

PROPERTY AND FREEDOM: THE STORY OF HOW THROUGH
THE CENTURIES PRIVATE OWNERSHIP HAS PROMOTED
LIBERTY AND THE RULE OF LAW. RICHARD PIPES. NEW
YORK: KNOPF. 2000.

Every once in a while a book comes along which bodes well to explain, expound upon, and, most important, defend and justify that much-maligned institution private property rights but which turns out, in the end, to be a disappointment. Two years ago it was Bethell's *The Noblest Triumph* (1998)¹ that took on this role. This time around it would appear to be the turn of Pipes's *Property and Freedom* that fails to meet our hopes and expectations.

Although I have come to "bury, not praise" this book for its deviations from the philosophy of private property that it ostensibly defends, I must start out on a positive note, because, however flawed, Pipes does make a contribution to our appreciation for private property. It cannot be denied that the book starts out on a high plain. Certainly, Pipes is correct in locating the difficulties suffered by both Russia and later the U.S.S.R. in terms of the lack of appreciation for private property endemic in that society. And what could be more uplifting than to be told, with clarity and passion, that property rights promote stability, constrain the powers of government, enable people to capture the fruits of their own labor, enhance economic efficiency, and promote individuals' sense of self-worth (p. 4)? Also to be admired is his careful exegesis of the views on property by such philosophers as Plato, Aristotle, Ovid, Augustine, Aquinas, More, Spinoza, Bodin, Grotius, Seneca, Hobbes, Locke, Hume, Rousseau, Proudhon, Marx, Engels, Mill, Boas, Rawls, Fromm, Condorcet, and many more. This is a *tour de force* of the history of the philosophy of property rights.

Nor is this book at all behindhand in stressing the importance of possessiveness—on the part of animals, children, primitive peoples, hunters and gatherers, in antiquity, under feudalism, in medieval days—in accounting for the range and depth of property in human civilization. His history of property in England is alone more than worth the price of admission.

The author wishes to thank Ilana Mercer for comments.

¹Pipes (p. 286) is a supporter of the Bethell book, stating that the latter has "convincingly presented . . . the close relationship between property and prosperity." For a critique of this book see Block (1998).

As a historian of property, throughout the centuries and all around the world, Pipes is exemplary. And this goes, in spades, for his criticism of how property is treated under both communism and fascism. It is only his economic and political understanding of the concept—particularly in regard to the welfare state—with which I wish to quarrel.

Here, Pipes's treatment can only be considered problematic. Consider his views on the New Deal in general, and, such measures as the Social Security Act of 1935 and the Fair Labor Standards Act of 1938: "These measures belatedly guaranteed Americans the kind of social benefits that the Germans and English had taken for granted for decades. They were certainly needed" (p. 241). This is neither the time nor the place for a full-scale critique of the New Deal; suffice it at this point to state that these legislative initiatives were, if anything, the very antithesis of private property rights.

Or consider this statement:

The symbiotic relationship between property and freedom does not preclude the state from imposing reasonable restraints on the uses made of objects owned, or ensuring the basic living standards of the neediest strata of the population. Clearly, one cannot allow property rights to serve as a license for . . . ignoring the fundamental needs of the unemployed, sick, and aged. Hardly anyone contests this proposition today: even Frederick (sic) Hayek, an implacable foe of state intervention in the economy, agreed that the state has the duty to ensure for all citizens "a minimum of food, shelter and clothing, sufficient to preserve health and the capacity to work." (p. 287)

Pipes cites Hayek's *Road to Serfdom* in this regard. But there are difficulties here. First and foremost, the Pipes book is presumably one in *favor* of private property rights. How can this possibly be squared with the forced taking of the wealth of some citizens, in order to give it to others? Would not private charity be a way of helping the poor far more in keeping with the presumed goal of this book? (Olasky 1991, pp. 3-24; Hughes 1990, pp. 43-56). Second, Pipes employs the argument from authority, an informal fallacy in logic. "Even . . . Hayek says" this is not a coherent argument; it is the substitute for such. And third, it is simply not true that Hayek is "an implacable foe of state intervention in the economy," no matter how widespread is this fallacious rumor. Very much to the contrary, he makes room for all sorts of government interventions and violations of property rights (Block 1996, pp. 327-50).

Perhaps realizing something of the intellectual quagmire into which he has just jumped, Pipes attempts to pull back from the precipice with the following:

But to say this is not to grant the state the authority to use the powers at its disposal to interfere with the freedom of contract, to redistribute wealth, or to compel one part of the population to bear the cost of the self-defined "rights" of special constituencies. Limitations on the use of property imposed for public good should surely be interpreted as "takings" and adequately compensated. (p. 287)

But like the tar baby, this only gets him deeper into the pit.

Pipes has just finished, à la Hayek, justifying the welfare system.² He now contradicts himself by asserting that "this is not to grant the state the authority . . . to redistribute wealth." What else but a wealth redistribution scheme does this author think the welfare system is? Welfare, further, is the very paradigm case of compelling

²For a devastating critique, see Rothbard (1984).

“one part of the population to bear the cost of the self-defined ‘rights’ of special constituencies.” In this case, the special constituency are the poor. And as for “rights,” Pipes it is not clear what “printing press rights” means and “class rights,” even going so far as to cite libertarians Ayn Rand and Henri Lepage to this effect (pp. 288-89). The point is, there is simply no such thing as a “right” to the wealth of other people, the premise underlying the forced transfer of income from the rest of the population to the poverty stricken.³ It is one thing to contradict oneself in a large book in widely dispersed sections of it, or in other writings, but here the inconsistency appears on the very same and contiguous pages. Nor will compensation for “takings” avail this author much in the way of mitigation.

First, a “taking” is the equivalent of theft, surely incompatible with a regime of private property rights. Second, if they are “adequately compensated,” what is the *point* of stealing? Surely, adequate compensation in this context implies that which the *robber* determines it to be. Were it to satisfy the property owner, there would be no reason for the “taking” in the first place; an ordinary purchase would suffice. Suppose you own a car, and I “take” it from you, offering compensation of \$10, which I deem adequate. This is indistinguishable from a theft of the value of the automobile minus the \$10. On the other hand, suppose you place a value of slightly less than \$10,000 on your vehicle, and I “take” it, while giving you precisely \$10,000. Then, there is no difference between this and an ordinary purchase. Pipes cannot be allowed to have it both ways: either compensation for a “taking” is adequate in the mind of the original owner, in which it is not a taking, or it is inadequate in his view, in which case it is downright theft.

And what is with this “public good” business? Surely, if there is anything such as the “public good,” a dubious proposal on its face, it consists of nothing more and nothing less than the *protection* of property rights (to persons as well as physical objects), not the denigration of them as urged by Pipes with his advocacy of welfare-state socialism. Pipes explicitly rejects “group rights rather than individual rights,” but is not the right to welfare a “group right” (p. 289)?

Pipes’s view of the relationship between democracy and coercion is also somewhat suspect. He approvingly cites Hayek to the effect that “the functions of the State (should be) limited to fields where real agreement among a majority could be achieved” (p. 291). He then goes on to declaim: “This reasoning explains why government interference in the life of the citizenry even for benevolent purposes endangers liberty: it posits a consensus which does not exist and hence requires coercion.” But the implication of this is that if but majority consensus *could* be achieved, why, then, state action would *not* be coercive, and nothing could be further from the truth. For take a case where a democratically elected government, we stipulate *arguendo*, pursued policies that were popular with the majority: the Nazi persecution of the Jews. Were he to carry forth on the logic of his own premises, Pipes would have to deny that the Holocaust was coercive, since “real agreement among a majority [was] achieved” here; a consensus on this policy *did* exist. The point is, there can be such

³Pipes cannot plead ignorance of the distinction between the legitimate “negative” rights not to be molested or victimized by theft, on the one hand, and the so-called “positive” rights to food, clothing, and shelter at other people’s expense, as he discusses these, correctly on pages 245-47 (for more on this see Rothbard 1998). Pipes understands this, full well, in “theory,” but is unable or unwilling to apply these insights to the welfare state.

a thing as the tyranny of the majority. Democracy is hardly a guarantee of the respect for private property rights in persons and things.

Nor need we accept Pipes's contention that the welfare system evidences "benevolent purposes." Suppose five robbers break into the home of a family of four. As the robbers are about to leave with the owners' possessions, the owners object, on the grounds of private property rights. The criminals, being of a philosophical bent, are willing to engage in dialogue with their victims. Under the influence of Pipes, they are willing to hold a democratic referendum on the issue of whether or not it is justified for them to "take" the family's household goods. The vote proves conclusive: five in favor (the thieves) and four against (the family members.) Would it make any difference if thereupon the gang stated that it was their intention to distribute their ill-gotten gains to the poor, and thus their motives were "benevolent"? Not at all. Theft is theft, and there need be no benevolence to it at all.

Let us end on a sad note for Pipes's comprehension of the doctrine of private property rights. I quote him in full on this, one, so that there be no possible misunderstanding, and two, the better to ferret out his errors and expose them. He states:

The government is not the only entity restricting property rights to real estate. Guilty also are private associations of homeowners which arrogate to themselves quasi-governmental functions. Such associations, set up by developers to administer condominiums, cooperative apartments, and single-family planned units, have grown from fewer than 500 in 1964 to 150,000 in 1992; their rules and regulations affect an estimated 32 million people. The objective of these associations is to protect property *values* of a community by imposing strict guidelines concerning the appearance and use of real estate. Paradoxically, by protecting the values of the community's housing they infringe on the property *rights* of owners. Many of the restrictions are proper and sensible. But some communities go to extremes: they may forbid the growing of vegetables or the installation of air conditioners, limit visits by grandchildren, regulate the color of curtains, prohibit the home delivery of newspapers or the display of the American flag, etc., etc. Failure to abide by the community's rules and regulations can lead to the imposition of fines. Although in theory membership in such regulated communities is voluntary, many families have no choice but to buy into them because of price, location, or some other compelling factor. And once they do so, they lose a great deal of freedom and even privacy. (p. 253)

It is hard to know where to begin, there are so many mischievous errors packed into so small a space.⁴ The core fallacy is that ownership of property under such restrictive covenants is somehow coercive, as if people are forced against their will into making condominium purchases. If a man can be "compelled" to buy a co-op apartment because of "price or location," then there is no hope for any of us, since the same can be said of *every* possible purchase of *anything*. That is, everything that anyone takes into ownership through commercial means has some sort of price and is located somewhere or other. We must conclude that this consideration, contrary to Pipes, is entirely insufficient to establish coercion. Further, it matters not one whit what specific rules are imposed upon owners; as long as they agree to them, and are not initially misled through fraud, there is no violation of property rights. It doesn't

⁴For another statement along these lines, see Holcombe 1994. For a rebuttal, see Block forthcoming.

matter if I agree to do something truly demeaning; for example, push a peanut with my nose down the street, wearing a propeller beanie. As long as I *consent* to be bound by such rules, there is nothing amiss, as far as private property is concerned.⁵ Nor can we accept Pipes's distinction between "sensible infringements" upon rights, and those which "go to extremes." One man's extreme is another's moderation. In the event, all such contracts must necessarily be mutually beneficial in the *ex ante* sense. Were they not expected to generate benefits, they would hardly be entered into in the first place. Based on the statistics supplied by Pipes himself, they must be very successful, too, in the *ex post* sense.

In conclusion, while this author does support private property rights, his analysis is vitiated somewhat by a welter of mistakes and confusions. Perhaps a better title for the book would have been *One Cheer for Private Property Rights*.

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⁵Under voluntary sadomasochism, people assent to being whipped. Should such a person be allowed to accuse the sadist of assault and battery? No more than should one boxer be allowed to sue another for punching him. When you enter the boxing ring, you agree to being hit (above the belt). Under Pipes's dispensation, there could be no such contracts—a violation of liberty if ever there was one.