

The Harm Principle and Corporate Welfare (or *Market Libertarianism vs. Promotionism*)

Abstract

I aim in this paper to provide defense of one way to look at what should be regulated in the market place. In particular, I discuss what should be *tolerated* and argue against corporate welfare. I begin by endorsing John Stuart Mill's harm principle as a normative principle of toleration. I call strict commitment to the harm principle when considering the regulatory structure of markets *market libertarianism* and oppose that to *promotionism*, the view that endorses government interference to promote business interests. I next discuss the widespread use of promotionist policies, arguing against them and for market libertarianism. I also consider problems for my view, recognizing that one of my responses may leave some thinking the paper is a *reductio* of the market libertarian view because of the sort of slow-growth state it endorses. Others will recognize it as a view promoted by some of the U.S. founding fathers and find it attractive in its own right.

The Harm Principle and Corporate Welfare (or *Market Libertarianism vs. Promotionism*)*

Contemporary philosophical discussions of economic arrangements generally involve talk of positive and negative rights.¹ Some defend negative rights meant to prevent anyone from forcibly having to sacrifice property for the benefit of others. Others defend both limited negative rights and limited positive rights to the goods needed to have an at least a decent life. On my view, there is a better, perhaps older,² way to discuss the issue: to simply discuss what, morally, should be permitted in markets—that is, to discuss what principle or principles should be seen as justifying regulation of market activities.

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¹ In other venues, the conversation involves the different pairing of welfare and economic rights.

² In the middle of the last century it was, obviously, more common to argue about the overall economic system of a state, with less attention to individuals' rights. In 1940, for example, the political economist Walter Sulzbach (in his "Tolerance and The Economic System," *Ethics*, Vol. 50 No. 3, April 1940, 290-313) argued for toleration of a broad array of economic freedoms—to defend democracy and laissez faire economy over socialism. He wrote, I think correctly, "In no country at the present time is absolute noninterference in economics the policy of the government. The democracies ... have turned their backs on the teachings of Smith, Ricardo, and Mill and are regulating economic life to a far greater degree than was the case eighty years ago" (310) and that "there is a connection between the vanishing of laissez faire and the decay of intellectual tolerance" (311). Elements of this view can be traced not only to Adam Smith in the eighteenth century, but to Francisco de Vitoria in the sixteenth. Whatever problem it was in 1940, it is clearly a problem now.

Focusing directly on the question of what sorts of business transactions should be permitted may not fully replace questions about rights or what sorts of wealth individuals should be allowed to accumulate, but it is a more basic question—at least if one believes that people should be free to do as they wish so long as they do not violate moral or legal rules. That topic, though, is too large for one paper; my narrower focus is on what is permissible in government regulation of markets. I will investigate this by considering how a state adopting John Stuart Mill’s harm principle would interact with business entities. That principle reads: “The sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection ... the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others” (Mill 1859, 9).

It is worth pointing out that while the approach I take here is clearly indebted to Mill, I do not intend to defend the view as Mill’s. This is not a work of exegesis and Mill’s likely disagreement with some of what I say is not an argument against it.³ While Mill tells us that harm is the *sole* end justifying interference, the *only* purpose that offers justification for interference, there are less strict versions of the harm principle that allow for the endorsement of other principles. According to such versions, things other than harm may *also* justify interference. Let us call the version of the harm principle that excludes other justifications for

³ For the best treatments of Mill’s harm principle, see C. L. Ten’s *Mill On Liberty* (Oxford: Oxford University Press, 1980)) and Joel Feinberg’s four volume opus, *The Moral Limits of the Criminal Law* (NY: Oxford University Press, 1984, 1985, 1986, and 1988). In his “Mill on Liberty, Speech, and the Free Society” (*Philosophy and Public Affairs* Vol. 29, 2000: 276-309), Dan Jacobson offers an alternative interpretation, claiming “Mill does not endorse HP, as that principle is conventionally construed” (287). I can’t address his concerns here, but admit that Mill is unlikely to endorse the version of the harm principle I discuss (see Book V of his *Principles of Political Economy*).

interference (where “only” and “sole” are emphasized), *the strict version* of the principle.

According to the strict version of the harm principle, if there is no harm, there is no cause for interference.

In this paper, I examine what a thoroughgoing commitment to the strict version of the harm principle (hereafter, just “harm principle”) would require of government regulation of markets and, in the process, suggest why such a commitment may be warranted. As I will show, the harm principle rules out all forms of corporate welfare; a liberal government thus ought not engage in any. That first claim is fairly obvious once stated—and perhaps part of why the strict version of the harm principle is not widely accepted. Given that, the bulk of this paper will be spent explaining what that first claim amounts to and answering objections to the second claim—that a liberal state ought not engage in any corporate welfare.⁴

The paper is divided as follows. In section I, I say a bit to motivate my approach and make some prefatory remarks to clear the path. I then spell out what commitment to the harm principle requires of government regulation of markets in section II. There, I show that the harm principle rules out all forms of corporate welfare—the main point is that government is meant to protect only and so must not provide any aid to businesses that is not protective. I call this view *market libertarianism*. In section III, I discuss the current political-economic order, explaining why it is not in accord with the harm principle and instead instantiates what I call *promotionism*.

⁴ To limit my discussion, I do not address questions about what activities can be limited for moral reasons not having to do with trade itself. For examples of that sort of discussion, see Margaret Jane Radin’s *Contested Commodities* (Harvard University Press, 1996), Michael Sandel’s “What Money Can’t Buy: The Moral Limits of Markets” (delivered at Brasenose College of Oxford University, May 11-12, 1998) and his *The Case Against Perfection* (Harvard University Press, 2007), and Debra Satz’s *Why Some Things Should Not Be For Sale* (Oxford University Press, 2010).

I not only explain the nature of promotionist acts, but also explore possible justifications for them. In section IV, I argue for market libertarianism over promotionism.⁵ In section V, I discuss three problems for my view, two practical and one more theoretical. That final problem leads to further discussion and some final concerns in section VI. My solution to the big problem may leave some thinking the paper is a *reductio* of the market libertarian view because of the sort of state it entails; others will recognize it as a view akin to that of some of the U.S. founding fathers (esp. Jefferson) and find it attractive in its own right. I will not be able to settle that debate and realize that my solution—denying the value of rapid economic growth—may be counterintuitive to many.

I. Motivating the View and Clearing the Path

I have two reasons to use the harm principle to discuss government regulation of markets.⁶ The first is the same reason it is a valuable lens through which to view *all* activity: the harm principle is a normative principle of toleration—i.e., it indicates a normative requirement for interference—and toleration is a core value of liberalism (perhaps *the* core value) so the

⁵ Market libertarianism can also be called *economic or market separationism*: commitment to the separation of government and economy or market. As with separation of government and religion, of course, the separation need not be complete and final. Government might interfere with a variety of things in markets just as it might interfere with the religious sacrifice of humans. It might disallow enslavement, for one obvious example. The question for us is “on what basis is such interference permissible?”

⁶ Of course, the details of markets are partly determined by law and state policy. Consistent with my thesis here, this too should be in accord with the harm principle. That is, the basic structure of market society itself, including the shape of property rights, should be such that no interferences are permitted absent harm. Elsewhere (“The Harm Principle and Corporations.” *Toleration and the Challenges to Liberalism*, Ed. Johannes Drerup and Gottfried Schweiger, NY: Routledge, 2021), I argue that this means the current system of corporate law is unjustified. This paper is a companion piece to that one.

principle provides a direct link to liberal theory. Toleration is already the lens through which many liberals discuss individual behavior and cultural practices, so it is in some ways odd that it is not often used to discuss the morality of the regulatory structure. In any case, talk about toleration in markets is talk about what sorts of business practices and transactions (etc.) are permitted and thus directly impacts the levels of welfare we should expect to find.⁷

The second reason for the approach taken here is that the main alternative—as indicated earlier—is to frame the discussion in terms of rights and on my view, rights talk is merely a convenient way to talk about what should be allowed or tolerated and what should not. That is, I do not take rights to be primary. I do not defend this view here, but merely register it as a partial explanation for the current project. Still, it may be helpful to indicate what I take to be morally primary and thus to provide normatively weighty reasons for limiting what should be tolerated. In brief, I take harms to fill that role. Following Feinberg, I understand harms, in the sense relevant here, to be *wrongful hurts*—or, to use his terminology, wrongful setbacks of interests.⁸ Hurts have clear moral import, but following Mill (and, I think, John Locke),⁹ it is *wrongful*

⁷ E.g., if there is toleration of coercive monopolies (like Willy’s Widget Wrangler, which prevents others from enjoying Widgets) it would impact the overall level of welfare on society.

⁸“ For the purposes of the harm principle, we must think of harming as having two components: (1) it must lead to some kind of adverse effect, or create the danger of such an effect, on its victim’s *interests*; and (2) it must be inflicted wrongly” (Joel Feinberg, *Freedom and Fulfillment* (Princeton: Princeton University Press, 1992), 3-4; emphasis in original). See also my *Toleration and Freedom from Harm* (Routledge, 2018). I do not think—as Feinberg seems to—that wrongs are necessarily rights violations. I think there may be (moral) wrongs that are not rights violations—wrongs to oneself, e.g.

⁹ See Clark Wolf, “Contemporary Property Rights, Lockean Provisos, and the Interests of Future Generations” (*Ethics* Volume 105 No. 4, 1995, 791-818).

hurts—*harms*—that are primary for legal and political thought.¹⁰ Direct coercive interference, on this view, is only warranted where there are harms, but other hurts can nonetheless be morally relevant. To determine if an economic system is *good*, we must know (among other things) if it allows for or causes any hurts or harms and if so, how they are dealt with.

With the motivation clear, several prefatory points must be made.

First, the harm principle does not say simply “don’t harm others.” It says, rather, that harm to others—and, given the strict reading used here, *only* harm to others—provides justification for interference. It is important both that it is *harm* that warrants a response and that what sort of response is permissible remains open. Harms wrongfully set back the interests of another. Merely setting back the interests of another is not sufficient for interference. John’s offering a higher price for a piece of art than Jill (another bidder) can offer is not wrongful so warrants no interference even if it sets back Jill’s interests. Jack’s fraudulently convincing Jill to buy him the painting, on the other hand, may well warrant interference.¹¹ What sort of interference is permissible—that is, *how* to prevent or rectify Jack’s wrong—remains an open question. My concern here is only with *when* interference is permitted, not what to do when it is. (Similarly, saying we can interfere with a murderer does not tell us what to do when we interfere.)

Second, in what follows, I will talk of toleration but use the term loosely, meaning “to

¹⁰ I do not think hurts provide justification for interference unless they are harms. They will, though, provide reasons to help alleviate the hurt. Importantly, individuals can have their autonomy or psychic well-being (see my 2018) set back as well as their physical and financial well-being.

¹¹ To be clear, when harm is present, there is *pro tanto* reason to interfere but there may be countervailing reason that mitigates against the interference. Harm is thus a necessary but not sufficient reason for interference.

refrain from interference.” Strictly speaking, an act of non-interference only counts as an act of toleration if what is not interfered with is *opposed* in some way.¹² The harm principle, by contrast, requires that we not interfere with *any* activity that does no harm to anyone other than the actor—and a great deal of that is likely to be activity we actually approve of or are neutral about.

The third prefatory point is simply that I offer nothing near a complete political or economic theory. The concern is only with grosser regulatory structures that affect the lives of those living under a particular regime.¹³ I am not concerned, here, with who makes the decisions or how they are made. As such, I am also (largely) limited, in this essay, to discussions of activity within a single state.¹⁴ This may seem anachronistic since we live in a world with tremendous economic activity between states and since philosophers have devoted substantial effort to the international arena in the last decade or so. In response, I note that much of what I say here can be expanded to cover the international economic arena and that it is easier to consider what we should tolerate close at hand before considering what we should tolerate further away. This is especially true as state borders and sovereignty complicate matters.¹⁵

II. Market Libertarianism: Moral Commitment to the Strict Version of the Harm Principle

¹² See my “What Toleration Is” (*Ethics*, Volume 115 No. 1, October 2004: 68-95). There are other issues that prevent the sorts of activities discussed here from being acts of genuine toleration, but that need not concern us.

¹³ Of course, how such decisions are made—and by whom—often affect what they are. Similarly, what the decisions should be affects how they should be made, but I cannot address that here.

¹⁴ The parenthetical “largely” is important. As foreign competition is often part of the explanation for moves away from toleration, it will be of some concern here.

¹⁵ I deal with international issues in my “What Liberals Should Tolerate Internationally” (*Critical Review of International Social and Political Philosophy* Volume 24, No. 1, 2021: 64-86).

Mill's harm principle provides us guidance regarding what *should* be tolerated—it is a normative principle of toleration.¹⁶ It is, though, under-appreciated and often considered more limited in scope than I here take it to be. Few explicitly accept, for example, that in the realm of commerce, the harm principle requires that the sole reason for which entity A (or its agents) is warranted in interfering with the activity of entity B (or its agents) is B's activity harming entity X (or its agents), where X can be A or any entity other than B.

Importantly, the interfering agent (entity A) can be a government. Taking the strict version of the harm principle as accurately indicating the normative limits of toleration means a government should not interfere with the commercial activity of any agent unless that agent causes, or is about to cause, harm.¹⁷ Importantly, this means that government should not provide any sort of assistance to businesses. Such actions are not justified by the harm principle. To be sure, such actions would be *aid* rather than hindrances (and *not* ruled out on that basis), but would require interference with others—primarily tax payers (who would be the “B” in the previous paragraph). To be clear, I am not saying that the aid to Firm C is a form of interference with Firm C; what matters here is that the aid to Firm C requires interference with others (B: the

¹⁶ *Volenti non fit injuria*—the principle that what one welcomes or volunteers for cannot be an injury or wrong—is a standard principle of jurisprudence often considered a corollary of the harm principle. The latter is thus not invoked when a boxer, who consents to a match, is knocked out in a fair fight. As the harm principle and *Volenti* are well known and well discussed, I will not dedicate space to their explication. See footnote 3 above.

¹⁷ Per footnote 11, it is harm—commercial or otherwise—by an agent that gives *pro tanto* reason for interference.

taxpayers) in order to have the resources needed to provide that aid.¹⁸ The harm principle straightforwardly rules out *that* interference as it is not needed to prevent or rectify any harm.

The first objection to the claim that toleration of market activity is required and assistance to firms is not permitted concerns the nature of government. Government, after all, is an agent of particular importance. It not only engages in the sorts of economic activity other economic entities engage in—collecting revenues and making expenditures—it also *sets the policies* that determine how that activity takes place. It determines what legal property rights are, for example. Put more simply, it shapes the background conditions of trade. This, it may be objected, necessarily limits the ways in which the government can tolerate in the economic arena. If it sets property laws and the like, it cannot fail to interfere in the actions of other economic entities and so cannot possibly tolerate. If, for example, property is legally defined as excluding *jus abutendi*—the right to destroy or waste—then if an individual wants her house destroyed when she dies because she cannot bear the thought of anyone else living there,¹⁹ she will simply be unable to have her wishes executed because of government interference.

The question here is whether government’s setting of background conditions is interference. Stated that way, it may be thought that the objection is defeated since talk of government *interfering* when it sets background conditions is conceptually confused. To interfere requires that there be *something to interfere with* and in setting the background

¹⁸ Interference warranted by the harm principle might not be limited to interference with the agent causing the harm. This is not unusual. Police activity to interfere with murderers, rapists, thieves, etc *also* requires interference with others to fund the interference with the agent causing the harm. See David Brink’s *Mill’s Progressive Principles* (Oxford: Oxford University Press, 2013), 184 for discussion of the harm principle as either an anti-harm principle or a harm prevention principle; see also my 2018, 104 ff.

¹⁹ From Lior Jacob Strahilavitz (“The Right to Destroy.” *The Yale Law Journal*, Volume 114, 2005: 781-854), 784 n 7: See *Eyerman v. Mercantile Trust Co.*, 524 S.W.2d 210, 217 (Mo. Ct. App. 1975).

conditions, the government creates what was absent and so could not (at or before its creation) be interfered with. If this were right—if there were no previously existing background conditions regarding the issues at hand when the government sets policy regarding those issues—there could be no talk of interference in setting background conditions. But this is not the case.

That there are background conditions prior to government policy-making, should be clear. Consider traffic laws. At least with the simpler of these, it is not the case that government initiates laws *ex nihilo*. Positive law often codifies expected behaviors. It may now be a law, for example, that we (in the U.S.) drive on the right side of the road, but it is not the case that the passing of such a law is what made people drive on the right. People had been driving on the right side of the road and the government, recognizing a need to set a side of the road for driving, wisely opted to make a law that matched existing behavioral norms rather than destabilizing “interactional expectancies.”²⁰ In this way, it did not interfere. By contrast, had the government decided—when such laws were first codified or at any time thereafter—to require driving on the left, it would have been interfering with behaviors that were in accord with previously existing norms. Importantly for my purposes here, much the same will be true about property—for there were norms regarding property prior to codification of those norms by government.

When a state committed to the harm principle sets policies that shape the background conditions of trade, including those regarding property, it must do so in a way that generally takes advantage of previously existing norms so as not to interfere with interactional expectancies. The exceptions, of course, are those where the state institutes policies to redress

²⁰ Lon Fuller, “Human Interaction and the Law” in *The Principles of Social Order: Selected Essays of Lon Fuller, Second Edition* (Oxford: Hart Publishing, 2002, 211-246), 218-224. Fuller argues that understanding customary law is necessary to understand law in general. My point is that when legislated law evolves from customary law, it is less disruptive and less “interference” than when it does not.

injustices—violations of the harm principle. If A has been able to continuously harm B, that expectancy is appropriately destabilized (according to the harm principle). So when is interference with market activity permissible? When doing so is necessary *to defend against violations of the harm principle and where, consistent with that, interference is needed to maintain the background conditions within which trade takes place.*²¹

What are the background conditions within which trade takes place? As we are concerned with the uncoerced, unforced activity of consenting agents, we are concerned with conditions that make norms of cooperation possible. This is the “security no human being can possibly do without,” that allows us to secure “the whole value of all and every good, beyond the passing moment.” Without this basic security, “nothing but the gratification of the instant could be of any worth to us ... [as] we could be deprived of anything the next instant by whoever was momentarily stronger than ourselves.”²² “As Mill makes clear ... security involves not merely immediate, short-term physical safety, but durable long-term protection of personhood and property.”²³

Property serves as a hedge against future difficulties. Should we be otherwise unable to supply ourselves with necessities, property enables us to trade for them. The background

²¹ This is meant to be consistent with my HP1A*, a version of the harm principle I defend in my 2018, 104ff. There I claim that the harm principle is primarily an anti-harming principle, but allow an element of harm prevention by including “minimal policies to reliably protect freedom from harm” that “*make the use of power over P rightful*” (106). Those minimal policies would include what is necessary to maintain the (just) background conditions within which trade occurs.

²² Mill, *On Utilitarianism*, p. 53 (1863; here, Hackett Publishing edition, edited by George Sher, 1979).

²³ Glyn Morgan, “The Mode and Limits of John Stuart Mill’s Toleration” (*Nomos XLVIII: Toleration and Its Limits*, ed. Melissa Williams and Jeremy Waldron, NY: New York University Press, 2008, 139-167: 151).

conditions that we are concerned with are those necessary for security—thus, those necessary for property and consensual trade. Importantly, the background conditions in different locations at different times can provide security of the requisite sort in different ways. Each legal system determines the conception of property within the society.²⁴ This is not to say that property is merely a legal construct, but that legal systems shape the conception of property accepted within their societies.²⁵ However a particular legal system does this, it must provide contract and anti-theft laws. These work in accord with the harm principle to guarantee that property serves as a hedge against the future and so that people can freely trade with others.

Given what has been said thus far, we can say *a market libertarian state is committed to the strict version of the harm principle (coupled with Volenti, as discussed in footnote 16) and recognizes the importance thereof in the realm of commerce; this requires maintenance of the background conditions necessary for trade.* Importantly, the market libertarian state abides by these principles in relation to all activities—individual, cultural, business, or other—so that no one is interfered with unless the activity they are engaged in is directly harmful to non-consenting others or the interference is necessary to retain the requisite background conditions.²⁶

²⁴ Cf. Jeremy Waldron, *The Right to Private Property* (Oxford: Oxford University Press, 1988), 31. See also A.M. Honore, “Ownership” (*Oxford Essays in Jurisprudence*, Ed. A.G. Guest, 1961: 107-147), 111.

²⁵ In doing so, they greatly influence the resulting property schemes such that, for example, cocaine cannot be property in the U.S., whether or not it should be. Any particular property scheme may be immoral. (This note and two sentences in text prior adapted from my “A Conceptual and (Preliminary) Normative Exploration of Waste” (*Social Philosophy and Policy*, Volume 27 No. 2, Summer 2010: 233-273, note 81).)

²⁶ One could have a *merely market libertarian* state—one committed to the strict version of the harm principle in the realm of commerce, but not in other areas. A merely market libertarian state might fail to be libertarian in the way it interferes in non-market activities.

The market libertarian state interferes—in markets or elsewhere—only when doing so prevents (or rectifies) a harm and, consistent with that, maintaining a background within which people can trade.²⁷ Stated that simply, the point seems obvious: the primary purpose of a state is to provide such an environment and to protect those in its territory.²⁸ It is a central role of government to provide (and maintain) a social background within which individuals can flourish—often by engaging in trade—and, more generally, doing as they wish so long as no harm is done others. By contrast, acts of interference not suitably justified “arbitrarily promote the interests of some groups” over others.²⁹

²⁷ Taxation necessary for maintaining the background conditions of trade, including that which is necessary for preventing or rectifying violations of the harm principle, would thus be justified. Determining how much that is, is beyond the scope of this paper, as is determining the best possible taxation scheme. For perhaps the best recent economically informed philosophical treatment of the latter, see Liam Murphy and Thomas Nagel’s *The Myth of Ownership: Taxes and Justice* (Oxford University Press, 2004). See also Richard Epstein’s “Taxation in a Lockean World” (*Social Philosophy and Policy*, Volume 4 No 1, 1986, 49-74). Following Epstein, I take it “[t]he function of the state is to protect liberty and property. It is not to aid one group or another in skewing the uses to which individuals put their natural endowments” (55). See also Stephen Holmes and Cass R. Sunstein’s *The Cost of Rights: Why Liberty Depends on Taxes* (Norton Publishers, 1999).

²⁸ The market libertarian has no compunction against prohibiting activity that would cause an end to the market libertarian state. As Thomas Nagel indicates, “liberalism does not require its adherents to step outside liberalism itself to compromise with antiliberal positions” (“Moral Conflict and Political Legitimacy” *Philosophy and Public Affairs* Volume 16 (1987): 215-240, 239; cf. Brian Barry, *Culture and Equality* (Cambridge: Harvard University Press, 2001), 283 and Monique Deveaux, “Toleration and Respect,” *Public Affairs Quarterly* Volume 12 (1998): 407–27, 413-414).

²⁹ Edward Soule, *Morality & Markets: The Ethics of Government Regulation* (Lanham, MD: Rowman & Littlefield, 2003), 115. See also Epstein, 54. For other principles used to justify government interference, see Joel Feinberg’s *Harmless Wrongdoing* (Oxford University Press, 1990), xix-xx as well as footnote 4 above and section III below. I note here that on my view, a market libertarian society cannot include a legal system of incorporation. This does not mean there cannot be large firms; it means only that the legal

III. Promotionism: Departures from Toleration *for* Business

Current states are not market libertarian states.³⁰ Of particular concern here are government subsidies to firms and industries, sometimes in the form of direct cash payments, sometimes in the form of tariffs on imported items from foreign competition to those firms, and sometimes in the form of monopoly powers granted by the state. These are not warranted by the harm principle.

For our purposes, there is no substantive difference between cash subsidies, import tariffs, and monopoly grants. Indeed, “[a]most anything can be a business advantage—a subsidy, a tax break, an entry barrier, a spurt in the rate of economic growth, a government purchase, a regulatory move that hurts a competitor, etc.”³¹ Tariffs on imported goods have the effect of giving a price advantage to the domestic producer by interfering with the activity of the importer and its customers, thereby aiding the domestic producer's sales and so adding to its bottom line just as would a cash subsidy.³² The same is true of government grants of monopoly power. When a municipality allows only one operator of cable television in its territory, for example, it has the effect of allowing the provider to charge higher prices by interfering with

system cannot create and maintain a system of incorporation as such a system would not be justified by the harm principle. (For more, see my “The Harm Principle and Corporations,” *op cit.*)

³⁰ It is fashionable to claim “neo-liberalism” is at the heart of the current global economic order. That term is used without clarity, but I suspect it would best be understood as a system in which states actively support—rather than tolerate—business firms. This is in stark opposition to market libertarianism.

³¹ Paul H. Weaver, *The Suicidal Corporation* (NY: Simon and Schuster, 1988), 166.

³² While tariffs transfer money to the government, it ultimately comes from consumers who pay higher prices. Subsidies might be paid for by those tariffs or other taxes. Taxpayers and consumers, though, are the same people. It is the residents of the state who pay for the subsidies, either through higher prices or higher taxes.

potential competitors and their customers. None of these policies are warranted by the harm principle; they aid businesses at the expense of others. Two examples, one national and one local but common across the U.S., make the point clear.

In March 2002, the U.S. levied tariffs on imported steel in a clear bid to aid the U.S. steel industry.³³ Such tariffs obviously provide a benefit to firms in that industry: they are able to sell their product at higher prices than they would without the tariffs. This, though, affects many others. Firms producing goods that use steel—e.g., automobiles—face higher prices for their raw material; they thus suffer a loss of profits or raise their prices (or both). The loss of profits would be a setback to their interests (that is, the interests of their shareholders); increased prices would be a setback to the interests of consumers who would face reduced purchasing power.³⁴ A policy that fully tolerated imports (i.e., with no tariffs), by contrast, would mean less expensive steel and thus less expensive products made with steel. More sales of these products could mean both domestic and foreign manufacturers of steel succeed and that producers of other components for those products prosper. While U.S. steel firms would lose some business to

³³ In December 2003, those tariffs were revoked after a suit pressed against the U.S. before the World Trade Organization. Tariffs were again imposed against foreign steel—this time primarily against countries with less geo-political clout, especially South Korea—in July of 2014. For an interesting comparison of the 2014 and 2002 situations, see

<http://www.forbes.com/sites/timworstall/2014/07/19/why-steel-tariffs-wont-save-jobs/>.

³⁴ In the long run, consumers spend less, the market contracts, and the steel companies are also negatively affected. These claims are not new. In the late nineteenth century, economists were already arguing that U.S. protection of the “infant” cotton and steel industries in the early part of that century was a mistake (see Douglas A. Irwin, *Against the Tide: An Intellectual History of Free Trade*, Princeton University Press, 1996: 134). Cotton subsidies remain a problem. See Sungjoon Cho (“Doha’s Development,” *Berkeley Journal of International Law*, Volume 25 No 2, 2007, 165-202, 183).

foreign competitors (they would not necessarily sell less steel), it is not clear how that supplies reason for state interference.³⁵

The second example is the relatively common agreement between professional sports teams and municipal governments for subsidized arenas that are then run by, host, and benefit the teams' and their owners. We are told, generally, that this will result in increased tourism and tax revenue to the municipality. I don't dispute those claims here; I merely point out that this policy takes money from municipal taxpayers and gives it to the teams' owners. Taxpayers that happen to want the arena and the team because they can enjoy the offered sporting events may not have a claim to be hurt in the process—but there will be some, perhaps even many, who are hurt when made to pay for sports they do not care for.

The two examples—steel tariffs and taxation to build sports stadiums—demonstrate clear failures to abide by the strict version of the harm principle. It is not that either interference is itself harmful—though I think they are—but that neither is sanctioned by the harm principle. Recall that the principle requires toleration of entity B unless it harms entity X. When a government forces higher prices on consumers of imported steel or forces citizens to pay for sporting events they do not enjoy, it fails to tolerate their activity and requires them to contribute regardless of their wishes.³⁶ Put differently, it fails to tolerate the (commercial) activity of

³⁵ Some—investors in US steel and its workers—*might* be less well off without the tariffs but *not instituting* tariffs does not make anyone less well off. (It might allow them to be made worse off in competition.) *Removing tariffs might*. Still, absent reason to think such *wrong*, there is no harm. If there were, care would be needed to determine the best path; it may be that removing the tariffs should proceed slowly or be accompanied with other actions to offset the losses to those who had unfortunate but legitimate expectations regarding the tariffs.

³⁶ In both cases, the government (federal or municipal) effectively implements barriers (small though they may be) to some individuals leading their lives in the way they see fit (according to their own conception

individuals (entities B) who have not harmed anyone and does so in a way not necessary to support the background conditions necessary for trade. These interferences may not be hugely burdensome, but they do set back the interests of some citizens and are unwarranted by the harm principle. (They may also be wrongful and so harms.)

Systems that fail to tolerate in the ways just discussed (and others) engage in what I call *promotionist acts*—acts meant to *promote* the interests of some subset of those within the system. There are many promotionist acts, including:

- *mercantilist* acts, which promote domestic businesses internationally—e.g., agricultural subsidies for exports.
- *protectionist* acts, which promote domestic entities over foreign competitors domestically—e.g., import tariffs.

To those familiar acts, we can add:

- acts that domestically promote particular domestic entities—individuals or firms—can be called acts of *internal individual promotionism* and *internal firm promotionism* respectively. Government disability insurance, unemployment insurance, and minimum wage laws are all examples of the former. Municipal support for sports teams and monopoly grants to cable companies are examples of the latter.
- acts that domestically promote foreign business entities—e.g., grants to foreign companies to open factories locally. Call these acts of *reverse mercantalism*.³⁷

of the good). If they are forced to pay for aid to steel companies or sports magnates, they are limited in their ability to pursue their good by, for example, buying books, baby food, and the like.

³⁷ This may sound odd but is common. American municipalities sometimes help foreign companies willing to open factories and hire local workers. China does much the same within export processing

- acts that use international governance structures (like the IMF and WTO) to promote international business interests. Call these *internationalist* acts.³⁸

Important for our purposes here, though some instances of the above may help prevent some people from being hurt, none is designed to prevent or rectify harm (or to help maintain the background conditions necessary for trade). None is warranted by the harm principle.

One reason some might favor the sorts of government interventions mentioned above (and that market libertarianism prohibits) is simply that the results of such interventions are extremely small costs for many coupled with huge benefits for some, so that the clear benefits seem to outweigh the (less visible) costs. This is a real *political* problem: those hurt by non-interventionist policy—e.g., those who lose their jobs—are extremely visible, while those who benefit from it are diffuse and generally unseen.³⁹ Why this should be considered a problem of justice, though, is unclear. Forcing many to pay even slightly higher prices for the goods they buy in order to help a few keep their jobs is not *clearly* a moral requirement. Even those in favor of aiding individuals improve their welfare might think there are better ways to help.

Those that advocate promotionist acts of any sort generally offer, as justification of such uses of political power, that they make individuals living within a regime better off by helping business prosper which helps people find employment, contributes to the tax base, and increases

zones. The purported justification in both cases is increased local employment and the further benefits derived from that.

³⁸ A counter-factual example: during the 2002-2003 steel tariff debacle, the idea was floated to have the WTO collect revenues on U.S. tariffs on European steel as well as on the retaliatory European tariffs on American goods that would have resulted and to use those proceeds to help rebuild the international steel industry.

³⁹ The *locus classicus* of this argument is in Frédéric Bastiat's pamphlet "What is Seen and What is Not Seen," originally published in 1850.

property values. In other words, the claim is generally that promoting business interests also indirectly improves the welfare *of all*, not just those whose firms are helped or whose jobs are secured.⁴⁰ That claim, however, is generally mistaken. In most such cases, many individuals living within the system are made worse off. Some find their competitive edge significantly reduced in an industry they have an established stake in, others find the barrier to entry into that industry significantly higher, and some are simply left with reduced purchasing power. The government-supported firms, of course, have a market for their goods and make a “profit” in the form (at least) of government grants.⁴¹

Why else might an impartial thinker favor government interference of the sorts we are discussing when they are not responses to harms? Many, of course, think interference is warranted for reasons other than harm. Some believe that government should act to *promote*—not merely protect—individual autonomy (and/or individual welfare). Without endorsing or denying this “autonomist” view,⁴² I note that it would not easily help defend promotionism. While promotionist acts *might* aid the autonomy of some individuals, they would likely also

⁴⁰ This, I take it, is part of the point of (now outdated) claims such as “What’s good for GM is good for America.”

⁴¹ The firms compete in what economists call “rent-seeking.”

⁴² See my “What the Liberal State Should Tolerate Within Its Borders” (*Canadian Journal of Philosophy*, Volume 37, 2007: 479-513, 483 note 7. See also Elizabeth Anderson, *Values in Ethics and Economics* (Cambridge: Harvard University Press, 1993), 142; Will Kymlicka, *Liberalism, Community, and Culture* (NY: Oxford University Press, 1989); and Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), 376-378. In my 2007, I argue government should protect, but not actively promote, autonomy (492). Chandran Kukathas makes a similar argument about reason in *The Liberal Archipelago* (NY: Oxford University Press, 2003), 130. Brian Barry, in other ways critical of this sort of view, concurs in his *Culture and Equality*, 120-121 and 221-225. See also David Schmidtz’s *Elements of Justice* (NY: Cambridge University Press, 2006), 170.

detract from that of others. For similar reasons, it is also hard to see how a paternalist argument could support promotionism since the latter does not uniformly encourage individuals to benefit themselves or prevent them from hurting themselves. Similarly, though some will suggest that government is justified in promoting *shared values* of the citizenry, this can only support promotionism if there is evidence that doing so promotes those shared values—and that they are genuinely shared by those in the polity.⁴³

Government aid to market agents—promotionist acts of any type—violates the harm principle by interfering where no interference is warranted by that principle. The market libertarian view is that only acts in accord with the harm principle or necessary for the maintenance of the background conditions for trade are permissible. Promotionist acts are thus all impermissible. It might be suggested that this is too restrictive a notion of justified government action in the marketplace and that so long as all benefit equally, such action is justified. That is, it might be claimed that (some sort of) neutral benefit is all that is needed. I do not here take issue with that general view, but note first that how to flesh out neutrality in an acceptable way is far from obvious (and notoriously difficult) and, second, that none of the acts described above can reasonably be considered neutral.

Promotionist acts could only be neutral between firms if all firms received the same degree of aid. Of course, even that would fail to be meaningfully neutral if some *individuals* fail to benefit by such acts (either owning, working for, or otherwise benefiting from them). In fact, though, it is inevitable that only some firms benefit in promotionist regimes.⁴⁴ Indeed, if Adam

⁴³ Moreover, as shared values can be morally problematic, such a defense can only be part of the story.

⁴⁴ Neutrality is not assured even if all firms received the same amount of aid as different firms are differently situated to take advantage of the proffered aid. E.g., larger firms can more easily handle the

Smith is right, there is reason to worry that it is only industry “carried on for the benefit of the rich and the powerful that is principally encouraged ... That which is carried on for the benefit of the poor and the indigent is too often either neglected or oppressed.”⁴⁵ I will not defend that claim; Smith is obviously right that in promotionist (he talks of mercantalist) regimes, “the interest of the consumer is almost constantly sacrificed to that of the producer.”⁴⁶ Consumers are taxpayers and it is they who pay for the aid to business. In other words, in aiding business, government hurts individuals. Indeed, protectionism (and promotionism more generally) “does not serve the general economic welfare of rich countries themselves. Protectionism simply feeds small groups at the expense of the many. In the U.S., a lavish sum of nineteen billion dollars of taxpayers’ money is showered each year to a handful of already rich corporate farmers in the name of agricultural subsidies.”⁴⁷ This clearly departs from neutrality understood in any acceptable way. To the point here, it violates the acceptable normative limits to toleration. It violates the harm principle.

Thus far, I have discussed ways current states act that are not sanctioned by the harm principle, in ways that are promotionist. In the next section, I further my discussion of market libertarianism and promotionism and argue that promotionist acts are often harmful. Importantly, that last step is not needed for the claim that promotionist acts violate the harm

costs of compliance with government regulations than smaller ones. (It is no surprise when larger firms are less hostile to, or even welcoming of, new regulations as they are at an advantage with respect to smaller firms in terms of compliance.)

⁴⁵ Adam Smith, *Wealth of Nations*, Book IV, Ch.8, ¶ 4; 644.

⁴⁶ Adam Smith, *Wealth of Nations*, Book IV, Ch.8, ¶ 49; 660.

⁴⁷ Cho, 195-196 (op cit). Cho here cites Laurie Goering “End to Subsidies is Best Aid for Africa,” *Chicago Tribune*, July 3, 2005.

principle. The harm principle does not say government can interfere *so long as doing so does no harm*; it rules out interferences except where they are necessary to prevent (or rectify) harm.

IV. For Market Libertarianism

It is worth noting that those who favor the use of force to create, open, or encourage markets, do not endorse the strict version of the harm principle but allow government interference in the market for reasons not based on harm.⁴⁸ Such thinkers might claim to want to protect markets, but forcing open markets is *not* protecting markets—it is *promoting* particular interests. If I don't buy a watch from Mr. Watchman, he does not get to trade with me. While this is a real limit to Mr. Watchman, nothing makes it unjust. In particular, my refusal to trade with him is a limit to his trading, but not to his *free trading*. A system in which I am not forced to trade—in which no one is forced to trade—is compatible with the harm principle. By contrast, if I am forced to buy from Mr. Watchman (or to pay taxes to support his business), my interest in not doing so is set back. Absent some very good explanation for the force, I assume, it is unjust. This means I am harmed—my interest in not trading with (or otherwise providing funds to) Mr. Watchman is unjustly set back. Notice, then, that free trade is not promotionist and involves no force other than that needed for harm prevention—such force is not itself likely to be harmful because it is not usually wrong to prevent a wrongful setback of interests. Promotionist acts, by

⁴⁸ Per footnote 30, these might be what are referred to by the term “neo-liberals.” They might also be called “special interest liberals,” “corporatists,” “alliance capitalists,” or “crony capitalists.” Mancur Olson discusses special interest liberals in his *The Logic of Collective Action* (Cambridge: Harvard University Press, 1965 and 1971), particularly at 141-148. See also Theodore Lowi's *The End of Liberalism* (NY: Norton and Company, 1969), especially chapters 2 and 3.

contrast, involve force to make trade happen and such force is, ordinarily, harmful.⁴⁹ The harm principle is thus violated because there is an interference unjustified by harm (as noted in the previous section). Additionally, though, the interference is itself harmful and yet no possible response is forthcoming though the principle would likely warrant one.

Some may ask why it should be acceptable to limit Mr. Watchman but not to limit me. My response is straightforward: the limit on Mr. Watchman only infringes his freedom *if he seeks to infringe mine* (by forcing me to trade with him). It protects me against harm. A limit forcing me to trade with Mr. Watchman, by contrast, directly and necessarily infringes my freedom.⁵⁰ With such a limit in place, I can neither choose to trade with Mr. Watchman, nor not to. Assuming I have an interest in making that choice myself and assuming the interference here is not warranted, forcing me to trade with Mr. Watchman is a harm. The limit on Mr. Watchman accords with the harm principle—the requirement that *unless* one harms or threatens to harm another, we not interfere—the limit on me, though, does not.

The goal of market libertarianism (adherence to the strict version of the harm principle) is, in part, the prevention of harms—it thus prohibits *any* such infringements, rather than requiring the fewest possible interferences. Put another way, it is the first infringement that is forbidden, regardless of the overall freedom that would be maintained or disallowed without that

⁴⁹ There may be instances where X being forced to trade with Y is just. Taxation of some sort and at some level may be an example of such. There may be other examples. The point is that it is regularly not the case.

⁵⁰ Someone might suggest a limit on me prevents an infringement of Mr. Watchman's freedom and only amounts to an infringement of mine *if I seek to infringe upon his*. This implies a moral requirement that I trade with him that is not present in the usual case.

prohibition.⁵¹ This means that absent a special consideration (like a prior agreement upon which I am trying to renege), no one can permissibly force me (or anyone) to trade with another.⁵²

It should be clear now that a market libertarian state does not intervene in order to hinder or to *help* businesses. The state, on this view, is meant to protect people as they live their lives and this includes making trade possible by providing and maintaining the background conditions that it requires. It is not, though, meant to provide lucrative contracts to select firms and it is not meant to force anyone (whether within its borders or elsewhere) to trade with select firms. When it intervenes it does so only to prevent (or rectify) harm—in accord with the harm principle.⁵³

⁵¹ Cf. Nozick against a utilitarianism of freedom. See *Anarchy, State, Utopia* (NY: Basic Books, 1974), 28.

⁵² The same holds for communities. If a community does not want a firm operating in its borders, its members are free to take non-coercive action to stop it. They can individually or collectively refuse to sell it land or to sell it land subject to specific conditions. Governments are often used to facilitate these things; papering over issues of democratic rule, this accords with market libertarianism unless it involves harm (e.g., using force to prevent dissenters from acting against the majority). Government action is made acceptable if it has the consent of the governed, not by being in accord with the interests of GiganCorp—even if GiganCorp will bring jobs. Market libertarians would not oppose GiganCorp but would not allow it to do harm and would not aid it. Similarly, they would oppose use of eminent domain to seize land, whether to create a National Park or develop more housing. (See *Via v. State Commission on Conservation and Development of VA*, regarding the creation of the Shenandoah National Park in Virginia in 1935, and the more recent *Kelo vs. New London* in 2005, that allows local governments to use eminent domain to seize land to increase economic activity. Note that if all citizens wanted this, it would be different—but then no judicial action would be needed.)

⁵³ In the process of preventing (or rectifying) harm, a market libertarian government may hinder or aid a business, but that is never the intent and counts (morally) against the action at issue. Similarly, retaliatory promotionist activity by state A against state B may be justified if state B initiates promotionist activity that harms citizens of A but if B's response also does harm, that counts against it. A version of the doctrine of double effect may be helpful here (though market libertarians say *toleration is required* unless there is harm, not that there must be no intent to cause harm).

Say that Mom's Grocery Store goes out of business because of a large supermarket that opens nearby. Clearly, Mom is hurt, but to call this a harm as the term is used in the harm principle—a *wrongful* hurt—would be misguided. While determining when something is wrongful can be difficult, we would not think a wrong had been committed if Mom's customers were simply split between Mom's and a similarly sized neighborhood store—even if that second store intentionally undercut her prices. It is not clear what morally relevant difference there is when we are talking about a large supermarket instead of another neighborhood store. Nor when we are talking about a new store instead of one already in existence. To insist that no larger store can open in the vicinity of an older, smaller store, would be odd. So, again, the supermarket's being the cause of Mom's going out of business is not a harm and no interference is warranted. Moreover, many others do better as the supermarket sells them food for less than Mom's (and more are employed). Government interference to help Mom would hurt those others—either by forbidding the supermarket from opening (hurting its investors and workers as well as the people in the neighborhood who would have to pay the higher prices at Mom's) or by subsidizing Mom's (also hurting the investors and workers of the supermarket as it does less business and also hurting others who pay taxes to enable the subsidy). If the interference is unjustified, these hurts would be wrongful and hence harms.

An objection arises here: if it's inappropriate for the government to interfere to aid an individual or firm, one might also think it inappropriate for private individuals or companies to do so. Indeed, the harm principle applies to all, not just government. Consider a chain store owner (CSO) that subsidizes one of his stores with the profits of others in the chain to improve brand recognition and customer loyalty. Most would say this is reasonable and thus causes no harm, but if CSO works to prop up an *independent* competitor to Mom *in order to keep Mom's*

Grocery weak, it may seem that CSO runs afoul of the harm principle. It might be thought, though, that this leads to more interferences than anyone would countenance. After all, when I buy my groceries from Mom's competitor, it supports him and sets back her interests. There is an important difference, however, between me as a customer and CSO. When Mom and her competitor open their stores, they do so realizing they will compete for customers—and so can be said to be consenting to a system wherein they compete.⁵⁴ Given that, the harm principle is not violated (because of *Volenti*—see footnote 16) when the two stores competitively lose or gain customers. My patronage of either is thus simply part of the system, not a wrong. Neither Mom nor her competitor, though, consented to a system where some third party—whether CSO or the government, but neither a direct competitor nor a potential or actual customer—actively sabotages their efforts. That setback to interests seems wrongful.⁵⁵ If it is, it is a harm and interference is warranted. (If it is the government doing the harming, we may simply say its acts are not permitted.)

In the market libertarian view, government serves to protect individuals, including their ability to trade with others. Market libertarian regimes thus protect markets—which means protecting people associating and dis-associating with each other, trading and not trading with

⁵⁴ It might be objected that everyone similarly consents to import tariffs (and all protectionist activity) because they are known to exist when individuals go into business. While I can't offer a full response here, I will say that I think people generally (a) accept that competition with others is normal, expected, and moral, but (b) that cheating—by one's competitors or others—is not and (c) that aid by third parties, including government, is more like cheating than fair competition. Put simply, Mom expects to compete, but not against the government or CSO.

⁵⁵ Active sabotage by a direct competitor is also wrongful and not something Mom consents to (just as a boxer doesn't consent to fight with an opponent who puts weights in his gloves). Clearly delineating sabotage from normal competitive acts is a separate project.

each other, etc. The government in such a regime does not seek to lower my well-being by hindering my business activity and does not seek to promote my well-being by aiding it. A *promotionist* regime, by contrast, may interfere to promote the well-being of some seeking trading partners they cannot attract on their own. Rather than merely *allowing* for trade, the regime interferes with some to aid others that cannot afford to buy an item (internal individual promotionism) or to aid others that cannot find as many voluntary buyers of their products as they would like (e.g., internal firm promotionism). It is the latter I am concerned with here, but the argument applies to the former as well. While promotionist activity may aid some, it also causes harms. Given endorsement of the harm principle, it should thus not be permitted.

When government aids some firms, it interferes with, and sets back the interests of, others. This is clear from the Mr. Watchman case. Moreover, if a state promotes one firm, it leaves other firms in a weaker position than they would otherwise be in, setting back their interests. Without moral justification for the act, this would be a harm.

Thus far, I have been arguing against promotionism and in favor of market libertarianism. This view, however, has its own problems. I turn to them now.

V. Market Libertarianism's Political Problems and a Deeper Problem⁵⁶

The market libertarian endorses the simple idea that people should be free to interact with one another as they like, subject to no interference unless they cause (or will cause) harm.⁵⁷ It

⁵⁶ Parts of this section and the next overlap with parts of my “The Harm Principle and Corporations” (op cit).

⁵⁷ This is not a broad *freedom from interference*, but a narrower *freedom from harm*. For the argument against the former, see Shelly Kagan’s “The Argument from Liberty” (*In Harm’s Way: Essays in Honor of Joel Feinberg*, ed. Jules Coleman and Allen Buchanan; NY: Cambridge University Press, 1994: 16-41, esp. 24-27). For a defense of the latter, see my 2018.

requires allowing all trades that do no harm. This means no tariffs or other interferences meant to aid favored firms. This is a policy of free trade. Some respond to defenses of free trade by arguing that free trade is not “fair trade.” Populists that make such claims do not typically have any sophisticated account of fairness (or freedom) in mind.⁵⁸ Indeed, the problem here is not conceptual but political: protectionist, mercantilist, and other promotionist policies are routinely touted as part of “free trade” and hence the latter is condemned as including the problems of the former. This is simply a confusion of terms.

Free trade occurs in free markets. As the state’s role is to protect people and people often wish to trade, the state must protect the markets people trade in. Good governments thus protect the markets in their domain. Under a promotionist regime, however, government does more than protect markets—it seeks to expand markets, at least for some firms and industries. As already indicated, though, creating a market through coercive means is not protecting free trade. Free trade is not coerced. To be sure, a market coercively opened may contain free trade, but those forced to trade are obviously not *freely* trading. A government committed to the harm principle does not force me to trade with you—even if you really want someone to sell to and even if you agree to support the government or hire its citizens.

A second political concern is related to the first. Many suggest that recent economic crises demonstrate that free market principles are bad policy.⁵⁹ The response to this should be

⁵⁸ By contrast, see G.A. Cohen, *Self-Ownership, Freedom, and Equality*, esp. 43-46 for an argument that genuinely free trade can result in unfairness.

⁵⁹ Consider Alan Greenspan’s (partial) recantation of his previous free market beliefs. See Edmund Andrews“ ‘Greenspan Concedes Error on Regulation,’” (New York Times, October 23, 2008), http://www.nytimes.com/2008/10/24/business/economy/24panel.html?_r=2&hp&oref=slogin (accessed 11/30/2020).

clear, but warrants being made explicit: recent crises no more speak against market libertarianism than the failure of the former Soviet Union speaks against genuine socialist principles. Had a genuine socialist state failed, it would have had *some* evidential value against socialism (not, though, conclusive). Similarly, had genuine market libertarian policies been in play, it would have had some evidential value against those policies. Recent crises, though, can only serve as evidence against the policies that were (and are) in place: promotionist policies.⁶⁰

What I've discussed thus far in this section are purely political issues that do not indicate any internal inconsistency of market libertarianism. The next issue may be more controversial—at least for those otherwise in agreement with what I have said thus far. This is what I call “the myth of American libertarianism.” This is the view that absent all government, a state can attain a powerful national or international economy with increasing wealth.

Consider U.S. history. The rise of large corporations begins, roughly, in the 1880's and 1890's with the “great” railroad and steel companies.⁶¹ There is no doubt that these firms contributed to the development of a national market that, in turn, allowed for the rise of trade. What I wish to cast doubt on is the claim that these companies could have succeeded without government help. First, consider what did happen, rather than what could have happened. Railroad companies were granted tracts of land by the U.S. government. Where people were in

⁶⁰ Elaboration would take us far afield. For an excellent overview, see Jeffrey Friedman's “A Crisis of Politics, Not Economics: Complexity, Ignorance, and Policy Failure” (*Critical Review*, Volume 21, No 2-3, 2009: 127-183). See also Brink Lindsey and Steven Teles's *The Captured Economy* (Oxford University Press, 2017).

⁶¹ It is not coincidence that these emerge along with the idea that corporations are legal persons. That legal doctrine was first solidified in *Chicago, Milwaukee and St. Paul Railway Company v. Minnesota*, 134 US 418 (1889) and in *Minneapolis Eastern Railway Company v. Minnesota*, 134 US 467 (1889).

the way of the planned railroads,⁶² the government sometimes used its (legal) right of eminent domain to force people off land. The railroads and the increased economic activity they would bring were thought necessary for progress. So the railroads spread and railroad, steel, and banking magnates became rich. Capital was accumulated, making possible large loans and investments and ever-growing businesses. This did not happen without government interference. Promotionist activity was the norm (internal firm promotionism, to be precise).⁶³ There is, though, a popular idea in our culture that a strong nationwide economy grew without government intervention and does not need government (which, indeed, some think constrain it).⁶⁴

⁶² The 1880 Mussel Slough tragedy (involving a dispute between the Southern Pacific Railroad and homesteaders south of Fresno, California) is one of the most famous incidences (with many fictionalized depictions). Some claim the government ignored railroad henchmen assaulting people and burning their homes to encourage them to sell their land. Many believe “the claims of the railroads were always regarded as paramount, while the rights of individuals were viewed as of little importance” (Dee Brown, *Hear That Lonesome Whistle Blow* (NY: Holt, Rinehart and Winston, 1977), 273). Others—less common—give the railroads a more favorable hearing. In his *Sunset Limited: The Southern Pacific Railroad and the Development of the American West, 1850-1930* (Berkeley: UC Press, 2005), esp. at 85 and 94-104, Richard J. Orsi, e.g., claims many of the evicted were land-speculating squatters, seeking profit at the railroad’s expense. (Part of the financing for the railroad involved those grants of land from the government. Parts of those tracts were on the sides of the railroad; after stations were built, the land around them—now more valuable—were sold to finance the next stretch of railroad.) For a balanced explanation, see Richard Maxwell Brown’s *No Duty to Retreat* (NY: Oxford University Press, 1991), 87-128, esp. 93-118.

⁶³ Railroad companies also engaged in monopolistic activity, resulting in the creation of the Interstate Commerce Commission in 1887. (The ICC existed until abolished in 1995.)

⁶⁴ It may be that once such an economy is in place, it can be self-maintaining without government. I have doubts, but take no stand on the issue. The “myth of American libertarianism” that I discuss is only that government is not necessary for the *emergence* of a strong economy and that the American economy in particular emerged without government help.

Consider the infrastructure needed in a large economy. Infrastructure is needed to transport goods, services, capital, and labor. In the modern world, states (or their provinces) provide the infrastructure and so provide the foundation for the economy. This does not mean they must. The New York Stock Exchange began as a voluntary construct,⁶⁵ without government aid, and could *possibly* have sustained a national capital market. It seems more likely, however, that the infrastructure needed for large capital markets is a *public good*. The same is true of the infrastructure necessary for markets in goods, services, and labor—roadways, electricity transmission systems, and the like. If they are public goods, they have no marginal cost (pure public goods are “non-rivalrous”; use by additional parties adds no cost). If they are public goods, they cannot be used by some without allowing others to use them (pure public goods are “non-excludable”). If they are public goods, then, there is no profit to be made from private provision and so we have reason to doubt they would be privately supplied. If they are to be supplied, they must be supplied collectively. A collective solution—for all intents and purposes, a government solution—is necessary.⁶⁶

⁶⁵ It began in 1792, when 24 New York City stockbrokers signed the “Buttonwood Agreement.” See <https://time.com/4777959/buttonwood-agreement-stock-exchange/> (accessed 11/30/2020). For more, see Walter Wener and Steven Smith’s *Wall Street* (NY: Columbia University Press, 1991), esp. Chapter 2.

⁶⁶ Some will argue that the infrastructural requirements for an economy are not pure public goods. Some roadways have tolls, after all, thereby making excludability possible. They also require upkeep—the more use, the more upkeep is needed. Though it may be low, the marginal cost is not zero, and so they are not non-rivalrous. I do not dispute this, but note that collective provision means these goods can likely be more readily available. It might be objected that collective solutions for the supply of public goods (whether pure public goods or not) need not be *governmental* solutions. This is right, but it is not clear how it matters here given that the collective solutions used *have been* governmental (and the government often claims—and has—a monopoly over the provision of the goods discussed).

Of course, if only local economies are sought, infrastructural requirements can be significantly lower. In local communities, individuals can walk to each other and bring labor, capital, goods, and services. As individuals accumulate wealth, they can decide—individually or with neighbors—to improve the infrastructure and extend their market. Perhaps, over time, this could grow enough to cover a contemporary nation state without government investment. I will not try to show that this is impossible. It is enough to recognize that as local markets have limited numbers of participants, limited goods and services bought and sold, and limited profits, accumulations of capital are not likely extensive enough to fund infrastructure across a large state’s territory. More accurately, if the sort of accumulations of capital present without government encouragement would allow for national growth, it would be slow.

If the above is correct, government interference—in the form of the provision of the public goods of infrastructure—allows for more rapid expansion of infrastructure than is otherwise possible. This is a clear benefit not to be sacrificed lightly. Hence, some will say, if it does require a strong government, we must reject market libertarianism and the myth noted above and, instead, embrace a more powerful government—one that will engage in promotionist activity. There is, though, an alternative: opt for the slower growth that would occur without a strong, promotionist, government. This is the market libertarian approach, since the market libertarian cannot embrace large-scale government provision of infrastructure, as that would inevitably require violating the harm principle.

VI. Final Considerations and A Partial Fix

Whether we should embrace slower growth or a larger promotionist government deserves further attention. Recall that what is needed for a large-scale market that does not slowly emerge from local communities is government (or other collective) provision of public goods that are

infrastructural requirements.⁶⁷ Such provision involves interferences in the market where no harm is being prevented or rectified. Hence, government provision of such goods is not in accord with the harm principle and so is opposed by market libertarianism. This asphalt company gets the government contract, that paving company. Asphalt with rubber is used, aiding the rubber industry (or one company therein). The list, of course, goes on. Some firms or industries are advantaged over others. If the government buys from (or gives grants to) all firms in a particular industry, it might not disadvantage one firm *vis a vis* others in the same industry, but it would disadvantage other industries (and other firms that want to enter this industry). It might disadvantage the plastics industry, e.g., by helping the steel industry.

Although many benefit from government investment in infrastructure, others do not. When the railroad that transports goods from east to west is built, some will move west with it—and the family they leave behind will face a loss. Some will lose their hunting grounds as they are razed for the railroad. Some will simply not want to move from land the railroad will cross. Any decision to build infrastructure is a decision that has costs. This is not a controversial claim but is important to keep salient as it means all such decisions condemn some ways of life to a likely end.

It is not only efforts to supply collective goods that are at issue. It is *any* government trade with *any* firm. If the government must buy tanks and planes for the military, for example, it must buy them from producers.⁶⁸ If it must buy computers, paper, or pens, for another sort of

⁶⁷ This is not a conceptual necessity. In some possible world, God-like creatures could provide the infrastructure.

⁶⁸ There are several possible ways to respond to the worry that a market libertarian society could not support a large government military. First, it may be that private mercenary groups paid with voluntary contributions can provide the needed military service. (Governments hire mercenaries; it's certainly

example, it must buy them from producers. Buying from one producer rather than another puts profit—and thus ability to invest—in the hands of one rather than the other. The market libertarian then seems pushed to say that the government should not purchase goods or services from any firm as doing so would advantage that firm over others. Such activity seems opposed to the harm principle, as even if those goods and services are needed by the government to prevent or rectify harm or to maintain the background conditions where all are protected from harm, in disadvantaging some firms, government likely sets back the interests of the owners and employees of those firms. This seems to leave the market libertarian with two options: (1) adopt an anarchist stance as government cannot operate without purchasing goods or services or (2) require that the government produce anything it needs. The second option, though, does not help since if government undertook to produce its own tanks and planes, for example, it would (a) compete with manufacturers, creating a barrier to their pursuit of profit (at least competing for labor, bidding up its price)⁶⁹ and (b) hire some rather than others, thereby facing the same problem at a different level. It looks like market libertarianism collapses into anarchism.

conceivable that the funds could be raised without government.) Second, it may be that we don't need a strong military and that citizens in a market libertarian society would engage in guerrilla warfare against any invaders. (That seems to be Murray Rothbard's view; see, for example, *Conceived in Liberty*, Volume 4 (Auburn, AL: Ludwig Von Mises Institute, 2011), 1555-1560.) Third, it may be that a military can be defended—likely on a much smaller scale than what the US now has—as necessary to supply the background conditions where all are protected from harms. (I hope that is the case.) Fourth, of course, those committed to large military budgets may simply reject market libertarianism.

⁶⁹ Soule notes Mill's worry that "government is organized in a way that is appropriate for governing but not producing" and another worry with allowing government to compete with private enterprise: that "when the state actively produces goods and services, then it is no longer available as an impartial regulator" (Soule, 88).

This is a mistake. The market libertarian allows for interference that is necessary to maintain the background conditions where all are protected from harm. Hence, expenditures for those purposes will be permissible and resulting disadvantages (or setbacks to interests) will not be violations of the harm principle. The only remaining issue is to determine what those expenditures should be. Ideally, we would have a way for governments to buy what they need without aiding or hindering anyone or any firm. Any procurement, though, will have the effect of helping some and hindering others. Perhaps this would not be bothersome if it were true that anyone could submit an honest bid unencumbered by factors that do not also encumber all other competitors. Even then, though, extensive benefit to one or several firms is worrisome from the market libertarian perspective. The worry is that with the concentration of industrial (or financial, or ...) power, the winning firms would be able to sway future policy in their favor, just as steel and railroad companies did.

The market libertarian favors slower growth, opposing government interventions that make possible a rapid supply of infrastructure. The market libertarian state seeks to interfere as little as possible. In effect, then, the market libertarian path is clear. A completely open bidding process—e.g., a blind dutch auction that anyone can participate in—would be favored. Those that win a government contract may be able to improve their lot, but—and this is important—in a way that is limited by the nature of the market libertarian state.⁷⁰ There can be no large-scale government contracts (i.e., for work across a large-scale economy) in such a state and none for activities not approved of by the citizenry. The blind and open bidding procedure results in some

⁷⁰ Those who do not successfully bid for a government contract will not have their interests satisfied (or set forward), but do not have them *wrongfully* setback as the process is part of a necessary condition of the existence of a legitimate (we assume) state that provides the background conditions where all are protected from harm. They are, thus, morally justified.

getting benefits, but all small-scale. A few miles of road might be laid, not hundreds. The problem is thus partially alleviated because the market libertarian disallows large (nationwide) purchases by government. All procurements are local with open and blind bidding. This at least “spreads the wealth” and limits the benefit any single entity would receive.⁷¹ Moreover, the citizenry would approve of all such benefits (see footnote 52).

One final objection is worth considering given the above emphasis on a small scale system.

A young market libertarian regime would be without large-scale corporate actors⁷² and would thus lack economies of scale that lower the marginal cost of production. Costs would thus be higher. It will thus be objected that the worst off in a market libertarian society would be extremely badly off indeed and thus that the proposed system is morally unacceptable. It might be thought that those born into bad social positions would have no possibility of improving their condition because the market libertarian government would do nothing to ensure their life prospects and would actually disallow the large-scale production needed to produce inexpensively so that all can be fed. It might be thought, then, that the market libertarian system

⁷¹ This is only a *partial* solution for the problem. The basic idea is that less active governments are better than more active governments because they involve fewer necessary interferences with markets. This is not about efficiency but about limiting unjustified interferences.

⁷² I leave open the possibility that a market libertarian regime can slowly grow to cover a large territory. If it does, accumulations of capital may be possible even absent promotionist activities. Perhaps more interesting is what would occur if an already developed state became market libertarian. I’ll say only that I suspect that along with an end to rent-seeking behavior, there would be tremendous devolution of economic power (accumulations of wealth).

ignores the welfare of the worst off and issues of prior domination, whereby those who start with little have no chance to improve their lot.⁷³

The narrow objection misses the mark for a simple reason. Market libertarianism is a firm commitment to the strict version of the harm principle and the harm principle clearly allows for interference with unjust domination. Moreover, what domination (just or unjust) exists in such a regime will be small scale. Without large-scale players to impose their wills, there could only be small-scale occasions of domination. Admittedly, it would be better if there were no domination and no harms—and the *ideal* market libertarian state would have none.⁷⁴

The broader objection—that the slower economic growth will mean people remain poor longer than need be—is more troublesome but requires more discussion of empirical work than I can provide here. It is worth noting two things. First, though there are now smaller percentages of people living in poverty than ever before, there are also higher rates of suicide and depression—despite the greater material wealth we have due to lower marginal costs of production. Second, the lack of wealth in a young market libertarian state would be accompanied with fewer harms and these would be vastly different from what has historically been the case. To take one example, if the Dalit in India had always been allowed to trade as they pleased, their situation would undoubtedly be better than it actually was.

I would suggest that slower growth accompanied by freer economic activity would *not* leave poor people poor. This for two basic reasons: (a) given freedom to do so, people can

⁷³ See Anderson, *Values in Ethics and Economics*, 165.

⁷⁴ Note that transitioning a particular state to market libertarianism may require (temporarily) imposing non-market libertarian policies. I assume such moves must be “morally accessible”—i.e., they “should be achievable without unacceptable moral costs” (Allen Buchanan *Justice, Legitimacy, and Self-Determination*, NY: Oxford University Press, 2004, 61).

improve their own lot rather than staying impoverished and (b) with lower taxes and stronger communal bonds, private charity will likely thrive, thereby helping the needy. These are consistent with lower levels of accumulated wealth—or more precisely, fewer large accumulations though more wealth spread amongst many.

It's worth developing this response to the broader objection by considering some thoughts of Amartya Sen who rightly tells us that “it is easily seen that a situation can be Pareto optimal but nevertheless highly objectionable—indeed, possibly disastrous. If the utility of the deprived cannot be raised without cutting into the utility of the rich, the situation can be Pareto optimal but truly awful.”⁷⁵ This is clearly right. It may be that the only way to help those who are badly off is to make some of those who are well off somewhat less well off—that is, we may have to slightly set back the interests of the well-off to improve greatly the worst-off.

All should agree that if there are super-rich and suffering super-poor and no one can be made better off without making any one worse off, the situation is not ideal. There are two good reasons to worry about such vast inequality:⁷⁶ the super-rich may be able to use their resources to unfairly influence the political system⁷⁷ (against market libertarianism) and the super-poor are likely to suffer. States wherein politicians and judges can be bought are to that extent unjust (and *not market libertarian*) and states with suffering are, at the least, unfortunate; when the suffering is the result of harm, it is unjust. But this is not the end of the story.

If the super-rich did no harm and the super-poor are poor for reasons that have nothing to

⁷⁵ Amartya Sen, “The Moral Standing of the Market” (*Social Philosophy and Policy*, Volume 2, No. 2, Spring 1985: 1-19), 10; see also his *On Ethics and Economics* (Basil Blackwell, 1987, 32).

⁷⁶ What I say here parallels what I say in my “Bleeding Heart Libertarian View of Inequality” (*Ethics in Practice*, ed. Lafollette, Hugh, 2020: 598-610), 602.

⁷⁷ Perhaps, but not necessarily, in a way harmful to the super-poor.

do with any harm done them, the situation may well be just even if unfortunate. If this were the case, though, the super-rich would likely wish to help the super-poor—hence, private charity would be enough to remove the suffering. At the very least, that the super-rich, by hypothesis, did not cause the super-poor to be poor suggests the former have no desire to hinder the latter. Of course, charity won't—and nor is there good reason to think it should—remove all inequality. Nonetheless, a situation with super-rich and suffering super-poor is *not* Pareto optimal since the super-rich would (I claim) be made better off by their personal transfer of wealth to the super-poor.⁷⁸ That is, by giving charity, the rich are made better off (with emotional gains) so that a Pareto superior move is for them to give charity.⁷⁹ The situation will reach Pareto optimality when further transfers from the super-rich to the super-poor would actually make the super-rich worse off—which means the point at which they no longer want to help the super-poor (remember they are already losing monetarily; that loss is, until this point, offset by emotional gains incurred by helping). The hope, here, is that at this point the super-poor no longer suffer.

In large part, this discussion of a situation with super-rich and suffering super-poor is beside the point. The ideal state for the market libertarian is likely similar to Rawls' ideal of a

⁷⁸ Murphy and Nagel suggest a similar argument (see 86-88) considering the elimination of poverty to be a public good. I am not suggesting that, but only that the super-rich benefit (emotionally) by decreasing poverty and so will voluntarily proffer assistance to the needy.

⁷⁹ This despite Sen's claim (at 1987, 41) that "a person may value the promotion of certain causes and the occurrence of certain things, even though the importance that is attached to these developments are not reflected by the advancement of his or her well-being." In my "Exchanges and Relationships" (*Social Theory and Practice*, Volume 38, 2012: 231-257) I argue that this is mistaken—that when the person values a cause, its promotion is or results in an increase in the person's well-being and that is part of what it means to say they value the cause, even if there is a decrease in the material goods the person possesses. Of course, this increase may be offset by some unforeseen countering loss.

property-owning democracy⁸⁰ and Jefferson's ideal agrarian regime. Such a state is not a state with the sorts of wealth disparities that cause the concerns just addressed. It is a state where the government protects all people within the state's borders, including their freedom to trade with others. It is a state where the government does nothing to help individuals except preventing and rectifying harms because any other help is interference unwarranted by the harm principle.

⁸⁰ Promotionist policies occur in and foster what Rawls calls systems of welfare-state capitalism rather than in what he calls property-owning democracies. See *Justice as Fairness* (Cambridge: Harvard University Press, 2001), 139.