



## NATURAL LAW AND THE ECONOMY: A REPLY TO MILLER<sup>1</sup>

por Samuel Gregg

*Natural law does not demand capitalism, but we can deduce from natural law that some institutions that are key to market economies are normally just, while practices key to socialist arrangements are usually unjust.*

In his reply to my *Public Discourse* piece on conservatives and capitalism, Robert T. Miller critiques my argument that conservatives need to articulate principled, as opposed to simply utilitarian, cases for capitalism. I thank Miller for his careful outline of where we agree and disagree as well as for his criticisms. But I also thank him because this is precisely the type of discussion that conservatives should have more often.

Let me begin by noting where I agree with Miller's observations. First, he maintains that "capitalism is *consistent* with Aristotelian-Thomistic moral premises, but it is not *obligatory* given those premises."

Obviously much depends on what we mean by "capitalism." Those arrangements often described as "crony capitalism," for example, systematically violate many prohibitions (such as the proscription of theft) articulated by natural law. But if "capitalism" means the particular set of activities and institutions affirmed (albeit with many qualifications) by, for instance, John Paul II's 1991 encyclical Centesimus Annus, then it is broadly consistent with natural law premises.

That said, I agree with Miller that capitalism is not obligatory given these premises-indeed, I have never claimed that it is. Natural law theory has always maintained that humans enjoy considerable creativity within the framework provided by natural law when determining many political and economic positions.

On many such matters, as Robert P. George observes, "A number of possible schemes-bearing different and often incommensurable costs and benefits, risks and advantages-are consistent with natural law." In many cases, the legislator cannot, on natural law grounds, identify political or economic arrangements that are uniquely correct. Yet he *can* identify several options that meet the test of right reason, even if some of the options may be incompatible with each other. This is the kind of activity of the practical intellect that Aquinas called *determinatio*.

To illustrate the point, George uses the example of building a house. Assuming the basic criteria of usability and safety are met and certain constructional elements (such as roofs of a

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<sup>1</sup> Publicado en *Public Discourse*, Sam Gregg argues that while natural law doesn't mandate market economies, it does render key practices of capitalism just and key practices of socialism usually unjust. (<http://www.thepublicdiscourse.com/2013/05/10227/> )



certain height) are in place, several acceptable, albeit sometimes incompatible, options exist for building the house.

To a certain extent, the same holds true for political and economic life. No one can claim, for instance, that today's American economy (or the Australian or German economy) is somehow *uniquely* correct in its capacities for promoting human flourishing.

But I begin to part company with Miller when he writes:

In principle, monarchy, aristocracy, and democracy are all morally permissible political systems (which is not to say that every exercise of governmental power in such systems is morally permissible) and capitalism, corporatism, and socialism are all morally permissible economic systems. Aristotelian-Thomistic moral philosophy does not, by itself, imply much about political or economic arrangements.

Much hinges here on what Miller means by "by itself." I would argue that natural law does suggest a great deal about the proper ordering of political and economic arrangements. Aquinas himself states that while institutions such as contracts and property are a question of positive law, they are so necessary for a just society that they can be deduced immediately from natural law principles.

Moreover, we can identify political and economic systems that systematically infringe the broad principles indicated by natural law. Totalitarianism exemplifies such a political order, not least because of its complete violation of the principle of subsidiarity and its refusal to accept natural law as a check on state power.

Likewise, natural law's insistence upon the legitimacy of private property and freedom of exchange would normally exclude, for example, arrangements that involve the state's outright and permanent collectivization of all property. That is no small thing, not least because it appears to rule out socialist (democratically endorsed or otherwise) and command economies.

Moving beyond the negative, I also think natural law broadly affirms several activities and institutions that are usually difficult to realize outside those economic arrangements based on, to cite Miller's description, "private property, freedom of contract, and minimal governmental regulation of the market" (I would add a free price system and rule of law to his mix).

Natural law does not regard private property as an absolute. But natural law does suggest that private property arrangements are acceptable and even to be *generally* preferred, and not just on grounds of superior utility. One of the reasons Aquinas offers (following Aristotle) is that it encourages personal responsibility and thus helps facilitate a condition for human flourishing in ways that collective ownership struggles to replicate.

Likewise natural law thinkers ranging from Francisco de Vitoria and Hugo Grotius to Emer de Vattel have broadly affirmed (again, without absolutizing) free trade as a derivation of natural



law's affirmation of freedom of association. Similarly, natural law has generally regarded the normal measure of the value of an economic good to be the price it would be accorded, to cite Aquinas, "in the market" (*secundum communem forum*).

Again, none of this means that natural law mandates market economies. It is simply to suggest we can identify certain economic practices and institutions as normally just and others as likely to be unjust on natural law grounds, and that many of the normally just practices and institutions are indispensable to the workings of free markets.

On the subject of human flourishing, Miller argues that while entrepreneurs can certainly engage their reason and free will in creative ways, "exactly the same thing could be said of the central-planning bureaucrat in a socialist system: He too uses his reason and free will to participate in creative work."

As a straight comparison of two individuals, Miller is correct. There is, however, an important difference between the two situations. Command economies are premised on what natural law would suggest is an injustice: a regime's choice systematically to undermine most people's ability to exercise reason and free will in their economic choices and thereby participate in goods that include but also go beyond creative work. Reading accounts of life in communist and hardline social democratic systems soon brings home their crippling effects on the potential for human flourishing in the economic realm.

Granted, such things sometimes occur in more-or-less free economies. One thinks of businesses in which employees are treated as mere objects. These cases, however, are not a direct result of free economic arrangements. They usually flow from unjust individual choices by employers. Moreover, in a free economy and society, there are many possibilities for employees to exit and/or challenge these situations. Under socialist arrangements, such possibilities are far fewer because of unjust restrictions on freedom of association and liberty more generally.

Finally, I would like to address Miller's own arguments about how to make a moral case for free markets. He suggests, for instance, that "we should expect that any moral argument for capitalism that abstracts from capitalism's effects on people's lives will fail."

When it comes to the business of persuading people, I tend to agree with Miller. But then I have never suggested that such an abstraction be made. Indeed, as John Finnis writes in *Natural Law and Natural Rights*, there are many contexts in which we may reasonably calculate, measure, and weigh the consequences and efficiency of alternative choices. An obvious example, Finnis notes, is a market for those things that may legitimately be exchanged and in which a common denominator (i.e., money) allows comparisons of profits, costs, and benefits to occur.

To that extent, we can and should make legitimate comparisons between the market economy's effects upon a society's material wellbeing and those of, say, socialist arrangements. Natural law doesn't exclude consideration of these matters. What it would



resist is making such comparisons the primary or only basis for settling the moral validity of a given economic system. For that would take us into the realm of consequentialism (and thus irrationality).

Miller also maintains that it is in fact a *moral* argument (as opposed to a utilitarian claim) that free markets take people out of poverty and thus provide them with many of the resources and opportunities they hitherto lacked with which to pursue moral goods that are central to human flourishing. Again, I generally agree.

But I would add that this line of reasoning appears to track closely a natural law conception of the common good insofar as natural law reasoning regards the common good as the sum total of conditions that allow people to fulfill themselves. To that extent, free markets may be legitimately construed as constituting one subset of those conditions.

This brings me to Miller's last argument. Thinking about the moral case for markets, he suggests that "The solution . . . lies not in abstract philosophical arguments. Such arguments do not in fact work, and, even if they did, most people would never understand them anyway."

This is my strongest point of disagreement with Miller. Over the centuries, many people—great and ordinary—have understood natural law arguments. Until relatively recently, they were part and parcel of public discourse throughout much of the world. And if natural law is simply the truth about good and evil inscribed on human reason itself, then we should have some confidence that natural law arguments will resonate at some level with people who might not know how to explain a concept like *determinatio* but who have little difficulty comprehending natural law's affirmation of private property.

Then there is the fact that many people can be convinced by what Miller calls abstract philosophical arguments—for better and for worse. It is difficult, for instance, to find more philosophically abstract contentions than those expressed in John Rawls's *Theory of Justice*.

Yet Rawls's opinions have over time managed to convince many intellectuals and public officials (including, I suspect, President Obama) that highly social democratic arrangements that relegate economic liberty and its associated institutions to (at best) a fourth-level concern of the political community are just. In these and other cases, abstract reasoning with immense implications for political and economic life has in fact "worked"—albeit to the detriment of the common good, a coherent conception of justice, and societies that take human flourishing seriously.

Indeed, the very success of the Rawlsian agenda underscores the need for more conservatives to get serious about making principled arguments for economic freedom—arguments that embrace and highlight the empirical evidence about the capacity of markets to resolve many economic problems but that also integrate these data into a convincing and principled exposition of the nature and ends of human flourishing. Until they do so, I fear that conservatives will remain at a competitive disadvantage in the marketplace of morality and economics debates.



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