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# NYU JOURNAL OF LAW & LIBERTY

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## WALTER BLOCK & RICHARD EPSTEIN DEBATE ON EMINENT DOMAIN\*

**J.H. Huebert:** Our debaters today are Professors Richard Epstein and Walter Block. Both men have long lists of achievements, but I will only introduce them briefly in the interests of time. Prof. Richard Epstein, as most of you know, is a Professor of law here at the University of Chicago and one of the world's foremost classical liberal scholars. He is the author of numerous books, including a highly influential one addressed to the topic we are discussing here today called *Takings: Private Property in the Power of Eminent Domain*. Professor Walter Block is a member of the economics department at Loyola University New Orleans, and a leader of the Austrian School of Economics. He is an outspoken critic of the Chicago School of Economics, and is also the author of the provocative book *Defending the Undefendable: The Pimp, Prostitute, Scab, Slumlord, Libeler, Moneylender, and Other Scapegoats in the Rogues Gallery of American Society*.

The topic of our debate today is "Do we really need eminent domain?" Professor Epstein will argue that we do, and Professor Block will argue that we do not. Here is the format: Block will begin with a 15 minute opening statement, followed by Epstein. Then, each will respond to the other with an 8 minute rebuttal. After that, we will go to a question and answer format, with debaters alternating in the order of their responses. Dr. Block, you may begin.

**Walter Block:** Usually, a debate is the sort of a thing where there is blood on the floor afterward which students always like to see. I hate to disappoint you, but I think that there will be less blood on the floor than otherwise expected, because I do agree with Richard that under certain circumstances eminent domain

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\* The following is a transcript of a May 10, 2004 debate between Walter E. Block, Harold E. Wirth Eminent Scholar Endowed Chair and Professor of Economics at Loyola University New Orleans and Richard A. Epstein, James Parker Hall Distinguished Professor of Law and Director, Law & Economics Program at the University of Chicago. The debate was moderated by J. H. Huebert, then a law student at the University of Chicago. All participants wish to acknowledge a debt of gratitude to Lew Rockwell, President of the Mises Institute, for financially supporting this event. The Journal of Law & Liberty is pleased to provide this transcript as a service to our readers.

is justified. But there will be some blood flowing later on because we do have some substantive disagreements.

Do you know the difference between a living room and a bathroom? The joke is, if you say "no", I say, "Don't come to my house." Well, the analog joke is: do you know the difference between coercion and voluntary agreement? Between using, initiating force against innocent people, one the one hand, and consent, on the other hand? If you don't know the difference between those two things, I say, "Don't get into political economy."

This debate is about political economy. Now, I admit that Richard does know this difference; further, that he is an impassioned defender of liberty and non coercion in, maybe, 99% of all cases. However, he does have some reservations. He says that there are certain things that can trump the requirement not to initiate force. Namely, he denies that non-coercion is always a legal good, coercion always a legal bad. Examples for him include necessity, public goods, the holdout, the free rider. Whereas, in my case, nothing trumps this principle. I am rabid on this issue. The non-aggression axiom is the essence of libertarianism, and I brook no disagreement with it in my philosophy.

Eminent domain is okay within a condominium development or restrictive covenant or based on some sort of prior consent. But what about outside of a condominium development? Suppose we are now talking about "out there" as in the case if somebody wants to widen a highway or build a new road and there is a hold out. To me, the issue comes down to the question of whether the U.S. government is an agreed-upon institution? Is it a club? Are we all part of this club called U.S.A.? If so, then we have already agreed to be bound by whatever the majority wants, and presumably eminent domain could be one such policy. And that would be fine.

For my claim is that consent can turn what would otherwise be a legal bad into a legal good. For example, assault can turn into non-assault. Consent can turn what is a mugging into boxing. We don't put boxers in jail, even though what they do is punch each other, and in other contexts, we would do just that to them for such behavior. But since they both consented to punch and be punched above the belt, it turns from a legal bad into a legal good.

This occurs, similarly, with sex. Consent turns rape into seduction. Now, rape and seduction might look exactly alike to an outside observer. The woman who is being raped might not protest, for example if there is a threat that the rapist will kill her baby in the next room if she doesn't cooperate. A third party might not be able to tell whether it is rape or seduction, but surely, her consent is crucial. With it, it is seduction. Without it, it is rape.

What about eminent domain? Well, if there is prior consent, then eminent domain is justified. Here is where I agree with Richard. For example, in a condominium development. I used to live in one. Every house there had to be painted the same color; you couldn't have a picket fence, because all of them were required to be in the same style.

Such institutions featured an agreement to be bound by majority rule, within certain limits. Suppose they wanted to widen an internal road and this necessitated eliminating, or reducing the size of several members' front lawns. Then, since everyone had previously consented to the condominium contract all those negatively affected were required to go along with this decision. I think that eminent domain of this sort is justified.

Now for the blood on the floor. I believe that the U.S. government is not a voluntary organization. Thus, its eminent domain is not consistent with libertarianism. In contrast Richard argues that it is. To buttress my case I first turn to arguments from authority. Here is a quote: "The theory which construes taxes on the analogy of club dues or of the purchase of the services of, say, a doctor only proves how far removed this part of the social science is from scientific habits of mind."<sup>1</sup>

Here is another quote from Franz Oppenheimer:

"There are two fundamentally opposed means, whereby man, requiring sustenance, is impelled to obtain the necessary means for satisfying his desires. These are work and robbery, one's own labor and the forcible appropriation of the labor of others. . . . [I call] one's own labor and the equivalent exchange of one's own labor for the labor of others the economic means' . . . [w]hile the unrequited appropriation [where I would add requited appropriation too,] of the labor of others will be called the political means. . . . The state is an organization of the political means."<sup>2</sup>

In my view, the state is based on theft. To see this, let us go back to the day of creation of this group called the United States of America. Suppose we are in the wilds of western Pennsylvania somewhere in 1776, and a tax collector comes to Mr. Jones and says, "Hey, Mr. Jones, guess what? We just started this new group called the United States of America." And Jones says, "Oh, that's nice. I wish you the best of luck. We'll be good neighbors. I always get along with my neighbors, and I'll get along with you all." The tax collector replies: "You don't understand. You have got to be part of this group." And Jones says, "Why do I have to be part of the group? I'm not a joiner. I don't like joining groups. I don't want to join this particular group. I'll be peaceable, I won't attack you if you don't attack me." Whereupon states the tax collector: "You don't understand. You've got to be a member. This is

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<sup>1</sup> JOSEPH A. SCHUMPETER, *CAPITALISM, SOCIALISM, AND DEMOCRACY* 198 (1942).

<sup>2</sup> FRANZ OPPENHEIMER, *THE STATE* 24-27 (1914).

not a voluntary matter. This is coercive." I put it to you that this is a moral outrage. It is disgusting. It is despicable to go to an innocent person and threaten to use force against him when he has not done anything of the sort to you.

Here is a quote from my colleague, friend and debating partner, Richard, who says, in his *Reason Magazine* interview: "[N]o government at all . . . A large society with no central authority offers an open invitation to some sleazy individual to consolidate power in his own name. [The] constitutional government uses deliberation. [Anarchists'] void at the center promotes the totalitarian rule, not individual liberty."<sup>3</sup>

I think this is wrong on many different levels. First, if we are worrying about totalitarians and sleazy individuals, we have to realize that monopoly usually creates the worst product possible; competition is a superior process. The reason we have reasonably good ties and wristwatches and shirts and stuff like that and pretzels too is because we have competition in these arenas. If somebody makes a lousy pretzel, Richard won't eat that pretzel, and that pretzel place goes broke. Whereas, if they make a good pretzel like Ryder's pretzels, which I'm sure is a good pretzel, he'll go back and buy more pretzels from them.

But the same result obtains in guarding against bad guys, capturing, trying and imprisoning them. Why should it be different? Why should competition be good for pretzels and shirts and ties and wristwatches, and not for protection against criminals? Competition brings about a better product, in general, because it weeds out inefficient providers of the good or service. I am sure that Richard would agree. Why should this not be true in all industries, including those devoted to dealing with bad guys?

Here is one indication of this. Consider what the federales are doing. They are creating more problems than they are solving. A very high proportion of the people now in jail are there for drug crimes. But this is a victimless crime, and in a libertarian society, these prisoners would all be free.

What Richard is saying is, if I understand him correctly, is that if there are just a bunch of us individuals, we need a national government to rule over us because we are more than likely to run amuck and rape and murder each other. The market can't be relied upon to stop this, so we need a government. I argue against this, now, by analogy: national government is to individuals as world government is to national governments. Notice that the countries of the world are in a state of anarchy with regard to each other. There is not now a world government; there is no U.N. with any such powers. So the country of Canada and the country of Venezuela are now in a state of anarchy with regard to each other, just as I would be with regard to any individual residing here, if we didn't have a

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<sup>3</sup> Richard A. Epstein, *A Moderate Responds*, REASON, March 2004, at 49, available at <http://www.reason.com/0403/fe.ra.coercion.shtml>.

national government. Richard's argument logically implies advocacy of world government. If national government is justified because there is no single entity ruling over the locals, well then so is world government, for precisely the same reason: because there is no single entity ruling over the various nations.

There are problems with any such scheme. If we had a world government, India and China between them would rule the entire planet. There would be no other place to run to, if you did not like the way they ran things. But this is mere consequentialism, unworthy almost of even mentioning, because we are interested in principle and justice. And the principle is that it is just plain wrong to initiate violence against people. It is wrong to force them to join a club. If you force them to join a club, it is no longer a voluntary a club.

Another point is that Richard's position implies no right of secession. This, in turn, implies slavery. Look, the only thing wrong with slavery was that you could not quit. If you could quit, it would be no problem. It's a pretty good deal: You get fed three meals a day, you pick cotton and sing a song—and then the guy pulls out the whip and you would say, "Wait, I quit." And he says, "No, you can't quit." You can't secede from slavery. We southerners still resent the War of Northern Aggression. People in Chechnya have every right to leave Russia. People in Taiwan have a right to be free of their Chinese masters. The two-country solution in Israel and Palestine is legitimate. But if it is justified to leave or quit en masse, it's also justified to secede a state at a time or a county at a time or a city at a time or a family at a time or even an individual at a time.

Consider the situation if an individual can secede and keep his property, not just emigrate and be forced to sell his land but depart from the political union and keep his property intact for himself. This is all that the guy in western Pennsylvania wanted to do: keep his property. When the tax collector told him he was free to leave, but could not stay and keep his property, the only proper response is, "But that is land theft." If you can secede, and stay on your own land, that is equivalent to anarchism, or free market anarchism.

Let us now consider government defense. Is government necessary for defense? It seems to me that it is more like a protection racket. The Mafioso comes and says, "Look, I'll protect you. Pay me money". And the guy says, "Oh, that's okay. I don't need protection." Replies the gangster: "You don't understand. You pay me and then I'll protect you. Mainly from me." And the government adds: "I'll make you pay even if I don't protect you."

The point is that there's no unanimity in the government. What about the poor pacifist? Why should he be forced to contribute for defense? I defy anyone to tell me the difference, apart from great P.R., between the United States government and a Mafioso hooligan gang. It is the same thing. There is no difference.

Here is a paradox. Inside the condominium, eminent domain, takings and expropriations are justified, since they were agreed upon beforehand. Outside the condominium, in the real world out there, eminent domain, takings and expropriations are not needed. Take the holdout problem. You are thinking of building a road from New Orleans to Chicago, and all of a sudden, some guy, Huebert over here, who owns property right in the middle of your prospective highway says, "Ha, ha. I'm not selling my land for any amount of money" so you can't build the road. That's the argument of the road statists.

There are various ways to deal with that challenge. First, there is not one but several possible routes that can be taken between New Orleans and Chicago. One, of course, is an exact straight line between them. But it is also possible to take several slightly circuitous routes, each of them extending out, a mile or two east or west, from the most direct. If there is a hold out on any one of these paths, the builder can utilize another.

Another response is to tunnel under Heubert the hold-out's land, or build a bridge over it. Libertarians do not believe in *ad coelum*. In that doctrine the owner of a square mile of the earth's surface also owns a cone of territory down to the center of the earth and also the air up towards the heavens, and, presumably, any heavenly bodies that wander into this area. Under this rule, no one could build over, or tunnel under, anyone else's land without the surface owner's permission. This would effectively require eminent domain if things like roads, pipelines, water and sewer lines, etc., were to be constructed.

Libertarians reject *ad coelum*, and instead adopt homesteading, or "mixing your labor with the land" as a way of establishing ownership. Since nobody homesteaded a hundred yards underneath or above his farm or house, assuming a hundred yards is sufficient to tunnel under, the developer could overcome the holdout challenge by building a tunnel right under, or a bridge right over it.

Did you ever see a city block entirely taken up by a high rise except for a little sliver of land on which appears a little cottage? Did you ever see that? This is evidence that the land assembly negotiations didn't succeed. You won't find that in the Soviet Union. This phenomenon is a testimony to the virtues and the freedom of capitalism and free enterprise. Namely, that sometimes people don't make deals even though those who believe in making interpersonal comparisons of utility think that the cottage should have been taken down and the entire block given over to the large building. I say that this is a magnificent example of the operation of the free enterprise system.

A third response to the holdout problem is not to purchase land outright, but, rather, options. You buy options to buy land. The land in question might be worth, say \$10,000. You pay a landowner on each of the prospective paths of the

highway \$100 and say to him, "Look, I'll give you \$100. You keep it. And if I want, I could exercise the option to buy the land within a certain time period at the agreed upon price of \$10,000. You buy options all over the place, relatively cheaply, and then if you get one holdout, you just go to another route.

Here is a quote from Richard, "Low level frauds . . . are used to mislead sellers about buyer's intentions."<sup>4</sup> If I understand him correctly, by low level frauds, he means that if you buy an option, you don't tell people what you're trying to do. You are guilty of fraud. But I think this is mistaken. I don't think it is fraudulent.

Another point: roads were originally privately owned. So much for the need for eminent domain. By the way, now that they are run by the government, they kill 40,000 people a year.

Now consider the concept of fair compensation in eminent domain. Huebert steals \$100 from me. He is a philosophical robber so he is willing engage me in dialogue about this and I say to him, "This is unfair. You stole \$100 from me." He says, "Tut-tut. Here is a piece of chalk in compensation." How could it be fair compensation unless I agree? Remember, the key is consent, not giving compensation. Thanks for your attention.

**Richard Epstein:** Walter, talking with you always makes for an interesting conversation. Let me respond.

First of all, the question here is not whether we think that the distinction between coercion and consent has no traction. Clearly, if you are trying to figure out how to organize any kind of society, just or otherwise, a system, which entirely rests on coercive arrangements will in fact be the Gulag and we all ought to deplore it. The issue, rather, is whether or not the distinction between consent and coercion is so absolute that one would say that whenever there is consent, the transaction ought to be blessed, and that whenever there is coercion, the transaction ought to be damned.

What is the difference between the strong or radical libertarian such as Walter, and the more moderate or restrained classical liberal such as myself? It is that we classical liberals believe that there is a very strong presumption in favor of consent over coercion, but we do not believe that this is an absolute. The question is, What counts as a reason for the exceptions, and how is it that we can implement them and put them into practice?

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<sup>4</sup> Epstein, *supra* note 3, at 49.



If you start looking at the consent side of the situation, there are ways in which it can be undermined. Here is one of the examples that Walter gave, which I don't think came out quite right. He said that if you use force against a woman, it is coercion and rape, but if you don't use force, it is seduction. I was waiting to hear a word like "love" or a phrase like "genuine passion" because "seduction" itself has strong negative connotations. The reason is that there are transactions that are induced by various forms of fraud, and the question under these circumstances is whether or not the fraud will negate the voluntariness of any particular arrangement, whether for business or pleasure. Within the standard framework of a libertarian analysis, the answer, I think, should be "yes" at least if the cardinal sin in law is force and fraud.

My problem with Walter, here, is that he did not actually condemn, fraud. He said that the fundamental principle was that of non-aggression, which seems to speak only to the use of physical violence and does not deal with such things as nondisclosure, concealment, or outright lying. So, one of the problems that you should immediately be aware of is that, within the libertarian framework, there is a debate as to whether or not fraud should be covered under the prohibition, or if it is only naked force that is a legal wrong.

In dealing with this consent situation, at least within the context of government, there is also another very large body of law which is extremely important. It addresses the situation when you hold a resource for which the consents you obtained are not going to be valid. For example, suppose the government announced that the only time they are going to allow you to use the roads is if you agreed to waive all your rights for the compensation of property taken from you in an independent action. Most of us would say, and I think intuitively we would be correct, that the ability to contest the exaction of individual consent does not succeed within the standard libertarian framework. If you have the power to withhold something absolutely, or the power to grant it absolutely, you have the power to grant it subject to a condition or not. Ergo, the government wins.

The reason the conventional analysis is so dubious about that syllogism is that it is deeply worried, in all of these cases, about the problem of monopoly and coordination. The reason why most classical liberals are not libertarians is that they think the nature of the social problem is not just to minimize the danger of fraud, or rather force and fraud, but, also, to minimize the dangers associated with fairly serious coordination problems. Walter, I think, makes too light of these. They also stand in the way of human happiness and success. Consider the case that we are talking about, here. I think the usual rule is that no matter how much any individual wants to consent to the waiver of these particular constitutional rights, in virtue of the fact that the conditions involved have nothing to do with the safe operation of the roads, but, rather, constitute a design to extend government power,

we would not accept the waiver. Interestingly enough, even if you were dealing with private roads, whose owners enjoyed monopoly positions there would be a limit of the conditions that their owners could impose for access. The desire to find some way to discipline certain monopolies long antedates Roosevelt's New Deal. The general common law that allowed for the regulation of rates also allowed for judicial scrutiny of any conditions that might be imposed on use of these private roads.

In other words, the doctrine of unconstitutional conditions often applies to government actions because they rely on state monopoly power. But to the extent that there are any forms of private monopolies, the same sorts of worries continued to apply.

So, if you are going to look at the issue of consent, you ought not to treat it as non-problematic and self-evidently understood, as I think Walter does. There are certain very important limitations that have to be accepted with respect to the operation of that particular doctrine.

Regarding the use of force and coercion, or the threat thereof, similar kinds of ambiguity also arise. There is no doubt that ordinary aggression by individuals against other individuals counts as a legal wrong. There is also no doubt that there are immense problems in trying to figure out when there is an altercation between two or more individuals, who is the initial aggressor and who used force in self defense. The uncertainty with respect to the application of the principle in the individual case is what led every serious political thinker, from Hobbes to Locke and beyond, to the conclusion that self-help and self-judgment was not a reliable way in which to organize a political society. A rational legal system requires a neutral third party to sit in judgment so as to be able to introduce some degree of impartiality for the resolution of these kinds of disputes.

One could hope, in many cases, that you would be able to set up these tribunals by some kind of consensual arrangement. But, generally speaking, as the population size rises, the likelihood that there will be consent within the group is in fact much lower. If you start looking at this fellow in western Pennsylvania mentioned by Walter, it may well be that he says, "Well, you know, I'm a perfectly peaceable guy, and if you are a good neighbor to me, oh United States, I'll be a good neighbor to you." But suppose it turns out that he is lying. Now the whole question of anticipatory self-defense arises. Do you attack him before he attacks you, or do you have to wait? Generally speaking, when you are trying to work out these kinds of political arrangements where there are huge numbers of individuals, you cannot handle the coordination problem with a geographical hodge-podge, where the effective scope of sovereignty turns out to be the boundary lines of the western Pennsylvania farmer Jones's field.

Walter is quite right to say that competition in marketplaces clearly dominates government coercion and monopoly. But there is no way that these wonderful pretzels would have been able to reach our vending machines unless there were a system of public roads over which they could travel. There is no way that the seller would have been able to get them here to the University of Chicago unless there had been at least a modicum of social order which, generally speaking, only a well organized state can provide. So, if you are trying to understand what eminent domain's power is all about, what it says in effect is that the coordination problems we face in upholding society, in assembling pipelines and highways for pretzel delivery, etc., are very serious, and there is no way we can attain our desired individual goals without a limited government, armed with, among other things, eminent domain powers.

Now, Walter tries to do this by giving you a series of arguments, both of which, I think, are wrong. One concerns a practical matter, and the other a doctrinal issue. Consider the question of what else you own when you own some part of the surface of the earth. Here, Walter argues against the entire history of both Roman and common law by assuming that ownership applies only to surface rights. (An additional error of his is that he speaks of the *ad coelum* doctrine, which applies to ownership rights above the surface, when he meant to refer to the *ad inferos* doctrine, which pertains to ownership rights below the surface). Both of his contentions are wrong. Walter's view that ownership is confined to surface rights has been uniformly rejected for all sorts of very clever and sensible reasons.

Does a person who is only four feet tall own only up to six foot high into the air with respect to his land, whereas somebody who is six feet tall gets eight feet? Can you in fact claim additional airspace above your land by building upward? Can somebody who occupies the land next to you cantilever over your property, so as to prevent your building a house from taking place? Every serious property lawyer who has thought about this has said that the trick in the system of possession is to make sure that you require as little as possible, not as much as possible, to generate a stable system of ownership rights. This will allow people to generate ownership claims over particular physical objects.

Ownership of land on the surface of the earth runs in both directions precisely because it eliminates incredible problems that would arise if subsequent strategic actions would allow you to build on top of or below the land of your neighbor. One of the most famous cases in the takings law, called *Pennsylvania Coal Co. v. Mahon*,<sup>5</sup> had to do with the problem when you start digging out coal underneath the surface and the ground starts falling in. The question is whether or not the owner of the coal was under a duty to support the land and improvements of the surface owner during the course of his mining operations. In principle the

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<sup>5</sup> 260 U.S. 393 (1922).

question could go either way. In most cases the surface and the subsurface mineral rights are owned by the same person in virtue of the *ad inferos* rule. When they are divided, if in fact the parties want to create easements by contract, which allow the owner of the mineral rights to dig without worrying about support, that is just fine: allocate that risk by the deed, and register it to bind all third parties. But to argue that when you own the surface, you do not also legally possess the subsurface, means that anyone could burrow under you, and your land will be at risk from cave ins, etc. You now have to contract to get protection from him.

What this maneuver does, in effect, is save the libertarian theory from the holdout problem by creating an impossible original delineation of rights, which makes it impossible for anybody to get productive value out of his own land. It is not a trade, I think, that any rational legal theorist or private entrepreneur would want to make in these sorts of cases.

Now let us consider Walter's second argument. He has a rather odd definition of property rights. The libertarian definition, as he puts it, is much more narrow and much weaker than the traditional definition of property rights. Walter shows us this "wonderful" illustration to the effect that there are lots of different ways to get from New Orleans to Chicago and back. Of course, when you are trying to build a highway, you are not just trying to build a one-way road between two cities. You might also like to stop in Memphis along the way, or maybe Springfield or St. Louis. Look at the routes taken by all the interstate highways built in the United States as a case in point. Once you start adding in those constraints, it seems pretty clear that this particular scenario of private voluntary transactions, with or without options, is going to be a dismal failure.

There are probably, at a guess, a hundred thousand or more landowners from whom you would have to assemble rights of way in order to build any one of these routes between Chicago and New Orleans. If you announce that there are only six or eight alternative routes that you could have, each one of which could be blocked by one landowner under the circumstances, that would be a recipe for disaster. You just need to have a rate of noncompliance under these circumstances of well under one tenth of one percent in order to throw the entire system of interstate highways into a shambles. It simply cannot be denied that the holdout problem is very, very devastating.

We know this empirically. Just consider the holdout problems associated with small surface plots of land that are located above large pools of oil, where, in fact, cooperation amongst the surface holders would allow you, relative to non cooperation, to increase the yields from these pools by five- or tenfold. The empirical evidence that has been gathered shows that once you get more than four or five people on the surface who have to coordinate their activities with respect to the pools below, you never come up with any form of agreement. Instead you get

these incredible, wasteful “picket fences” where everybody starts to drill down at their boundary line in order to commandeer as much of the pool under the surface of their own land. The net effect is that everybody is left worse off than if there were cooperation.

These examples show us what is profoundly wrong with Walter’s version of the libertarian state. You don’t want to treat this wealth of empirical evidence attesting to the importance of the holdout problem with the sort of easy dismissive attitude that he did. If you are looking at the nature of various kinds of human actions, which involve the use of coercion, we know enough about human motivation that nobody, even a pervert, will engage in coercive actions against some other individual unless he thinks there is some kind of return or net benefit for himself. The core of good sense, with respect to the libertarian position, is that, generally speaking, if we are involved in ordinary individual actions of aggression, we know that there is going to be a fundamental imbalance between the benefits and the harms of coercive behavior. If I start hauling off at Huebért, he is going to be a systematic loser, even if I may turn out to be a winner. But we also know: a) I am not going to compensate him so as to let us know whether or not my gains are greater than his loss, and b) we know empirically, even when compensation is not possible, if I kill him in order to make my life a little bit more pleasant for a day, society is willing to do what Walter says we can’t do: make interpersonal comparisons of utility, and stop me.

I dare say there are none of us who would think, for example, in the rape case, that a happy ten minutes for a guy is sufficient utility to justify a life of shame, degradation, physical humiliation and abuse, psychosis that can be induced in a woman, not to mention her possible death. We make interpersonal comparisons of utility in those cases all the time. With regard to that kind of extreme case, I don’t think there is anybody who thinks about this with the slightest bit of detachment, who would say that global judgment turns out to be wrong.

So, what is it about the eminent domain case, or the taxation case, that distinguishes this from the straight coercion case that Walter talks about? The answer is that the distribution of benefits you get from the proper use of government powers, relative to the distribution of benefits from private uses of coercion and murder and rape cases, is so fundamentally different. In that little exchange in *Reason Magazine* to which Walter referred, I said that the reason the hard libertarian principle is wrong is because it systematically and absolutely and in all cases precludes the use of centralized force by a government. It does so under those kinds of circumstances, in which there is a net benefit for the individuals who, in fact, are subject to the coercion in question.

Go back to the oil and gas pool that I referred to a moment ago; that is exactly the way in which the system starts to work. What happens is, by telling

each of these characters that you may put, for example, one and only one well on your property, each of them is being coerced—in the sense that they are being limited as to what they can do. But each of them benefits from the parallel coercion imposed upon the other persons who own land above the pool. So the person who is coerced now finds that his production goes down by 10% because he can't have those other 40 wells on his land. But then, to counterbalance that, he finds out that it rises by a far greater percentage by virtue of the like restrictions that are imposed upon the property of all these other individuals.

To the radical or extreme libertarian the only question you ask is whether or not there is or is not coercion involved in the transaction. To the classical liberal, my own tradition, you ask another question. Do we or do we not move from a regime of non coercion to one of coercion? Or, can we say that we have created a situation in which the welfare of all the individuals has been improved, to some extent, as a result of the state action? It was exactly that kind of a logic which led people, looking at the inconveniences associated with the state of nature, to introduce a form of "social contract" theory to explain how it was that you justify the state. And, it seems to me, that this move contains really a very important insight.

Let me conclude by mentioning two other points. One of them concerns the eminent domain principles I have criticized. In my book *Takings*,<sup>6</sup> I talk about how the use of state force is justified against sovereign individuals only to the extent that it provides them with a net benefit greater than the coercion involved. This is in fact a position which has been systematically repudiated everywhere in the United States and elsewhere in the free world. Most scholars favor a much larger role for state power. After I wrote my *Takings* book, I was not, for the most part, attacked as a sell-out by people who stood on the right, and insisted that I had made too many concessions to state power. In addition, I was attacked as a zealot and worse from the left because, in effect I said that if you follow the principles I supported, you could get pretty strong evidence that virtually every major social welfare reform introduced under the New Deal was flatly unconstitutional. That is to say, this is not a position which is toothless against the arguments associated with government taxes.

How does this work? What happens is that the argument relies on a lot of private analogies and tries to push them a little bit further. For example, if you go back and you read opponents of large government such as Adam Smith, they use the partnership example in trying to explain why a flat tax ought to be preferred over a progressive tax. The argument was in a partnership all individuals have to contribute, in proportion to their shares or their gains, their fraction of the cost; that principle of proportionality becomes a useful rule of thumb to figure out how you

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<sup>6</sup> RICHARD A. EPSTEIN, *TAKINGS* (1985).

would organize taxation in a public state. If you realize that once you eliminate one major source of redistribution and coercion by flattening the tax and eliminating various exercises of government power, what remains is an eminent domain power. This doesn't easily lend itself to massive forms of abuse; in fact could be quite closely tracked, if only you had a government that cared to do it.

The last point I want to mention is that you have to be very much aware of questions of scale. I am very much worried about the problems associated with world government precisely because I think the monopolistic tendencies of these states, if they follow the pattern of the European Union, for example, will be disastrous. But there is a big difference between governments and individuals. It is very difficult to imagine any kind of stable situation if you have hundreds of thousands of people in very close proximity to one another without a common authority. Whereas if you have a much smaller number of government players under their separate controls, you can get that form of stability because of a mutual acknowledgement of the gains from trade associated with it. Sometimes defensive positions require less to maintain themselves than offensive positions require to overrun them.

The argument here is not that classical liberals such as myself favor the current system of separate nation states because it is perfect. Any system, whether it be monopoly or private, is going to have to figure out how you minimize cost under different types of uncertainty. What we can say with some degree of confidence, and I will end on this note, is that within the domestic political realm, a limited government will do better than no government at all. This holds true even if we are confident that, when we're worried about the potential source of abuses in the international realm, that a comprehensive world government is likely to do more abuse than a system of well run national governments. Thank you.

**Huebert:** Professor Epstein gave both an opening statement of 15 minutes and also a rejoinder of 8 minutes. I now call upon Professor Block for an 8 minute response; then we will go to the question period.

**Block:** I don't think there's anything wrong with seduction. Part of seduction is taking a shower or wearing a nice suit of clothes. I don't think it is fraudulent to try to seduce someone. I don't think that full disclosure is necessary. If you have to disclose, that is a positive obligation, anathema to libertarians.

With regard to monopoly, there is no such thing as a private monopoly. There can only be publicly aided monopoly. Monopoly is a grant of state privilege based on coercion. There is no such thing as a private monopoly.

In my publications on private roads, I made the point that right now when you buy a house, you get title insurance to make sure that you are the real owner of it. Under a regime of private roads, you would have to get access insurance, namely assurance that you could get in and out of your house and onto the road and not have to become a world class pole vaulter or get a helicopter. The road owner would contractually obligate himself not to pull that sort of stuff on you because he wants you to buy the house contiguous to his road in the first place.

I don't think public roads are necessary for pretzel delivery. We have had private highways long before we had public ones. The initial thoroughfares were private turnpikes and I don't see why you couldn't have them today.

I think Richard misunderstands the *ad coelum* doctrine. If the tunnel builder causes a cave in for the owner of the surface land, obviously he is building too close to the surface. That would be a violation of the surface owner's property rights. But if you left him, say, fifty feet, and there was firm terrain between the top of your tunnel and the bottom of his basement so that there would never be a cave in, then and only then would you be justified in burrowing under his land holdings. Why does he own the area way below his surface property? He didn't homestead it. And if you believe in first possession, prohibiting the tunnel or the bridge is incompatible with that doctrine as well.

This solution eliminates all the oil well problems. The surface owner didn't do anything with the oil that would entitle him to own it. The first guy who discovered, developed and tapped into that oil lake, is the only rightful owner. Anyone else putting a pipe down to this lake is stealing his oil. There is only one just owner. You don't need any "coordination."

Consider the system of statism we now have. Rudy J. Rummel calculates the total number of noncombatants killed by their own governments during the 20th century as 169,198,000.<sup>7</sup> That is not due to war. This figure is apart from wars. This is just due to states killing their own residents. A hundred and seventy million of them and many, many more millions died due to wars between governments. Surely, anarchy could do no worse.

Richard in his *Takings* book tells a story of two pies. He says there is a small pie without the government, and a much bigger pie with this institution in charge. I would reverse it and say that when the government comes on stage the pie shrinks because of its inherent coercion. There is a lack of a sense of a proportion here. The state has been one of the institutions that killed more people than anyone else; robber gangs don't come close, rapists don't come close. Richard is embracing this

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<sup>7</sup> R. J. Rummel, 20th Century Democide, FREEDOM, DEMOCIDE, WAR, at <http://www.hawaii.edu/powerkills/20TH.HTM> (last visited April 4, 2006).



evil institution in order to make it easier to get roadways built. I don't think that this is justified at all.

In his response to me he ignored my challenge about telling me the difference between a government and a mafia or protection racket and a government. Maybe he will answer that later, during the question and answer section of this debate.

I don't like this idea of anticipatory self-defense. It seems like that is what the U.S. is doing now. We have several hundred military bases in every country known to man and some unknown to man. We have soldiers posted in some countries that have not yet even been discovered. I'm just kidding here. We have got military bases there too. There is an awful lot of anticipatory self-defense. How about waiting until we see the whites of their eyes?

Richard also favors the doctrine of necessity that justifies all sorts of violations of private property. Well, I put it to him right here and now that there is a necessity. There are people presently starving in Africa, and he has a nice suit of clothes, a wristwatch, pretzels, a nice house. I say that he is acting incompatibly with his own doctrine. What he should do is sell his house, sell his car, sell all the possessions that he has over and above what is needed just for some sort of hand to mouth existence. Take that money, and because of necessity, give it to all the starving people. If he doesn't do it, and so far he has not, then he is acting incompatibly with his own view. He is guilty of a performative contradiction.

**Huebert:** We now enter the third phase of the debate, questions from the audience and responses from the debaters. No matter to whom a question is addressed, the debaters will alternate as to their order of response.

**Question 1:** Professor Block, how can you mount an attack on eminent domain, even while accepting the social contract? I mean, to take a common example, suppose you're in a condo complex. There are still some things that a condo cannot do to you. There is a such thing as a social contract, but eminent domain is not one of the things that the government can or should do.

**Block:** I would say that it depends upon the specific condominium contract. If you believe the government is a legitimate institution, it depends upon what powers we ceded to them in order to get this much-vaunted protection out of them. Yes, there are certain things that the condominium association can't do. They

can't shoot you, but they can widen the internal road, or narrow it, or take away one of your rooms if permission for so doing is stated in the contract. And if not, they shouldn't be able to do it.

**Epstein:** There's no question that with condos it is easy, because it all starts with a single owner who can supply a blueprint for dividing up the land. The point is that after you divide it up in an effort to sell shares to people, what kind of protections do you give them? They are remarkably similar to those that we find in the United States' constitution. There is no condominium association which it allows you to take this or that private room and turn it into a common recreation room, but there are rules that allow assessments to be laid usually proportionally to various benefits that are received. This becomes very tricky because some of these changes benefit only some members of the unit and some benefit others. So you have all these battles. But that is the easy case. The turnpike case is not one like that because all these private turnpikes are only assembled in the first place with the use of eminent domain powers and then handed off to private parties. So there is always a situation of state franchises and private development, which in fact is perfectly consistent with the basic situation but is not consistent with Walter's theory.

**Question 2:** It seems like, Professor Epstein, that you are arguing, that rape is wrong only because of costs and benefits considerations. I certainly don't form such decisions in that way. And I don't think that very many other people do either. Instead, we make decisions based on what is right and wrong. It isn't that we ignore the consequences, but, we have a certain system of moral rules that we follow. It would not even be possible to do it your way because we cannot make such interpersonal comparisons of utility. I am a philosophy student at Washington University and one of the things you learn is that utility is subjective. It is inside your head, and you can't take it out and look at somebody else's and put them on a scale. So, even if you wanted to make moral decisions this way, you couldn't.

**Epstein:** That is an interesting question, but I think you are confusing two things. One is the question of where and how do you make these decisions. It would be utterly ruinous as a moral and a practical matter to use a form of act utilitarianism for rape. If we did this with respect to each particular instance of rape, we would have to determine whether or not the satisfaction on one side was sufficiently greater than the harm on the other side to warrant imprisonment. The reason we have categorical rules is because if you look around and see what is generally happening, you can't imagine many situations that would go the other

way; that is, where the benefits of a rape would exceed its costs. The last thing you want to do is to give accused rapists in individual cases the opportunity to plead a utilitarian defense, because you know that there is a great danger that phony special pleading will override your basic judgment. In other words, your background norm says that the gain from rape is 10, while the loss is 100,000. Then the defendant's lawyer says, "That's just a general average. In my client's case, the gain was enormous and the prostitute didn't much care anyhow, so the cost was trivial."

So that what happens is we do make, and we have to make, utilitarian judgments all the time with respect to aggregate norms. This is one of the things we are worried about in the problem of administration. If you allow judicial decisions to be made particularistically in individual cases, the entire system will suffer a rapid degeneration.

Now, there are a couple of things about this problem which show how tricky and treacherous some of these judgments turn out to be. Consider the domain of charitable work, which even in a libertarian world is perfectly fine. The only way we decide to whom we are going to extend contributions, on the grounds that they are needy, is to be able to make utilitarian judgments about comparative need. For example, that somebody who is desperately hungry and hasn't had anything to eat for 4 days, can use a bowl of soup more than I can use my 19<sup>th</sup> bowl of soup after having just slurped down 18 bowls.

I submit to you if the radical subjectivity you think appropriate for moral philosophy was correct, then not only would you misunderstand the arguments that I made with respect to rape, but you would render the entire area of imperfect obligations for charitable work completely unintelligible. Completely unintelligible. You simply could not explain the common patterns of behavior. If you cannot explain what utility differences are, why it is that you would make a voluntary contribution for no consideration in exchange to some people and not to others? And even with respect to categorical judgments, for example, we have a categorical judgment based on moral grounds against murder, right? And this holds true even with consent. Then you would have to figure out if Walter is correct, why we retain that prohibition. It is only because of the general abuse in practice.

When you think of people who are desperately ill, racked with pain, suffer from euthanasia-type circumstances, the categorical judgments on the authenticity of consent do not seem to fit the particular cases. You get the enormous moral question as to whether or not you now have a sub-rule of cases to deal with euthanasia as opposed to the general prohibition.

Let me ask Walter a question. Your version of libertarianism has nothing to do with any system property rights ever known to mankind. On the area of oil

rights, ad coelum, anything you care to mention, it is just completely at variance. So just answer a simple question: would you or would you not accept consent as a defense to murder?

**Block:** Yes, I would certainly accept consent as a defense to murder because I believe in the right of assisted suicide.

**Epstein:** No, no. I said general defense to murder in all cases, obviously in cases of rape. That is, alleged rape. Everyone says consent, otherwise you don't have marriage. But the question is whether or not you think it operates the same way? The point I am making is that there are institutional judgments which you are blind to. Would you accept consent to a standard case of murder brought by this mythical public prosecutor who, in your world, doesn't exist? And then you say, "Yeah, I killed Huebert, but he wanted me to do it. He asked for it."

**Block:** I would accept this as a defense if I killed Huebert and he said it was okay if there was some sort of evidence for that claim. If he had written a letter or taped a video stating that he wanted me to kill him. That would prove that it was assisted suicide as opposed to murder and I would accept it as evidence.

I want to talk about this rape business and interpersonal comparisons of utility. Here is a quote from another of Richard's books: "a unit of wealth is worth more to a poor person than a rich one."<sup>8</sup> In my view, you are giving away the store when you say anything like that. You can justify all sorts of non-libertarian and even non-classical liberal welfare schemes. If you are justified in taking money from a John D. Rockefeller or a Bill Gates because they have 19 bowls of soup and give it to some poor guy without any, then you have justified every leftists' vision of the welfare state.

There are cases where we can say that a rape victim loses less than a rapist gains if you use interpersonal comparisons of utility in a loose sense. I really have no objection to doing so. But the existence of charity does not prove interpersonal comparison of utility in the strict technical sense. Charity can be justified without resorting to that concept in a non-technical sense. People do look around them and see others in worse shape and they want to help them.

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<sup>8</sup> RICHARD A. EPSTEIN, *SIMPLE RULES FOR A COMPLEX WORLD* 141 (1995).

What about the case of a prostitute who is used to having sexual intercourse all the time, and the rapist who, say, was in jail for 20 years and was really desperate for sexual services. One could then, using this loose sense of interpersonal comparisons of utility, say that utility will increase if we allowed that rape to occur. I still say, along with the questioner, that this is a moral obscenity. And yet, this is the objection that the Coase, Posner, Epstein and the entire University of Chicago Law and Economics tradition is wide open to. They maintain that maximizing wealth is the be all and end all of legal theory. If that's your criteria, then you get these anomalous cases where utility clearly runs the other way.

In Africa, nowadays, they have this view that if you have sex with a virgin, you get cured of AIDS. This isn't true of course, but suppose it were. Suppose that if you have sex with a virgin—non consensual sex, therefore rape—you will no longer have this dread disease; you will save your own life. Maybe we should legalize or even favor rape in these cases? Only a Coasean, Posnerian, Epsteinian judge would even consider such an outrageous thought. Whereas a libertarian would say, "Well, look, this is a violation of property rights. This woman owns the property rights in herself, and I don't care how much utility you get from doing this, it is just too bad. It is her body. The rapist is guilty, even though he thereby rids himself of AIDS." The only way you could get her to have sex with you—I am still assuming that as she is a virgin she could thus save your life—is to pay her. Or get her voluntary consent in any other way. If you don't get her consent, it is rape. It is a vicious, evil kind of a system, and totally unjustified, to not find you guilty of rape because utility increased thereby.

**Question 3:** Can I suggest a compromise? I'll explain it and see what you both think about it. Say that we prohibited all takings by the federal or the state government and this was only allowed on the local level. Perhaps this would be more like the condominium club, which makes it much easier to move into a community. I wonder if this proposal might be acceptable to both Professors Block and Epstein. We would have some sort of a takings, but you would limit the impact of it. So, what would both of you say about a system like that?

**Block:** This reminds me of that joke about the bathroom and the living room. If you can't tell the difference between a coercive village government and a voluntary private condo, don't come into political economy. It does not matter whether it is a world government or a state government or a national government or a town government. They are all coercive and they are all evil and they all should be ended if we are to have justice. Whereas a condo or any other such

voluntary agreement is entirely justified. So, while I am always open to compromise, I cannot see my way clear to agreeing with this one.

**Epstein:** That is a perfectly sensible suggestion, except that the evidence suggests that in many cases, exploitation by local governments is at least as bad and maybe worse than that of national governments.<sup>9</sup> Justice is straight empirical matter. Sometimes you get small isolated minorities of one kind or another. You get a powerful zoning board and they will come up to you and say we are going to wipe you out unless you sell to one of our friends in a “voluntary” transaction. The history of the Constitution and the effort to place in this document powerful federal restraints against state expropriations after the Civil War is eloquent testimony to that phenomenon.

The other point I do want to mention is that Walter has attacked Ronald, Dick and myself, but consider the cases in which the virgin is needed to ward off disease. This is very different from the Common Law Necessity doctrine. If you want to be fair you have to understand what its limits are and attack it, rather than putting forth a straw man argument, and then disposing of it.

This doctrine said that in times of immediate necessity, in an emergency in which you are in imminent peril of your own life, you may use somebody else’s property without their consent so long as you later provide compensation for the loss thereby inflicted. It has nothing whatsoever to do with affirmative duties to give generalized aid to other individuals when there are countless numbers of individuals who are able to do it.

In the rape case, with respect to the virgin, the standard argument is that transactions costs are low, and there are many different alternatives. No matter how great the need, you must go through the market instead of using coercion. So, the cases that were given are in fact cases that would receive categorical denunciation even under the traditional rules that do allow condemnation of private property for a public use. Remember, that is what we were talking about. We were not talking about private use of force for private advantage, we were talking about the eminent domain question: “nor shall private property be taken for public use without just compensation.”<sup>10</sup> That is the text of the relevant portions of the Fifth Amendment to the US Constitution, replicated in some form in every state constitution.

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<sup>9</sup> See generally CLINT BOLICK, *GRASSROOTS TYRANNY: THE LIMITS OF FEDERALISM* (1993).

<sup>10</sup> U.S. CONST. amend. V.

**Question 4:** Professor Block, how would you enforce the situation in a libertarian world where the condo or the cooperatives actually ends up taking somebody's room and turning it into a recreation room, anyway, despite the fact that it wasn't in the contract? How do you enforce that? So, how does the apartment owner, if the contract has been violated, enforce it?

**Epstein:** I think that's an absolutely unanswerable objection.

**Block:** Your question was what sanctions does the condominium owner have if the condominium grabs his recreation room?

**Questioner 4:** Yes.

**Block:** And it was not in the contract?

**Questioner 4:** Yes.

**Block:** Well, in my libertarian model, he goes to the forces of law and order. This would be the private courts if there is free market anarchism or if we have limited government libertarianism or minarchism, as Richard advocates, then he goes to the government court. In either case he says to the judge, "Look, this was not part of the condominium agreement. The contract mentioned the color of the house and the color of the curtains and the type of fence, but it didn't say anything about grabbing my recreation room. They seized it anyway. I want an injunction and I want damages. So, whoever the forces of law and order are, you would appeal to them.

**Epstein:** But if there are forces of law and order that are not part of the condominium association, they are going to have to get their revenues through taxation. It is one thing to try to minimize the role of force in human affairs, it is quite another to pretend that you can organize them where they are never going to be used in a legitimate fashion.

**Block:** I disagree. There is an entire literature that Richard isn't looking at. See Murray Rothbard, Hans Hoppe and David Friedman.<sup>11</sup> These authors talk about competing defense agencies. It is at least a debatable point, but Richard dismisses this out of hand. I claim you can have competing defense agencies without a taxation system. You go to court A because court A is your court and you go on from there. If you read what Hoppe, Rothbard and David Friedman have said about this, you understand how the competing defense agencies would work to a better effect than coercive governmental ones.

**Epstein:** No they would not. I have read that literature carefully. The claims made in it are farcical in my judgment. For example, suppose you are not quite sure who has been the source of aggression against you. What you want to do is to run an investigation in the context of multiple competing defense agencies. There are 73 different agencies from whom you have to get approval in order to run any kind of investigation. The system will collapse, and then exactly what I predicted in the *Reason* article will take place: chaos. You will get bad governments instead of good governments. The reason there are 170 million people dying is because people did not follow those principles of good government I have elaborated upon.<sup>12</sup> The reason why you have competition in a country like ours is although we deviate from these principles all too often, we don't deviate from them so far and so much as to allow us to descend into anarchy. And remember, the common meaning of the word anarchy (chaos) is not one which invites all sorts of exultations. Rather, it is something which seems to preach or to be aware of the prospects of imminent violence and destruction.

**Block:** I disagree. Etymologically the word archy means unjustified rule. It is Kant's categorical imperative: do this, don't do that. In contrast, his hypothetical imperative would be: if you want this then do that. Archy just means arbitrary rule, and I think it is totally unjustified to rule other adult human beings without their say so. I don't oppose paternalism for 3-year-old children, of course. But it is improper for adults, unless they threaten or initiate violence or fraud.

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<sup>11</sup> See generally HANS-HERMAN HOPPE, *DEMOCRACY: THE GOD THAT FAILED: THE ECONOMICS AND POLITICS OF MONARCHY, DEMOCRACY, AND NATURAL ORDER* (2001); DAVID D. FRIEDMAN, *THE MACHINERY OF FREEDOM: A GUIDE TO RADICAL CAPITALISM* (1989); MURRAY N. ROTHBARD, *THE ETHICS OF LIBERTY* (1982); MURRAY N. ROTHBARD, *FOR A NEW LIBERTY: THE LIBERTARIAN MANIFESTO* (1973).

<sup>12</sup> See generally EPSTEIN, *supra* note 8.



In sharp contrast, “anarchy” adds the prefix “an” to “archy,” and means without or in the absence of, arbitrary rule. Critics, not advocates of free market anarchism, equate this term with chaos.

We have to put these things in perspective. If I jump up in the air right now I am exerting gravitational force on the earth and the earth is exerting gravitational force on me. To put it this way would show no sense of proportion, because the gravitational force the earth places on me is way more than the gravitational force I place on it. Even so, the statement is true, that we each exert gravitational force on the other.

My claim here is that what Richard is doing is exhibiting a similar lack of proportion. He is caviling about these stupid roads and oil wells, meanwhile people are dying like flies under his system, a system he admits is a bad system because of errors or what have you. You know, we in New Orleans are experts on vampires. You have to stipulate this because, who could deny it? We are the vampire capital of the world! To me the government resembles nothing as much as a vampire. To urge limited vampirism, shows a serious lack of proportion. These vampires are out there killing people in droves. That 170 million are people killed by their own states. In addition, governments have concocted all sorts of wars. Richard is willing to embrace this present system in order to make it a little bit easier for roadways to be built, which also kill 40 thousand people a year, in traffic accidents.

**Epstein:** I’m embracing a limited form of government. I’m not defending Idi Amin or Saddam Hussein or Stalin or Hitler. You talk about a sense of proportion. But there is a stupendous, gigantic difference between governments that allow people to essentially live out their entire lives and those that murder people in their bed when they are 6 years of age. What happened in all the places in which you start with anarchy, is that a thug takes over and bad government results. So as Edmond Burke said, and it applies to you, Walter, all that is necessary for the forces of evil to prevail in the world is for people of good will to do nothing, and that is precisely what you are recommending.

**Block:** No, I’m not recommending doing nothing. What I’m doing is recommending getting rid of vampires, whether they are vampires that take just a little bit of blood or vampires that take gallons of blood. Here is a joke that is

apropos. A man asked a woman, "Would you go to bed with me for a million dollars?" and she says, "Okay." Then he says, "How about for two bucks?" and she says, "What kind of woman do you think I am?" He replies: "we have already established what kind of woman you are, we are now only arguing about the price." Well, it seems to me that we have established, to my satisfaction at least, that governments are vampires and ghouls and murderers, and we are just arguing about how many people they are murdering. I don't think that's an important discussion.

**Epstein:** Walter, are you indifferent to living in near or in Saddam Hussein's Iraq? Somehow, I very much doubt this. I think the only reason you speak as you do is that you benefit from the blessings of liberty secured by limited government. Look, Walter, let us understand one thing. When David Friedman talks about his society—I love, admire and respect David—but this is a guy whose only example is some small obscure village in the upper mountains in Iceland in 1200. You can't point to a single solitary real world example of your system working successfully. All I am saying is there is something about the tradition of limited free enterprise government that makes a lot of sense. We've got to figure it out. And in your effort to repudiate this large government view, of which I am now charged with, in effect says that everything in the tradition that everybody has ever done from the beginning of time is wrong, because they don't quite understand the vampires at the gates. I'm boggled, just boggled.

**Block:** You say that our liberties are secured by limited government. I reply that the liberty we enjoy here is in spite of limited government, because even limited government starts off as a mafia protection racket. It goes to innocent people and says, "Look, you are going to join us whether you like it or not and you are going to pay us taxes whether you like it or not." How can an institution that starts off that way, which Richard admits starts that way, how can any good come out of an institution like that?

**Epstein:** Because they are not running a protection racket. If they are doing it right, they are giving services back to the people of equal or greater value than the taxes they impose.

**Block:** Services?

**Epstein:** Consider this following mental experiment. I would like to create this large national park and what we will do is we'll say that this will be Block haven, and everybody who agrees with Walter can go there. We will seal off the boundary line, and in 20 years we will open up the gates and exhume the bodies.

**Huebert:** There are only 30 seconds left.

**Block:** Services, schmervices. The key is not whether you give services, the key is whether they are financed on a voluntary basis or not. I could give you a piece of chalk and say that's the service for taking your wallet.

With regards to national parks, I want to ask Richard a question. Richard, where would you rather meet me tonight at 3 in the morning, in private enterprise Disney Land or in New York City's Central Park which is a government park?

**Epstein:** Well...

**Heubert:** That's all we have time for. Thank you to our debaters, and thank you to the audience for coming.