

DOES JUSTICE QUALIFY AS AN ECONOMIC GOOD?: A BÖHM-BAWERKIAN PERSPECTIVE

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One of the most dependable ways of demonstrating the inconsistency of a general principle, theory, or proposition is to deduce some necessarily contradictory consequences from its major premises. In 1849, Gustave de Molinari confronted his fellows at the *Journal Des Economistes*—a bastion of free-market thought—with this Aristotelian truth using a disturbing alternative. Either the *laissez-faire* principle is firmly grounded and thus always applies to the production of every good, and hence must apply to the administration of justice, or this principle is partial and relative, which is to say, it is not a principle at all. Either it is logical and true that the production of security should remain subject, in the interest of the consumers, to the law of free competition, or “the principles on which economic science is based are invalid” (Molinari 1849, p. 280).

Molinari was challenging the premises on which the economic functionality of the state (including the public provision of adjudication) is based. He was addressing the legitimacy of a dichotomy which is still prevalent in economics today.

Indeed, this statement from the first modern libertarian (Hart 1981a,b; 1982; and Hoppe 1989) brilliantly underscores the tension that results from the coexistence of different analytical standards within the same logical framework. Moreover, this seemingly provocative proposition hides a more fundamental question: What is an economic good?

This elementary problem of where to draw the borders of the realm of economic analysis should elicit a common solution within the profession, but it does not. Hence, a restatement of the essential features of what constitutes an economic good may help to clarify some fundamental controversies such as whether markets can provide justice and security. Therefore, this article aims to show that these controversies are rooted in incompatible definitions of a good or, more accurately, of what makes a good an economic good.

What is at stake in the definition of an economic good goes well beyond semantics; it goes to the heart of crucial analytical and normative issues. On the

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one hand, the identification of what constitutes an economic good confers on economic propositions their epistemological status and thereafter marks out the field of application of the laws of economics. On the other hand, because of the beneficial normative implications of things identified with the very word good, more clearly delineating its meaning may help economists to avoid the temptation of overuse, especially when discussing policy prescriptions.

In 1881, Eugen von Böhm-Bawerk attempted an explicit and extensive answer to this question in his article "Whether Legal Rights and Relationships Are Economic Goods."¹ After presenting Böhm-Bawerk's definition, it will be used as a tool for critically examining some of the core concepts of modern welfare economics, namely the concept of collective goods, external benefits, and transaction costs. Because these arguments are at the forefront of the discussions attempting to justify the public provision of collective services (including adjudication), a critical reappraisal allows a refutation of the orthodox position on a primary, i.e., conceptual, level. Then the position of Böhm-Bawerk will be recast to be more consistent with his underlying theory of goods.

When analyzing the nature of the state and of its agencies for the administration of justice, Böhm-Bawerk abandoned the ironclad standard of a good to which he had been led by his detailed inquiry. Nevertheless, it is argued here that, because he had so firmly established the subjectivist framework of methodological individualism upon which the analytical basis of Austrian market theory rests, his contribution to libertarian political economy generally deserves to be seen in a positive light.

FUNDAMENTALS OF ECONOMIC GOODS

This article focuses on the fundamentals of an economic good, drawing upon the 1881 formulation by Böhm-Bawerk. As a guide to the proper method in the quest to characterize an economic good, it might be considered that the purpose of a definition is to distinguish the things subsumed under a single concept from all other things in existence; the defining characteristic must be that essential characteristic which distinguishes them from everything else. Instead of taking for granted an a priori definition, this article begins, along with Böhm-Bawerk, with the broadest sense in which ordinary language warrants the use of the term "good." By eliminating irrelevant or vague categories, an attempt is made to discover the discriminating "good-character" in the strictly economic sense.

In its broadest sense, the ordinary linguistic usage includes things that are, to be sure, "goods" but not means to an end. These consist mainly of goods which are desired, not as means to achieve ends, but as ends in themselves. Böhm-Bawerk (1962, p. 45) delivered an illustrative sample of this category: "Pre-eminent among such things are ethical, religious, and many other kinds of 'spiritual goods', such as virtue, happiness, contentment, peace of mind, and the like."²

¹Böhm-Bawerk set down, in a fully systematic manner, what is today known as the subjectivist approach of economic analysis.

²It is sometimes said that any theory grounded on a logical separation between means and ends is unrealistic because in practice the two are often amalgamated or fused into one. As demonstrated by Rothbard (1993, p. 66), the only sense to the charge concerns those cases where certain objects or certain courses of action are an end in themselves, as well as means to other ends. Nevertheless, this does not preclude the fact that the separation of ends and means into different categories is a logical prerequisite in the analysis of human action in general and of economizing man in particular.

Therefore, economic goods are, as a first distinctive feature, means. At the end of the nineteenth century, this statement was not controversial and writers on economics had seldom been divided as to this basic approach: goods are “those things, which serve human beings as the means or tools for the attainment of their personal well-being” (Böhm-Bawerk 1962, p. 39; emphasis in original).

This definition excludes certain things that enter into the causal chain of actions that lead to well-being but must, nevertheless, be barred from identification as an economic good. Those things are, for instance, the superabundant elements of the environment and the invariant qualities of the physical universe. The sun and the air, in most situations, are in unlimited abundance. Hence, they don't have to be allocated to the satisfaction of ends since they are sufficiently abundant for all human requirements. They are consequently not means and are not employed as means to the fulfillment of ends. Though they are indispensable for life, they can not serve as the object of attention of any human actor. It is in this specific sense that they are not means but general conditions of human action and human welfare (Rothbard 1993, p. 4).³

While scarcity is commonly referred to as an essential feature of an economic good, this must not be understood purely in a physical sense, i.e., a fewer number of items compared to the quantity of others. Indeed, if all means are scarce by definition, it is specifically because they are limited with respect to the actual ends that they are capable of satisfying. If, for some reason, it happens that an end disappears, the good-character of all the things that served exclusively for its achievement disappears, too. Therefore, the characteristics of a good are not inherent in things and not a property of things, but merely a relationship between certain things and men, the things obviously ceasing to be goods with the disappearance of this relationship:

Whatever importance we accord to the corporeal objects of the world of economic goods derives from the importance we attach to the satisfaction of our wants and the attainment of our purposes. The natural unit of means-of-satisfaction will be the one that corresponds to the means of satisfying one unit of our wants or to the attainment of one unit of our purposes. . . . [whatever] we accord, in the form of an estimation of value, to the means to well-being is merely a reflection and a further development of the importance we accord to our wants and our purposes. Where there is no want and where, rightly or wrongly, there is no approved purpose, there is also no value. (Böhm-Bawerk 1962, pp. 74–75)

One good does not equal another good by its physical characteristics but by the equal serviceability of its units to the actor.⁴ Moreover,

[t]he only reason at all why men desire corporeal goods lies in the prospect they afford of renditions of service. And these renditions of service are capable of attaining economic independence aside from the goods themselves. Furthermore, this characteristic is not

³See Böhm-Bawerk :

[It] becomes possible to differentiate corporeal goods from nonuseful material things on the ground that goods are such advantageous manifestations of matter that they permit man to guide the natural forces inherent in them into channels advantageous to him. (1962, p. 67; emphasis in original)

⁴The term “unit” is not used in a metric sense here.

something that is a purely incidental and secondary matter. On the contrary, it is the renditions of service rather than the goods themselves which, as a matter of principle, constitute the primary basic units of our economic transactions. And it is only from the renditions of service that the goods, secondarily, derive their own significance. (Böhm-Bawerk 1962, p. 73; emphasis in original)⁵

Then, as a matter of consequence,

it is not goods, but it is in very truth the renditions of service which emanate from those goods which constitute the smallest independent units of our economy and that the former (i.e., goods) constitute only complexes of the latter, that goods are therefore of secondary category. (p. 77)⁶

One other necessary, although often neglected, prerequisite for being a good is that it must be known as a good. Someone must have the knowledge (or at least the presumption) of a causal connection between some characteristics of a thing and the satisfaction of a need (strictly "of an end") for this thing to become a good.

Because knowledge is neither common nor floating in the air, it must be held by someone. Because there is no way to observe this knowledge directly, the ultimate proof for the social scientist that this relevant knowledge rests upon the demonstration of its usefulness through a course of action in which it is involved. Surprisingly, this crucial point has been judged secondary, according to a large part of academic literature.⁷

Also, and more importantly for this study, it is not enough that a thing be known as a potential good to deserve the name of economic good. It is necessary that the thing in question be disposable or available to us. We must possess the full power of disposal over it if we are really to command its power to satisfy our wants. Marvelous plots of land on Jupiter or Venus are for me not goods, nor are the things permanently threatened with destruction by natural disasters or spoliation by animals. Indeed, the possession of a good cannot simply be decreed: either you possess effective control over it or not.

At this stage in Böhm-Bawerk's argument, his important point is that other human beings may struggle for control of a good. Thereafter, he raises the issue of the legitimacy of possession, and underscores that: "This legitimate possession is something apart from and in addition to physical possession. And yet, for the attainment of man's economic ends, only physical possession, is economically speaking, indispensable" (p. 57; emphasis in original). Therefore, legal enforcement is only complementary to the effective power of disposal, and merely extends the latter in scope:

[If] legal rights carry economic significance only if and to the extent that they embody physical control, or at least imply a means of acquiring such control, then we are safe in setting down the following conclusions: in the first place: (1) Legitimate power of control, however distinct it may be from ordinary physical control (based on possession or

⁵This is what Lancaster will rediscover a few years later.

⁶From this point, Böhm-Bawerk draws the illuminating explanation of the concept of "wearing-out" or exhaustion of goods.

⁷If this statement needs further proof, see, for example, the literature endorsing the perfect knowledge assumption.

backed by the owner's power of brute strength), needs to be characterized by a quality akin to the power of physical control and indeed, needs, by its nature to be convertible into physical force; and in the second place: (2) This very characteristic (the absence of which reduces all law to impotence, to a desiccated form sans content) constitutes the essential quality which endows legitimate rights with economic value, or, indeed with economic character. (Böhm-Bawerk 1962, p. 58; emphasis in original)

So, if legal rights gain their economic significance from the fact that they embody effective control, their content cannot be conceived apart from or in addition to the existing thing concerned: "what is actually being acquired or conveyed is the things to which the right of ownership applies" (p. 82; emphasis in original).

At first glance, this may seem an obvious statement, but what we may call the "integration assertion" is an equally cogent refutation of all past and current attempts to introduce artificial cleavage such as those opposing productive and unproductive activities as different economic categories (Hirschleifer 1995). In some modern economic models, the activities focusing on the defense of private property are considered unproductive, whereas by enforcing control, they make (through control) a thing to be a genuine good in the first place: "Legal title to a thing, like the physical possession of it, does not develop outside of, and in addition to the good to which it applies, so as to become a second, independent good. It simply helps to make the thing a good in the first place" (p. 62).

Consequently, there is no separation at all between the enjoyment and the direct control of a thing. In the same way that Böhm-Bawerk integrates the physical thing and its economic qualities,⁸ he achieves the integration of the legal right to a thing and of the effective possession of the thing itself, which brings his point to the forefront of the modern debate on the issue of the institutional framework of economic activities.

Last but not least, a crucial point must be set down here, one that was rarely emphasized since the time it was expounded by Böhm-Bawerk:

[E]very good can be a good only for those definite economic subjects with respect to whom every one of the subjective economic "conditions precedent" [those explained above] is fulfilled. Only for those persons who feel or experience the particular want to the satisfaction of which a given thing is adapted; only those persons who are aware of the thing's adaptability; only those who possess the knowledge or skill necessary to use the given thing; and, finally, only those persons who possess the actual power of disposal over the thing—only for these persons is the given thing a good. (p. 43; emphasis in original)

Strictly speaking, then, one should never speak simply of goods as such, but only of goods for Mr. X, Ms. Y or Z, or other specific economic subjects. As it is underscored by Böhm-Bawerk (1962, p. 43), the most important difference here

⁸Böhm-Bawerk writes:

Once [it] is established, it becomes impossible to maintain, with economic seriousness, that the quality of coldness can be termed a good which exists in addition to or more especially instead of the cold water, except by indulgence in a pleonasm or a totally impermissible metaphor. (1962, p.118; emphasis in original)

that comes into play is the difference “between the individual economic subject’s point of view and the economic community’s point of view.”⁹

From a methodological point of view, the value judgment of the observer is irrelevant for identifying the economic preference of another individual. Only one particular individual can experience and recognize as goods the things that are suitable for the satisfaction of his wants. The singularity of the knowledge concerning the multitude of his ends, whether immediate or remote, can only be the object of speculation from the point of view of an external impartial observer, whether economist or not.¹⁰ Just as every good must be a good for something, so also it must be a good for somebody. This last circumstance markedly restricts the area of things that are genuine economic goods.¹¹

Let’s summarize the essential features selected by Böhm-Bawerk: (1) There must be a human need, or more precisely and less restrictively, a purpose to be achieved. (2) The thing named a good must have useful properties, which is not to be understood in a strictly physical sense (“one man’s meat is another’s poison”). (3) The potential or actual possessor of the good must know these useful properties. (4) This actor must have the ability to utilize the thing; he may know the usefulness of a thing without being able to use it himself. According to Böhm-Bawerk, this condition was lacking in Carl Menger’s (1994, p. 52) enumeration. (5) Finally, this individual must possess effective power of disposal over the thing, with special emphasis on the fact that things belonging to someone else are for him not goods.

At first glance, the fourth point may be considered redundant with the fifth, if the concept of effective power of disposal is extended to knowledge, i.e., if the control is not only physical. Nevertheless, Böhm-Bawerk explicitly justifies this distinction in calling the former purely subjective, whereas the latter is considered to be “external.”¹²

⁹For an exhaustive discussion of this topic, see Böhm-Bawerk (1962, pp. 43–45).

¹⁰Furthermore, agents are given recognition for positive causality, and the relationship between the thing and the individual leaves no place for a determinist interpretation, as is illustrated in the book’s example:

Whatever intellectual element is added we supply out of our “souls” when we react to the physical stimulus. But if we are not prepared for the fruitful reaction—if, that is to say, we cannot read or, even if we can read but are incapable of the necessary understanding or emotions, then nothing takes place beyond the physical stimulus. (Ibid., p. 69)

Beyond the outstanding modernity of this element of cognitive psychology, this assertion is so radical in its formulation and so subversive in its consequences that even Böhm-Bawerk failed to draw all of them. A patent example of this failure is his analysis of the nature of the State.

¹¹It is worth noticing, that although many logical restrictions were introduced here in order to mark out the realm of goods relevant for economic analysis, goods are not limited in number. Moreover, even if the logical category is immovable, its concrete elements are always changing. New goods are perpetually created, and as many ends are satisfied, new ends appear to each individual.

¹²For clarification see Böhm-Bawerk :

“Ability or knowledge of how to use” is lacking in Menger’s enumeration of the conditions requisite for goods-quality. I felt that it was necessary to list it as a requirement independent of and different from the factor that Menger lists next under the name of “power of disposal.” My reason for this is that the latter is a purely external factor while “ability to use” (or knowledge of how to use) is a purely subjective factor. (Ibid., p. 42, n. 2; emphasis in original)

After having disencumbered the category of goods from pleonastic and superfluous elements, Böhm-Bawerk provided more than a mere definition. Indeed, Böhm-Bawerk launched, through this definition, both an operational discriminating set of criteria and a genuine subjectivist framework for methodological individualism.

A CRITICAL REAPPRAISAL OF ELEMENTS OF WELFARE ECONOMICS

In light of this clear-cut set of criteria, some of the most important analytical tools of modern welfare economics hardly appear sustainable. Two traditional concepts, in particular, because of their explicit use of positive connotations, will be subjected to detailed examination: “collective goods” and “positive externalities.” The concept of “transaction costs” which is central to the tradition of the law and economics movement and which plays a crucial role in claims for public intervention deserves, in this respect, special attention.

Collective Goods

Collective goods, which often become public goods due to the alleged necessity that they be produced by government, are considered to have special features that other goods do not possess. According to Cowen,

A public good involves two elements: non-excludability and non-rivalrous consumption. Non-excludability refers to the impossibility of preventing non-paying individuals from enjoying the benefits of a good or service. Non-rivalrous consumption refers to cases in which individuals’ ability to consume a good or service is not diminished by allowing additional individuals to consume it. (1988, pp. 3–4)

In light of Böhm-Bawerk’s definition, what is to be concluded concerning this traditional notion, beyond its surface of analytical sophistication? Given the explicit necessity of a good being a good for someone, the notion of a collective good would have appeared rather incongruous to Böhm-Bawerk. It was clear to him that a good cannot be a good per se, whether collective or not, if it is not deemed to be so by individuals: “[f]or the whole category we are dealing with concerns not the existence of goods but only the connection of goods with individuals, or it concerns the assignment of reasons for subjective good-qualities” (Böhm-Bawerk 1962, p. 134).

Furthermore, what could non-excludability mean except that the power of disposal over this collective good would be drastically reduced by the impossibility of excluding others from its enjoyment? Obviously enough, it cannot be a good at all if it is defined as uncontrollable.

Non-rivalrous consumption does not seem to be better suited for the characterization of a genuine economic good. Indeed, if its consumption is non-rivalrous, it simply means that it is in unlimited abundance, and, therefore, that it cannot be the object of any human action.¹³ Once again, it cannot be a good at all if it is defined as a general condition of human action.¹⁴

¹³And is there any point in producing, even publicly, a superabundant good?

¹⁴For the refutation of the “technically collective” argument, see Rothbard (1993, p. 885).

Unfortunately, even though an orthodox critical appraisal (Brubaker 1975) has attempted to overcome these difficulties, it never goes beyond superficial arguments, stressing that the production of public goods

results in "forced riding" by individuals who are coerced into expressing non-existent "demands" for collective goods. Or worse a "good" in fact may be a bad, in some views, from which it is economically not feasible for the individual to exclude himself, and for which compensation may be appropriate. (Brubaker 1975, p. 157)

These circumlocutions merely admit that the production of collective goods in no way results in goods production, but instead, in enforced redistribution, i.e., in common language, spoliation.

Positive Externalities or External Benefits

The supposed problem of external benefits is a major justification for governmental activities. Though not directly using the word, Böhm-Bawerk alluded to the concept. A non-controversial definition of external benefits explains the issue as follows: "an externality exists whenever an individual's actions affect the utility of another individual. Positive externalities are those that benefit others" (Cowen 1988, p. 2), and its normative corollary: "Such benefits are not accounted for in the market and a subsidy is required to correct this defect" (Brownstein 1980, p. 93).

A candid Böhm-Bawerkian might raise two questions: Benefits for whom, and a subsidy to be taken from whom and required by which standard? According to Böhm-Bawerk's approach, the only valid problem is the problem of control. Typically, contracts allow the internalization of externalities, since they aim at insuring control of a stream of services, as in the famous example of the beekeeper and the tree grower. For the beekeeper, the presence of the actions of his neighbor are, among many other things, a general condition of his own actions. If he wants to secure his production, making it less dependent upon the whims of his neighbor, he can buy the whole land, or set up a simple agreement with the neighbor to engage in production for several years. In short, he can buy more control over these things. This long-term contract is nothing more than a capital good in the sense identified by Böhm-Bawerk (1962, p. 100), i.e., a good of remote order.¹⁵ In this particular case, it is the contract that (through control) transforms a general condition of action for the beekeeper into the category of genuine economic good.

Nevertheless, another famous line of attack has been advanced by Paul Samuelson, according to whom the existence of externalities annihilates the realm of the private sphere: "What are we left with? . . . With a knife-edge pole of the private good case, and with all the rest of the world in the public good domain by virtue of involving some 'consumption externality'" (Samuelson 1969).

The difficulty with this position is that it proves too much: every action leads to externalities. Indeed, we are all benefactors of others' actions, present and past.

For instance, Rothbard (1993, p. 888) asks, "which one of us would earn anything like our present real income were it not for external benefits that we derive from the actions of others?"

¹⁵Cheung (1973) demonstrated with an empirical study that real farmers through contract relationships had precisely overcome the impending disaster predicted by welfare economists.

As a matter of fact, the external benefits argument is double-sided: On the one hand, the recipient is charged with free riding. He doesn't pay for the benefits he gains from the actions of others. The recipient is denounced as a "free rider," a man who wickedly enjoys the "unearned increment" of the productive actions of others. This line of reasoning is a perfect illustration of self-contradictory concepts. Insofar as these words make sense, in order for somebody to give something, he must own the thing, i.e., according to Böhm-Bawerk, have the power of control over it. But externalities are precisely the non-controlled results of one's action. So, in no way can anyone make a gift of them.¹⁶ Furthermore, how can there be such a thing as "compulsory benefaction?"

On the other hand, the benefactor is suspected of underproducing the external benefits that are worth so much to others. Here again, some slight self-criticism can be found, but it is not based on conceptual grounds. Kenneth Goldin (1977, pp. 53–71), for instance, advocates as a source of misconception an unconvincing lack of imagination: "for many years, exclusion from the services of lighthouses and bees was asserted to be impossible, not because it actually was, but because economists lacked the imagination or empirical studies to show otherwise."

Along with Böhm-Bawerk, I would say that they rather lacked a single cogent and unambiguous analytic standard of what constitutes an economic good.

Transaction Costs

The concept of transaction costs is sometimes used in conjunction with the common externality argument in order to argue that neighbors may not coordinate spontaneously because of "high transaction costs." It is a concept which encompasses many different features: "transaction costs are defined as obstacles to market exchanges that interfere with or discourage the process of transacting. In the presence of transaction costs, externalities are often considered a source of market failure" (Cowen 1988, pp. 2–3). Their reduction then becomes an economic imperative. Indeed, "In the absence of transaction costs, externalities are not a source of market failures, because the relevant parties can bargain their way to the optimum" (p. 2).

Let us assume, for the sake of the argument, that transaction costs are barriers to exchange. But, even so, in what sense is an exchange an end in itself? In order for an exchange to take place, each party must consider the thing owned by the other as a "better economic good" than his own. Therefore, the knowledge of the existence and the availability of a good is an imperative condition for this thing to be a good. How could there be frustrated potential exchangers if they are not even aware of the existence of a psychic profit opportunity? Moreover, in what sense can a transaction be satisfactory if it is not voluntary? For whom and by what standard?

We are drawn back to Böhm-Bawerk's emphasis on the difference between the individual point of view and the economic-community point of view.

Regarding the issue of forgone opportunities, this static view of the market underestimates (if not ignores) the central part played by the entrepreneur within the real world. It is precisely because people disagree about what constitutes the

¹⁶Just as in the famous statement of Proudhon, "Property is theft," the concept of gift, just like the concept of theft, must refer to some definition of property.

most profitable use of resources that entrepreneurs make profits and become actors in this discovery process called the market.¹⁷ Finally, with collective goods, external benefits, and transaction costs, we have eliminated from the category of goods—groups of things which are as extensive in number as they are ambiguous in their nature.

THE ADMINISTRATION OF JUSTICE: BÖHM-BAWERK'S POSITION REVISITED

The Orthodox Positions According to the Economic Analysis of Justice

Instead of reviewing seriatim all the different orthodox positions advocating the status quo, i.e., for the public monopoly of justice, the previous discussion suggests that Böhm-Bawerk's definition can be used as a powerful lever that allows for a radical refutation of these approaches, from a conceptual standpoint. As a matter of fact, most of these positions are encompassed in general theories of the state, which seldom address the administration of justice per se. These arguments range from, on the one hand, a mere repetition of principle¹⁸ and arguments from intimidation¹⁹ to, on the other hand, highly sophisticated mathematical models arguing the instability or the non-viability of anarchy (Hirschleifer 1995).

However, all other authors resort systematically to either the transaction-costs argument, the external-benefits argument, or the collective-good argument in order to sustain their claim for the public administration of justice.²⁰ Consequently, these theories can be and actually are refuted, on the mere basis of conceptual inconsistency: they are unsound because they resort to irrelevant economic categories.

But curiously enough, for the purpose of his study, Böhm-Bawerk did not draw such definitive conclusions from the illuminating standard he established. After exposing in the most apodictic way the severely restricted conditions under which a thing can deserve the name good, he decreed the government an economic good. He did this using arguments that were in contradiction to results he had obtained from logical inquiry. Despite this aberration, after a brief presentation of Böhm-Bawerk's insights on the institutions of justice, a reappraisal of the subjectivist framework he set down will be offered, from a libertarian perspective.

The Self-contradiction of Böhm-Bawerk

After he had made a thorough examination into the nature of candidates for the status of a good, acknowledging the central role of power of disposal,

¹⁷That is what the French etymology of the word reveals: "entrepreneur" literally means in-between-taker.

¹⁸Douglass North (1981, p. 23; emphasis added):

the state trades a group of services, which we shall call protection and justice, for revenue. Since there are economies of scale in providing the services, total income of the society is higher as a result of an organization specializing in these services than it would be if each individual in the society protected his own property.

¹⁹James Buchanan (1975, p. 4): "when we examine it carefully, anarchy does not seem to be able to set down the ground principle allowing the organization of social order, even if we stay within the boundaries of strictly interpersonal relationships."

²⁰For an exhaustive presentation of these arguments see Landes and Posner (1975, pp. 1–46; 1979, pp. 235–84).

Böhm-Bawerk addressed the question that is also at the heart of our present discussion:

Only in the rarest instances would the physical strength of any one individual suffice to preserve the physical control that is indispensable for the preservation of his economic requirements against the attacks of other individuals and especially against the wishes of the community. In this connection, therefore, the power of disposal and control which relies on individual physical strength, must seek outside assistance. . . . And that assistance is effected through the administration of justice. That administration proceeds along the following lines: The first step consists in a ruling by the court as to whether or not the necessary presuppositions are in force, by virtue of which the instrumentalities of the community may be invoked; then the enforcement agencies of the state lend their physical support to the community-member entitled thereto, in order to place him or maintain him in the position of factual physical control of the thing in question. . . .

Hence a legal right or the legalized power of disposal over a thing is nothing more nor less than a necessary re-enforcement supplied by a politically organized state of the physical power which is needed by the owner of a good as a condition of its economic utilization. (Böhm-Bawerk 1962, pp. 58–59)

Thus, the economic function of legal rights and of their enforcement closely parallels that of physical possession of a good. Both identify a species of the power of disposal and, in combination with each other, they constitute the complementary constituents of complete economic control.

Note that Böhm-Bawerk gives a functional definition of the “agencies of state” which leaves space for various institutional arrangements. But then, he anticipates the modern professional opinion:

Under the economic conditions prevailing in our society, the desired complete and assured power of disposal over goods is, so to speak, divided between two agencies. The first is the strength of the individual, the second is the power of the state as represented by its agencies for the administration of justice. The natural power of disposal possessed by any individual economizing subject would be inadequate. For it would probably be at a disadvantage against the unlawful attacks of other individuals. (Ibid.; emphasis added)

In fact, he further describes the government as a public-good phenomenon, anticipating the free-rider argument, considering that “only a very tiny fraction of the total advantage derived from the state’s institutions impresses itself upon any individual as a direct and positive rendition of service” (ibid., p. 132).

What of the criteria of being known as a good, being under actual control, and mostly, being perceived mostly as a subjective good? These traits are not to be found in the government provision of justice; can his own theory of what constitutes a good be used to establish that these traits subsist in such government provided “goods?” The compelling evidence is that of a typical ad hoc argument. Although it is a realistic, non-holistic theory of the state, inner contradiction is obvious and inescapable.

Böhm-Bawerk as an Inadvertent Contributor to Libertarian Theory?

Apart from Böhm-Bawerk’s surprising backward leap, it seems unfair to classify him among those who make the usual claims for the provision of public justice by

the state. First, while he suggests that the government should play a role in social organization, his description of the state is still highly minimalist. As a matter of fact, he describes the state as a functional complex of resources aiming exclusively at achieving the protection of property rights, i.e., the administration of justice.

Second, Böhm-Bawerk's (1962, p. 132) theory and definition of economic goods sets up, incidentally, an entire subjectivist framework of methodological individualism. In the same way that, in the theory of rights, "voluntariness and purposiveness," are the generic features that characterize all action (Philon 1979, pp. 1171–96), Böhm-Bawerk's five conditions identify the generic features that characterize all subjects of economic analysis. Further, they do so in a visionary way, expounding in the context of legal-rights analysis and proposing a unified system of thought that integrates the economic, legal, and institutional aspects of economic analysis. In retrospect, this system is astonishingly similar, from the analytic point of view, to the one which gives libertarianism its outstanding analytical power.

From the perspective of history of thought, this singularity should qualify him as an early contributor (although an inadvertent one) to the political economy of libertarianism.

In conclusion, Böhm-Bawerk unerringly centered his analysis on some of the most basic problems in the theory of economic goods. The prerequisites he formulated and drew together constitute a dazzling achievement and a cornerstone for Austrian economic analysis, mostly because they provided a case of universal principle and not of degree. Building upon Menger's foundation, he established an epistemological guideline, that may be called, retaining the analogy with the theory of rights (Philon 1979), a "principle of generic consistency." From a methodological standpoint, the essential implication is that the knowledge that something is a good must be demonstrated: not only must preferences be demonstrated, but the very character of something being a good must itself be demonstrated.

Although this sounds moderate and reasonable, it appears that most mainstream policy prescriptions (like public provision of collective services), when subjected to the Böhm-Bawerkian criteria, do not withstand analysis. Hence, the alternative that Gustave de Molinari stressed in 1849 is still relevant today, and the challenge is the same: either economists must approach their discipline as a coherent, integrated whole, so that such basic concepts as what constitutes a good may be readily understood, or it will grow increasingly fragmented, broken into pieces of unintegrated analysis.

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