

Selwyn Duke at The American Thinker has written two articles, "[Libertarianism's Folly](#)" and "[Libertarian's Folly-Part Two](#)", which he believes refutes libertarianism. However, what he has done is demonstrated a profound ignorance of libertarian thought. Libertarianism is a political theory concerned with the question of the legitimate use of violence. This is the main moral question that concerns our political philosophy. Libertarians argue that each man has exclusive ownership of his body and his property and he can dispose of them as he wishes as long as his activities do not harm the bodies and properties of other individuals. Some people may use their bodies or their property in ways that libertarians deem immoral. However, as long as these people do not physically aggress against others, the use of violence to prevent these people in their activities is immoral. This is the non-aggression principle and it is fundamental to libertarianism. Unfortunately, Mr. Mr. Duke does not even acknowledge its existence. Instead he creates libertarianism as he thinks it should be and attacks this creation of his own imagination.

Moreover, his argument begs the question that State is legitimate. He does not at all justify the State; he simply takes it for granted that the State is legitimate. Libertarians, however, assert that the State is an illegitimate and criminal institution. Thus, if Mr. Duke is to respond to libertarianism, he must offer a justification for the State and demonstrate that it is fundamentally not criminal. This lack of analysis impoverishes his argument and shows that he is not yet up to the task of grappling with the radicalism of libertarian theory. I will respond to Mr. Duke's first essay here and respond to the second one later.

Before I begin my refutation, I must start with a definition of a State and a comment on its origins so that any new readers (and perhaps Mr. Duke himself) will understand my analysis. A State is defined as a territorial monopolist of law and order, and ultimate decision making. This means that State is a final judge of conflict of all under its auspices. It is also the final judge of conflicts including conflicts involving *itself*. This is an important point for the non-libertarian to realize. Since the State is the final judge of conflict involving itself, we can expect that it will decide such cases in its own favor. We must also realize that the State has the incentive to cause conflicts and then decide such conflicts in its own favor.

It is also important to realize that all States are criminal institutions. All States have their origin in crime and deception. Murray Rothbard describes the State as follows:

Briefly, the State is that organization in society which attempts to maintain a monopoly of the use of force and violence in a given territorial area; in particular, it is the only organization in society that obtains its revenue not by voluntary contribution or payment for services rendered but by coercion. While other individuals or institutions obtain their income by production of goods and services and by the peaceful and voluntary sale of these goods and services to others, the State obtains its revenue by the use of compulsion; that is, by the use and the threat of the jailhouse and the bayonet. Having used force and violence to obtain its revenue, the State generally goes on to regulate and dictate the other actions of its individual subjects. One would think that simple observation of all States through history and over the globe would be proof enough of this assertion; but the miasma of myth has lain so long over State activity that elaboration is necessary.ⁱ

No State can function without aggressing against its own civilians. The revenue that States receive to fund their activities necessarily requires threats of violence to collect money from its citizens. As such, no State can be peaceful for it is always at war with its own citizens to collect money for its goals. This is also a necessary characteristic of the State and I will apply this fact later.

Mr. Duke begins [this essay](#) with a quotation of Thomas Jefferson followed by his own commentary. He writes

Thomas Jefferson once said, "The legitimate powers of government extend to such acts only as are injurious to others. But it does me no injury for my neighbor to say there are twenty gods, or no God. It neither picks my pocket nor breaks my leg." Now, I certainly agree with the first sentence, as it's merely a statement of the obvious. But then we have to ask, what constitutes "injurious"? And when determining this, do we completely ignore *indirect* injury? Then, if we do consider the latter, to what extent should it be the domain of government? (When pondering these matters, note that the Founding Fathers didn't reside on the modern libertarian page. They

certainly would have, for instance, supported the idea of *state and local governments* outlawing pornography and would be appalled at what is now justified under the First Amendment.)
emphasis in original

As I mentioned above, libertarianism is concerned with the appropriate use of political violence against the persons and property of people. Conservatives seem unable to grasp this point. Murray Rothbard pointed this out in a 1981 article where he wrote

The confusion here, and the basic problem with conservatives' understanding of libertarianism, is that libertarianism per se does not offer a comprehensive way of life or system of ethics, as do, say, conservatism and Marxism. This does not mean in any sense that I am personally opposed to a comprehensive ethical system; quite the contrary. It simply means that libertarianism is strictly a *political* philosophy, confined to what the use of violence should be in social life. (As I have written above, libertarianism maintains that violence should be strictly limited to the defense of the rights of person and property against violent intervention.) Libertarianism does not talk about virtue in general (apart from the virtue of maintaining liberty), simply because it is not equipped to do so. As Professor Tibor Machan has pointed out, libertarianism is a "political doctrine . . . a claim as to what is permissible for human beings to do toward each other by means of the aid of force or its threat, nothing more".ⁱⁱ

What Mr. Duke does here is broaden the meaning of the term "injury". Liberals do the same thing. Rather than focus on concrete property rights, both liberals and conservatives expand "injury" to mean essentially "anything we do not like". This expands the reach of the State into the minute details of human life because these broad definitions of "injury" eventually encompass anything and everything. And by expanding the State into these areas of life, it necessarily expands its violent tendencies into areas which humans can regulate without violence. Mr. Duke has no appreciation for the consequences of expanding the definition of "injury".

In this essay, Mr. Duke immediately does what most conservatives do and that is he assumes that the State is necessary to enforce the good. He writes

...[Libertarians] ignore not merely religion's effect upon morality, but also morality's effect upon government, as they apply their ideology not merely to law, but also social codes. Indulging "moral libertarianism," they not only oppose anti-sodomy and anti-polygamy laws, but they also look askance at social stigmas that could discourage such sexual behaviors. Not only do they oppose obscenity laws, but they're wary of courageous condemnations of the obscene. Even that most intrepid libertarian, Glenn Beck, is guilty of this. When asked during [an appearance](#) on the O'Reilly Factor whether faux marriage was a threat to the nation in any way, he laughed and mockingly replied, "A threat to the country? No, I don't ... Will the gays come and get us?" I don't know, Glenn -- ask the Europeans and Canadians who criticized homosexuality and were punished under hate-speech law.

This passage is full of inaccuracies. The first glaring one is his assertion that Glenn Beck is a libertarian. [He is not](#). A second error is his assertion that libertarians "religion's effect upon morality, but also morality's effect upon government". [We do not](#). A third error he makes here is that he assumes that libertarianism automatically means that whatever is legal is, therefore, moral. He clearly has not spent time learning about the various types of libertarians and groups all libertarians as libertines. This is a false assumption and if Mr. Duke should spend more time talking to libertarians rather than stereotyping us based on the few libertines he has communicated with.

Moreover, it does not follow that if the State permits behavior X, therefore behavior X is moral as Mr. Duke implies. This only follows if one believes that the State is the originator and guardian of morality and libertarians do not believe this. He also asserts that libertarians themselves would not police behavior they find objectionable. I cannot speak for all libertarians, but I do know that there are Christian libertarians who believe that homosexuality is sinful. If such Christians were to found their own stateless community, they would discourage this behavior. However, they would not send police officers into the

house of two men suspected of homosexual behavior and send them to jail. I suspect that Mr. Duke would have no problem with this situation since he has no qualms against anti-sodomy laws or at least he shows no qualms here.

I also suspect that Mr. Duke does not like the idea of not being able to force other people to live the moral life he deems everyone should live. Using reason to persuade people to abstain from certain sexual behaviors is much harder than simply passing laws and threatening the lawbreakers with violence. Such an argument works in conservative circles because conservatives are mentally unable to separate State-created law and morality. These are equivalent to conservatives, unless the laws being promulgated are liberal laws. But even if the laws are ones conservatives do not like, they will obey them because they intuitively place the State above their own consciences and obedience to the State above objective morality.

However, the deeper philosophical problem is that Mr. Duke does not understand the point of libertarianism. Libertarianism is concerned with the application of political violence. Libertarianism understands that all State law is ultimately backed by violence. As Mises said in *Human Action*:

It is important to remember that government interference always means either violent action or the threat of such action. Government is in the last resort the employment of armed men, of policemen, gendarmes, soldiers, prison guards, and hangmen. The essential feature of government is the enforcement of its decrees by beating, killing, and imprisoning. Those who are asking for more government interference are asking ultimately for more compulsion and less freedom.ⁱⁱⁱ

The reason libertarians oppose obscenity laws, anti-sodomy laws, and anti-polygamy laws is because these actions do not justify violence against the people involved. Two men who decide to engage in sexual activity have not done anything to warrant the police breaking down their doors and hauling them off to jail. A man with multiple wives also has not done anything to warrant the police breaking into his compound and hauling him off to jail. These actions may be immoral, but they do not justify the violent reaction of the State. Mr. Duke simply accepts that the violence of the State as legitimate, but this begs the question. He must first make the argument that the State is legitimate and then argue that these behaviors justify violently enforced laws. He has done neither.

Another error is that Mr. Duke does not examine his own moral convictions in light of the State's actions. It is clear that Mr. Duke is a Christian and as such I would believe that he would say that theft is wrong. However, would Mr. Duke say that taxation is wrong? How is taxation any different than private theft? Are the State actors now suddenly immune from the laws of God now that they are acting as State agents? I dare him to define taxation in a way that is not analogous to theft. Libertarians, on the other hand, argue that theft is wrong, period. If aggression is used to take property from one person, this is theft. The fact that a group of people got together and called themselves a government does not obviate the immorality of their action. Lysander Spooner wrote what is probably the best description of the government as robber bandit ever limned. I include the full passage here because I believe that it is a devastating rebuke to those who proclaim that taxation is voluntary and also a trenchant critique of the social contract theory of government. Spooner writes

The fact is that the government, like a highwayman, says to a man: Your money, or your life." And many, if not most, taxes are paid under the compulsion of that threat.

The government does not, indeed, waylay a man in a lonely place, spring upon him from the roadside, and, holding a pistol [*13] to his head, proceed to rifle his pockets. But the robbery is none the less a robbery on that account; and it is far more dastardly and shameful.

The highwayman takes solely upon himself the responsibility, danger, and crime of his own act. He does not pretend that he has any rightful claim to your money, or that he intends to use it for your own benefit. He does not pretend to be anything but a robber. He has not acquired impudence enough to profess to be merely a "protector," and that he takes men's money against their will, merely to enable him to "protect" those infatuated travellers, who feel perfectly able to

protect themselves, or do not appreciate his peculiar system of protection. He is too sensible a man to make such professions as these. Furthermore, having taken your money, he leaves you, as you wish him to do. He does not persist in following you on the road, against your will; assuming to be your rightful "sovereign," on account of the "protection" he affords you. He does not keep "protecting" you, by commanding you to bow down and serve him; by requiring you to do this, and forbidding you to do that; by robbing you of more money as often as he finds it for his interest or pleasure to do so; and by branding you as a rebel, a traitor, and an enemy to your country, and shooting you down without mercy, if you dispute his authority, or resist his demands. He is too much of a gentleman to be guilty of such impostures, and insults, and villainies as these. In short, he does not, in addition to robbing you, attempt to make you either his dupe or his slave.

The proceedings of those robbers and murderers, who call themselves "the government," are directly the opposite of these of the single highwayman.

In the first place, they do not, like him, make themselves individually known; or, consequently, take upon themselves personally the responsibility of their acts. On the contrary, they secretly (by secret ballot) designate some one of their number to commit the robbery in their behalf, while they keep themselves practically concealed. They say to the person thus designated:

Go to A_____ B_____, and say to him that "the government" has need of money to meet the expenses of protecting him and his property. If he presumes to say that he has never contracted with us to protect him, and that he wants none of our protection, say to him that that is our business, and not his; that we choose to protect him, whether he desires us to do so or not; and that we demand pay, too, for protecting him. If he dares to inquire who the individuals are, who have thus taken upon themselves the title of "the government," and who assume to protect him, and demand payment of him, without his having ever made any contract with them, say to him that that, too, is our business, and not his; that we do not choose to make ourselves individually known to him; that we have secretly (by secret ballot) appointed you our agent to give him notice of our demands, and, if he complies with them, to give him, in our name, a receipt that will protect him against any similar demand for the present year. If he refuses to comply, seize and sell enough of his property to pay not only our demands, but all your own expenses and trouble beside. If he resists the seizure of his property, call upon the bystanders to help you (doubtless some of them will prove to be members of our band.) If, in defending his property, he should kill any of our band who are assisting you, capture him at all hazards; charge him (in one of our courts) with murder; convict him, and hang him. If he should call upon his neighbors, or any others who, like him, may be disposed to resist our demands, and they should come in large numbers to his assistance, cry out that they are all rebels and traitors; that "our country" is in danger; call upon the commander of our hired murderers; tell him to quell the rebellion and "save the country," cost what it may. Tell him to kill all who resist, though they should be hundreds of thousands; and thus strike terror into all others similarly disposed. See that the work of murder is thoroughly done; that we may have no further trouble of this kind hereafter. When these traitors shall have thus been taught our strength and our determination, they will be good loyal citizens for many years, and pay their taxes without a why or a wherefore.

It is under such compulsion as this that taxes, so called, are paid. And how much proof the payment of taxes affords, that the people consent to "support the government," it needs no further argument to show.^{iv}

I have nothing to add. It should be quite clear to all that taxation necessarily requires violence. If Mr. Duke thinks that taxation is a legitimate function, then he proves that he condones theft. So I find it interesting that Mr. Duke accuses libertarians of being morally compromised when he is unwilling to apply his own moral rules consistently to all people at all times. He accuses libertarians of being libertines for not advocating State violence against gays and polygamists, but he himself condones theft in the form of taxation. Libertarians, however, consistently apply the moral laws of theft, murder, and fraud to all people no matter what their station in life is. That is because these laws pertain to property rights and the legitimate use of violence. So even if a Christian libertarian believes that homosexuality is a sin, he will

oppose anti-sodomy laws because he understands that two people who consent to such activities have done nothing to justify a violent interposition of their behavior.

Mr. Duke continues this essay with a discussion of worldview and politics. Once again, he demonstrates an ignorance of libertarianism. He assumes that libertarians believe in democracy and speaks in terms of political battlegrounds. He does not realize that libertarians are neither left nor right. Most of us ignore the political battle lines of left and right. Instead, we construct our political prism with freedom on one end and slavery on the other. Libertarians are on the side of freedom. Liberals and conservatives are on the side of slavery. He writes

And the proof is in the electoral pudding. Did you ever observe what groups vote for whom and wonder why? Churchgoing Christians cast ballots overwhelmingly for traditionalist candidates, while atheists and agnostics support leftists by wide margins. In fact, consider this: Virtually every group involved in something those Neanderthal Christians call sinful or misguided votes for leftists. Goths? Check. Homosexuals? Check. Wiccans? Check. People peppered with tattoos and body piercings? Check. You don't find many vampirists, cross-dressers, or S&M types at Tea Party rallies.

In light of this, do you really believe there is no correlation between worldview and political belief? In fact, is it realistic to say that there isn't likely causation here? And what can you predict about America's political future based on the fact that an increasing number of people are embracing these "non-traditional" behaviors and beliefs? The irony of Jefferson's statement is that whether our neighbor believes in twenty gods or no God, he will likely vote the same way (this is at least partially because paganism and atheism share a commonality with liberalism: the rejection of orthodox Christianity). And equally ironic is that he will elect people who do injury to the very Constitution Jefferson helped craft.

So there is a truth here hiding in plain sight: If someone is not a moral being, how can he be expected to vote for moral government? Do you really think a vice-ridden person will be immoral in business, when raising children, and in most other things but then, magically somehow, have a moment of clarity at the polls? This is why John Adams warned, "Public virtue cannot exist in a nation without private [virtue] ... "

This is where Mr. Duke's ignorance of the nature of the State in general, and the democratic State in particular, shines forth like a beacon of foolishness. I can only recommend that Mr. Duke read Hans Hermann Hoppe's *Democracy-The God that Failed* for a thorough refutation of the democratic State. It is simply not in the nature of democracies to promote moral people to high positions of power. Hoppe speaks to this fact in the following passage from his essay "On the Impossibility of Limited Government":

Moreover, because the Constitution provided explicitly for "open entry" into state government — anyone could become a member of Congress, president, or a Supreme Court judge — resistance against state property invasions declined; and as the result of "open political competition" the entire character structure of society became distorted, and more and more bad characters rose to the top.

Free entry and competition is not always good. Competition in the production of goods is good, but competition in the production of bads is not. Free competition in killing, stealing, counterfeiting, or swindling, for instance, is not good; it is worse than bad. Yet this is precisely what is instituted by open political competition, i.e., democracy....

In distinct contrast, by freeing up entry into government, the Constitution permitted anyone to openly express his desire for other men's property; indeed, owing to the constitutional guarantee of "freedom of speech," everyone is protected in so doing. Moreover, everyone is permitted to act on this desire, provided that he gains entry into government; hence, under the Constitution, everyone becomes a potential threat.^v

Hoppe gives even more detailed critiques of democracy in his book, but this conclusion is clear. It is impossible for moral men to ascend to highest branches of national government. While a moral man might become a mayor of city or even governor of a small State where the electorate shares his values, a

moral man will never ascend to the presidency of the United States. And Mr. Duke does not understand this at all.

However, what Mr. Duke understands is power and he is convinced, wrongly, that in order for society to function there must be a supreme human power, i.e, a State, to keep order. He approvingly quotes Edmund Burke who once wrote:

Men are qualified for civil liberty in exact proportion to their disposition to put moral chains upon their own appetites ... Society cannot exist, unless a controlling power upon will and appetite be placed somewhere; and the less of it there is within, the more there must be without. It is ordained in the eternal constitution of things, that men of intemperate minds cannot be free. Their passions forge their fetters.

The fact that there will always be men of intemperate minds does not, therefore, mean that we need a State. There is no reason to assume that a monopoly of violence is necessary for social order. In fact, what we are witnessing is just the opposition. The existence of the State has led to complete chaos and a breakdown of social order. The evidence of this chaos stares us in the face each day, but the State has so been entrenched in the minds of most people that they cannot interpret this evidence properly. We live with incessant war, economic uncertainty, oppressive bureaucracies, and abusive police, but for some reason no one but libertarians blame the State. Once again I recommend that Mr. Duke read Hoppe's *Democracy-The God that Failed* for a thorough explanation of how the democratic State leads to the breakdown of social order.

However, Mr. Duke does reveal what I think is his true reason for opposing libertarianism at the end of the essay-The Liberals will win. He writes:

Ultimately, the tragic consequence of the libertarian mentality is that it guarantees the left's victory in the battle for civilization. This is because, in libertarians' failure to fight for hearts and minds in the cultural realm, they cede it to leftists, who aren't shy about advancing their "values." And proof of this is in the social pudding. You see, if talk of establishing social codes and traditions sounds stifling, know that we haven't dispensed with such things -- that is impossible. Rather, the left has succeeded in replacing our traditional variety with something called "political correctness," which describes a set of codes powerful enough to control the jokes we make and words we use, get people hired or fired, and catapult a man to the presidency based partially on the color of his skin.

In other words, the real problem with libertarians is that their principled opposition to the State means that let the Left will the battle for civilization. As such libertarians should change their worldview so that that the good conservatives can take over the State and restore civilization to some pristine utopia that did not exist. This is where libertarianism stands above both liberalism and conservatism. The libertarian understands that positive change can never come through the political process of the democratic State. The State is a criminal institution and it always will be. It cannot act without threatening violence against innocent people under any circumstances. The State's very first act, in fact, is to violently threaten people who would not use its monopolized services or who refuse to pay the State for its services that they did not ask for and do not want. It is completely foolish to expect that such an institution can lead to social order and peace. Moreover, the libertarian dislikes the policies of the left just as much as the policies of the right. If Mr. Duke and his comrades were to take over the State, we would be just as hostile toward its laws and edicts.

An institution with a monopoly on violence and that is the ultimate judge in cases of conflict involving itself cannot be limited. Such an institution has an incentive to provoke conflict and then judge this conflict in its own favor, thus expanding its power. Contra conservative constitutional mythology, it is not a failure of the Constitution to prevent the expansion of the State. Since the State is the ultimate judge of its own powers, it will always interpret the Constitution in its own favor. And since it has a monopoly on violence, it can disobey its own rules when it finds doing so expedient. These necessary conditions are in place no matter who is in charge of the State.

Mr. Duke concludes this essay saying

The libertarian chant "I don't care what you do, just lemme alone" sounds very reasonable, indeed. But as hate-speech laws, forcing people to buy health insurance, and a thousand other nanny-state intrusions prove, when people become morally corrupt enough, they don't leave you alone. They tyrannize you. A prerequisite for anything resembling libertarian government is cast-iron morality in the people. And we should remember that, to echo Thomas Paine, "Virtue is not hereditary."

Mr. Duke has no argument here. He already gave away the store when he expanded his definition of the word "injury" at the beginning of this essay. Liberals argue that hate speech "injures" people and that lack of health insurance "injures" people. But Mr. Duke's argument that government should address "indirect injury" and not physical injuries means that whatever prevailing notion of injury is floating around at the time wins. At best, Mr. Duke can be upset that the indirect injuries liberals wish to see protected in laws for are not the same as Mr. Duke would like. But he has no principled opposition because indirect injuries are always relative. Direct injury such as theft of property or assault, however, is obvious for all men of reason to recognize.

Mr. Duke also displays his conservative tunnel vision because he does not at all name any of the intrusive laws that conservatives support like the drug laws or wiretapping laws or bureaucratic regulations or the Patriot Act. How many conservatives call for the complete abolition of public schools? How many conservatives call for the complete abolition of the TSA? How many conservatives argued against Bush's bailouts or his Medicare expansion? Conservatives also like to boss people around and they especially like sending young men and women to die in immoral wars for the glory of the nation.

And I need to also point out that "cast-iron morality" is not "a prerequisite for anything resembling libertarian government". Libertarians are not utopians; we know that as long as mankind is what it is, there will always be theft, murder, and other violations of persons and property. However, what the libertarian realizes, and what completely eludes conservatives, is that the State is not a solution to this problem. The State institutionalizes theft and murder on a massive scale that no private criminal gang could ever match. It makes absolutely no sense to create such an institution and then simply hope that immoral men will never take charge of such an institution. It is precisely immoral men [who seek the power of the State to rule over other people.](#)

If Mr. Duke really wants to see social order, he needs to understand that such order will never be realized through the democratic State or any State for that matter. All States are fundamentally anti-social and criminal institutions and they always will be. They cannot be reformed and they cannot be limited. However, because the State relies on the voluntary participation of its citizens, it has a weakness. If the people suddenly stop believing in the legitimacy of the State, it will collapse. This is the goal of libertarianism: to convince the people that the State is not their protector, but it is their enemy. Lew Rockwell said it best:

Let me state this as plainly as possible. The enemy is the state. There are other enemies too, but none so fearsome, destructive, dangerous, or culturally and economically debilitating. No matter what other proximate enemy you can name – big business, unions, victim lobbies, foreign lobbies, medical cartels, religious groups, classes, city dwellers, farmers, left-wing professors, right-wing blue-collar workers, or even bankers and arms merchants – none are as horrible as the hydra known as the leviathan state. If you understand this point – and only this point – you can understand the core of libertarian strategy.^{vi}

ⁱ Murray Rothbard, "Anatomy of the State", *Mises.org*, <http://mises.org/EasaRAN/Chap3.asp>

ⁱⁱ <http://www.lewrockwell.com/rothbard/rothbard48.html>

ⁱⁱⁱ Ludwig von Mises, *Human Action-The Scholars Edition*, (Auburn, Alabama: The Ludwig von Mises Institute, 1998), 715

^{iv} Lysander Spooner, *The Constitution of No Authority*, <http://lysanderspooner.org/node/64>, (originally published in 1870)

^v Hans-Hermann Hoppe, "On the Impossibility of Limited Government", *Mises.org*, <http://mises.org/daily/2874>.

^{vi} Lew Rockwell, "The Enemy Is Always the State", *LewRockwell.com*, <http://www.lewrockwell.com/rockwell/enemy-always-thestate.html>