



WOODS: We're 60% of the way through Bob Murphy Week, but we're nowhere near done with the challenges for Bob. These are toughies. We've got some tough questions for Bob. So here's another one. I had a fellow named Carlos Morales on *The Tom Woods Show* all the way back in 2015, and he was from Child Protective Services or he'd worked there for some time, and he just repudiated the whole thing, and he's more or less a whistleblower about them. So we had a very interesting episode where he talked about some real-life examples of horrible things gone wrong.

But at the same time, there are children who were in very, very bad situations. So the question I have – and again, I'm getting this from a listener – is, in a Rothbardian society, how would we ensure the safety and security of children? So something like Child Protective Services is not by any means the best answer, but at least there is some system in place right now for children who are in danger, abused, neglected. So how would we investigate claims of child abuse in a society without a state? And how would we remove a child from an abusive home if it should become necessary? And are there any resources, has there been any real work done by people in our tradition on this? And I remind people who are listening who might be confused, who might say this is a role for the state: what we're trying to investigate is what would happen in the absence of the state, the ultimate libertarian situation where there's no coercive apparatus involved. Could we nevertheless solve these kinds of problems? Has anybody done work on this? So that's the series of questions that I'd like you to take a crack at.

MURPHY: Sure. So let me just remind people, just to warm them up in case they haven't really thought much about this particular issue, but I think there's probably a big chunk of your listeners, Tom, who whether they agree with it or would at least be sympathetic to the proposition that so-called military defense by the US government is actually them starting problems and arguably makes the average US citizen more vulnerable to a foreign attack, especially if you include terrorism, than would be the case if the Pentagon hadn't existed in the last 50 years. So far from providing defense, it actually makes us worse off in addition to committing a bunch of horrible crimes in its own right.

Or there's plenty of libertarians who would tell people: don't ever call the police, period. Someone's breaking into your house or whatever? It is a mistake to call the police, because they would probably make the situation worse. So even though thought they ostensibly exists to provide law and security, a lot of people would say, no, because when things go wrong, it's so bad that on net, it would be better to just don't call them.

So likewise here, even though, yes, there certainly is child abuse and there are bad parents and things like that, there are lots of horror stories, not just one-off things, but just systematic abuse of foster homes where there's a lot of systematic abuse occurring and the people are getting the kids sent to them – like in other words, it's not just a one-off thing or something, like real, systematic things that, geez, how come people higher up didn't stop this?

So just, in principle too, the ability of the government to come in – like for many parents, I think the worst thing the government could possibly do, worse than taking your money via the

IRS, worse than throwing you in prison, is to take your kids away and put them in "the state's protective care," where you don't know where they're going to end up. There's all kinds of fights and stuff, that you want to keep them safe when they first land. And then if they get placed with a family, for all they know, the people who are doing that, it's not out of altruism. So again, when you think of the bad things the state can do to you right now in the current system, taking your kids away on trumped-up charges is something that they can do.

And I've heard too, that that's something they'll do when they're leaning on people to cooperate with the authorities, in addition to offering plea deals and stuff, is they can say, if somebody's not coming from the best of circumstances, *Well, we've got you for these three things here. Our social workers showed up and they saw you had some marijuana on the table. We could take your kids away, or you can give up this deal you had with this drug dealer over here we're trying to take out.* That kind of stuff. So I just want to encourage your listeners, if they've never really heard about this stuff, to realize the way that the state is horrible in all the other areas, and just because there's the EPA doesn't mean the government's really keeping the environment clean; just because there's Child Protective Services, don't fool yourself that that's actually keeping children safe and maybe they waste some money or something. No, it does not keep children safe.

Okay, so in a free society, though, what would happen? So here, again, I'm going to appeal, Tom, to the fact that I think — I don't know if I explicitly said this when we talked about abortion in I think the first episode, but when you were saying what's an area of libertarian theory that needs to be developed more, I do think the libertarian legal treatment of children needs to be bolstered.

So real quickly, I've always thought it has to do with like the legal angle and the principle that could expand this area has to do with your ability to give consent. So even an adult, if you're drunk and you on a bar napkin say, "I give you my house in exchange for you buying me the next round of drinks," maybe a judge isn't going to uphold that, because they're going to say, "Come on, you couldn't have been in your right mind when you signed that cocktail napkin. This isn't a valid contract." And so likewise, little kids agreeing to go in a stranger's car for candy or something, I would say the kid doesn't really know what he's agreeing to, and so that should not be construed as a voluntary transaction, and who are we to intervene? So that's partly how I think the legal system would have like a sphere of protection around children.

And then also in terms of, okay, what about neglect or something, it's tricky, and I do think that it's a bit incorrect — so I don't know, Tom. You tell me if you know this. People a lot of times allege that Rothbard's position was if you have a toddler sitting in the highchair, and the parent is just staring at it, saying, "Hey, you're free to get up and leave and go get a job, but I'm not feeding you," that the kid can just sit there and starve and that's fine in a libertarian — or not fine, but that's not illegal. Do you know is that actually his position, or is that more of a caricature from his critics? Or don't you know?

WOODS: Well, the only place that it's covered is in *The Ethics of Liberty*, and in there, he takes the view, first of all, that a child has an absolute right to run away. So that's one thing. And how would that right be manifested? Well, by actually running away. That would indicate that he had become a self-owner at that point. So that's a separate question, but obviously, if you're in that kind of situation, you would have the right to run away. But then the question would be: can the parent have positive rights enjoined upon him? I don't think Rothbard thinks that's the case.

Now, since that time, as you may well know, other people have come along, and I believe — now, I don't remember if it's Ed Feser takes the view that you could do it, and he tried to argue it from a libertarian standpoint, but I think it may also be Kinsella and then Jakub Wisniewski have written on ways that you can actually enforce that sort of thing on the grounds that — and I'm maybe I'm not remembering their argument completely, but it would be like if I was almost imprisoned in your home, or the usual example is I'm up in your

airplane, if I'm under your care and you've put me in that position, you can't then withhold from me the things I need to survive. For example, like withholding a floor by opening a trap door and making me fall out. There are certain obligations that you incur on yourself when you put somebody else in a vulnerable position.

MURPHY: Yeah, so that's great, and that's what I was going to say, Tom, is that that's the way I think it would be. So what I do want to stress is, I guess what I'm saying is all the stuff I've read about libertarian in terms of legal theory applying to children — and I haven't read the ones you're talking about, so maybe the ones that you're talking about, Tom, I would have read that and said, ah, okay, finally, someone's filling this gap. But up till the ones I have read, they seemed a little ad hoc, like they clearly wanted the kid to have autonomy, but they recognize, well, a two-year-old really isn't fully able to just get up and go — so for example, I don't think a two-year-old should be allowed to run away. I think the parent goes and physically grabs the kid and imprisons him in the Pack 'n Play or whatever, I don't view that as keeping someone a slave against their will. I would say that's the parent of the two-year-old — you know, they're a two-year-old. They don't know what they're doing. So that's kind of where I was going with the stuff about the consent and that ability, that a two-year-old really is in no position to make the decision.

WOODS: Yeah, right, right, obviously.

MURPHY: But again, I do recognize the difficulty and how Rothbard could say, hey, I understand it leads to some uncomfortable outcomes, but we can't just be making up stuff because we don't want to — you know, these are the principles. But like you say, Tom, I think there are other legal principles that we don't even need to develop in the context of children to show in general, yeah, I invite someone up in my private plane and then we're over the sea, and I say, "You know what? This is my property, and you've just got to get out. I'm not saying you've got to fall, but you can't stay here." That's kind of crazy. And so likewise, yeah, you're a parent, you have a kid, and all of a sudden you say, "Well, you're free to go get a job, but I'm not feeding you anymore," and it's a two-year-old sitting in the highchair, that can't be right.

WOODS: Right. But I was thinking more like a 14-year-old in that case, who could just run away.

MURPHY: Right, right.

WOODS: Yeah.

MURPHY: And then there's other refinements too, like whatever the specific basic law code understanding would be in terms of judges rendering opinions, certainly community standards can be enforced. So you move into a neighborhood and they have things like you can't be playing rock music at 3am, and you can never actually play progressive music ever if it's a sensible community — see what I did there, Tom?

WOODS: Yeah, I did. I'm just going to let it go.

MURPHY: [laughing] You're bigger than me. Likewise, they could say you're not allowed to starve your infant too. We frown upon that in this community. So there's ways, even if the strictly speaking, *Yeah, I know it's a horrible case, but technically he didn't break the law*, it's not like this would be happening very often, like the people who own property could make rules. And again, this goes hand in hand with why Rothbardians among others are so particular about, no, when you own the land, you can set the rules. And that offends people or whatever, but that ultimately is the solution when you come up with crazy scenarios. People can set the rules they want on their land, and if we all agree that's their land, okay, then. So it's not like the force of law in the sense that that's a basic legal principle, but certainly if it's a policy that everybody knew when they bought into living on that land, then that would regulate the conduct, if that's the term you want to use, at least in that jurisdiction.

WOODS: But what do you think happens, let's say, in a case where it's found that a child has been — I mean, maybe it's a questionable case. So then is it sort of mutually decided upon in a community like this, that we'll have some investigator who goes in? So then at what point does this not just become the state all over again, and wouldn't it be more convenient just to have the state?

MURPHY: So I mean, this is a tricky — so yes, in terms of a step-by-step, and then we'll step back and say, *Well, wait a minute. Didn't we just reinvent the state?* Yeah, I mean, ultimately, it could be that the homeowners' association or whatever would say, yeah, we hear complaints — so yeah, it couldn't simply be, if anybody calls us up or emails us and says, *Oh, yeah, so-and-so down at 10 Maple Street is giving his kid welts or something with corporal punishment, and that's against your policy, so they have to be kicked out,* they clearly would have to investigate. They wouldn't just take the word of the complainant. They would have to go verify that this in fact is occurring. And presumably, they would have some kind of protocols in place for the accused to be able to offer evidence and that kind of thing. So, eventually, yeah, they would need policies like that, and maybe some of the principles they adopted would look like some of the things that we got from the common law tradition or what have you.

And ultimately, though, you could say, *Oh, well, what if someplace was too dictatorial, and they always had inspectors showing up after dinner every day or every other day and they took your kids aside and privately asked them some stuff?* as a parent, I wouldn't want to live there. Okay, so yeah, you wouldn't live in that community. Again, there's a whole spectrum of choice available. And I guess that's one answer to it. And I guess you could say, wouldn't that'd be like a bunch of little states? I suppose, but also, if we had a bunch of secession and we had in the current landmass of the US instead of what we currently have and we had 16,000 little city-states and people could move freely, that would be a lot better than the current system. And so that's one element. And in terms of the legitimacy of it, if these people were the acknowledged owners, then there wouldn't be a matter of them illegitimately enforcing rules on people.

WOODS: All right, now we're going to switch gears completely, because I think in this episode, we'll just do two topics, because that this is a big one and then the other one is also a big one. And people may say, *But why don't you spend more time on these?* Because I want to just get a basic grounding in these things for everybody, and then you can pursue them further. So for example, on the topic we're about to cover, namely, what would you do in the case of a pandemic or something like that, like Ebola or whatever, we have a full episode on that. But maybe not everybody wants that. They just want the little sound bite or whatever. So we're just going to do a bunch of these.

So let's talk. So right now there is — there's a technical name for it, but some people are calling it the novel coronavirus. But the point is, we're reading all the time about the spread of this thing, about more deaths, about the different countries it's going to, and about the failure to contain it through some pretty coercive measures. So the question becomes: what would a libertarian do about it?

Now, I tend to be interested in the really theoretical question of what would happen if there's no state at all. Now, there is a state now, and maybe that affects our answer in the current day. But I want to know, if there's no state at all, can you handle a problem like this? And the reason I want to know that is that if we're making the case that the state is an anti-social institution that undermines civilization and so on and on, I want to have an answer when people say, *But what would you do about X? What would you do about Y? How would you handle this? How would you handle that?* So in principle, I want to have an answer for that.

And I think you've come up with a pretty convincing way to think about this. So we covered it for Ebola all the way back on something like Episode 270. I'm going to link to that at

TomWoods.com/1605. But for the sake of people who haven't heard that, what would be a shorter version of your argument?

MURPHY: Okay, so the first pass, obviously, if everything is privately owned in a Rothbardian-type framework, property owners can set whatever rules they want. And again, I know that seems like, oh, that's just your easy — well, yeah, right, and that's also why Rothbardians today are often making other libertarians uncomfortable really stress that stuff and say there's no such thing as a freedom of movement, that if people own property, they can set whatever rules they want. So that clearly here, yeah, if you've got a mass outbreak of a virus or something and people are contagious, it's a good thing that there's not absolute freedom of movement, that that's not some principle of liberty, because then that means you're saying the free society could be susceptible this.

So yeah, the people that own the airports and the cruise lines and whatever, the roads, they could all set whatever checkpoints they wanted to to regulate who's coming in and out, and that would be one obvious way — or the border, if there's some country, like the countries that border China could all shut down their borders with them and have really stringently enforced checkpoints to make sure people aren't bringing the virus in. That would all be perfectly acceptable legally in a totally free society, because every landowner could set whatever policies he or she wants.

To get more esoteric, though, what you could do — and maybe this is what you were alluding to — so in terms of my approach to law enforcement and just trying to regulate anti-social behaviors, instead of doing the model of saying, okay, we have a law code, and then someone goes and breaks it, and then we call our defense agencies to go grab the person, and then there's a ruling levied against them, and my insurance company compensates me for damage to me, and then maybe they go wring it out of the bad guy, I flip it the other way around and say I think there's also something where people would have insurance on themselves, kind of analogous right now to your auto insurance, your liability coverage, right? So if you're driving a car and you cause damage to someone else, right now you need to have insurance in force, or at least legally you're supposed to, to compensate the person you hurt. So I'm not talking about fixing your own car; I'm saying for damage you caused while driving, you've got to have insurance and coverage to do that. Or if you're a hospital and you're going to hire a brain surgeon to be on staff, they're going to insist you have medical malpractice insurance.

So I think that principle would apply more generally, at least in some areas in a free society, like if it's a big city and there's millions of people coming and going, it's kind of hard to keep track, I think like a regular company before they hired someone would say, you need to show us you've been vouched for by some third party, so in case you do anything criminal on the premises or whatever, they're going to compensate us. And then they can try to hunt you down if they want. So in other words, you don't have to do background checks on everybody, that there's other companies that do that.

Another analog is like your credit score. So if you go right now to a Best Buy or something and they're going to give you a credit card, they might run and check your credit first before they let you walk out of there with a TV on a Best Buy credit card. And so what does that credit rating agency do? They're the ones that investigated you and give an assessment about your trustworthiness.

So you can imagine something analogous to all that when it comes to communicable disease. And it might not be worth building up as infrastructure if it's really not an issue, but if we are in a world where this really is a thing, and someone might say, well, gosh, this is one time I wish we had a coercive state, the way the free society could handle that is, companies could arise that would check somebody out. So it could be something as simple as saying, okay, if there's a vaccine, that this company could say, yep, this person has been vaccinated. They show no symptoms right now, so we think, going forward, they're fine. You can go ahead and let them into your mall or into your church or whatever, into your school, no problem.

And so places that are particularly sensitive that say we absolutely cannot have someone bringing coronavirus in here, like if it's a hospital or daycare facility, they can have real stringent rules and say, *No, no, you can't come in through this door unless you show us that from these top three companies that provide the service, at least one of them has signed off on you.* So there could be things like that too, that individuals can be — so it's not some central database of the state, Big Brother tracking everybody; it's decentralized companies. And if they get it wrong, then they stand to lose. Like maybe that would be part of the clause, like how does the community come to accept this one agency's ratings as to who's been vaccinated or whatever, or who hasn't come from a region of China where the coronavirus is running rampant. They might have some policy, like if you let somebody in that we've vouched for and it turns out they were sick, then we'll pay you \$10,000 or something.

And maybe you would subscribe to that company. So in terms like how do they make their money, the people who go to them to be signed off on, maybe they pay a fee, and maybe the people that subscribe to be able to get the information, maybe like having a Bloomberg terminal or something, like you've got to pay a high fee annually to get their latest updates as to who has received the vaccination for this new thing that's now raging rampant in Thailand or whatever.

WOODS: All right, so I think that is a fairly convincing framework for what would happen in that kind of situation. But now let's think about today. All right, so today you have the state and you have the state controlling borders and in charge of public order and stuff. And they may say that, for the sake of public safety, we need to restrict the movement of people so as to restrain the spread of this virus. Are you saying that a libertarian absolutely cannot allow that? Like how would a libertarian right now deal with it? Would a libertarian say I would rather that a pandemic not wipe out humanity than be the world's greatest libertarian? Or do we have to face that choice?

MURPHY: I mean, I don't think there's a great answer. So let me just give you that sort of cop-out boilerplate. Like I say, oh, should government schools, public schools, allow people to pray or have the Ten Commandments or something? There's no good answer. Like, the reasons for allowing it, there's compelling reasons, and then the reasons for not allowing it, there's no — so that's kind of the problem with coercion, is like, oh, what's the right way to do coercion? There isn't. So there's that element.

I mean, we could do a simpler one too, like as a libertarian, do I like the fact that the police go and capture somebody who's probably just killed somebody, like in a bar fight or something, and put them in a cage? It's not that I'm losing sleep over the guy being in the cage if he really is a killer, but on the other hand, I know giving them that power means they're going to lock up a lot of people who actually aren't guilty and that kind of stuff, and they're going to take my money at gunpoint to pay for it all.

So kind of similar thing here. To answer your question here, Tom, I don't know enough about the particulars to even weigh in, even with a ballpark, just throwing this out here, to know — I mean, I've been flying, so I'm not personally worried. Now, am I doing that because I kind of thought, *Well, I'm sure the TSA wouldn't let all these people in from China who have the thing*, and so I guess that's partly in my calculus of why I'm not afraid to fly right now. Also personally, I think if I got sick, I'm probably going to get over it. So I guess if you're asking me right now, I personally would not want the government imposing extra, absolute prohibitions, but yeah, when I hear that the TSA was delaying people and putting them in quarantine and stuff and they were coming from certain regions, I wasn't thinking, *Oh, wow, that's just like Hitler*, if that's what you're getting at.

WOODS: Right, I wasn't either.

MURPHY: Right. So it would be better, of course, if the whole system were privatized or whatever, and there were private companies that were somehow liable if they made a mistake and let people in, but given that that's not what we have right now, I certainly would

not condemn someone as being a fascist, anti-libertarian if they thought, *Well, given the way the system is right now, I think they've got to kind of regulate who comes in*, if that's what you're asking me. I certainly would not condemn them, because there is no good answer. The only true, to me, libertarian answer is a better system would be to get rid of all this. And then if you're saying, *Okay, but we don't have that; what should they do right now?* to me there's no unequivocally right libertarian answer, so I'm not going to condemn someone for weighing in on that.

WOODS: Right. Right, right. That's how I feel. And as I say, it may sound like I'm exaggerating, but there is the potential for real damage by a virus. If it came down to the human race could have 80% of its people wiped out or I don't win the world's greatest libertarian award, I think I'll be okay not winning that award.

MURPHY: Well, you're not winning that anyway, so on the margin, yeah, you might as well save humanity.

WOODS: I already have a Lifetime Achievement Award, so the rest of my life I can be a complete bastard. So that's what I intend to do.

MURPHY: Yeah, and this shows the benefits of having multiple different organizations offering credentials and such, because, yeah.

WOODS: Yeah, then you can decide. All right, next time, Bob, we're going to do a kind of lightning round thing. So we're going to do maybe five or six minutes per answer, and this is going to be painful for Bob, because Bob is the king of the caveat and the exception.

MURPHY: Yeah, I usually burn 15 seconds just going, [thoughtful sound].

WOODS: [laughing] I know, because he wants to be so precise and fair, so this is going to be torture for poor Bob. All right, first of all, remember, check out *The Bob Murphy Show*. It's a tremendous podcast with a wide variety of topics and guests, and sometimes Bob just talking and teaching you something. And sometimes it's something that you're just dying to know, and other times it's things you didn't know you were dying to know until Bob explained it to you. So BobMurphyShow.com is the site, and we'll see you tomorrow for the last day of Bob Murphy.