

No Harm: Ethical Principles for a Free Market*

T. Patrick Burke

Justifications in support of liberty are plentiful and diverse. This is to be expected, if the libertarian ideals of free minds and free markets are true, valid principles. For if liberty is justifiable, it is only natural that libertarian principles should be supported by many different lines of reasoning, including pragmatic, utilitarian, consequentialist, rationalist, and natural-law arguments, as well as by intuition, tradition, and common sense. Each time someone comes up with another insight into why freedom works, it adds to the argumentative evidence that individual freedom is a good thing. Patrick Burke in *No Harm: Ethical Principles for a Free Market* contributes to this libertarian corpus and offers yet another vantage point from which to view the virtues of freedom.

Burke's clearly libertarian thesis is that "social justice requires market freedom." (p.9) *No Harm* presents a justification of this thesis with an extended discussion of a rather simple core idea: *that those who have not caused harm have a right not to be harmed*. Libertarians will recognize the No Harm principle as a close cousin of the non-aggression principle which prohibits the initiation of force.

In attempting to establish the No Harm principle underpinning the case for liberty and free markets, Burke does not offer a completely rigorous argument in the manner of some other libertarian theorists. Rather, he takes many things for granted, such as his position that human beings ought not to be harmed against their will, unless they have caused harm (discussed further below). Many of the premises Burke takes as true are accepted by most libertarians as well as by most ordinary people, so any conclusions he bases on these premises are still valuable. Other conclusions that Burke reaches, however, seem incorrect, perhaps because some of his foundations are not adequately defined and justified.

Before discussing the substance of the book, let me briefly make a comment about the book's format. *No Harm* unfortunately contains endnotes rather than footnotes. Although some readers are annoyed by notes at the bottom of every page that "run along, like little angry dogs barking at the text,"¹ in my opinion footnotes are much more convenient to glance at than endnotes, and are thus vastly superior. It is a wonder to me that anyone in this age of computerized word processing would ever use endnotes. (I realize that the use of endnotes in books is still common, however, and I also realize that this very review utilizes endnotes rather than footnotes, but I can only plead that any blame for this lies with the editor.) *No Harm* also contains no detailed table of contents, i.e., one listing subsections as well as chapter headings in hierarchical form. I find that a detailed table of contents, often used in legal treatises in addition to a shorter "summary of contents," is very helpful in understanding in outline form the conceptual organization of the ideas laid out in the book, and in looking up desired topics. But enough of this procedural quibbling and on to the substance.

Punishment and Harm

In order to establish his case for the free market, Burke attempts to show three things: (1) that those who have not caused harm have a right to not be harmed; (2) that typical market activities do not cause harm; and (3) that governmental actions which proscribe such market activities do cause harm. Libertarians would probably agree with the general thrust of these three points, if "harm" is defined as the initiation or use of force. Indeed, point (1) resembles the libertarian non-aggression principle, under which an individual has a right to do *anything* unless it involves the initiation of (physical) violence, i.e., aggression or coercion. Building on the non-aggression principle, libertarians can fairly easily show that market transactions, since they do not involve coercion, are not rights-violative; and that governmental laws directed at such market actions are thus themselves coercive and illegitimate. The problem that libertarians typically face is justifying the claim that the only fundamental individual right is a right to not be coerced.

Burke wants to approach this problem from a slightly different angle, by focusing on the perhaps more intuitive or more general concept of "harm" rather than solely on the concept of physical violence or aggression. Thus, instead of arguing in favor of the non-aggression principle, Burke attempts to establish that those who have not caused harm have a right to not be harmed. I must admit that I found parts of the structure and organization of Burke's argument somewhat hard to follow. Not until chapter 5 does he really tackle what "Causing Harm" is, and not until the last three chapters, 7, 8, and 9, does he explore his "Principle of No Harm" in detail. Further, many of side-points seem clearly wrong, as I will discuss in more detail below.

In the very beginning of and throughout his discussion, Burke implicitly equates the right to not be harmed with a right to not be *punished*, and thus he implicitly equates harm with punishment. (p.10) Thus, to establish his point (1) (those who have not caused harm have a right to not be punished), Burke must define harm and its causation, and must also explain when punishment is deserved or justified. Regarding harm, Burke maintains that to cause harm to a person by some action, he must be "worse off" after the action than he was before, and the action in question must have "caused" the deterioration in condition. (p.46) Burke's conception of harm and causation are not very controversial, but do not get one very far, either, in terms of normative rights theory, since at this stage they are merely descriptive, not normative or prescriptive.

The big question that Burke must answer is "Who ought to be punished?" Burke says, "The only just answer to this question can be: those who *deserve* punishment." (p.40) Even this formulation is almost tautologically true: only people who "deserve" punishment "ought" to be punished (and vice-versa). Burke's first really synthetic proposition is the claim that only those that have caused harm deserve to be punished. In support of this contention, Burke offers three related principles of "No Harm". The first principle, the Principle of No Harm, states that human beings ought not to be harmed against their will, unless they have caused harm. According to the Principle of No Harm II, those who deliberately cause harm to the innocent deserve to be punished proportionately. Under the Principle of No Harm III, those who do not cause harm deliberately ought not to be punished. (Chs. 7, 8, 9)

Admittedly, if the tripartite Principle of No Harm is accepted as valid, then the rest of Burke's argument falls into place: by the Principle of No Harm, we may punish people only if they have caused harm; the enforcement of any law is a use of punishment and laws may thus not be passed against those who do not cause harm; actions on the free market do not cause harm; and therefore, laws may not be passed that restrict economic liberties. Ultimately, though, Burke does not offer much defense of the Principle of No Harm, crucial as it is to his argument. Instead, Burke relies on its intuitive and widespread appeal. Burke writes:

Since the large majority of people accept the concept of crime, detest crime, and support legal punishment, in that sense and to that extent they already accept the Principle of No Harm. Causing harm would seem in fact to be the quintessence of what we mean by the notion of "morally wrong." Anyone who wishes to cast doubt on this principle has the burden of coming up with an alternative theory as to the principle on which it is wrong to commit murder or robbery. [p.181]

Taking such fundamental rights for granted, it then becomes easy to validate the Principle of No Harm, if it

is simply an unpacking or explication of what is implicit in the elementary belief that it is wrong to kill or injure an innocent person That actions such as murder and robbery are criminal and deserve punishment is one of the most fundamental moral intuitions of mankind, and one which has the strongest claim to acceptance on its own terms. We do not need a theoretical construction to tell us that it is valid. Although theoretical considerations may be useful in clarifying this insight, as they can also muddy it, any moral theory we develop must assume its essential validity and be dependent on it. [p.182, emphasis added]

Even though Burke believes that all this is self-evident, he offers some perceptive "theoretical reflections which can lend support to the principle." (p.182) He eschews utilitarian and egoistic theories, because these "kinds of arguments, if indulged in exclusively, would have the effect of reducing the Principle of No Harm to nonmoral factors, which runs counter to our ordinary conception of morality." Instead, Burke develops a Kantian position that focuses on man's volition, his ability to make free choices. Because each person is a self-governor, the most fundamental moral obligation is not to deprive others, by physical force, of making free choices. "Coercion, the use of *physical force* to deprive an adult human being of the power of self-government, is intrinsically harmful and wrong, unless he has deserved it by causing harm to others." (p.183, endnote omitted, emphasis added)

Burke's derivation of a right not to be harmed is thus not completely rigorous, because he relies on "the most fundamental moral intuitions of mankind" and the like, rather than justifying these bedrock principles themselves. Nor does he adequately explain why these principles are self-evident, if they are. Burke's conclusions are nevertheless insightful and largely convincing, because most of the assumptions he makes are shared by most civilized people anyway. Given his largely sound framework, Burke does a nice job of showing that market transactions do not usually cause "harm," and thus ought not be "punished," i.e., outlawed or regulated.

Harm versus Aggression

I believe that Burke's case could have been a stronger one if he had focused more on force rather than on harm, or if he had made his definition of harm more (explicitly and consistently) dependent on force. Such a refinement of his argument would also have helped him to avoid a few missteps along the way.

Much of Burke's argument implicitly recognizes the crucial role of force in defining rights. When, for example, Burke argues that market transactions do not usually cause "harm," he effectively characterizes harm as the inflicting of force on others. He also characterizes the right to not be harmed as a right to not be punished, thereby equating harm with punishment, i.e. force. It is when Burke views harm as the use of force that his discussion is most persuasive, which is not surprising to libertarians, who give force such a central role. Despite this implicit equation of force and harm in these contexts, however, Burke would not appear to agree with a general equation of harm with coercion, of rights-violations with the initiation of force. For instance, Burke maintains that rights-violations are not the only circumstances in which a person can be "harmed" (p.194); and that violence is not the only way to harm someone (see, e.g., his views on blackmail (p.57), defamation (p.57), and "dueling" (p.192), discussed further below). But punishment, after all, a central concept for Burke, is not merely the causing of "harm" — it is specifically the application of force to an individual. Why does Burke focus on (physical) punishment so much, if the physical, forcible element does not necessarily need to be part of the concept of harm? Why does Burke equate a right to not be harmed with a right to not be punished, but not harm with force in the general case?

A more rigorous and consistent case may be made for liberty if the interrelationship between harm, force, rights, and punishment is made clear. Under the libertarian non-aggression principle, an individual has a right to do anything other than initiate force against others; thus punishment (the use of retaliatory force) is justified *only* in response to aggression, and never in response to harm alone.² That is, the only punishable harm is one caused by an initiation of force. Burke's concept of punishable harm as being broader than the mere initiation of force leads him to untrue conclusions in a few instances. First, if rights-violations or the initiation of force are not the only way that individuals are harmed (such that punishment may be visited upon the harmer), then it would follow that at least some harmful acts which are not rights-violations or violent can be legitimately punished. But if harm can follow from a non-coercive action, then this opens the door to regulate market activity, for while voluntary market activity does not involve coercion, how are we to say that it never causes "harm," if harm can include non-coercive harm? Certainly the market, while indeed non-coercive, has many other features (e.g., it may be vulgar, crass, or amoral), and I can see no reason, and Burke offers none, that "non-coercive harm" (that nevertheless justifies punishment) is not among them.

As Burke states,

It does not make sense to believe that a person may cause harm to another by engaging in a market exchange with him. It does not make sense to believe that even when there is no question of force or fraud, a seller may cause harm to a buyer by

selling him something which he requests to buy, and an employer may cause harm to an employee by giving him a job which he applies for. [p.42]

Burke also emphasizes that "The question of law is always a question of *punishment*." (p.58) As Burke seems to recognize in these comments, the element of force cannot be left out of a viable definition of harm, if "harm" is to be used to justify (forcible) punishment. Any law will direct the use of physical force against certain individuals. Burke is correct that this is a type of "harm," and may be legitimately inflicted on others when they, too, have harmed someone. But the symmetry of the argument requires that the type of "harm" being punished involve force itself. If force is to be inflicted on others, surely this can only be justified when it is in response to an initial use of force. If A merely causes "harm" to B but without inflicting force (i.e., a non-coercive type of harm), B is indeed justified in causing "harm" to A in response — but only a non-force-inflicting type of harm, and thus certainly not punishment, which necessarily involves force.³ Thus, the only sort of harm that can legitimately be punished is force-inflicting (i.e., rights-violating) harm.

If Burke must resort to the concept of physical force to get useful results from his "harm" principle, one wonders why his thesis focuses on harm rather than on force simpliciter. Burke would do better to substitute the initiation of force for harm, and seek to establish: (1') that those who have not initiated force have a right to not have force used against them; (2') that typical market activities do not involve the initiation of force; and (3') that governmental actions which proscribe such market activities do initiate force. In establishing step (1') characterized this way, it is indeed relevant to ask, "Who deserves punishment?", since punishment, like step (1'), focuses on the use of force itself. When these issues are clarified in this way, however, it becomes clear that the vague concept of "harm" is too broad to sufficiently justify rights and market transactions.

Further Problems

Burke's view of the concepts of harm, force, rights, and punishment causes further difficulties. For example, consider Burke's view on blackmail. Burke considers the case of the blackmailer offering to "not to publish compromising photographs of a man with his mistress if he will pay \$500." (p.57). Disagreeing with libertarians such as Rothbard, Burke maintains that "To blackmail a person is to threaten to cause him harm. Harm is *not restricted to violence* or the threat of it, but includes injury to a person's reputation by defamation, libel and slander." (p.57, endnote omitted, emphasis omitted) Burke here cites Pennsylvania's criminal code regarding theft by extortion, presumably as an example, but hopefully not as a justification, for surely the mere existence of a positive state law cannot justify such a law. But Burke's reasoning is too skimpy here, and he does not provide an argument showing why (punishable) harm includes defamation, libel, and slander.⁴ The mere uttering of sounds or words does not inflict force on others, and thus simply cannot justify retaliatory force against the utterer. Burke even recognizes this in another context: "A mere statement of a belief cannot in principle be harmful to anybody, even if it mistaken, since it always rests within the power of the listener whether he is to believe it or not." (p.213)

For the same reason that we have a right to free speech words cannot aggress against libel and slander laws cannot be tolerated in a free society. The only rights that exist, in my opinion, are rights to tangible, corporeal, property. This is because the only reason for property rights is to assign ownership to scarce resources, and only physical property can be scarce.⁵ Ideas and reputations are mere abstractions and are not property.⁶ Burke also believes that "a challenge to a duel is akin to blackmail." (p.192; see also p.268 n.15) The argument here is very sketchy and, I believe, unconvincing.

Burke's view on contracts is also problematic. In attempting to justify the "enforceability" of contracts, Burke draws on the traditional legal concept of detrimental reliance. According to this theory,

The binding force of the contract comes from the fact that it leads each party justifiably to expect a certain performance from the other and to rely upon that expectation in such a way that if the other fails to perform, then the first party is harmed. [p.71]

As others have pointed out, this reasoning is circular, for reliance on performance is not "reasonable" or justifiable unless one already knows that the promise is enforceable, which begs the question.⁷ What has not been widely recognized even by many libertarians is the fact that the enforcement of promises also violates freedom of speech: if I merely utter words (e.g., "I promise to do X") then I have not used force against you; thus you are not justified in using force against me to "enforce" the contract. Contracts may legitimately be construed only as conditional transfers or exchanges of property.⁸

Burke also offers the Principle of Double Effect as a way to determine whether we may outlaw an action that will have both bad and good effects. Burke submits the example of a terrorist who is threatening to kill a hostage unless certain demands are met:

A police sharpshooter could perhaps shoot the terrorist, but there is a risk that he might shoot the hostage by mistake. Is it morally permissible for him to try to shoot the terrorist?

The Principle of Double Effect answers this question by providing three criteria:

- 1) The evil effect must not be the cause of the good effect. This rule is necessary because the end does not justify the means. We may not do harm in order that good may come of it.
- 2) The evil effect must not be deliberately intended.
- 3) The harm caused must not be greater than the harm prevented, or the good done. [p.198]

There are many problems with these criteria. For example, how in the world do you weigh harms against one another, or the harm caused against the good intended? A more serious problem with this principle is that Burke simply asserts it as if it is true, without offering any justification for it, evidently relying on its somewhat intuitive appeal.

In the area of economics, Burke admirably rejects antitrust laws, but seems to accept the concept of monopoly nonetheless. "If a genuine monopoly is achieved in an industry, and the monopolist firm raises prices above the competitive level, it creates an incentive for other firms to enter the industry in competition with it." (p.80) This ignores, however, Rothbard's demonstration that the very concept of free-market monopoly is invalid.

Burke's views on the Great Depression are baffling. He recognizes that the Great Depression was, contrary to popular belief, caused by actions of the federal government. So far, so good. According to Austrian economic theory, recessions and depressions are caused when the malinvestments of artificial booms, caused by inflation of the money supply, are liquidated. Thus, it is a federally-controlled decrease in interest rates, or the corresponding expansion of the money supply, that causes depressions.¹⁰ Burke, however, maintains that one of the actions of the federal government that caused, or prolonged, the Great Depression "was the action of the Federal Reserve in *increasing* interest rates and further restricting the money supply, precisely at the time when just the opposite action was needed." (p.91, emphasis added; see also pp.33,164) The "opposite action" that Burke believes was "needed" — i.e., inflation of the money supply — is the very type of thing that *caused* the Great Depression. Only Milton Friedman is cited here; apparently Burke is unfamiliar with the Austrian work on the business cycle, or finds it not worth taking into account in his analysis.¹¹

In another economic misstatement, Burke says that "Far from causing harm, the seller who raises his prices in a shortage is doing just what needs to be done to reduce the shortage, he is providing an incentive for producers to produce more." (p.95) But it seems to me that this is untrue: the raised prices provide a disincentive to prospective buyers with less urgent needs from purchasing the goods.¹²

Burke's favorable comments regarding democracy are also somewhat naive, or at least paint too rosy a picture regarding the virtues of democracy. He maintains that representative government is an "effectual system," and that "The idea of democracy is enshrined in two principles: majority rule, and human rights. Both of these, but especially human rights, are antipathetic to authoritarianism." (p.23) He also maintains that "democracy is the most effective means of ensuring the protection of human rights against government" (p.163), and he has "no doubt that representative democracy is the best and wisest form of government where it is capable of existing". (p.234) Burke's use of phrase "human rights" rather than "individual rights" is somewhat unsettling, because the term "human rights," like the term "liberal" in American usage, has acquired a leftist or socialist tinge.¹³ Further, majority rule as a principle can resolve into mob rule, which is unlikely to favor individual rights. Indeed, democracy has systemic features which make it tend to oppress liberty.¹⁴ Democracy is not as benevolent and compatible with the free market at Burke assumes.

Useful Insights

All this is not to say that Burke does not make many perceptive points in *No Harm*. Although his Principle of No Harm could stand some refinement and is not defended with complete rigor, it is, after all, true that people should not "harm" one another, and most

decent people do agree with this, stated as a general proposition. Burke has many good explanations that show why, contrary to popular wisdom, we are not harmed by market transactions, and are, conversely, harmed by government intervention. Probably the most praiseworthy aspect of Burke's book is his extended discussion of the "harmlessness" of voluntary market transactions.

There are many fresh insights sprinkled throughout the text. One useful insight of Burke's that had never occurred to me regards the typical leftist assertions that "the actions of a person in economic distress are not free." (p.49) Liberals typically maintain that a person in danger of starvation is "compelled by circumstances" to accept a low-wage, dangerous, or otherwise undesirable job. As Burke notes, this

is thought to be a significant question only because it is assumed that people in distress who accept tough conditions are being harmed. It is supposed to provide an explanation for what otherwise, on this interpretation, would be bizarre and incomprehensible behavior. Given that they are causing harm to themselves, what could explain such a paradoxical action, since presumably they are not masochists? The answer is made that they have no alternative, they are compelled to take the job. It is assumed that this explanation renders comprehensible an action which otherwise would make no sense. Where it is clear that a person is benefiting from an action, however, there is no urgent need to ask whether he does so freely. A penniless beggar given a lottery ticket which turned out to win him a million dollars would be under heavy economic and psychological pressure to accept the prize, but there would be little practical point in questioning whether his acceptance was truly free. [p.49, emphasis added]

Burke also notes that some writers oppose market freedom based on alleged "market failure." For example, a car owner, who is often mechanically ignorant, may be taken advantage of by a mechanic, who has an incentive to lie and diagnose greater problems with the car than actually exist. Since the mechanic or service station owner is supposedly "rational" in this case, this may be a case of "market failure" requiring government regulation. Burke perceptively points out that:

To call lying a case of market failure betrays an elementary misunderstanding of the concept of a free market. Deliberate deception, or fraud, is not a part of the concept of a free market. It is certainly true that the successful operation of a market economy depends on maintaining ethical behavior, and there must be legal remedies available for people who have been defrauded. Fraud, however, is not a case of the failure of the market, but of the moral failure of individuals. [p.89]

Conclusion

All in all, *No Harm* presents a fresh perspective on the virtues of liberty from the viewpoint of the ubiquitous concept of harm. Burke does a good job of explaining why, in general, people are not "harmed" in a free market, and thus free market activities should not be regulated by governments, whose job is to punish those who cause harm. However, Burke's neglect of foundational issues, justifications, and precise definitions, and his unfortunate willingness to label some non-coercive actions as punishable harms, weaken his overall case, and cause him to stray into error on a few issues. Yet Burke does offer

many useful insights, and is fundamentally correct in championing freedom and pointing out its many benefits. We should always cheer when yet another voice is added to the chorus crying for freedom.

N. Stephan Kinsella,
Schmader, Harrison, Segal & Lewis, Philadelphia, Pennsylvania

[www.StephanKinsella.com; www.KinsellaLaw.com]

Endnotes

*Page references to this book will be given parenthetically in the text.

**The author practices computer software and hardware patent law with Schnader Harrison Segal & Lewis, in Philadelphia. He may be reached by internet at kinsella@shsl.com.

1. S.M. Crothers, "That History Should be Readable", in *The Gentle Reader* 172 (1903; repr. 1972), quoted in Bryan A. Garner, *The Elements of Legal Style* 92 (New York: Oxford University Press, 1991).

2. On the definition of "aggression" and the libertarian non-aggression principle, see Murray N. Rothbard, *For a New Liberty: The Libertarian Manifesto* (New York: Libertarian Review Foundation, reprint ed., 1985), 23. See also Hans-Hermann Hoppe, *A Theory of Socialism and Capitalism: Economics, Politics, and Ethics* 139-41, 237 n.17 (Boston: Kluwer Academic Publishers, 1989) (arguing that property rights protect the physical integrity of property, but not the value of property).

3. See my articles "Estoppel: A New Justification for Individual Rights", *Reason Papers* No. 17 (Fall 1992), p. 61, and "Punishment and Proportionality; the Estoppel Approach", *J. Libertarian Studies* (forthcoming), for a theory focusing on this sort of symmetry.

4. On the illegitimacy of libel and slander (defamation) laws, see Rothbard, *supra* note 2, at 96-97; *idem*, *The Ethics of Liberty* 126-27 (Atlantic Highlands, N.J.: Humanities Press, 1982) and Walter Block, *Defending the Undefendable: The Pimp, Prostitute, Scab, Slumlord, Libeler, Moneylender, and Other Scapegoats in the Rogue's Gallery of American Society* (San Francisco: Fox & Wilkes, 1991).

5. For a discussion of the necessity of the concept of "scarcity" to a proper definition of goods or property, see Ludwig von Mises, *Human Action: A Treatise on Economics* 93, 235-36, 528 (Chicago: Contemporary Books, Inc., 3d rev'd ed. 1966); Murray N. Rothbard, *Man, Economy, and State: A Treatise on Economic Principles* 4 (Los Angeles: Nash Publishing, 1962); and Hoppe, *supra* note 2, at 8-10, 134 *et seq.*

6. On libel laws, see *supra* note 4. For a discussion of intellectual property rights, see Rothbard, *supra* note 2, at 123-24; *idem*, *supra* note 5, at 652-60; Tom G. Palmer, "Are Patents and Copyrights Morally Justified?" "The Philosophy of Property Rights and Ideal Objects," 13 *Harv. J. Law & Publ. Pol'y* 817 (1990), as well as other articles in same issue (No. 3, Summer 1990) and in Vol. 13, issue no. 1 (Winter 1990) of this journal; Tom G. Palmer, "Intellectual Property: A Non-Posnerian Law and Economics Approach", 12 *Hamline L. Rev.* 261 (1989); Wendy J. Gordon, "An Inquiry into the Merits of Copyright: The Challenges of Consistency, Consent, and Encouragement Theory", 41 *Stan. L. Rev.* 1343 (1989).

7. See, e.g., Randy E. Barnett, "A Consent Theory of Contract", 86 *Columbia L. Rev.* 269, 274-76 (1986); Randy E. Barnett and Mary E. Becker, "Beyond Reliance: Promissory

Estoppel, Contract Formalities, and Misrepresentation", 15 *Hofstra L. Rev.* 443, 446-47, 452 (1987). For further discussion of these and related issues, see Williamson M. Evers, "Toward a Reformulation of the Law of Contracts", 1 *J. Libertarian Stud.* 3 (1977); Randy E. Barnett, "Contract Remedies and Inalienable Rights", 4 *Social Phil. & Pol'y* 179 (1986); Rothbard, *supra* note 4, chapter 19;

8. For insightful discussions into the nature of contracts, see Evers, *supra* note 7; Rothbard, *supra* note 4, chapter 19, "Property Rights and the Theory of Contracts"; and Barnett, "A Consent Theory of Contract", *supra* note 6. These formulations are not, however, without problems. I plan to discuss this issue at further length in a future article.

9. Rothbard, *supra* note 5, at chapter 10, esp. pp. 604-14; Hoppe, *supra* note 2, at chapter 9, esp. pp. 180-85.

10. See Murray N. Rothbard, *America's Great Depression* (Los Angeles: Nash Publishing, 2d ed. 1972); *idem*, *supra* note 5, at ch. 12, 11; Mises, *supra* note 5, at ch. XX.

11. In a discussion of the "business cycle," Burke notes that the two chief explanations for this phenomenon are that it is due to excessive investment; or to governmental policies, such as "control of the money supply." (p.94) Burke cites neither Mises's nor Rothbard's work on the Austrian theory of the business cycle. See *supra* note 10.

12. See, e.g., Murray N. Rothbard, "Government and Hurricane Hugo: A Deadly Combination," in *The Economics of Liberty* at 137 (Auburn, Alabama: Ludwig von Mises Institute, 1990) (first published in *The Free Market*, vol. 7, No. 12 (December 1989)); and George Reisman, *The Government Against the Economy*, ch. II, sec. 2, p. 42, et passim (Ottawa, Ill.: Jameson Books, 1979).

13. See, e.g., the United Nation's *Universal Declaration of Human Rights*, U.N. GAOR, 217A (III) (1948), at articles 22-26 (reciting, for example, human rights to "social security" and to "free" education).

14. For perceptive articles discussing this point, see Hans-Hermann Hoppe, "Time Preference, Government, and the Process of De-Civilization From Monarchy to Democracy", 5 *J. des Economistes et des Etudes Humaines* 319 (1994). Interestingly, Frank Knight made a similar point back in 1929. In his essay *Freedom as Fact and Criterion*, Knight stated:

We say that the victim of a highwayman is coerced, not because the character of his choice between the alternatives presented is different from any other choice, but because we think the robber does "wrong" in making the alternatives what they are.

In no other sense is it possible to speak of coercion. No human being can ever literally "force" another to do anything (though one may of course forcibly prevent another from acting). ...[T]he *threat of violence*... as a means of controlling the conduct of a human being has only a figurative kinship with the action of a physical force in changing the state of rest or motion of a mass of matter. It is interesting to

note that when conduct is influenced by an offer to improve one's condition, instead of a threat of worsening it, we do not call it force or duress.

Frank H. Knight, *Freedom and Reform: Essays in Economics and Social Philosophy* 17 (Indianapolis: Liberty Press, 1982).