

REVIEW ESSAY: *SELFISH LIBERTARIANS AND SOCIALIST
CONSERVATIVES? THE FOUNDATIONS OF THE
LIBERTARIAN-CONSERVATIVE DEBATE*

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Nathan W. Schlueter and Nikolai G. Wenzel: *Selfish Libertarians and Socialist Conservatives? The Foundations of the Libertarian-Conservative Debate*. Stanford, CA: Stanford University Press, 2016, pp. 215; xii. ISBN: 9780804792912.

THIS BOOK MAKES INTERESTING READING not only because of the subject but also because of the authors' approach to it. It is, in fact, an energetic and thought-provoking dialogue between a libertarian political economist, Nikolai G. Wenzel, and a conservative political philosopher, Nathan W. Schlueter. By setting aside the journalistic urge for simplifications and catering to the biases of partisans—a stance summed up in the title of the book—the authors are laying the groundwork for intellectually honest investigation of the key principles of conservatism and libertarianism and the main arguments that stem from them.

The aim of the book is not to propose a reconciliatory theory, as was attempted long ago, unsuccessfully, by Frank Mayer (1996). Today it is only

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too obvious that differences are overcoming similarities, sometimes grossly, preventing any feasible unification. Instead, the authors want to show the fundamental problems in the structure of the opposing theory. Given this goal, an optimistic reader should be aware not to expect a happy ending.

Still, there are important similarities between the two philosophies that inspired the original debate some 60 years ago (Nash 2017). Libertarianism and conservatism might share common traits in which Wenzel and Schlueter find their own points of concurrence: the rejection of modern liberalism (progressivism), the importance of economic freedom and virtue, the moral and political priority of persons, and contempt for the modern, over-bureaucratized state (5-8). All this led Ronald Reagan to remark that “the very heart and soul of conservatism is libertarianism” (Klausner 1995).

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The discussion begins with particular interpretations of what the authors believe are the ideal types of conservatism and libertarianism within predominantly American political experience.

Schlueter’s proposal (Ch. I) is as neat and attractive as it can be. It combines the historical experience of what he calls the American Founding (the American constitutional revolution and its sacred scrolls) and natural law theory conceived from an evolutionist’s perspective. Schlueter argues that the most preferable state only emerges under certain fortunate circumstances. Schlueter calls this situation the “equilibrium of liberty” and the circumstances it describes consist of liberty, tradition, and reason. The equilibrium is not invented but discovered in the process of the birth of a political culture where “opinions, sentiment, and habits favorable to liberty” (17) exist. This much echoes the Burkean narrative. Furthermore, “The equilibrium of liberty is a rare and always fragile achievement that must be won anew in every generation” (19), a venerable Hayekian insight that Schlueter acknowledges. The American Founding is the expression of classical liberalism or what Schlueter calls natural law liberalism, and here he substantially draws on philosopher John Finnis.

The equilibrium is established on the back of natural law, a moral framework for a free society. Schlueter rejects a fixed understanding of the natural law; every historical period needs a new interpretation and rediscovery of its core principles, and natural rights are derived from such conceptions of natural law (31). With the last point, a barrier is lifted to the (progressive) concept of a free-floating essence of rights.

For Schlueter, natural law is not an abstraction. It secures the “means of human flourishing,” that is, the framework for the development of

intrinsic goods such as all the things human beings naturally aspire to (knowledge, friendship, religion) (p. 28). This framework consists of instrumental goods (such as freedom from coercion and social life) that are to be secured by government. And because a vast range of human action is left to the free and spontaneous arrangements of various actors in a society, only limited government can be justified. However, sometimes a government cannot be completely neutral as to “competing conceptions of good.” Sometimes it has to secure intrinsic goods too. And against the background of eudemonistic ethics and an organicist understanding of political community, Schlueter argues for “soft-perfectionism” in contrast to the antiperfectionism of libertarians and the full perfectionism of totalitarian conceptions of society (28).

Consequentially, the “state,” “government,” or political authority, is not necessarily some alienated bureaucratic monster that preys on human wellbeing. In a society with a developed culture of liberty and fruitful traditions (understood in Hayekian terms) there exists a special relationship between the authority and members of society, and here rests a justification of political authority as such, similar to a justification of parental authority within a family. Only within such a moral and political framework can there emerge a “citizenship” that too is not some abstract entity, a social security number, a passport, or a right to vote, but shared feeling of common heritage, values, traditions, and religion, the “we-membership” of the sort Roger Scruton writes about (38).

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Nothing of this can be found in Wenzel’s “ideal-type” libertarianism (Ch. II), although it is a well-constructed and attractive proposal, at least for libertarian souls. The main idea is that libertarian natural law (and rights) theory should be accepted only as a regulative ideal, and the political economy of public choice as an appropriate instrument for reaching the ideal. Wenzel is concerned with the epistemological foundations of natural rights (47), and although he accepts the theory,¹ as an economist he can speak only the language that he is most familiar with in making his own case for libertarianism (47). He thus prefers the “simpler approach of robust political economy” (47), that is, the public choice theory of James Buchanan and Gordon Tullock (1999) with its characteristically grim account of human nature.

¹ Wenzel enthusiastically mentions John Hasnas’ concept of “empirical natural rights” (2005) as an “approximation of Lockean natural rights” (53-4).

Readers upset with the constant enlargement of the modern state in the last hundred years or so might find this reliance on public choice a sensible and useful proposal. If they are worried that the expansion of the state will eventually annihilate individual freedom, they should reject sterile and abstract theorizing with its oversimplified romantic vision of the common good (56) and look instead at the way people really behave in the world of politics. Non-libertarians especially should be warned that calling on the government to “fix market failures” leads to a dangerous Nirvana fallacy (53) of comparing imperfect with perfect, and in fact, impossible states:

Far too often, the market is seen to yield an imperfect outcome, so the government is called in to regulate without anybody asking the question whether the government will do a better job (53).

Thus, if freedom is to be preserved, institutions of a robust character must be introduced and bridles put on the political animal: “the political problem comes down to adopting institutions that will constrain bad behavior and provide incentives for good behavior” (56).

Wenzel also observes that humans are “nonomniscient” (57), and here he rejects neoclassical economics as a child of the 20th century’s trend toward mathematization and positivism that encouraged the implementation of models from natural science in the sphere of social phenomena. But the trend was widespread, and its effects more visible in those societies where it was more completely adopted. Thus, Wenzel quotes Mises that communism was “the *reductio ad absurdum* of central planning” (57) assuming that the idea of central planning naturally follows from positivistic impulses of social scientists who, in Hayek’s opinion, want to “engineer society as if it were mere clay in an omniscient potter’s hand’s” (57). Against this trend, and the introduction of new economic methodology, stood the works of Mises who demonstrated (1920) why economic calculation is impossible under socialism and Hayek, who introduced the knowledge problem (1948), which is principally unsolvable under socialism. As nonomniscient agents, humans need economic institutions that can acknowledge these Hayekian and Misesian insights and prevent any kind of social engineering. Thus, Wenzel proposes an institutional framework with only a few governmental prerogatives and with strict constitutional restrictions on governmental power, “lest the state become an instrument to impose coercively the will and knowledge of some on others” (63).

All these lead to the concept of minarchist libertarianism, where the state has only one function—to protect individual rights. All other functions of the productive state (the classical liberal state of Adam Smith that corrects

market failures and allows for a mild version of interventionism²) and redistributive (welfare) state are left to the spontaneous actions of individuals. By adhering to the non-aggression axiom³ Wenzel is at pains to reject anarcho-capitalism in favor of the ultra-minimal state. He is aware that the consistent implementation of non-aggression axiom disallows any kind of state,⁴ even the most minimal one. Yet, as we have seen, he rejects rights-based justifications of libertarianism, and in the last instance evokes (72) Buchanan's admonition: "The libertarian anarchist who dream of markets without states are romantic fools who have read neither Hobbes nor history" (1964).

Wenzel is well aware that the same problems that exist for a productive state exist for every other state (justification of taxation and political authority, defense spending) (72), and concludes again that the best hope in this imperfect world is to "provide the most robust institutions possible to cope with those facts" (73).

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What are the merits of these two philosophies? Both Wenzel and Schlueter elaborate on many of their arguments (Ch. III & IV), which can be summarized in one main critique addressed to the rival side.

(A) For Wenzel, conservatism *lacks firm principles* (86), and because of that, cannot constitute either a consistent theory or, consequently, a preferable model of social organization. Too often in human history, natural law has been used as a legitimization framework for invasion of individual freedom,

from slavery to the execution of those who did not attend weekly church services in colonial times, and from denial of a basic rights to women or racial minorities, to arbitrary deprivation of property or life by an absolute monarch (82).

² Wenzel thinks Friedrich Hayek was also a classical liberal of this sort, given his sympathetic attitude to policies like a guaranteed minimal income and correction of market failures (66). But he shows certain understanding for this mild interventionism of the great liberal, because "Hayek does not offer free rein to state intervention but provides careful conditions, arguing that redistribution must occur according to the principles of rule of law and generality (that is, there must be no favored groups) (66).

³ In what other way could Wenzel's "protection of individual rights" be understood if one has in mind a libertarian perspective?

⁴ A position staunchly defended and most thoroughly elaborated by Rothbard (1998).

The upshot is that the objective moral order cannot be deduced from natural law even if the latter objectively exists. There is an unbridgeable gap between a general understanding of natural law and specific ethical concepts. Consequently, every historical instantiation of natural law served only as a justification for state-sponsored coercion that infringed on individual rights. Yet natural law cannot be used as justification for coercion (83) since it too cannot be justified.

Does this then open the door to moral relativism? Wenzel thinks not, since moral attitudes concern, in the first place, individuals, not communities. Conservatives believe in moral norms favored by certain communities and traditions. But, Wenzel asks, “what... constitutes community?” (87), and who can determine what is or should be a social or moral norm for a community? Thus, “conservatism... is arbitrary in its claims because it seeks justification for the public imposition of private preferences” (87). And from here Wenzel goes even further, claiming that there cannot be any non-coercive state imposition of virtue (87), but without going into the discussion of why conservatives are not so squeamish about the idea that sometimes state has to impose moral values. When such action is required, society needs a morally committed government. But it is naïve to believe in the possibility of good and wise government caring for the moral wellbeing of society, and conservatism rests on a naïve understanding of human nature. That this is not just a theoretical conclusion, but also historical fact, Wenzel illustrates with the case of the “American Founding,” which in his opinion was merely a “big grab for central power” (95) conveniently presented as a struggle for higher causes.

Finally, Wenzel delivers a death sentence to conservatism:

[it is] internally inconsistent, it is arbitrary in its preferences, it involves an imposition of private preferences through public means, and it is ultimately inimical to liberty and human flourishing (90)

(B) For Schlueter, libertarianism adheres to *the reductionist understanding of human nature* and is incapable, therefore, of understanding the nature of political association. It reduces the political animal to a homo economicus (98), the “utility-maximizer” equipped only with (enlightened) self-interest, and otherwise completely inept at grasping an idea of the common good, let alone the need to sacrifice for a higher cause. But politics is much more than a struggle for limited resources: it is, above all, cooperative action (100).

This truncated understanding of human nature is mirrored in the “dilemma of public choice”—and here Schlueter strikes hard at Wenzel’s libertarianism. Public choice is either descriptive, but then untrue (e.g. people sometimes die for a higher cause), or prescriptive, and true, in which case it

makes political life meaningless (99). If everybody would agree that the public choice approach is true (and would thus yell, “the emperor has no clothes!”) there would be no need for politics. Yet this is quite an unimaginable. So, there is a need, after all, for romantics, since:

[people do] honor the important political figures and events of their history; they respect their flag; they learn their national anthem; they take time to vote even when they know their individual vote has only an infinitesimal chance of affecting the outcome of the election, and often against what libertarians regard as their own individual interests; and, in exceptional cases, they are willing to expend their “last full measure of devotion” in service to their country (101).

For these observations, Schlueter finds confirmation from no less than Buchanan himself, who acknowledged the importance of political myths and public-interest-oriented behavior (103). Schlueter concludes that “leading public choice theorists do not support Wenzel libertarianism” (104). Neither does Hayek’s classical liberalism. Schlueter’s critique of Hayek rests on the same challenges posed long ago by Michael Oakeshott (1962). Namely, Hayek’s theory assumes the very Cartesian rationalism it wants to renounce: “How can principles that are derived from the evolutionary process guide the evolutionary process? Indeed, what does “improvement” in terms of evolution even mean?” (109).

Even more, Hayek’s idea of the Open Society introduced in *Law, Legislation and Liberty* (1976) is projected through severely reduced political choice: either tribal society on the one hand, or a society where no concept of common good exists (antiperfectionist society, or the Open Society), on the other (110). As a consequence, the only feasible, proper, and historically verified choice, one in which individual freedom coexists with the common good in a productive symbiosis, is not listed on the menu.

Schlueter distinguishes moral judgments, like in the sentence “rape is wrong,” from our subjective preferences, such as “I don’t like bananas” (111). The vision of homo economicus, embodied in a libertarian picture of the world, reduces moral judgments to subjective preferences. Yet moral neutrality is “principally impossible” (115). Libertarianism tacitly fosters a specific morality that enables various sorts of nonphysical harm—e.g. harm to reputation (defamatory speech, libel, and slander), or harms to social order (open borders) (112). Furthermore, how flawed and unrealistic the libertarian understanding of human nature can be is evident in Robert Nozick’s interpretation of a self-ownership principle that cannot justify parental authority, all the more so state authority, since “it makes all forms of rule without consent equivalent to slavery” (119). Schlueter concludes with strong words:

[Libertarians] do not understand the nature of the political association; insofar as they undermine the self-understanding and norms that underlie citizenship, libertarians inadvertently assist in the growth of the managerial administrative state. If there is hope for the restoration of a decent political order, it rests in those who understand the nature of politics, the specific good of politics and the limits of politics, better than modern liberals or libertarians. That hope rests in conservatism (120).

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When it comes to the case studies of immigration, education, and marriage (Ch. V, VI), the ferocious rhetoric of ideal-type ideological narrative gives way to more sober and reconciliatory language.

This is especially noticeable in the case of immigration, where Wenzel advocates classical libertarian support for open borders without governmental benefits for immigrants and, on the other side, Schlueter espouses the argument (147), similar to the one made by Hans-Hermann Hoppe (2014), that crossing the border should be treated as entering into a zone of private property. Schlueter recognizes the complexity of the issue and the need for a more balanced approach. He admits that there are two types of immigration, both legitimate under certain conditions (that is, immigration cannot be a threat to security and immigrants must not have access to governmental benefits): citizenship-seeking immigration, and work-seeking immigration. In the latter case it is up to markets to decide on numbers—thus, Schlueter extends an olive branch to Wenzel.

Concerning education, Wenzel's argument is that the market will provide all necessary education without coercion (135). To think otherwise—that the coercive governmental apparatus would provide better education—means repeating the Nirvana fallacy. On the other side, Schlueter opts for a change of the principles on which education stands and asks for a retreat to more traditional forms where parents, families, and communities are the backbone of the educational system. This presupposes rejecting both the progressive idea of a nanny state overseeing the educational process and the libertarian solution, which can have negative consequences for children. Schlueter targets here mainly a left-libertarian vision of education, not Wenzel's libertarianism. A government should have some role, and Schlueter advocates the introduction of voucher schemes, a solution supported by many libertarians today.

In the would-be society ordered completely in libertarian fashion, the institution of marriage becomes an ordinary legal contract between consenting individuals, and it is up to spontaneous arrangements within society (churches, local communities, associations) to regulate it. Here

Wenzel suggests that classical marriage “can even be strengthened if state enforced ‘one size fits all’ marriage” has been removed (142). This is reminiscent of Rothbard’s vision of a stateless society as a predominantly conservative one (Rothbard 1998) with strict hierarchical orders and binding moral codes (except for small, ousted groups of “free-spirits” living on the fringes). Schlueter retorts that marriage as a state-enforced contract paves the way for a never-ending enlargement of the state and the demise of limited government, thus making, indirectly, a libertarian point also.

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In his final reply (Ch. VII), Schlueter stresses that Wenzel’s rejection of natural rights presupposes a version of natural rights, since there is an evident (objective) moral ground from which Wenzel assessed the development of natural rights throughout history (see p.5). In reply, Wenzel reiterates (Ch. VIII) his previously-given arguments. What we know as achieved moral order is as a rule usurpation of “a majority, or a vocal majority that has captured the political process,” usually for the sake of some “abstract” community (170).

In reply to Schlueter’s objection that obligation to moral neutrality (e.g. “government ought to be neutral”) does not follow automatically from moral skepticism, Wenzel stresses the epistemological humbleness of libertarianism. Libertarians can only “persuade” but not compel anyone to accept a particular set of moral principles. So when Schlueter remarks that libertarian antiperfectionism still invokes some concept of the common good, Wenzel agrees, but warns that libertarian “common good” is an outcome of the voluntary actions of individuals, and not imposed by the state. In contrast to a conservative vision of society, this libertarian view still allows for communist communities to exist (173).

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This book is a good read, both for “beginners” and “experts.” It offers an introduction to the subject matter, a clear explanation of the nature of the debate, a handful of citations to relevant literature, and a survey of the final theoretical reach of both political philosophies. In the end, it further strengthens the idea that there are sharp and mutual differences between conservatism and libertarianism. Yet there are also some shortcomings to the book. The arguments and counterarguments could have been presented in a more systematic, stringent, and even itemized manner so that the reader could follow the main argumentative trajectory more easily. This might have prevented unnecessary repetitions, elaborations, and summaries. But for the reader passionate for debate, this is a minor shortfall.

Still, the book suffers from one serious deficiency, although it introduces an interesting possibility at the very end. The urge to present an ideal-type, “true face” account of conservatism and libertarianism leads the authors to sidestep an analysis of the prevailing understandings of both doctrines. Today’s libertarianism is reduced not only to the opinion-moldering of the extravagant and uninfluential group that Russel Kirk called “chirping sectaries” (1981), but to a movement on the rise that elevates lifestyle liberties to the forefront of political struggle, thereby undermining the fundamental liberal concern for economic freedom. This trend challenges Hayek’s prediction, his triangular political compass (1960), that only conservatives—because of their lack of principle—will, willingly or unwillingly, adopt a progressive agenda. Today libertarians adopt the agenda too, more willingly than unwillingly, when standing alongside leftists in promoting “antidiscrimination policies” (Hoppe 2014). This trend was foreseen by Murray Rothbard, who sketched a psychological profile of the “modal libertarian” (1990), and Lew Rockwell, who underlined the important distinction between the doctrine and its practitioners (1990, 35).

Wenzel indeed, dismisses libertinism entirely, but today, when the “Woodstockian flavor of the movement” (Rockwell 1990, 6) is strongly present, it seems insufficient to discard it solely on the grounds that true-type libertarianism is not entirely opposed to the idea of rules and authority (74). At least some explanation for the resilient tendency should have been given since it too might say something about the nature of libertarianism. On the other hand, because of the same ideal-type fixation, Schlueter fails to address the measure in which the conservative movement still cherishes individual liberties and economic freedoms. The deterioration of American Founding values has been a strong tendency for many decades, and seems today to be accelerating. More generally, the book could have elaborated in greater detail the relationships these political philosophies have with other ideologies, especially socialism.

An interesting possibility emerges with the conclusion of the book. Imagine that both critiques (A and B) are true. Imagine then that there is someone who, in spite of acknowledging these critiques, still highly values shared elements of both political philosophies and rejects socialism. What would this mean for our understanding of these ideologies and of ideal-type theory modeling? Would we not find ourselves at the beginning again? Should not we seek some kind of fusion after all?

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