Episode 695: Thomas Sowell, Robert Nozick, and Richard Epstein: The Good and Bad in Three Fellow Travelers

Guest: David Gordon

WOODS: I had somebody write to me not long ago, saying maybe you could do an episode where you look at a few people who are certainly in the ballpark of where we are; they're not directly in our camp, but we can appreciate a good deal of what they say, and yet they do go wrong in some places, so can you help to sort out the good, the bad, and the ugly with regard to these people. And the two people the person writing to me had in mind were Richard Epstein and Thomas Sowell. Now, I happen to be more of a Sowell fan than an Epstein fan, but fair enough; I understand where he's coming from.

And when this was suggested, I thought immediately, David Gordon. David Gordon's the guest for this. But then I thought, I don't know, two — there's something magical about three people. Even though you could do an episode on any one of these, we're going to do an episode on all three. The third one that somebody suggested, I asked my private Facebook group who's another one, and somebody said, how about Robert Nozick. And I thought, boy, David knows Robert Nozick inside and out, so let's do the three of those.

Let's start maybe — if we start with Nozick, the whole episode will be Nozick, so let's do Nozick third. Let's start with Sowell, because I think he's the most sympathetic of the three characters in some ways. There's a lot that's great about Sowell. I think his book *Civil Rights: Rhetoric or Reality* is very good. His stuff on education's very good. His general column is good. A lot of his economic teaching is good. I know that Murray Rothbard and you believe that he goes a bit wrong in his book on Marxism, and I'll leave out his foreign policy, because it's obvious. We know he's a hawk on foreign policy. That's too easy. I want to get into things that are a little more subtle. If you were to say what are the shortcomings of Sowell — and he's a guy whose praises I have sung on the show and I've talked about; I have an episode on his work on income inequality, so everybody knows I like Thomas Sowell. What do you think the problems are?

GORDON: Well, Thomas Sowell is a very good economist. He was influenced a lot by Friedrich Hayek. Hayek thought Sowell's book *Knowledge and Decisions* was a great book, and what he absorbed from Hayek was that the market coordinates the knowledge, especially the tacit knowledge, of enormous numbers of people. But

although he's learned from Hayek, Sowell is not an Austrian economist. He's a Chicago school economist, and what he basically does in most of his work, he applies basic price theory to all sorts of problems. The reason Austrians can go along with what he say is that what he's doing is not really controversial in economics. He's just,s ay, for example, he'll show why minimum wage laws don't work, or he can show what's wrong with rent control. And if an Austrian economist — say if Mises or Rothbard were doing it, they would be doing it in pretty much the same way.

But the point where he differs, or a point where he differs from the Austrians is he was very critical of Böhm-Bawerk, a great Austrian economist who had a criticism of Marx, a famous criticism, he had criticizing both in the second volume of his book *Capital and Interest* and also in a separate monograph called *Karl Marx and the Close of His System* —

WOODS: All right, let me jump in and clarify that we're talking now about Eugen von Böhm-Bawerk, that economist. All right, go ahead.

GORDON: Yeah, so what Böhm-Bawerk said is Marx is supposed to be explaining prices by his famous labor theory of value, but Marx has to admit that prices on the market don't really correspond to their labor values. I don't think I need to go in the details here of why they don't correspond, but he said, look, Marx is supposed to be explaining these prices in terms of labor value, but he admits that the prices don't in fact correspond to labor values.

WOODS: All right, let's back up a minute. Again, I don't want to assume any prior knowledge. When we say that Marx says that prices correspond to labor values, this has to do with his labor theory of value —

GORDON: Yes.

WOODS: When he's trying to understand prices and he's trying to understand why one prices is the same as another price, it's that the two objects involved must have an equal amount of some third thing, which he takes to be labor.

GORDON: Yes, exactly, socially necessary labor requires producers. But actual market prices, it doesn't work out that way, so Marx said, well, that may be true, but he can show that the market prices can be derived from the labor prices. So what Böhm-Bawerk says is if this derivation doesn't work, Marx didn't succeed in this. So what Sowell says is he seems to think that Böhm-Bawerk's point is that there's a contradiction, that Marx was contradicting himself by saying I can explain prices by labor values, but then he has to admit later on that prices don't correspond to labor values. So Sowell thinks Böhm-Bawerk is saying Marx is contradicting himself, and Sowell says no, no, he's not; Marx isn't contradicting himself, because he's just presenting this labor value model. It's kind of a first approximation, and he's not claiming at all that that's the way actual prices are determined.

And where Sowell's criticism goes wrong I think is in two points. First, Böhm-Bawerk's criticism, he isn't assuming Marx is just ignoring a contradiction that he wasn't aware of; Böhm-Bawerk's point is that the derivation doesn't succeed, so Böhm-Bawerk knew that Marx realized that real prices don't correspond to labor prices, but he says the way Marx tries to solve this doesn't work.

And then the second criticism is Sowell says, well, when Marx sets up this labor model, he's just giving kind of a preliminary model; can't you set up a model any way you want? But what Böhm-Bawerk points out is that Marx isn't just setting up a model; he isn't just saying, well, here's what I'm assuming and then we'll figure out how this helps us understand economic reality. Marx is claiming from certain assumptions of his model to derive what would be the case in the model. So Böhm-Bawerk says no, this doesn't work. Marx, he's not just setting up a model saying I'm going to assume prices correspond to the amount of labor required to produce the good; he claiming to derive this by an argument under these simplified assumptions. And Böhm-Bawerk said no, this argument doesn't work.

So I think that's the main weakness I think in Sowell's work, is just his criticism of Böhm-Bawerk on Marx. Otherwise, he's generally quite good. I mean, there are other differences one can point to. For example, he doesn't accept Austrian business cycle theory. His explanation of the 2008 crash is almost entirely in the collapse of the real estate boom and that the government unwisely encouraged lending to very risky people who wanted to buy houses. But Sowell isn't really that theoretical. What he basically does — he does this very well — is he applies basic price theory to all sorts of problems, and he has a very good grasp of history, and he can apply the basic price theory to all sorts of interesting historical material.

WOODS: Let me say a couple things here about Sowell. If his worst — again, leaving foreign policy out of it — if his worst problem is this issue over the success or failure of Böhm-Bawerk's argument against Marx, I think Sowell's coming out pretty well, because that's an argument that most people wouldn't even be able to understand, so they wouldn't even be able to see where his errors are.

Secondly, you're right; he wrote a book called *The Housing Boom and Bust*, I believe, and I think he did a second edition, because I think the first edition might have come out — I don't remember the year. But there was at least — either it was the first or there was a second edition that came out after my book *Meltdown*, which of course talks about the Federal Reserve. I know he cites that in *The Housing Boom and Bust*, and that really surprised me pleasantly. And I tried to parlay that into an appearance by Sowell on the show, and that has not ben successful (laughing). He's very, very hard to reach. I've had Walter Williams on, his friend, a couple of times, but I have not been able to get Sowell himself.

Let's move on to Richard Epstein. Now, first tell us who Richard Epstein is, and secondly — and Richard Epstein, let's talk about his work on antidiscrimination law, because there he is treading in an area where other legal scholars would definitely not

dare to tread. So let's give him some credit, and then let's see what some of the drawbacks are. So first of all, who is he?

GORDON: Richard Epstein is a legal academic. He's now at NYU, but he taught for most of his career at University of Chicago law school. He was trained unusually for most — he studied I think at Oxford. He studied Roman law. He's famous for having a tremendous grasp of the entire legal system. He knows all the Supreme Court precedents. He can give courses on virtually any aspect of law, and he's also legendary for his verbal skill. He can just give a lecture that sounds as if it could be printed, and he's very, very fast. If anyone has an objection, he'll immediately have about five or six arguments against what the person is saying.

So he's renowned for his — he defends — his view is basically he favors — he's not a complete libertarian. He favors a limited government. He places great stress on the so-called public goods argument, the view that a completely free market would fail to produce certain goods, because these goods, such as defense is one that is given as an example, or ones that are what is called non-rivalrous — say the government's defending your house from a missile attack. It's defending my house at the same time. We're not rivals. And also the goods are non-excludable. So Epstein says there are certain goods, public goods that have to be provided by the government. If you say, well, can't people have arrangements as various free markets have proposed to produce these public goods, he says, no, it would be just too much trouble; we do need a government.

He doesn't defend the free market on the basis of natural rights, say in the way Rothbard does. He's a utilitarian. He says what we should do is to try to maximize well being or happiness, and the free market is the best way to do that. And just like Sowell, he's very much a Chicago school economist, so he's applying Chicago principles to try to argue for that.

And what I think his unique contribution is he thinks that we can take the U.S. Constitution, interpret it in a certain way as promoting this kind of basically laissez faire capitalist society, although not completely so that he favors. And he stresses very much that there are some, Supreme Court justices especially, post-Civil War Republican judges, like Stephen Field and up to the pre-New Deal court who applied the Constitution the way he wanted. So he wouldn't agree, say, with the way you and Ken Gutzman in your work say, well, the Constitution as it was originally tended was really a very strong states' rights document, and the federal government, including the Supreme Court, doesn't have all that much power to interfere with what the states are doing. In his view, the proper role of the federal judiciary is to enforce the principles he thinks are correct, and he thinks that there's a good basis in the Constitution for the kind of free market economic policy he favors.

WOODS: All right, so I can see some good and some bad in there. He has a book — now I remember it: *Forbidden Grounds* —

GORDON: Yes.

WOODS: That's the book I was trying to think of. And I have no doubt that you've read that book. Am I right?

GORDON: Oh yes, I remember when it came out. Yes, you see, what he argues in that book — again, he's applying basic Chicago principles. He says, well, some people, suppose somebody says I'm not going to hire members of a certain racial minority. I don't want these people in my job. So some people would say, well, look, isn't that unfair? The person isn't considering the members of this minority group as individuals; he's just saying I don't want Xs in my group.

So his basic argument has two really I think principle arguments. He says — and you see he's applying Chicago principles. He says really, suppose you discriminate against certain groups. That can be efficient in this sense. Say if you say members of a certain group don't tend to do well, you can economize on search costs in certain cases by discriminating against them. For example, suppose we had a — someone's a basketball coach. He might say, well, the basketball coach could eliminate without interviewing, say, people who were my height or your height. You know, we wouldn't be good prospects for a pro basketball team.

So Epstein says, well, look, some discrimination is economically rationale; then it's also rational, sometimes people who are in the same ethnic group or similar will get along better with one another, so that's another grounds that discrimination could be rationalized. You might object, well, what if it isn't; what if somebody's — say a member of this minority group is extremely good, he's better than the ones they have? So then he would say, well, if that's true then it'll be to the advantage of somebody to hire those people, so that sort of disadvantage will tend to be taken care of by the market.

But that argument is one that other people have given in favor of the market say we don't really need laws against discrimination because if somebody's very good, it'll be to the advantage of an employer to hire them. But the point where Epstein went against conventional opinion was he was saying in some cases discrimination can be rational or economically efficient, these basic Chicago perspective. The Chicago people are famous for doing that. They'll say behavior that seems odd or unreasonable is really motivated by economic rationality, so that's what he was doing in that book.

WOODS: That has Chicago written all over it there, that, well, it would be more efficient in some cases to do things that this type of antidiscrimination law would not allow us to do, so therefore we ought to be allowed to do it. But then on the other hand, is his view that, given that some forms of discrimination can have economically efficient results, is he going to say that those kinds of discrimination should be allowed but so-called irrational discrimination should not be allowed?

GORDON: No, I don't think he'd say that. I think probably his line there would be it's very much a desirable feature of law that we have general principles rather than have the government or someone try to sort out individual cases. So if we have general arguments that the practice is rational, we shouldn't sort of oversee this by some

process of trying to say, oh, well, it might be rational generally, but look, this guy's really just motivated by hatred. He wouldn't take a member of this group even if it were the greatest possible worker. I think he could say the legal system just can't take account of such individual cases.

And again, now, if you said, well, but look, isn't this — say somebody is discriminated against in a very bad way. Isn't this unfair to the person? Remember, he doesn't accept the notion of natural rights. And of course, libertarians would say, well, people don't have a natural right to engage in a business with somebody, so even if the employer is discriminating against you because he really hates your group, he's within his rights. So he wouldn't accept that, but he would also not accept if it you say you have a right — which many left-wing theorists would say — you have a right not to be discriminated against. He would say what he's interested in is promoting the efficient outcome the way Chicago economists define it, so that's why. And he's given arguments in *Forbidden Grounds* that discrimination in many cases is rational. And he controversially opposed this section in the 1964 Civil Rights Act that forbids private discrimination in certain cases.

WOODS: All right, I mean, we could say a lot more there, but let's move on to Robert Nozick. You knew him, I know, and I would say that for our audience the most significant work of his of course is *Anarchy, State, and Utopia*, in which he made the case for the minimal state, but not beyond the minimal state, and argued that this minimal state could come about in a way that would not involve the violation of anyone's rights. And that aspect of his argument — he has a lot of great stuff in *Anarchy, State, and Utopia*, but that aspect of his argument is rather involved and complicated, is it not?

GORDON: Oh yes. I mean, people are still trying to figure out what he meant. Part of the argument has to do with — he starts off in the way that would be familiar to readers of Rothbard, where there are groups of people who are members of different private protection agencies or defense agencies, and what he wants to show is that agencies would want to forbid other agencies from imposing what he calls risky decision procedures on their clients. So he thinks this could lead to, say, a stronger agency just forbidding other agencies to function because they'd be imposing risky decision procedures on their clients so they could at least stop them from doing that.

But if you did that, then you'd have to compensate the people who couldn't defend themselves, because what he called the dominate agency had stopped them from imposing their procedures on others. So he said, well, you'd have to compensate them, and one way they can compensate them is by offering them free or discounted protection under their own agencies, kind of peculiar compensation, or something like, I'm saying you can't protect yourself, and in return I'm saying I'll give you a discount if you buy protection from me. So he thinks that process can show that a minimal state can arise legitimately from a state of nature that the anarchist/libertarians would accept. So he's saying it could arise legitimately, and it would also be in the interest of people to move in that way.

I mean, just to say — this is a mistake that a lot of people make about Nozick's argument — just to say you could get to a certain state of affairs or condition from a starting point without violating rights isn't a justification for it. For example, suppose we could have — say we start with a completely free anarchocapitalist society, and then it wouldn't violate anybody's rights, is if everyone gave all their money and land to me so I owned all the resources. That wouldn't violate everybody's rights, but it wouldn't be a justification for the state of affairs where I own everything. That would be a very bad thing for everybody to do. I'd like it, but it wouldn't be good for anybody else. So he has to show not only that you could get to this minimal state without violating rights, but it would be in people's interests to do that.

WOODS: What can we say on the plus side here for Nozick? Is he, for instance — what part of his project is involved not with responding to Rothbard, in effect, which he does without mentioning Rothbard, but what part of his project is aimed at responding to Rawls?

GORDON: Oh, well, this is really — what he does is in the second part of the book — see, the first part, which I think as you indicate would be the part that Rothbardians or libertarians such as me with disagree with, is this justification of the minimal state. But then the second part, he says, okay, we've got a minimal state, but most people want the state to do more than just enforce libertarian property rights. Say they have more ambitious roles for the state. For example, in the most influential 20th century theorist John Rawls in his famous *A Theory of Justice*, he wants the state to engage in various kinds of redistribution. He said we shouldn't be satisfied with what Rawls calls the system of natural liberty. The state has to really come in and help the worst off class, so what we should be trying to do is maximize the position of the worst-off class.

So Nozick has a very effective, I think the best, discussion of Rawls, where he really — it's in the second part of Chapter 7 of the book — where he really knocks out all of Rawls' arguments. He really eviscerates the book, in my opinion. He also has very good arguments against Marx, Karl Marx' view of exploitation, and he has criticisms of democracy.

He really has I think extremely important contributions to libertarian theory, and I think the real reason to read Nozick, say, as against other people one might read — there are so many good authors one could read — is he was an extraordinarily intelligent person. I mean, he was a really great philosopher. He could come up with arguments and counterarguments, unusual counter-examples. So at what he did he was really probably the best or among the best of anyone in philosophy. He could just come up with new possibilities.

I'll tell you one story. Nathan Salmon, who was a very good philosopher of language, once told me that Saul Kripke, who is probably the top American philosopher, really a kind of philosophical genius, once said to him that Nozick was the smartest person he'd ever met. So I told Nozick that, thinking he'd be happy to hear it, and he said, that's why he's trying to destroy me.

WOODS: (laughing) By the way, I think we should point out who Nozick really was. I mean, he was a Harvard philosopher. He wasn't just some guy who wrote a book.

GORDON: Oh yeah, yes, that's right. I mean, he had gotten tenured at a very early age. I think he was about 30 when he was a full professor at Harvard, and he didn't consider himself mainly a political philosopher; he was in metaphysics, theory of knowledge. He would tend to go from one area to another. I mean, *Philosophical Explanations* is his main work in metaphysics and theory of knowledge. That's a book I think people would certainly find interesting. But he's a very interesting thinker. I mean, there are people, such as Hans Hoppe, whom I think very highly of, who doesn't really like Nozick as much as I do, but I mean, I think he's somebody who is definitely worth studying.

WOODS: Can you give us an example or two of arguments that Nozick makes against Rawls that show how sharp he was — and/or his argument against Marxian exploitation theory?

GORDON: Oh, well, let me see. One he has where Rawls says — he favors what he calls the difference principle, which he says we should apply; we should try to maximize the well being of the worst-off class. So what Nozick says, well, suppose you try to apply this to individual families. Say someone has a family and you have a number of children in your family. Would you say that what you should do is try to do everything you can for the child who is kind of the lowest in ability or has the most problems? I mean, obviously you'd want to do something for the child. Would you say what you should be doing in the family is just to do whatever you can for the child who's worse off? If somebody said, well, maybe you wouldn't do that for the family, but society is different, he says, well, why is it different.

Now, another famous argument, he says, suppose — this is his famous Wilt Chamberlain argument. He says, supposing you give people the shares, say, that Rawls or some other egalitarian theorist says they should have, then we could imagine, let's say — at the time he was writing, Wilt Chamberlain was a famous basketball player. So he says, well, couldn't we imagine each person has this amount of money — couldn't we imagine that people want to watch Chamberlain play, and each person gives Chamberlain a quarter. It's your money; can't you give him a quarter? But then the result is, say, that Chamberlain gets a salary of $250,000, which in those days was an enormous amount of money for a basketball player. I think now that's probably what they earn a day or something.

But so what he's saying is, look, if we start off with this egalitarian theory, then people could — he calls this a pattern theory — people can upset the pattern very easily, because they're taking their shares and they're just spending the money in a certain way that results in people being unequal. But then if you say, oh, well, then we can just stop them from doing that or take away the money that goes to Chamberlain, wouldn't that require very severe interferences with people's liberty? So if we try to enforce a pattern, we'll find it's very difficult to do that in a way that allows people essential liberties.

WOODS: Let's talk about Marx for a minute, because I get — when I'm on Twitter a lot I get people saying that it's a sham liberty that libertarians are favoring, because it really is just the freedom to starve. That's a very common Marxian sort of response. It's a freedom starve. Yeah, I know I have the freedom to take a job or not take a job and to accept a wage payment or not accept it, but what kind of freedom is that when the alternative is starvation? So it's just a sham freedom. Does the Nozick response cut any of the sting out of that argument?

GORDON: Oh yes, well, what he says there, the question would be, suppose somebody says I don't have any alternative. Then we would want to say why not. It isn't the case that — suppose somebody says I — someone offers this person, say, a very hard labor in a coal mine, and the person says that's too hard, I don't want to do that. So it isn't the case that the coal miner is going to say, well, I'm going to use violence, I'm going to get the agents of the state to chain you to the mine and do that. You're free to go try to get a better job elsewhere.

Now, what if you say, oh, but look, that's the best alternative open to me. Maybe that's all I can do. I don't have any real skills. So then what Nozick says there is, well, he's making a concession. He says he's not going to say that any case that doesn't involve violence, the threat of violence should be viewed as non-coercive, but he says if it's the case that other people are acting within their rights, then you haven't shown that you're being coerced just because your alternatives aren't desirable.

And he gives what I think is a very, kind of a typical Nozick example. He said let's assume that people in a certain society, say we had equal number of women and men, and each person wants to get married to someone of the opposite sex. I guess in those days things were a bit less complicated than now. So he says let's assume everyone on both lists ranks the people of the opposite sex who's the most desirable, next most desirable, and so on. So everyone has the same ranking. Like all the men will say this woman is the most desirable, this is the second, this is the third, and so on, and the women will say this is the most desirable man, the second most, and so on.

So then we imagine each person knows about the list, so then we imagine the men and women pairing off. So he says, well, then the most desirable man will pair off with the most desirable woman, and so on. So suppose you get down to the end of the list. So say the least desirable man and least desirable women, if they want to get married at all they'll have to pick each other. So each one will say, well, if I want to get married I have to pick the least desirable person. But you couldn't say they're coerced, because each person on the list has acted in accord with his or her rights.

So what Nozick's challenge is if somebody wants to say, well, this worker who faces undesirable alternatives is being coerced, then the person who raises that objection has to show why this case, the case of the worker, is different from his marriage case. And he poses that as a challenge. He says it isn't enough to say you have undesirable alternatives. You have to do more than that to show that there is coercion if there's no violence or threat of violence.

WOODS: What do you think people ought to read out of the people we've talked about today? Would you say that — I mean, Sowell, there's plenty of stuff to read, and I'm going to put a couple of — I personally like a couple of his books that are not as well known. There are a few that everybody recommends. I think *Civil Rights: Rhetoric or Reality?* is an amazing book, a short book. Every page blows you away, so I'm going to put that up there. Definitely put *Anarchy, State, and Utopia*, but what else from the people we've talked about do you think is worth looking at?

GORDON: Oh, well I think by Sowell there's one; *Knowledge and Decisions* is a very good book. Now, by Epstein, I would say his book *Takings* is very much worth looking at. That gives you kind of his basic framework of how he gets a pro-laissez faire view out of the Constitution. That's the book where he says, well, the government's power to take property for public use, eminent domain, should be limited that you have to compensate people with the full economic value of what you've taken, and the government also has to compensate people when, as a result of its actions, people can't use their property as profitably as before. Now, he has a new one, which I think is called *The Natural Right* — what is it? A new book on the Constitution. It was just published by Harvard. It's a more comprehensive book giving his views. Now, on Nozick I would recommend one called *The Nature Rationality*. I like that book. It's very good. And then of course the *Philosophical Explanations* is very good. Anything by him is worth reading, I think.

WOODS: All right, this is going to be a chock-full show notes page. It'll be TomWoods.com/695, where you can get links to these books that we've been talking about. And are you on Twitter, David, or just Facebook?

GORDON: I'm on Twitter, but I almost never post anything on it.

WOODS: Ah, all right. Maybe we've got to somehow lure you in, because I've sort of been converted to the inanity of Twitter in recent months, and it'd be fun to have you over there. But it would just drive you crazy, you know? There's no point in wasting a good mind like yours on Twitter. But I am looking forward to seeing you in a few months in Auburn at the Mises Institute for the Mises University summer program.

GORDON: Oh yes, that will be nice. I'm looking forward to that, yeah.

WOODS: It's going to be great. We're going to have the whole family there, so —

GORDON: Oh, that's wonderful.

WOODS: I'm going to take my 13-year-old to some of the sessions, and it'll be a lot of fun.

GORDON: Oh, I'm sure she'll do better than most of the students.

WOODS: I tried to say that to her without giving her a complex, good or bad (laughing). But anyway, David, thanks for your time. Always fun talking to you.

GORDON: Oh, same here, Tom; thanks.