

hands off the substantive terms of labor contracts because it has to define which terms do or do not count as income. And it requires only a moderate degree of economic ingenuity to create coordination arguments for state-imposed restrictions on labor contracts designed to reduce the deadweight burden from taxation or solve subtle problems of adverse selection.

Tariffs are an even clearer case. The infant industry argument for tariffs—the idea that trade barriers are needed to help a potentially competitive industry get started—can be, and has been, recast as a coordination argument, in which one's firms activities in a new industry are alleged to produce external benefits for other firms in the industry. And it is straightforward to show that a country in a monopoly position as either a producer or consumer can use a tariff or export tax to extract monopoly returns from its trading partners.

There are many other examples of government policies that Epstein does not like but that could be defended on his principles, including government involvement in education, in research, and in the production and regulation of information. His exceptions swallow his rule, leaving us with everything up for grabs—and familiar public choice reasons to expect that far too much of it will be grabbed.

Epstein hopes to prevent this outcome by better institutional design. Perhaps that is the best we can do. But there are at least two other alternatives worth serious consideration.

The first is the extreme version of the libertarian state: no coercion beyond a monopoly on retaliatory force. Such a state will do less well for us than a state that initiates coercion in the rare circumstances where doing so produces large benefits. But it might do considerably better than the realistic alternative: Epstein's society as we can expect to see it actually implemented, in a world with plentiful arguments for extensive uses of state power and strong incentives to act on them.

The second alternative is to eliminate state coercion by eliminating the state. In that world, some coordination problems will go unsolved, making the result worse than the world that would be produced by a state run by perfectly wise and virtuous libertarians. But eliminating the state also eliminates the largest coordination problem of all: the problem of controlling the state. Given the record so far, that is a more serious problem than how to build roads without the power of eminent domain. ¶

*His first book was *The Machinery of Freedom: A Guide to a Radical Capitalism* (Open Court). His most recent is *Law's Order: What Economics Has to Do With Law and Why It Matters* (Princeton University Press). A draft of his next book, *Future Imperfect*, can be found on his Web page (www.daviddfriedman.com)*

Beyond Economics

Freedom is more than dollars and cents.

James P. Pinkerton

RICHARD EPSTEIN MAKES the useful point that libertarianism should be embedded in a practical philosophy, and he offers an elegant two-tier approach to deciding when and where to work toward the laudable goal of “expanding the scope of human freedom.” I can’t quibble with his approach to the issues that fall within his purview, but I also can’t help but observe that the most important issues of the day seem to fall outside of that purview. Epstein’s circumscribed approach to libertarian philosophy will, I am afraid, also circumscribe libertarianism’s appeal and influence.

On the biggest issues of the day, Epstein is silent. I looked in vain for words such as *drugs*, *pollution*, *immigration*, *foreign policy*, *terror*, *Iraq*, or even *Bush*. That, to me, is the definition of a narrow piece. Not that there’s anything wrong with that, but I believe libertarians have an important contribution to make on the hottest of the hot-button issues: drug laws, immigration controls, environmental regulation (including the reality that the United States is involved in a host of international agreements that affect America, no matter what we do), biotech and stem cell research, and, most of all, the “war on terror,” which affects everything from civil liberties to federal spending to the ongoing war in Iraq.

By comparison, the issues Epstein wants to grapple with fall mostly within the realm of economics, including the minimum wage, anti-discrimination rules, collective bargaining statutes, mandatory pensions, insurance regulations, price and rent controls, and tariffs. Opposition to all these statist measures is firmly in the libertarian tradition; as Epstein says, it’s all part of

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his plan to “reduce if not eliminate much of the welfare state.”

Yet while it's fine to pound away on any and all of these issues one more time, I wonder what the ROI—Return on Intellectual Investment—will be. Most people, certainly most economists, accept the general proposition that markets work, and so the fight of the future is over applying Smithian wisdom in specific cases. The Institute for Justice, for example, recently filed suit against the Louisiana Horticulture Commission, which cartelizes florists. Such market-freeing cases are important, and Epsteinian thinking can help. But for the most part, the national agenda has shifted away from economics to other issues that seem more pressing. Indeed, the U.S. seems to have settled into a complacent Clinton-Bush consensus that accepts the idea that if the economy is booming, federal revenues ought to be spent—and then some. Today prospects for reducing, let alone eliminating, the welfare state seem poor.

At the same time, prospects for expanding the warfare state—which will, in turn, further expand the welfare state—seem excellent. In today's America, the spending of blood and treasure for foreign wars—even those, such as Iraq, that violate international law and are based on government deception—is practically unquestioned. A government arrogant enough to lie, big time, will never be a modest government. And then, of course, having made more enemies around the world through offensive wars, Washington must spend more on “defense,” including homeland defense. Finally, after pledging a welfare state for Iraq (Washington is now a gold rush for lobbyists and contractors brandishing newfound expertise in anything “Middle Eastern”), it will be impossible not to keep and expand the welfare state here at home. Just days after the 1918 armistice that ended World War I, British Prime Minister David Lloyd-George promised “a fit country for heroes to live in.” Britain's subsequent socialist bender proved that it's possible for a country to win the war and then lose the peace, and thus betray its heroes.

In today's America, war veterans will soon be granted larger benefits, but such expenditures will only be an overture to the lawsuits some of

them are already filing against anyone with a deep pocket. When's the last time President Bush made a real push against the trial lawyers? He can't deal with tort reform or any domestic issue because he's too busy vindicating his foreign policy.

In addition, a government that's “strong” enough to rearrange the domestic affairs of other nations likely will feel equally confident about continuing to meddle in matters that should be private here at home, be they sexual, medical, or pharmacological. Randolph Bourne was so right: “War is the health of the state.”

Some libertarians, of course, endorse the Bush Doctrine, explicitly with their words or implicitly with their silence. They argue, in effect, that the maintenance of freedom here requires us to force others to be free. I disagree with this neo-Rousseauian argument; I predict that if the Bush Doctrineers get their way, our future politics will go the cynical and perhaps *dirigiste* way of France, as every big-governmentalizing action is justified in the name of *la gloire*—oops, I mean “democracy.”

By all means, let's have a debate about American imperialism. My fear is that if we don't raise our voices, then libertarianism, *a la* Epstein, could become just a synonym for economics. In which case, we might have prosperity, but we won't have peace, and we won't have freedom. ■

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A Moderate Responds

Richard A. Epstein

OF THE TWO basic points I made in my initial remarks, one has escaped serious criticism: that the traditional natural law justifications for freedom are not sufficient to sustain the case for individual liberty or for limited government. We are, as it were, all consequentialists now. The particular debates, therefore, are more focused. Randy Barnett and David Friedman claim that any system of forced exchanges is likely to produce more mischief than it eliminates. James Pinkerton argues that any libertarian theory that obsesses on economics runs the risk of losing the large struggles over peace and freedom. Both criticisms deserve responses.