



WOODS: All right, so we're starting off, given how much stuff you've done in a lot of different areas and how much original stuff you've done — you've had an opportunity to dig into the nooks and crannies of libertarianism and libertarian theory and scholarship. And I wonder if in the course of doing that, you said to yourself we really need more work done in this area or that area, or we're a little bit weak here; I wish we were stronger here. Sometimes I think people look at libertarianism, especially young people, and they view it as a closed system, like that everything's already been written.. You know, Mises already wrote his books, and we already know how this would work and that would work and how we answer this question and that question. But are there specific areas where there should be more work done that would be helpful?

So I have not conferred with you about what your examples of this are, so I'm just going to go with whatever you say. So start off with what would be your first suggestion.

MURPHY: Well, I think, in terms of just developing the theory, that property rights and how do people come to own property, I actually think that there should be more work done on that. Like, for example, some people may know who Rob Bradley is, and he's done a lot of work on how do you use homesteading theory. And Murray Rothbard was his dissertation chairman for his PhD, and so he was trying to develop it when it comes to mineral resources. So the big picture is, of course, people like the homesteading principle, but how do you actually apply that? And there's lots of interesting thought experiments, like David Friedman's raised some objections, and I don't know that the standard Rothbardian has a crisp answer to that stuff.

So just to give you an example of what I mean, Tom: somebody walks up to the edge of the ocean. The first human who discovered the ocean, what can he — like if he takes a little thimble full of red dye and dumps it in the ocean, does he own the whole ocean now? Things like that. Or you have a plot of land somewhere, and suppose there's this huge deposit of oil underneath that goes out hundreds of miles in various directions, and you drill down and you hit that. What do you have the right to? Is it the oil just below, in terms of if you're looking at a map and you saw where your fence was and it went straight down? But when you pump barrels of oil to the surface, doesn't that reduce the oil that somebody else who might be 10 miles down the road if they drill down and were hitting the same deposit, the same pool of oil underneath the surface? So lots of issues like that. I think there could be a lot more work done on that.

WOODS: Okay, now that's one of these areas where I do hear critics of libertarianism raise this. Or sometimes it's friendly critics. Sometimes it's people within our tradition who say homesteading just doesn't answer all problems, or at the very least, you have to realize that in particular circumstances, there are just contingent facts that need to be dealt with. How would it be applied in this particular case? And so in other words, libertarianism can provide you with a kind of a framework as to how to steep yourself in the problem, but then, as in the case of minerals, for example, there's going to be more information necessary in order to come up with a complete answer. Is that what you're saying?

MURPHY: Sure, yeah. Like in practice, how would that play out? And so yeah, that's not a critique; that's just an area of where you have the general principles, but just how do you

apply it more? So that's like normal science, if you want to use that sort of thing, rather than a paradigm shift. So yeah, that's how I would do it there. Or even, and I know this might get into issues with people in terms of IP, but like radio spectrum, stuff like that. It's not obvious that — there would be a legal theory that developed, but before humans knew about radio waves, even if everybody was trying to obey the nonaggression principle or whatever they would have called it back then, once people understood how radio stations worked and then the possibility of a "pirate" radio station broadcasting and interfering with what the tower from the big, established corporation was doing down the road. Things like that, where it's not so much information, but really there are scarce things involved there and it's not obvious who owns the airways.

Or even can a plane — like for example, in a free society, in a Rothbardian world, if a plane wants to take off from New York and go to California, how does that work? Do they have to get permission from every homeowner along the route because in principle something might fall off the plane and land on your roof? So it's not clear just how do you apply, even if we all agree on what the basic framework is — *Oh, you know, self-ownership* — and then when you find unowned natural resources and somehow you — you know, some people like the idea of you mix your labor with it, but other people say that's kind of an arbitrary thing. But whatever the principle is, it's not clear in practice: okay, how do judges make rulings in the real world even in a free society?

WOODS: By the way, I do want to do an episode later in this week where I'm going to take some listener questions, where they're the kind of questions people would ask Walter Block, but not quite that crazy. So it's not one-legged Martians on the moon, and what would their rights be. It's nothing like that. But still, some of the difficult ones that we have to face, like children, for example.

MURPHY: Can I tell you my favorite Walter Block story in that regard?

WOODS: Please.

MURPHY: I think he'd be fine with me sharing this. So recently I had this zany idea, and I emailed and I said, "Walter, we should cowrite an article where the premise is going to be: if the Genesis account were true, then the God of the Old Testament would be the rightful owner of the entire universe, and therefore could set whatever rules he wanted and he wouldn't be a tyrant; he would just be the landlord." And Walter wrote back and said, "Bob, this is pretty weird. Let me think about that." So I thought that was kind of an accomplishment, that I got him to say this is weird.

WOODS: That is an accomplishment. That is an accomplishment. I don't know if you heard of Walter Block Week on my show, but it had my favorite moment in the history of the show, which was the very last episode of Walter Block Week, I asked for a preview, a sneak preview of some of the topics he's covering in *Defending the Undefendable* part three. And he starts listing them, and I just burst out laughing and I begged him for mercy. I said, "Stop, Walter, stop. I can't take it anymore."

So anyway, but so we're going to do some hard questions. I was thinking here about, as you say — hard questions in the sense of there's some emotion packed in them maybe, and it's hard to really reassure people that they would be taken care of in a libertarian society. And maybe there's some overlap with this kind of topic. This was more like where do we need more technical investigation done. All right, so that's the first one. What's another one?

MURPHY: I don't know if this is a specific thing, but just in general, I'm uncomfortable with the sort of armchair approach to legal theory that sometimes comes out of libertarianism. It almost sounds like they're saying, *Oh, in a free society, this is what the law would look like*, as opposed to these are the general principles by which judges making private rulings would influence the evolution of this market-driven legal process. And so it almost sometimes

sounds like they're centrally planning the legal system. And so I don't know, do you get what I'm saying, or do you want me to elaborate it?

WOODS: Well, it might help for folks who have never heard this kind of thing before.

MURPHY: Okay, well, I think that sometimes it comes off as people saying, *Oh, well in a libertarian world, and then from first principles, we can just reason and know that this is the way the judge a rule on such-and-such*, and it seems like sometimes those discussions don't leave any scope for the idea that, well, no, the judge is supposed to be applying the legal principles in novel situations, and there's a sense in which the laws over time — so I guess you could say it's more of a discovery process. And I realize some people are going to say, *Oh, that sounds like Hayek. I don't like Hayek; I like Rothbard.*

And it maybe that's part of the issue, but I'm just saying some of the arguments by which people discuss what the legal system would look like in a libertarian world, if they were going to say what would the food service industry look like in a free society, they usually have the caveat, like, *We don't know, of course, but probably this would happen or things along these lines*. But I'm saying sometimes when it comes to libertarians talking about the legal system, they're pretty sure about exactly, *Oh, what would happen is there would be two rival defense agencies, and they would have previously signed a thing*. And it just sometimes to me, it seems like they're really sure exactly what it's going to look like and they don't leave scope for the idea that, well, no, we don't know actually.

For like the things we were saying before, Tom, about the mineral rights, or can airplanes fly over or do they get permission, or how would radio spectrum be allocated, that sort of thing, I think a lot of libertarians would assume that what needed to be done was to just sit in a room and think about it for 18 hours, and then go ahead and type it up and go, *There, I just solved it*, when I'm saying that no, actually, I think it's more that, in practice, people would bring lawsuits against each other in a free society, and then private judges who had expertise in that area would render an opinion, and maybe that would survive over time or get overturned. So that's what I'm trying to get at, that I think like we hold up the common law, for example, often in libertarian discussions, as, *Oh, this is a great thing*. And I think that some of the legal principles emerge out of that, dare I use the phrase, spontaneous order.

And then especially like in the Rothbardian tradition, I think sometimes, because they're so afraid of being nihilistic or something, that they err on the opposite direction, where it's almost like a centrally planned thing, like, *Yeah, these are the features of a libertarian legal system*. And it gets pretty specific. A different analogy would be, like we could talk about, what if education were truly free, what would that look like? And certainly, we can speculate, but we wouldn't be able to pinpoint what would the curriculum actually be. And I worry sometimes that that's the analogue in discussions of a private legal system or judicial framework and how that comes off as, *Oh, the judges would rule this way, because they would believe in the nonaggression principle, and therefore, clearly, this is the way to rule on this kind of a case*.

WOODS: Okay, so, I think, by the way, we're kind of obliquely hitting on a larger point, which is that we get the point that you're making that we can't in detail answer a lot of these questions in the absence of lived experience and seeing how it works out in practice on the market. And for some industries, I think people would be willing to accept that and say, yeah, of course I can't know how the computer industry would organize itself and how the firm is going to be integrated, if at all, vertically or horizontally or whatever. I mean, you just have to see.

But the trouble we have making the pitch for like a radically anti-state, non-state society is people are willing to accept, yeah, we are ignorant about how some things would work out, but I'm not willing to roll the dice on the actual structure of society itself, namely law and defense. I mean, I don't really want to wait to see how that works out, because maybe it won't. There's a possibility that it won't. And then it becomes a tougher sell, which is why I

never start with those issues. I get them skeptical about everything else. And then by the end they say, "Yeah, these things would probably work themselves out."

MURPHY: I mean, that's certainly true rhetorically, and I can see why people wouldn't want to talk about that, but I don't think that explains the particular thing I'm talking about. In other words, I don't think it's that a devotee of Rothbard or something wants to provide assurance; I think it's more that no, I know that this is the way it would work out. Or if it didn't work out this way, then it wouldn't be a libertarian world. I guess maybe that's one way of putting it.

WOODS: Yeah, yeah. All right, Bob, what is number three on your list?

MURPHY: So it's related to that, what's considered to be like a libertarian approach to abortion. So it has to do with — you know, Walter Block's evictionism is certainly involved, but it's more general than that, so I'm not just limiting it to Walter's particular exposition. But in general — and I remember when I was younger and I thought this was *the* great solution, the libertarian approach of saying things like we can sidestep the argument about when life begins, and maybe the only non-arbitrary point is conception, but nonetheless, if the woman doesn't want the fetus to be using her body against her will, well, sorry, but that's it. That's it.

And so I think the problem with that — and this kind of ties into the earlier one, so this is just a particularly hot-button, sensitive point that people are going to get emotional about — that it's using sort of like abstract principles and thinking that's all you need to just dive in and render an opinion on something in terms of a legal ruling. So let me just say more generally, it's not obvious to me in a free society — so the whole world is Rothbardian — and there's a cruise ship crossing the ocean, or a cargo ship or whatever, and the captain or the crew, they discover there's some eight-year-old kid that's a stowaway. He ran away from home, and he thought it'd be an adventurous thing, and he goes on the ship, and they discover him while they're out to sea, I don't think it would be legal just to toss him overboard. And yet that would be the implication of a lot of these libertarians who say, *Well, it depends. If the captain is the proxy for the shareholders who own the ship, it's up to him, and you know, that's tough. But maybe out of the goodness of their heart, they'll let the kid stay.*

So things like that, where I don't think it would just be a complete tyranny of social justice warriors or something to say in a situation like that you can't just throw the kid over. Now, you can come up with extenuating circumstances, like if you're in a lifeboat, and there's only enough food to go around by the time you think you're going to get rescued, and somebody swims up to the boat and the people are saying, "No, no, stay away. We don't have enough food for you," and the guy climbs in any way. Maybe then you can knock him out and throw him overboard or whatever. But in general, that's not the issue. Just throwing the kid overboard because, *Sorry, this is our property, and we didn't invite you on here. You're a trespasser* — I don't think that would actually be legal. And so in other words, not merely just that, oh, if a company did that and then the public found out, they would get hurt in terms of sales and so it'd be bad PR. I mean, certainly that's a fallback, that even if you said, strictly speaking, yes, that'd be legal, but they probably wouldn't do it in practice.

So things like that, that I think there are areas of the law, that just starting with the NAP, and *Let me think about this for three minutes, and now I know the answer is, that a judge has to rule this way; otherwise, he must not be libertarian.* I think that fails to appreciate how complicated actual judicial opinions are or cases are, because normally what happens is, there are several principles implicit in the law, and in a given case, they might conflict with each other. And so the judge's job is to see which of these principles actually applies here, or is the more important or is there some deeper principle at work that kind of summarizes or gives the earlier ones and now I'm giving the more full treatment? So that's an example of the kind of thing I mean, that it's not that the answer is right or wrong, but I think actual legal principles are going to be a lot more complex in the real world.

And certainly all of the stuff I just said doesn't mean, *Oh, so that's why we need to have an election every four years to have a president who's going to appoint judges, and then they have a monopoly jurisdiction*. No, of course the current system is nutty. But I'm saying I think sometimes, certainly among like Rothbardians who like to be system builders, I think the vice of that is that they can lead you to think, *Oh, I just need to reason about this and figure out what the whole apparatus of the legal system would look like in a free society*. Just like to say we don't know what the physics literature would look like in a free society, I'm sure the state has distorted the progress of science; likewise, we don't know what the legal code would look like in a free society. We need to try freedom first and see. Have the best legal minds go into it and not be perverted by the state, and then let's see what a free society law code looks like.

WOODS: Yeah, yeah, yeah. Okay, I had a lot of people actually wanting to get you to talk about the law question, but we've actually done two episodes on the abstract question of private law, by the way, so I'm going to link to those. Of course we'll have all of Bob's episodes linked at TomWoods.com/1602 All right, number four.

MURPHY: So this one's more — now I'm getting less in terms of the theory, but more like just libertarians and how they argue online sometimes annoys me. Can I do that?

WOODS: Yeah, why not? I don't think you're alone in feeling that way.

MURPHY: [laughing] Yeah. So it's not that it's annoying, but I just noticed something. So libertarians are often, when it comes to what's called tax incidents — like, *Oh, Trump's going to make foreigners pay those taxes, right?* No, no, no. Prices will — like even if the IRS or whatever at the border said to the foreign company shipping in goods, "You have to write a check to the US government," that doesn't matter. What matters is what the world price would be, and prices would adjust. And so ultimately, it's the consumer in the US who's bearing the full brunt of the tariff.

Okay, whether that's true or not, because I actually think it depends on elasticities, but let's just say okay, fine. But when it comes to the question of income inequality, and who pays taxes, and the Democrats saying the rich need to pay their fair share, libertarians just quite straightforwardly look and see, well, who's writing the biggest checks to the IRS? And oh, it's the top 1% of income earners pay — I don't remember the percentage — a third of it or whatever of the total income tax. How much more do you want them to pay? And so it's a minor point, but I'm saying, actually, that's kind of inconsistent, that strictly speaking, shouldn't you be checking to see — Like in other words, suppose Bernie gets in and makes a big surtax on millionaires' incomes. Well, technically, does that mean that some millionaires now might leave the US and go elsewhere? That reduces the supply of millionaires earning income in the US, and therefore, that raises their pretax income, such that once the tax gets levied, they're not bearing the full burden of the tax. That's the shareholders or the prices of the products that their firm sells that's hiring them.

So my point is just I think there's an inconsistency there, where it depends on the argument as to whether you just look at who's writing checks to the government and saying that's the person bearing the burden of the tax. But if that doesn't give you the answer you want as a libertarian, then you'll do the adjustment elsewhere. So that's an example of the kind of thing I mean. So I've seen other examples that I might not be able to pull up at my fingertips here, but things where it's not that in any given application it's crazy or dishonest; it's just the way libertarians tend to handle certain questions, the tools you use or the depth of the analysis differs, and it just so happens that it always ends up with what the libertarian answer is.

WOODS: All right, fair enough. And we don't want to fall into that, certainly. All right, what's the last one you have?

MURPHY: The arguments over what's called school choice. There are a lot of libertarians that are really big into voucher programs and things like that. And I happen to be skeptical of it.

I'm very concerned that's going to give the government even more of a backdoor, so that instead of bringing the public schools or the government schools closer to the quality of private schools, I'm worried it's going to be the other way around.

But putting that aside, just a lot of the rhetoric. People will say stuff like — and I just had Corey DeAngelis on my podcast, so I let him answer this charge that I'm going to levy. But they'll say things like, *Oh, private schools are good enough for Senator Warren to send her kids to, but she just denying that to the average citizen because she's against school choice*, and things like that. And so maybe in some cases, there is genuine hypocrisy involved. But I remember like when Rand Paul got beaten up and then went to the hospital, that one of the progressive critiques was, *Oh, Rand Paul's not afraid to use his private health insurance, but he's not willing to let everyone get health insurance. What a hypocrite*. So like, that's crazy. That's clearly not hypocrisy.

So again, some of the rhetoric that I've seen a lot of people who call themselves libertarians, when it comes to this issue of school choice — or they'll have slogans like, "We're advancing the crazy notion that poor people should have just as much right to an education as rich people." It's like, you would not use that argument anywhere else.

WOODS: In any other situation. Yeah, that gets on my nerves also. I was thinking, in terms of things where we could use more work, maybe climate change. I mean, I know you've done a lot of work, but in terms of like an ancap, maybe you're the only one who's really seriously worked on it. And so I mean, as important as your work is, I'm sure you would be happy to have an extra helper out there.

MURPHY: Sure, yeah, and even on that one, technically, it's still a working paper [laughing], that I tried to say what would a free society look like. So you're right, Tom, just to make it clear for the listener, the way things progressed in the climate change debate, originally, there were a lot of people who were against government intervention for that reason who would appeal to the fact that, hey, it's not clear cut — the physical science, in other words, to say, don't just take Al Gore's word for it. And of course, that's with the whole spectrum too, that the proponents of this stuff conveniently like to label it all as climate denialism. So my joke is, "Geez, imagine that there are grown men who still deny there's such a thing as a climate. What's wrong with these people?" That that's such a goofy term.

But then the problem is if you're putting all of your weight on the idea that, well, no, actually, probably global temperatures won't rise that much, and maybe the effects won't be so bad — the problem with that is, okay, but that makes it sound like you're just conceding if it were the case, that unrestricted by the government, emissions of CO² and whatever would spell disaster for humanity, that then you would need to have a global government action to stop it.

WOODS: Right, so we need an answer to that, and that's what you've been working on. And we've talked about that a number of times on this show and on *Contra Krugman*, so I'll also link to those episodes. TomWoods.com/1602 is going to have a lot of great resources for everybody. All right, let's leave that here, and we'll pick up on some other topics tomorrow. And then as I say, as the week goes on, I've got some challenging ones, but not ones that old Murphy here hasn't thought of and come up with some kind of clever way of weaseling out of — [laughing] no, of solving. Solving, that's more the word I was looking for. All right, and by the way, everybody, if you haven't started listening to *The Bob Murphy Show*, Bob's podcast, then I don't know what's wrong with you. BobMurphyShow.com is the website, so you should go listen there. I was the very first guest on *The Bob Murphy Show*, episode number one. So you guys go and listen and enjoy, and we'll see you tomorrow.