

VOLUME XXIV, NUMBER 2, SPRING 2024

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A Journal of Political Thought and Statesmanship

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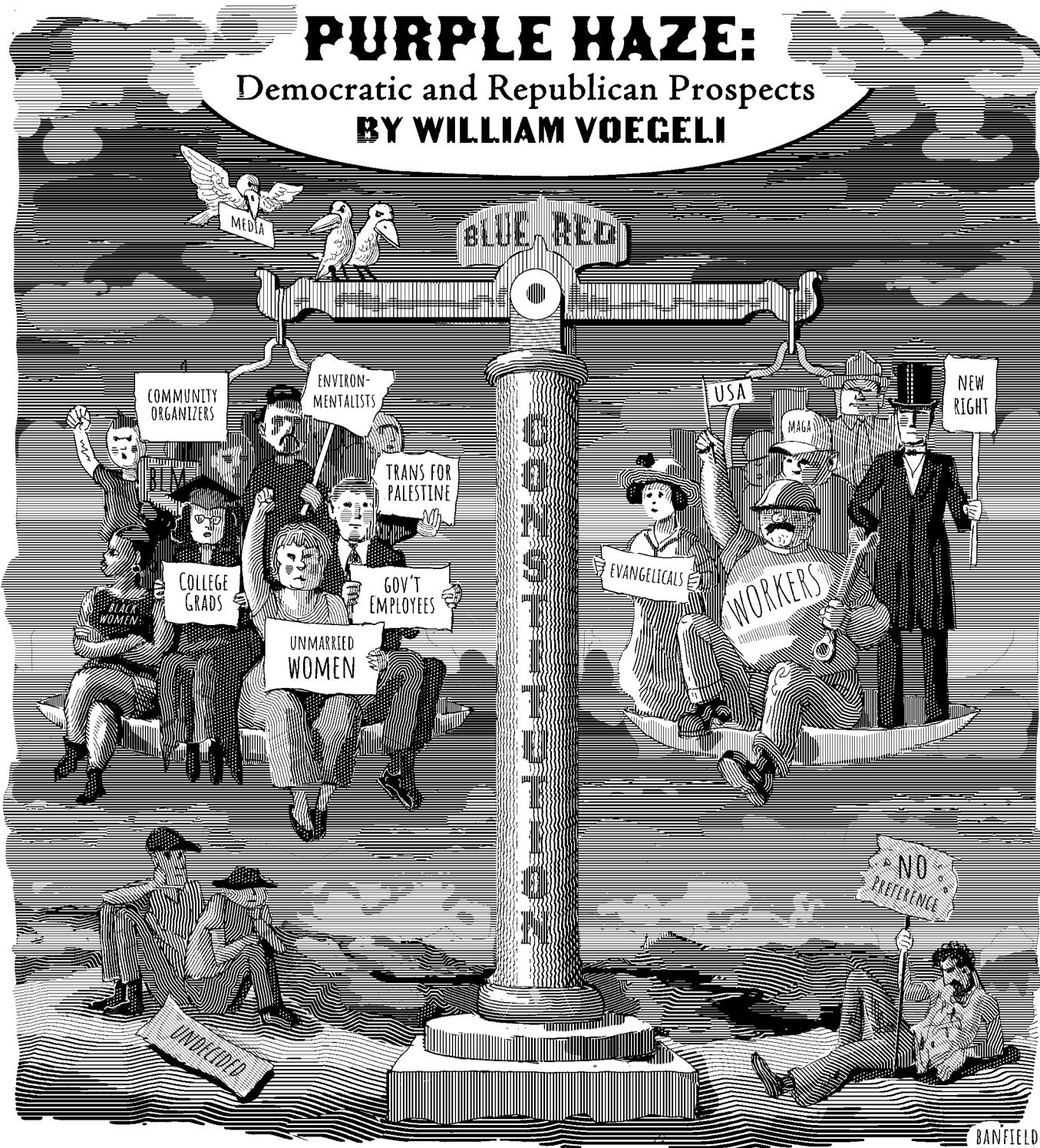
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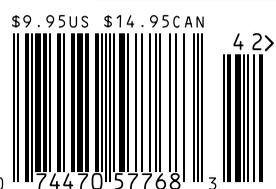
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National Conservatism: A Symposium

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A Publication of the Claremont Institute

PRICE: \$9.95

IN CANADA: \$14.95

Book Review by Randy E. Barnett

ORDERED LIBERTARIANISM

The Individualists: Radicals, Reactionaries, and the Struggle for the Soul of Libertarianism, by Matt Zwolinski and John Tomasi.
Princeton University Press, 432 pages, \$35



IN JULY 2019, I ATTENDED THE INAUGURAL National Conservatism conference, organized by the Edmund Burke Foundation and held at the Ritz-Carlton Hotel in Washington, D.C. The conference featured an all-star lineup of conservative speakers, from Tucker Carlson to J.D. Vance. As a self-identified libertarian, I decided to register and attend because I wanted to hear for myself what this new National Conservatism movement was all about. I didn't want to rely on secondhand accounts in the press or even in conservative media.

It soon became apparent that the speakers didn't have a firm idea either about what National Conservatism is. Each was pitching pretty much the same nostrums they always pitched, only now cast in more populist rhetoric. But there was one surprisingly per-

sistent refrain. About every 20 minutes or so, a speaker would take a shot at "libertarians" or "libertarianism." Often these shots seemed completely gratuitous. But they became so regular, it was amusing.

AS I SAT AND LISTENED, I WAS REMINDED of an old joke about two Jewish men who meet every day on a New York City park bench. One of them would always be reading a virulently antisemitic newspaper. Finally, the other man could no longer restrain himself and he challenged his friend: "Saul, why do you read such a Jew-hating rag when there are good Jewish newspapers you might be reading instead?" "I'll tell you why," Saul replied. "When I read our newspapers all I see are pogroms and hate crimes against Jews. It's just so depressing and frightening."

Holding up the front page of the antisemitic newspaper, he continued: "But look here. According to this paper, we own the banks, we own the media, and we rule the whole world! I prefer good news."

In the ballroom of the Ritz-Carlton, libertarians—far from being a small and rather marginal group—turned out to be running the world, controlling the Republican Party and even the U.S. government, including the Supreme Court. For the two days of the conference, it felt good to be so powerful.

In fairness, the Natcon speakers were not attacking a straw man. There really are libertarians who advocate for something like open borders, or who fail to acknowledge a "culture war" or who are on the wrong side of it. There really are libertarians who view liberty as an end in itself rather than a necessary political



means to the pursuit of human flourishing. (There are also libertarians who are “America First” in their noninterventionist foreign policy, though I didn’t hear anyone in this crowd giving them credit for that.) The positions being attacked were those advocated by the Cato Institute or in the pages of *Reason* magazine.

ON THE OTHER HAND, FOR THE PAST decade or two I’ve noticed a growing rump group of libertarian intellectuals and activists—many of whom happen to be lawyers or law professors—who dissent from some or all of those positions. Some have even stopped describing themselves as “libertarians” so as not to be identified with such policies. Not me. I remain a libertarian. As I describe in my new book *A Life for Liberty: The Making of an American Originalist*, in my junior year at Northwestern University I went from being a William F. Buckley conservative to a libertarian, and in my senior year taught an accredited seminar on libertarianism. Then, in the fall of my first year of law school, I met and was befriended by Murray Rothbard and the entire New York circle of libertarian intellectuals. By my second semester I’d joined the board of directors of the Center for Libertarian Studies (CLS), which held annual libertarian scholars’ conferences, the papers from which were published in its *Journal of Libertarian Studies*. Libertarianism in the 1970s was an internally contested intel-

lectual project, not a rigidly fixed set of policy positions.

THE FIRST BOOK TO RECOUNT THE RISE of the modern libertarian movement was Jerome Tuccille’s satirical *It Usually Begins with Ayn Rand* (1971). It was later surpassed by Brian Doherty’s superb and generally accurate *Radicals for Capitalism: A Freewheeling History of the Modern American Libertarian Movement* (2008). Both, however, tended to focus on libertarianism’s sometimes colorful, clashing personalities more than its ideas. In *The Individualists: Radicals, Reactionaries, and the Struggle for the Soul of Libertarianism*, Matt Zwolinski and John Tomasi provide a much-needed intellectual history of the movement, at a moment when libertarianism could use some rethinking.

Zwolinski is a philosophy professor at the University of San Diego. Tomasi was for most of his career a popular political science professor at Brown; he now heads the Heterodox Academy in New York City. Both have identified as libertarians their entire careers. They are accomplished teachers, not journalists, and this shows in the remarkable sophistication they bring to identifying, unpacking, and describing the various strains of libertarian thought, all the while being entirely accessible and engaging for a general audience.

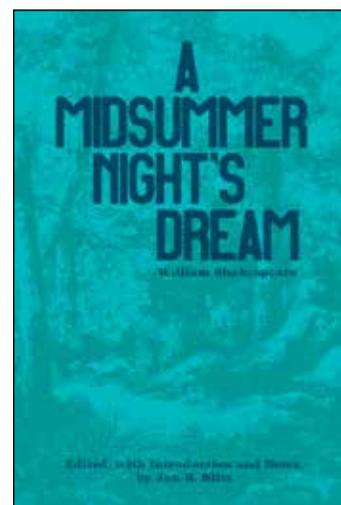
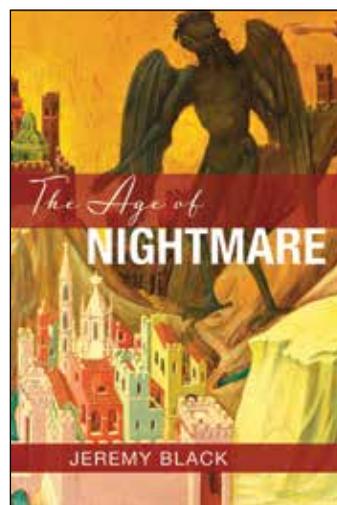
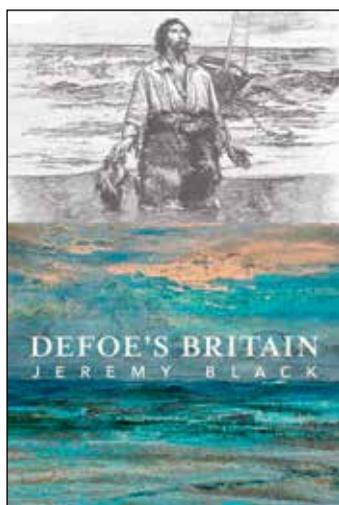
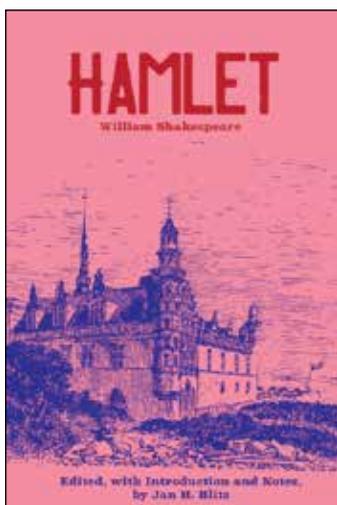
In their telling, the Natcons might be closer to the mark than I’d imagined. Considered

in its full breadth and depth, libertarianism has been remarkably influential, perhaps even dominant, in both contemporary conservatism and liberalism. But libertarianism has also been far more dynamic and diverse than is normally thought—even by libertarians themselves.

THE AUTHORS’ FIRST AND MOST IMPORTANT move is to argue that libertarianism “is best understood as a family of political theories rather than a single theory.” From the beginning, “what it means to be a libertarian—its key philosophical commitments, its policy implications, its natural political alliances—has been the subject of vigorous and persistent contestation.” Zwolinski and Tomasi reject the “notion that libertarianism is self-interpreting—that its political conclusions can be discovered through a simple, unilinear deduction from first principles,” a notion they acknowledge has long been part of its allure. “But this notion falters,” they insist, “when we widen our historical lens. Understanding libertarianism as a cluster concept, with each set of ideas subject to a range of interpretation, one can see why so many ‘libertarianisms’ have evolved.”

And widening the historical lens is precisely what the authors set out to do. They contend that “libertarianism has a longer, wider, and more diverse history than is commonly believed.” In both Europe and the United States,

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libertarianism was not simply a 20th-century phenomenon, but developed much earlier as a more radical version of late 18th- and early 19th-century classical liberalism. Libertarians “radicalized the classical liberal principles of property and free trade into nearly absolute imperatives.” For classical liberals, “individual liberty was merely a strong *presumption*.” For libertarians, the principle of liberty “is universal in the scope of its application.... Its moral force is definitive, overriding any and all other competing moral values, including the ‘public good’ to which classical liberals so often appealed to justify state action.”

It will come as no surprise that libertarianism can be traced to opposition to state socialism. But Zwolinski and Tomasi argue that, while this is true of libertarianism in Europe, where state socialism was a real threat during the 19th century, it was not the case in the U.S., where socialists were still marginalized kooks and crazies. American libertarianism, they maintain, first arose in opposition to the evils of chattel slavery. Ever since my own immersion in the 2000s in American antislavery constitutionalism, I’ve recognized the remarkable family resemblance between radical abolitionism—which also came to embrace anarchism—and modern libertarianism. Zwolinski and Tomasi connect the dots. Not until the 20th century, after slavery’s demise and the rise of the worldwide international Communist movement, did American and European libertarianism converge, as American libertarianism eventually did with modern anti-Communist conservatism.

THE *INDIVIDUALISTS* IDENTIFIES SIX markers that the varieties of libertarianism hold in common: “private property, skepticism of authority, free markets, spontaneous order, individualism, and negative liberty.” As they sketch these six markers, Zwolinski and Tomasi find that “libertarians interpret and express these shared ideas in different ways.” Property rights, for example, “can be affirmed by libertarians simply as being *among* the weightiest of rights—a position common among contemporary classical liberals. Or, at the other pole, *every* right can be seen as being but a species of property right.” So too with spontaneous order: “[O]n weaker readings, such orders are seen to play a vital and underappreciated role within free societies.... By contrast, on stronger formulations, spontaneous orders provide *all* the rules and institutions needed for society to function.” “Each marker is itself a continuum,” the authors explain, “making available a wide range of intermediate ways that each of our six common traits might be expressed.”

Rather than proceeding chronologically, the book links modern libertarianism to its historical roots thematically, with a chapter devoted to each of its six markers, while highlighting the internal diversity of libertarian thinking. The presentation is so rich and nuanced a book review can’t do it justice; you must read it for yourself. When you do, you’ll see that for the past 150 years or so libertarianism really has permeated our political culture in the ways that so riled the Natcons, which means it has permeated modern conservatism and liberalism to a far greater degree than libertarians themselves like to admit.

As a lifelong libertarian scholar, I learned a great deal myself about the movement. And I found no false notes among the facts with which I was personally familiar, including the way in which the authors characterize my own writings on liberty. Although I’ve never considered myself to be a “Humean,” this description of my approach to natural rights and natural law in my book *The Structure of Liberty: Justice and the Rule of Law*,

There comes a point at which the size and scope of private corporations can pose as great, if not greater, threat to liberty than government power.

first published in 1998, is astute. My views since then, however, have been subtly changing, which brings me to another important feature of *The Individualists*.

IN ADDITION TO IDENTIFYING THE SIX markers of libertarianism, Zwolinski and Tomasi also identify three “waves” of libertarianism. The first was the 19th-century opposition to slavery and state socialism already mentioned. The second was the post-New Deal libertarianism we most commonly think of: the libertarianism of Murray Rothbard, Ayn Rand, Robert Nozick, and David Friedman, as well as the less radical libertarian economists Friedrich Hayek, Milton Friedman, and James Buchanan.

Before reading this book, I might have stopped the chronology of modern libertarianism there. Zwolinski and Tomasi, however, stress the existence of a third wave that, at present, consists of three apparently divergent strands: bleeding-heart libertarians, left-libertarians, and paleo-libertarians.

To simplify, bleeding-heart libertarians like Zwolinski and Tomasi “are distinctive in taking social justice seriously. Sometimes that concern takes the form of an embrace of a positive, as opposed to merely negative, understanding of freedom.” Bleeding-heart libertarians “are also more sensitive to issues of *structural*, as opposed to merely individual, injustice, a feature that leads them to take a different view on questions of race than traditional libertarians.”

Left-libertarians, “by contrast, are primarily driven by worries about concentrated and monopolistic power.” They are “severe critics of ‘crony capitalism,’ which they see as the product of collusion between private actors and the state.” They are also skeptical if not hostile to the institution of “private corporations,” the rights of which they do not equate with those of natural persons.

Paleo-libertarians focus their attention on the link between freedom and culture. For them, a free society “would be one with a deep popular *commitment* to freedom and to the moral and cultural factors that freedom presupposes. Freedom is the absence of coercion, but such freedom does not entail, and is in fact incompatible with, the absence of traditional moral and cultural restraints.” By the time of his death in 1995, Murray Rothbard had migrated to this camp.

It would be characteristically libertarian to view each of these as mutually inconsistent rivals for the mantle of true libertarianism. But for some time now, my own thinking has developed along all three of these seemingly divergent paths at the same time. I’ve already been contemplating how libertarianism needs to be updated, refined, or reconceived. For present purposes, I will limit myself to what I see as four fruitful lines of potential improvement.

FIRST, I AM NOW INCLINED TO SUPPLEMENT my Humean-Hayekian defense of natural rights or justice with a more Aristotelian-Thomist conception of natural law or the good. I have in mind the kind of approach taken by my teacher Henry Veatch in his tragically neglected book *Human Rights: Fact or Fancy?* (1985), which provides a persuasive account of how “the common good” relates to the natural and inalienable rights to life, liberty, and property.

This natural law approach in which liberty is seen as instrumental to the good of human flourishing overlaps with the concerns of paleo-libertarianism. It also resembles the “fusionism” of *National Review*’s Frank Meyer, who was commonly misunderstood to be advocating a coalition of libertarians and con-



servatives around common concerns. Rather, as Zwolinski and Tomasi acknowledge in a footnote, Meyer's fusionism was an attempt to properly understand libertarianism itself. "[W]hile Meyer is often described as seeking to create a fusion between libertarianism and conservatism," they observe, "he explicitly repudiated this aim and stressed that his actual intent was to create a fusion between libertarianism and the idea of *virtue*."

Second, I would expand on a fact noted several times by the authors in passing: libertarianism in its more radical varieties is best considered a form of what philosophers call "ideal theory." The natural rights that libertarians insist are primary adhere to persons by virtue of their humanity, and independent of any government. In this regard, libertarianism is a theory of ideal justice in the "state of nature" without any government. Such a world would, by definition, lack any national borders. What libertarianism also needs is a theory of the second best. Libertarianism needs to be better accommodated to a non-ideal world—a.k.a., the real world—of competing nations. That conception would take seriously the competition among differing forms of government which are better and worse from a libertarian perspective.

This is one thing National Conservatism's Yoram Hazony gets right in his otherwise problematic book *The Virtue of Nationalism* (2018). The political order, he writes,

is much like the economic order. The reality is that no human being, and no group of human beings, possesses the necessary powers of reason and the necessary knowledge to dictate the political constitution that is appropriate for all mankind. Anyone tending to a skeptical and empirical point of view will thus recognize the advantages of a nationalist order, which permits many independent national states and allows them freely to compete.

All this sounds very Hayekian. These differences can justify some national regulation of international travel across geographical borders, be it for tourism or residency, to

preserve this beneficial diversity of political forms.

THIRD, THE SEPARATENESS AND DIVERSITY of competing forms of government entail a need for a theory of citizenship that libertarianism now lacks, but which was understood by 19th-century antislavery constitutionalists, and eventually by the antislavery Republican Party. Because the natural rights around which libertarianism is organized would exist in a state of nature, libertarians lack a coherent theory of civil society and *civil* rights, privileges and immunities that come with membership in one of many competing regimes.

Some of these "privileges" are positive, not negative, in nature. At a minimum, a "second-best theory" of libertarianism would recognize the positive right to "the equal protection of the laws" that safeguards one's retained natural rights. As one Republican congressman stated during the debate over the Reconstruction Act of 1867, "the first duty of the Government is to afford protection to its citizens."

What's more, such a theory might recognize that "public-private" and "government-nongovernment" are not one, but two distinct binaries. Free citizens may rightfully be excluded from private-nongovernmental spaces such as our homes and our beds, and from private-governmental spaces such as military bases. But free citizenship may carry with it the privilege of accessing *public* spaces and services, whether governmental (like streets, sidewalks, and parks) or nongovernmental (like places of public accommodation and common carriers) without being subject to arbitrary discrimination. This too was recognized by Republicans when they enacted the Civil Rights Act of 1875, which barred such discrimination on the basis of race. (The Supreme Court then erroneously held the act to be unconstitutional because it applied to private rather than to state actors.) The positive nature of some of these civil rights would extend libertarianism beyond negative liberty rights—as bleeding-heart libertarians have urged.

Fourth, libertarians need to be as concerned with corporate state fascism as they

are with state socialism. As some 19th-century libertarians recognized, there comes a point at which the size and scope of private corporations can pose as a great, if not a greater, threat to liberty than government power—especially as the two become intertwined in ways that are difficult to disentangle.

Imagine, for example, if the current handful of cell phone providers began electronically screening our calls for subversive communications, canceling those who were found to transgress some alleged moral norm. Would the fact they are "nongovernmental" make them any less a threat to individual liberty? Here, left-libertarians' concerns about monopoly and their antipathy to publicly traded corporations come to the fore.

AN ARGUMENT CAN BE MADE THAT what I am describing is really "classical liberalism," not libertarianism. Indeed, several libertarian apostates I know now call themselves "classical liberals," and I get why. But, as Matt Zwolinski and John Tomasi show in *The Individualists*, libertarianism is a far more protean term than even modern libertarians think it is. And so far as I know, none of these expat libertarians has repudiated the fundamental primacy of liberty or the six markers shared within the libertarian family.

When the modern libertarian movement was just getting started, we all wished we could come up with a less weird sounding label. Since the 1960s and '70s, however, the name "libertarian" has been mainstreamed. The speakers at the Natcon conference at the Ritz certainly thought so, and they weren't wrong about this. Libertarianism is a name worth preserving, and a political philosophy worth defending, from the Left and from the Right. But it is also a philosophy that merits further development and refinement to be of practical use in the real world.

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