i.e., it requires, in effect, relative equality of the BATNAs of the parties to the exchange. My BATNA was death from thirst. The driver was little affected by whether or not 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 non-euvoluntary. The precise definitional line between almost equal BATNAs (and therefore euvoluntary exchange) and unequal BATNAs (and therefore non-euvoluntary exchange) may be hard to draw, but I hope the distinction is clear enough for analytic purposes.

Let me emphasize this point, because we will come back to it later. 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 as a result the driver had stayed home? Would anyone seriously argue that having access to a market, even if the exchange was not euvoluntary, made me worse off? Sure, I was in trouble. But my difficulties rested on conditions that *preceded* market exchange, rather than being *caused by* access to the exchange. Allowing market exchange always improves the lot of the least well off participants in the exchange, even if the exchange itself is not euvoluntary. The reason is that the participant with the very bad BATNA is able to improve his or her situation, compared to the BATNA (which is, by definition, the outcome if access to market exchange is denied).

III. Examples

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 middle-

reflected in prices, is called the "diamonds and water" paradox. See, e.g., Adam Smith, *The Wealth of Nations,* 31–32.

man is a trader who buys as cheaply as possible, and then sells dear, merely moving the product rather than improving it in some way. Traders on the "Silk Road" were middlemen. So is the Web site eBay, today.

The roots of the English word "monger," a common merchant or seller of items, are quite old. In Saxon writings of the eleventh century, described in Sharon Turner's magisterial *History of the Anglo-Saxons* (1836), we find a very striking passage 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 [i.e., brass], 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 benefit 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."[13]

This makes quite a story—risk, greed, adventure, and profit. The *mancgere* openly admits that he does not 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 the exchanges between the *mancgere* and his customers euvoluntary? Probably. Many of the items being resold are luxuries. The buyers may be disappointed that they cannot afford the costly baubles, but their physical situations are not harmed by being unable to consummate an exchange. Moreover, 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.[14] But isn't it still true

[13] Sharon Turner, *The History of the Anglo-Saxons,* 6th ed. (London: Longman, Rees, Orme, Brown, Green, and Longman, 1836), 115–16. Portions of this discussion are adapted from Michael Munger, "Market Makers or Parasites?" (Indianapolis, IN: Liberty Fund, EconLib, 2009), http://www.econlib.org/library/Columns/y2009/Mungermiddlemen.html.

[14] See, e.g., Avner Greif, *Institutions and the Path to the Modern Economy: Lessons from Medieval Trade* (New York: Cambridge University Press, 2006).

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that since each separate exchange was (suppose, for the sake of argument) euvoluntary, the result must also be just, and morally defensible.

Obviously, I am paraphrasing, with only a few flourishes, Robert Nozick's argument from *Anarchy, State, and Utopia* (1974). Nozick famously posits that even if each separate exchange were morally justified (in my terms, euvoluntary), one might still expect to see enormous disparities of wealth. He gave the example of Wilt Chamberlain, a basketball player of such talent that people would happily pay a quarter extra, per fan, to watch him play.

These myriad euvoluntary transactions sum to a great fortune. In effect, Nozick is arguing two things. First, if the initial distribution of income and wealth is just, and each transaction is individually just, then any consequent distribution is also just. Second, given disparities in ability, the accumulation of these voluntary transactions would necessarily lead to great income inequality, unless exchange is outlawed. As Nozick put it, "The socialist society would have to forbid capitalist acts between consenting adults."[15]

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 example allows him to argue that the case for the proposition that "inequality is unjust, and requires redistribution" is not prima facie; it depends on how the money was acquired. One would have to inquire about the justice or injustice of the initial distribution of wealth, before exchange started, and also about the euvoluntary (or not) nature of each of the exchange transactions along the path from one distribution to another.

Nozick's example does not do the work he wants it to do, 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*? It will be useful here to consider a famous example of a "middleman" in action, from an account of a prisoner-of-war camp in Germany during World War II.

The British economist R. A. Radford was captured by the German army in 1943 and later wrote about the experience.[16] Radford noticed the universality of exchange in (among other things) the contents of Red Cross packets: tinned milk, jam, carrots, butter, biscuits, tinned beef, chocolate, sugar, treacle [i.e., molasses], and cigarettes.

Exchange, if euvoluntary, always makes both parties to the exchange better off. But the initial endowments, or BATNAs, of the parties are a

[15] Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 163.

[16] R. A. Radford, "The Economic Organisation of a P.O.W. Camp," *Economica* 12, no. 48 (November 1945): 189–201.

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 was composed of two parts: (1) daily rations from what Radford delicately calls "the detaining power" (the German army); and (2) once a month, the full contents of a Red Cross packet.

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 as a result of trade, but the total welfare of the group is improved. And people do not have to be told this. They recognize it quickly, on their own. As Radford put 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."[17] Opponents of exchange had to answer the powerful 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. An exchange of sacrifices might be mutually beneficial, but it might not. Better to exchange goods directly, so that their values can be compared.

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 exchanges predicated on (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.[18]

The reason such exchanges might be a problem is easy to see, but harder to explain clearly. If I make one trade, and I am better off, then no one begrudges the improvement, provided my trading partner also benefits. But if I make many trades, as the eleventh-century *mancgere* did, 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

[17] Ibid., 197.

[18] Aristotle makes this distinction most clearly, in arguing that value in use is different from, and superior to, value in exchange. Aristotle, *Politics,* ed. and trans. Thomas Alan Sinclair and Trevor J. Saunders (New York: Penguin Classics, 1981), Book I. And this is precisely the origin of the "labor theory of value" that finds its way through the neoclassical economists into the work of Marx.

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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 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. . . ."
>
> 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. . . .[19]

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. Yet the padre accumulated a "profit" amounting to a full Red Cross parcel, a small fortune in the setting of the camp.

Just like the eleventh-century Saxon *mancgere,* the wandering padre created value. It might seem that 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 six (or fewer) cigarettes for a tin of beef, and then finding another man *B,* who would sell a tin of beef for three (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 padre, by searching across trades, can arbitrage the difference: he sells the beef to *A* for five 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

[19] Radford, "The Economic Organisation of a POW Camp," 198–99.

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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 end up with 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 would demand to be compensated. The question is whether this demand is morally justified. That is really the question that Nozick was asking. 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 by the French economist Frédéric Bastiat, in his essay *That Which Is Seen and That Which Is Not Seen* (1850). 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.[20]

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.

[20] Frédéric Bastiat, *That Which Is Seen, and That Which Is Not Seen* (Paris, 1850); reprinted by Liberty Fund, http://www.econlib.org/library/Bastiat/basEss1.html, chap. 6, sec. 1.99.

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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 cheaply because the state's motivation is public service, not 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 they 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 puts it, "the wheat reaches 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. . . .[21]

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

One final example is worthwhile, because it reveals something of the depth of the antipathy many people have toward exchange, and also shows us something important about euvoluntary exchange. Hurricane Fran made landfall in North Carolina in September 1996, hitting the state capital of Raleigh around three a.m., dropping ten inches of rain.[22] More than one million people were without power the next morning, and many roads were blocked by large fallen trees. Few residences had any kind of backup power. Within hours, food in refrigerators and freezers started to go bad. Insulin, baby formula, and other necessities immediately began to

[21] Ibid., chap. 6.

[22] This example is adapted from Michael Munger, "They Clapped: Can Anti-Gouging Laws Prohibit Scarcity?" (Indianapolis, IN: Liberty Fund, 2007), http://www.econlib.org/library/Columns/y2007/Mungergouging.html.

spoil in the heat. More than a million people needed ice. And they needed it immediately.

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, passed in 1992. It was General Statute 75-36,[23] a law whose sole object was, in Nozick's terms, to prohibit capitalist acts between consenting adults. The law had been interpreted to limit price increases to less than 5 percent. Each violation of this law could result in a fine of up to $5,000. So, ice that happened to be 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?

Several people did try to sell ice. 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 a bag. 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.

Before long, Raleigh police arrived and shut down the illicit ice sellers, confiscating the ice. Interestingly, it appears that the prospective buyers standing in line did something surprising: They clapped. They 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 four 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.

This example raises 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

[23] The text of the law at the time read as follows: "(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 was amended in August 2006 to be even more restrictive, outlawing price changes reflecting cost increases up the supply chain. See North Carolina SL2006-245, General Statutes 75-38. A much broader and more careful treatment of these issues can be found in Matt Zwolinski, "The Ethics of Price Gouging," *Business Ethics Quarterly* 18, no. 3 (July 2008): 347–78.

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words, do anti-gouging laws have a legitimate purpose? In the next section, I will try to use what we have seen in the foregoing examples to offer answers to these questions.

IV. Preconditions, Not Consequences

If an exchange is not euvoluntary, should it be prohibited? It is true that the taco truck driver in the desert stood to make a lot of money by selling me water. It is likewise true that the *mancgere* expected to make a large profit by selling spices, gems, and silk, and that the itinerant padre was trying hard to accumulate extra cigarettes and food through his trades in the POW camp. Finally, the ice sellers were motivated by greed, not charity, in bringing ice to Raleigh.

In every case, the option to buy made the (potential) buyer better off. Nonetheless, 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 are 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 answer "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 no one should be in that desperate position in the first place. 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 $8 for a bag of ice.

But what we do next is nonsense, a non sequitur. We go from saying that no one should have to pay such a high price to passing laws saying that no one will be able to. The effect of these laws is to imprison people in the desperate position that made us feel sorry for them 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. Without access to the chance to buy water, the lost traveler would die of thirst. If there is no incentive for truckers to buy ice and transport it to the disaster zone, then hurricane refugees must accept that the price of ice is infinity, because none is available. Thus, 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?

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There are many objections to capitalism and exchange, some of which are complex. I will offer a brief summary, as a way of contrasting the objections with the argument so far. Karl Marx, in Book I of *Capital* especially, makes two distinct arguments—one based on exploitation and another based on the inequality of negotiating positions in market exchange.[24] The exploitation argument rests on the claim that wage labor alienates the product of labor from its true owner, and that no compensation could be sufficient.

The second argument is more interesting, at least for my purposes. In chapter 26 of Book I, Marx asks why some men work but own little capital, and others own large amounts of capital but do little work. His answer, borrowed from the neoclassical economists, is that "primitive accumulation," or differences in wealth in precapitalist society, seem to provide an explanation. This saving of capital is "a primitive accumulation preceding capitalistic accumulation; an accumulation not the result of the capitalist mode of production, but its starting point."[25]

Marx claims that primitive accumulation plays the same role in political economy as original sin plays in Christian theology. The reason that some have to work by the sweat of their brow is that their ancestors were spendthrifts—dissolute and morally loose. 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.[26] Marx finds this idea laughable, arguing instead that disparities in wealth are actually the result of theft—theft that is protected by the state through the invention of property rights and justified by fables and myths of ownership.

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 examples could charge arbitrarily high prices, the capitalist in Marx's example can pay arbitrarily low wages. The laborer 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 an objection to the process of exchange itself. Presumably, even Marx would see little that is 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

[24] Marx, *Capital,* Book I.

[25] Ibid., Book I, chapter 26. Adam Smith used the phrase "previous accumulation" to refer to this phenomenon (*Wealth of Nations,* Book 2, chap. 3).

[26] Euripides, in the Phrixus Fragment 970, said: "The gods visit the sins of the fathers upon the children." Christopher Collard and Martin Cropp, eds. and trans., *Euripides: Volume VIII: Oedipus-Chrysippus, Other Fragments* (Cambridge, MA: Harvard University Press, Loeb Classical Library, 2009), 436.

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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 that those workers will not be able to work at all. The reason for the poor working 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 path 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 embeds the exploitation claim in a cumbersome and unworkable labor theory of value.[27] John Rawls and his followers are the mostly widely cited expositors of the conflicts between liberalism and capitalism. According to Samuel Freeman, one can usefully categorize three different, though mutually reinforcing, problems with capitalism for the Rawlsian liberal.[28]

First, the "social minimum" under capitalism is too small, and the income of the wealthy too large, to satisfy the Rawlsian difference principle, which states that inequalities are to be permitted only when they benefit the worst-off members of society. 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. (1) Every citizen has an equal claim on society's resources, and thus increased resources for the better off can be justified only if there is some consequent improvement in the welfare of the worst off. (2) 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 (1).

[27] The relation between liberalism and Marx's theory of exploitation is rather complex, and beyond my scope in this essay. But see Allen Buchanan, "Exploitation, Alienation, and Injustice," *Canadian Journal of Philosophy* 9, no. 1 (March 1979): 121–39; and Allen Buchanan, *Marx and Justice: The Radical Critique of Liberalism* (London: Methuen, 1982) for an extensive critical review. Finally, a fascinating short story of the industrial revolution and the artistic sensibility, written by Herman Melville, asks whether it is possible for an individual simply to "prefer not" to participate in markets. Melville's character Bartleby repeatedly states that he would just rather not sell his labor, even if the alternative is to be sent to the madhouse. Herman Melville, "Bartleby, the Scrivener: A Story of Wall Street," *Putnam's Magazine,* Part I, November 1853, pp. 546–50; Part II, December 1853, pp. 609–16.

[28] Samuel Freeman, *Rawls* (New York: Routledge, 2007), 262–64. See also John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993); Thomas Spragens, *Civic Liberalism: Reflections on Our Democratic Ideals* (New York: Rowman and Littlefield, 1999); and Loren E. Lomasky, "Liberalism Beyond Borders," *Social Philosophy and Policy* 24, no. 1 (2007): 206–33.

The objection here is that the social minimum has nothing to do with justice, and instead is cynically calculated at just the minimum amount to forestall revolution. Under capitalism, the poor are bought off, with a level of income just slightly greater than the level that would make them indifferent between revolution and quiescence. In the rational choice literature, in fact, this is an explicit assumption in several recent works.[29] Thus, the welfare of the poor is treated as a constraint to be satisfied rather than as 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 countries. The reason is that exchange makes both parties better off. Being denied access to exchange actually harms the poor more than it harms the wealthy, since the wealthy are likely to have other means of satisfying their needs and wants.

The second major Rawlsian objection to capitalism is an aggregate level claim, namely, 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, the argument goes, inequality is inconsistent with liberal democracy, and the solution is to reduce inequality.

The problem with this 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 that we should get rid of the wealthy? Does it not follow at least as directly that the correct answer is to limit and constrain the power of government to damage the rights of citizens?

The debate recalls the humorous "Chicago Marxist" moniker that some have attached to George Stigler and the "Theory of Economic Regulation."[30] 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 to get rid of capitalism. The solution of Stigler, Sam Peltzman, et al. is to get rid of regulation, as it will generally make things worse.[31] It makes no sense to say that we are scared of government so we should get rid of the rich. If you are scared of government, then get rid of government.

[29] See, e.g., Daron Acemoglu and James Robinson, *Economic Origins of Dictatorship and Democracy* (New York: Cambridge University Press, 2005).

[30] George Stigler, "The Theory of Economic Regulation," *Bell Journal of Economics and Management Science* 3 (1971): 3–18; Richard A. Posner, "Theories of Economic Regulation," *Bell Journal of Economics and Management Science* 5 (1974): 335–58.

[31] See, e.g., Sam Peltzman, "Constituent Interest and Congressional Voting," *Journal of Law and Economics* 27 (1984): 181–213.

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The third and final Rawlsian objection to capitalism is that economic inequality in an unregulated market society is too great to preserve even 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 a few hands. Most workers have no substantial control over their own working conditions, and, because capitalists control the banking system, 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 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 workers 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 true that a system based on politics, or elitism, or power relations (such as racial domination or class conflict) might have just the sort of effects posited here. But capitalism is based on none of these things. Instead, it is based on self-interest or, more starkly, on greed.

Consider the example of Branch Rickey, who broke the color line in baseball by signing Jackie Robinson to the Dodgers in 1947. He did so not because he was an altruist, but because he was a notorious capitalist who considered every angle and sought out every advantage.[32] The fact was that African American baseball players, beginning with Robinson, had enormous talent and could be signed to contracts at prices much lower 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.

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 the 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 profit from loaning money to those inventors.

That is 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, which

[32] Lee Lowenfish, *Branch Rickey: Baseball's Ferocious Gentleman* (Lincoln: University of Nebraska Press, 2007).

allow them to indulge their 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 bolster liberal critiques of capitalism. But Keynes's 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:

> 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.[33]

V. Conclusion

It is useful to reprise the main themes I have tried to advance. First, I inquired about the paradox of the aggregation of exchange: 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 "euvoluntary," or truly voluntary, exchange. I used this concept to argue that all objections to the morality and justice of the uses of voluntary market

[33] John Maynard Keynes, *The Economic Consequences of the Peace* (1919; London: General Books, 2009), 236.

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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, euvoluntary 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 between the parties to a potential exchange, or the desperation of one of the parties, is actually perceiving a disparity in levels of welfare of the respective BATNAs or "Best Alternatives to a Negotiated Agreement." 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 the less well off 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 that are exactly the opposite of its supposed intent.

Political Science, Duke University

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