

## Chapter 2

# OWNERSHIP RIGHTS AND COMMERCE

## 1. IS COMMERCE DECENT?

Let us begin with the most important question about business, the profession that cares about wealth and that has as its goal its enhancement. Business arises as the professional arm of commerce. We all engage in commerce but not all of us work in business. This is not unlike medicine: we all dabble in self-medication but few of us are doctors, nurses and such. Those are the professionals in that sphere.

We need to ask, first of all, whether embarking on wealthcare is all right from the moral point of view. Is business itself a decent profession?

Some might consider this an odd question but, given that business is held in low esteem by many cultural commentators, as well as by Hollywood, pulp fiction writers like John Grisham, and dramatists like the late Arthur Miller (whose *Death of a Salesman* depicts business as a pathetic, lowly profession) or David Mamet (whose *Glengarry Glen Ross* characterizes people in business as most conniving), the question is not at all negligible. Charles Baudelaire, the famed French poet, said that “The spirit of every business-man is completely depraved. . . . Commerce is satanic, because it is the basest and vilest form of egoism.”<sup>14</sup>

Should we accept this condemnation of a field of work – and its practitioners – that has managed to create prosperity and wealth for not only those who succeed in it but those who are indirect beneficiaries of its products, such as universities, museums, and think tanks?

Most people take it for granted that medicine, education, and science have merit, and that individuals doing work in those fields are doing something worthwhile. They can claim credit for having chosen a fine calling or vocation. But the same is not so with business. A clear indication of this is that there is a great deal of talk about the social responsibility of corporations, and how companies should “give back to the community” by way of contributions or philanthropy, something few other professionals hear of. Are college professors being implored to do likewise? No, because their work is deemed to be worthwhile in and of itself. And why is it necessary for people in business

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<sup>14</sup>Charles Baudelaire, *Intimate Journals*, trans. Christopher Isherwood (San Francisco: City Lights Books, 1983), p. 89.

to “give back”? Have they committed theft, and so need to atone for it by returning the goods they stole? No, there is something else behind the hostility toward business.

Throughout human history, in the East as well as the West, commerce has been demeaned. Plato depicted the trader as a lowly sort, in his most famous dialogue, the *Republic*. Of all types of sinners who gathered in the temple, Jesus picked on the money lenders, and the Prince of Peace violently attacked them, sending a signal that Christianity seems to have embraced throughout its history. The idea that money may be lent for interest is still attacked by some moral philosophers, as if foregoing the benefits of liquid assets does not deserve to be compensated.

Is this all okay? Should we be ashamed when we embark upon a career in business? Is it a lowly profession akin, say, to prostitution or being a prison guard at a concentration camp?

If the answer is ‘no,’ as I believe it is, why have so many prominent figures shown utter contempt for commerce and its professional arm, business? What accounts for this?

A good place to begin is with Aristotle, the ancient Greek philosopher, a man who had little respect for activities aimed at prosperity. He believed that the highest form of human life is that which is devoted to contemplation. He held that theorist who contemplate the eternal verities are doing the most honorable thing, and this idea is still with us. Professors and educators in general are usually held in high esteem (unless they become popular and make money!). The Nobel Prize is usually given to theoreticians, not to those who put theories into practice. The bad guys in novels, movies and television are usually the ones trying to make a profit.

One problem with Aristotle’s ethics is that he believed that what is exclusively important in our lives is that we have minds. To be good, for him, meant being exclusively focused on what the mind uses, namely ideas. Intellectuals, then, seem to live the most, if not the only, worthy lives.

This is not really true, however. We are not just mental beings – we are embodied. And we need to be good at applying our thinking to all facets of our being, not just to abstract ideas. We need to succeed as living, thinking, biological entities, not only as intellectuals. (Of course, there is much debate on just what Aristotle meant. But what we might call “intellectualism” has been the most influential aspect of his ethical reflections.)

Oddly enough, it is one of the main virtues Aristotle himself identified, namely prudence, that gives commerce and business its clear link with morality or ethics. To be frugal, industrious, and heedful of the bottom line is something demanded by prudence, provided we view ourselves not simply as mental but as biological (albeit thinking) entities.

Such an understanding of human life shows that professionals in business are carrying out important tasks, every bit as much as professionals in medicine, science, education or engineering. It does not mean, of course, that such professionals cannot fall prey to the temptation of corruption. But this is no less true in education, science or any other profession. There are quacks in medicine, frauds in science, and so on, just as there are cheats in business. As a profession, however, business isn't like prostitution, pimping or drug pushing, undertakings that are inherently morally questionable.

Why is all this of significance? Especially after September 11, 2001, when terrorism was directed at both the major substance and the greatest symbol of commerce, the World Trade Center, it should be evident that whether business is a good thing is disputed even today, despite the evident beneficial nature of the institution. Not everyone acknowledges what is evident or reasonable. Moreover, many who embark upon business, professionally or otherwise, haven't the faintest notion of what makes this profession worthwhile. They engage in it absentmindedly and, when challenged, do not know what makes it honorable. There are even people in business who look upon what they do with self-deprecation and cynicism. They see themselves as so-called practical people who have abandoned naïve idealism and thus can pursue business because they do not care whether it is immoral, amoral or moral.

Certainly such people aren't going to make convincing defenders of this very large element of Western culture. And yet the institution does require a defense, given the bad press it has gotten throughout history and continues to get from many circles – philosophical, theological, ethical and cultural.

Furthermore, when professionals turn cynical about what they do, they aren't going to be inclined to worry much about doing it properly and ethically. So, in consequence, business practices can suffer. The usual approach is to say that all that matters is whether the law is obeyed, regardless of ethics and decency.

The law, however, is not a sufficient guide to proper business conduct because it changes from country to country, even from state to state. Unless those in business are guided by certain sound principles of business ethics, they will eventually lose their way. It is sometimes held that philosophy and its various branches are for people who are lost in the clouds, absentminded people, but there is a good case that contradicts that view. Without some understanding of the philosophical underpinnings of both the criticism and the defense of business, the profession will always suffer from moral ambiguity, and that means it is going to be unstable and morally suspect.

None of this means that all people in business need to become well versed in the field of intellectual history. But they do need to be aware that sometimes they may have to dip into that field to consult those who have contributed to the on-going dialogue about the merits of trade, commerce, finance, capitalism,

market processes and so forth. They need to be aware that there is such a conversation going on, and that it has strong implications for the way business is understood and depicted throughout the world. It may even have an impact on how people in business are treated, whether respected or held in contempt, something that, as we know, can have a powerful impact on the lives of those professionals.

There is a lot of discussion afoot about the origins of the Holocaust, but it is not mentioned often enough that one thing that contributed to it was the hatred of business. Jews, unlike Christians, did not have any religious objections to trade and finance; quite the contrary. When they settled in Christian countries, they were usually the ones who took up commercial trades. Often, this gave them considerable clout, for which they were then envied, resented, even despised. This is not a negligible portion of the story of one of human history's worst events. (And it is also important to realize that, despite being Jewish himself, Karl Marx considered the Jews to be open to severe criticism on the grounds that they were the quintessential capitalists, traders! This is not all that far from why the Nazis found Jews objectionable.)

People in business, like those in engineering and medicine, work in a field that unabashedly champions life here on Earth. Still, their work is not always well received; in fact, it is often demeaned. For capitalism, free markets and commerce in general to gain moral standing, this needs to be rejected, and the reasons why the critics are misguided need to be understood – even by those in business, at times! A good beginning might be to explore the implications of another observation made by Charles Baudelaire, namely that “Commerce is natural, therefore shameful.” What if someone said this about medicine or science in general? Think about it!

## **2. COMMERCE IS HUMANIZING**

Sure, you say, what's with this idea – doesn't everyone know it already? Well, actually, in many academic institutions, you will find professors of this and that proclaiming just the opposite. They claim commerce is a dehumanizing institution that makes people treat one another as objects or, at most, as means to various ends, not as full persons.

The doctrine is called “commodification” – making people into commodities, things for nothing other than to be purchased. The charge is that in a fully capitalist, free-market society, the system would encourage everyone to treat all others as mere useful products, like one's chair or automotive tires. For this reason, the argument goes – and it got its biggest boost from Karl Marx, in the 19th Century when he took capitalism to task very influentially for doing all kinds of nasty things to people – the free market, with its capitalist economic system, is not really good for human beings at all.

At first sight, this may sound like a credible point to make against capitalism. When you go to the grocery store, for example, you tend to treat the cashier or the manager as no more than a means to your ends of walking out of the place with what you need at home. You don't much socialize with these people, at least not initially. They are just functionaries to you. If they were machines and could do what you needed from them, that would be perfectly fine. Or so it can seem, from a superficial examination of what happens in markets. Your broker, doctor, auto mechanic, shoe repairer and the rest aren't your personal friends. They are instruments used to satisfy important needs of yours, but they could easily be replaced with someone else or with some tool. (Nowadays, you can even check out by using auto-scanners, with no need for a person at all.)

The trouble is that to focus on this element of the market – that it is mostly impersonal on a certain level – betrays a narrow vision. As if people would leave it at that, except in the most unusual circumstances – for example, when they are in a hurry and need to get done with shopping as quickly as possible. But normally that isn't how it is, at all.

As my friend and fellow philosophy professor Neera K. Badhwar argued in a well-developed, complex paper on the topic, commerce is actually the institution where much of our intimate social life gets its start. And anyone can check this out easily enough.<sup>15</sup>

Just consider that, wherever you work, you have colleagues with whom you have perfectly human relationships, good or bad or in between. In fact, sometimes places of work nearly become homes away from home, where people not only meet and talk and grow close (to enjoy or be annoyed by each other), but get involved quite seriously in each other's lives. Kids are discussed, as are spouses. Close friendships, or at least palships, develop frequently. Some colleagues become lovers, even marry in time. (Contrast this with how it is likely to go at the DMV!)

The myth that market transactions are impersonal is just that, a myth, and it comes from shallow, superficial reflection on what goes on in markets. It may be no accident that the idea is so popular in the academy, where there is often a kind of isolation among faculty, with few becoming close with one another, although there are enough exceptions to this that it should raise doubts in the minds of those who spread the myth about the market.

Even down at the grocery store – or the pet shop or car dealer – customers and vendors frequently depart from their initial reason for coming together, and start talking about sports, ethnic food, music or family troubles. And from that, now and then, full-blown, genuine friendships emerge.

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<sup>15</sup>Neera K. Badhwar, "Friendship and Commercial Societies," in Bernard Schumacher, ed. *L'amitie* (Paris: Presses Universitaires de France, 2005).

What the critics don't appreciate is how well people can multitask in life, that while they do business they can also do arts, sciences, education, family affairs and the rest, on the side. Karl Marx was wrong – the free market is by no means only a cash nexus, where everyone thinks only of the bottom line. It would be entirely unnatural for human beings to be that way.

### **3. CALCULATION PROBLEM & TRAGEDY OF THE COMMONS**

I wish here to take note of two interesting aspects of economics. I want to explain them clearly so that anyone will be able to see their point and how they are actually related.

In a nutshell, the famous calculation problem facing centrally planned economies (identified by Ludwig von Mises and his followers) and the famous tragedy of the commons (hinted at, early on, by Thucydides and Aristotle, and developed more fully by Garret Hardin) are, in effect, two sides of the same coin. One side is the description, while the other is the evaluation of the same phenomenon, namely, the refusal to recognize private property rights in human affairs.

Put briefly, here is the calculation problem: when individuals are not owners of resources, they are not able to assess their value, and when resources are publicly owned, their use will be systematically hasty and imprudent. As the 1975 Nobel Laureate F. A. Hayek explained it:

... It is more than a metaphor to describe the price system of telecommunications which enables individual producers to watch merely the movements of a few pointers, as an engineer might watch the hands of a few dials, in order to adjust their activities to changes of which they may never know more than is reflected in the price movement.<sup>16</sup>

Hayek's point is that, when one owns resources, one allocates just the amount of it to this or that purchase, based on what one knows of one's own circumstances, needs, wants, etc., which, in turn, contributes to an overall telecommunications system that serves to inform consumers and producers, and thus manages the allocation of resources throughout the market place.

As to the tragedy of the commons, here is how Thucydides explained it, many moons ago:

[T]hey devote a very small fraction of the time to the consideration of any public object, most of it to the prosecution of their own objects. Meanwhile, each fancies that no harm will come to his neglect, that it is the business of somebody else to

<sup>16</sup>F. A. Hayek, *Individualism & Economic Order* (London: Routledge & Kegan Paul, 1948), pp. 86–7.

look after this or that for him; and so, by the same notion being entertained by all separately, the common cause imperceptibly decays.<sup>17</sup>

Here, the idea is that, when resources are owned commonly and all have access to their use, they will be depleted much faster than under a system of private ownership. Nor will they likely be replaced, under such common ownership.

Of course, that individuals are not able to assess the value of things to them may or may not be a good thing. Only if they ought to be able to do so could this be something bad. But when we realize that public ownership leads to systematic haste and imprudence – for example, because resources are quickly depleted if no one knows the limits of use to which these resources may be put – then we get a hint that the inability of assessing the value of resources has deleterious consequences for most of us, though with no one to blame for this except, perhaps, those who insist on keeping the institution of public ownership in force.

That's the tragedy. No one is in a position to assess just how much of the resources contained in the commons available for us is available to any particular one of us, so as much as can be accessed and used will, in fact, be consumed. This will involve taking as much (and as quickly) as possible, while others scramble equally hard to do the same. The resulting depletion is not, then, a matter of greed or something else unreasonable but of doing the most that can be done so as to achieve one's very likely legitimate goals.

It is an underlying assumption of both the tragedy and the calculation problem that individual human beings, not collectives, tribes or communities, make decisions concerning how resources will be used. Indeed, in an absolute monarchy, where the king owns everything and no one else has the recognized authority to decide on the disposition and use of anything, there is no tragedy of the commons, or any kind of calculation problem. The country is deemed to be one huge piece of private property; whatever the king decides is exactly the efficient thing to do, and however resources are allocated is precisely the best way to allocate them. Those who must go without do not matter, since it is the king's decision that they should go without. And the materials that get depleted are exactly what ought to be depleted, given that this king has so decreed.

Of course, since the king isn't really the only person with the rightful authority to make decisions about everything, this system isn't going to succeed very long. The king will be resisted, on and off, and eventually deposed by someone who promises better recognition of the sovereignty of members of the society.

Let's explore the tragedy of the commons in concrete terms. Consider that a cattle rancher is interested in supplying his cattle with as much feed as he

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<sup>17</sup>Thucydides, *The History of the Peloponnesian War*, bk. I, sec. 141.

can. It is not a matter of what one owns or has obtained via rental, but of the effectiveness of the scramble. All the ranchers are under the impression that the commons is available to them, so they will all try as hard as possible to obtain as much as they can, and this will lead to a kind of grabbing from the commons before others take what they want. This can occur in the case of ranchers using common grazing fields, or special interest groups and their lobbyists taking as much as they are able to take via the political process of voting and related means for getting something from the treasury.

When it comes to commonly owned resources, such as public lakes, rivers, the atmosphere, or forests, this process leads to conduct that is often considered greedy, but which merely consists of supplying oneself with what one believes one may be able to make good use of, for purposes of pursuing one's goals. Painters, scholars, scientists, merchants, and all will follow this policy of taking the resources and running away with them, not because they are evil or wicked but because they are committed to their tasks.

The way in which this resembles the calculation problem is not all that difficult to understand. Without private ownership of the resources, the value of such resources is indeterminable. Private owners look to other private owners, and those who purchase them, to establish the prices of resources. Differential utilization of the resources will prompt different people to ask for and pay different prices, leading to a helpful if not flawless communication system concerning how important the resources are, in a given market place. But the commons do not permit such determination and, as a result, impedes communication between users and suppliers.

One might think, as did socialist planners, that some central authority, standing in for the public (as seen by a dictator or democratic assembly), could tell just how much of the resources should be used by whom, and for what purpose. But no general purpose exists to which such a determination can be made to conform (other than in small groups, perhaps, such as a family, kibbutz, convent, or commune wherein the few members come to agree on their common goals).

So the depletion of resources is necessarily unguided by coordination of supply and demand throughout the market via the more or less accurate registration of individual or small-group wants and needs. In this way, then, the tragedy of the commons and the calculation problem amount to two distinct but related facets of the same obstacle to central planning or even mere government regulation. What they have firmly in common is that they arise from the vital fact of human individuality, a central feature of human life that only the free marketplace can accommodate optimally.



#### 4. ATTACK BY DISTORTION – THE LOWDOWN ON GLOBALIZATION

Suppose someone described the game of golf by reference to riding in carts, wearing funny pants and large shirts, and occasionally using the various clubs to beat one's dog. Would this be fair? Someone who gave such a definition of the game would probably be on a warpath to disparage it, not to explain its true nature.

Consider, then, how the critics of globalization deal with that far more important contemporary phenomenon, globalization (which, by the way, isn't all that contemporary since, in certain periods of the modern era, globalization was in full advance). These critics point to the fact that globalization is sometimes related to child labor; it can involve various strains for insidious nationalism, such as trying to whip a country's economy into shape by coercion; and it can also involve some regional collusion (as with the European Union). Indeed, when so characterized – or should we say caricatured – globalization looks like an evil unleashed upon the globe by demons, instead of a promising method to promote economic prosperity and political liberty, fostered by sensible political economists (beginning with Adam Smith himself).

Why would some folks hate globalization as it is properly conceived? Why would they be so eager to distort its nature and paint it in a bad light?

We could ask the same thing about those who would distort the nature of golf, or marriage, or education. Enemies of golf might think that there is too much money spent on the sport, at the expense of their own favorite pastime. Enemies of marriage might wish to discredit it because they have failed at it royally and now wish to make free love or some other kind of union respectable. Enemies of education might want to have folks believe that all there is to it is indoctrination in dogmas the old wish for the young to accept uncritically, since they themselves don't much like to learn and find intellectual effort unpleasant.

So what might be some reasons for disliking *bona fide* globalization so much that it is then mischaracterized to make it seem a menace?

For one, the removal of international trade barriers, the central theme of globalization, unleashes competition which is the nemesis of entrenched industries and labor groups. It is sort of like the famous American "dream team" that was sent to the Barcelona Olympics – they were completely unbeatable for a time, but eventually other countries started to learn and catch up, and the dream team could not continue to win without improving its own game, without doing hard work to stay on top.

Industry, including labor, often would like nothing better than to achieve prominence in the market and then stay there effortlessly. There is much of this tendency everywhere – including academic life, where many people wish

to coast regarding their discipline without keeping up, without doing anything past when they received tenure. When young Turks turn up, as it were, and challenge the old guard, this is not often received with welcome. In principle, academics, like others, are supposed to keep improving and invite challenge and criticism from their colleagues, but there is corruption there, as there is elsewhere, and it often results in barrier to entry – refusing tenure to a challenging young teacher or scholar, or their equivalent.

This is one of the several reason globalization is resisted – the motive is known as protecting one’s vested interest – and members of many industries (for example, farming) evince it aplenty.

Another reason is the widespread belief that if we open up markets and encourage international commerce, this will eliminate or diminish national and cultural distinctiveness. And there is something to this, though not much. It does not take a genius to see that the marketplace unites people on some levels, but by no means on all – just go to any mall and see the enormous diversity of shoppers and merchants. The bulk of them accept the common medium of exchange and the ethics of commerce that should guide everyone, without any threat whatsoever to personal, cultural, religious identity.

Of course, there are some groups wherein such a practice conflicts with principles of free trade: If your tribe enslaves certain people, this will certainly be threatened by globalization, since slaves experience the harshest barriers of all to free trade. If the dominant male citizens in some country treat women badly and wish to bar them from economic power, this, too, is going to be threatened by freedom of trade.

One of the main enemies of globalization is the widespread belief that living a good life is itself something of an affront! People should suffer here on Earth, not enjoy their lives, and globalization promises many folks just the opposite, namely, prosperous living.

Under the guise of globalization, some dirty practices are also possible, of course, and some people mistake this for consequences of the real thing. For example, taking your firm abroad because in the host country you can dump your soot into the atmosphere with impunity may appear to be consistent with freedom of trade, but it isn’t. To raise the question as to who has the basic right, the person to breathe clean air or the person to dump soot into the air, is a bit like raising the question of who has the basic right, the person to go around uninjured by a gunshot wound or the person who wants to shoot that person. Dumping soot into the air-mass that is inevitably going to land in the lungs of non-consenting people is a violation of their rights. That should be a crime, because people are being assaulted and freedom of trade cannot tolerate such an assault among trading partners. Globalization, in fact, should encourage the enactment of laws that protect life and property from assault, including pollution.

There is a problem with attempting to provide a collectivist type of cost-benefit analysis of globalization, including the creation of pollution of public spheres, because such analysis fails to consider individual rights and objectives. It assumes some standard that at least most people want followed but fails to consider what quite a few others may aim for – for example, those who are not risk-averse or who aren't so sensitive to pollutants.

When it comes to how the system would work out, I suggest we do not listen to those who are hostile to globalization in any form, any more than we should ask those who disparage golf or marriage about the nature of those pursuits.

There is also the idea, already noted, that anyone who thinks globalization is some novel phenomenon in the world is misinformed. One need only consider the Olympic Games, in both ancient and modern times, to realize how wrong is that idea.

The Olympic Games include nearly all the countries in the world, and competitors from all of the member-countries can take part in the many events. And, yes, they all abide by the same rules.

If that isn't globalization, then I don't know what is.

When we consider economic globalization, it's about how all the people around the globe need to play by the same economic rules – free trade. No one gets to enslave workers – they must be hired and bargained with. No one gets to violate contracts – they must be honored and if not, the law steps in to rectify any breaches that have occurred. No one gets to deprive another of his or her property – only voluntary exchanges are kosher. And so it goes, into the minute details of commerce.

Critics of globalization complain that such general principles of commerce may not suit everyone, so let's not attempt to make them ubiquitous as globalization would have them be. Why? Because of cultural differences that should not be destroyed.

Has the Olympics destroyed cultural differences? No. Of course, in some areas there has been increased uniformity, but by no means in all. The costumes the athletes wear, and the music they prefer, say, in performances skating or synchronized swimming, will be different, and I am sure they also eat different foods and speak their own languages when communicating with others from their countries.

This only proves that human beings across the globe can share many practices and still keep their own special, even unique, ways, with no conflict at all. Just as the comic actor and novelist Steve Martin puts it in his most recent novella, *The Pleasure of My Company* (Hyperion Books, 2003), "People, I thought. These are people. Their general uniformity was interrupted only by their individual variety." And this is true not just of individual but also of innumerable group varieties. Both the attempt to make us all the same – the great fault of communism and other totalitarian ideologies – and the attempt

to keep us all different – which is what some of the modern subjectivist and deconstructionist schools promote – are off-base.

Just think – most people around the globe communicate in language, write and speak it, yet these are different languages. They live in homes, yet their architecture varies enormously. The majority get dressed every day, but certainly their styles of dress are highly diverse. Cuisine, artistic styles, forms of dance – you name it, and it is both universal and incredibly varied.

Globalization, too, involves some practices that everyone would have to follow, without in the slightest depriving people of their individuality, cultural variety, personality types and so forth. All this is quite natural, and there is no need at all for various lobby groups to butt in to make it work out their way. In addition, as stressed so nicely in Tyler Cowan's book, *Creative Destruction* (Princeton University Press, 2004), there is so much interplay between these different styles that new ones come every day, while old ones disappear, all quite naturally.

Of course, the fact that people wish to control how these matters proceed is also a fact of life, but it is not the same kind of difference as those mentioned above. In the cases of diverse styles of dance, art, language and such, most came about spontaneously, without some dictator ordering how things should go. But when governments introduce protectionist measures, subsidies, price-support programs and other restraints of trade, that's different. Here we see the central uncivil element in human relations, the introduction of coercion, of some people dictating how others must behave. It's a difference that is insidious, hostile to human nature, not part of the natural pluralism of human life.

So what needs to be excluded from human affairs, the only thing the law should really worry about everywhere, is the way that some people try to take over the lives of others by compelling them to do as they would have them do. The rest will work out pretty well, with only the ordinary human failings upsetting matters, and few of those can go very far without the individuals or groups perpetrating them having power over others.

## **5. GLOBALIZATION'S AGGRAVATIONS**

What many people object to in globalization is not all that different from what they object to in capitalism – free markets are highly volatile; jobs can be found and then lost; products appear and then disappear; services cost too little and then too much; innovations displace products we have gotten used to but we also benefit from them, big time; commerce seems to take over culture, eradicate distinctions, etc. There is what Joseph Schumpeter called “creative destruction” going on all the time and when its impact is felt by oneself or one's loved ones, it is not always welcome.

Yet, the benefits of globalization, as of capitalism, are mostly accepted without much hesitation. Less expensive clothing, cars, electronics, travel, and so forth are rarely lamented. And the great variety of goods and services and all that this makes possible is also widely welcome.

One thing that underlies the complaints about globalization and capitalism is that these upset the status quo. Just after one has moved into a neighborhood, settled into a new home and placed one's kids into schools, joined a church, all of this can be turned upside down by an economic transition – the firm one works for is downsizing, is moving abroad, is outsourcing one's work, or something else akin to these. Not that this happens a lot but it can and that is scary to most folks.

Yet, at the same time, few people really prefer stagnation. When computers replaced typewriters, few protested. When CDs replaced cassettes, again there was but the faintest protest, mostly from those involved in manufacturing the obsolete product. And this has been going on for generations – the consuming public welcomes innovation, improvements on products and services that come from the encouraging conditions of free markets, while in some industries there is panic.

So, unions are notorious for promoting featherbedding, making jobs that have no real function any longer. A most recent case reported involved a new urinal that doesn't require flushing. Don't ask me for the details – it's a baffling idea. But, the story goes, when in Philadelphia it was recently introduced, the plumber's union negotiated a deal whereby despite the fact that it wasn't needed, plumbing was supplied so that plumbers wouldn't have to find new employment. This kind of thing used to be routine with the railroads, when locomotives were upgraded and unions secured deals whereby the same number of people would continue to man the engines.

Then there are the less clearly economic concerns about globalization and capitalism, having to do with feelings of nationalism, patriotism, ethnic solidarity and so forth. Often people feel like they are part of a team so that when economic realities threaten to break up the team, the members come together and urge political measures that will protect their interests. The motivation may well be to express loyalty to those with whom they feel a closeness. This despite the fact that the protectionist measures impose considerable costs on many people who then will not have a chance to spend what they might have saved to create more jobs.

The recent upheavals in France exemplify this pretty clearly – so as to hang on to various costly benefits for the few, millions are kept from gaining jobs because protectionist measures keep investors from starting new enterprises. Artificial job security generates real unemployment.

In general, people are at odds with themselves about much of this – they like what's new and more efficient and satisfying but they also dislike when this

brings change into their lives. And they are even willing to erect barriers that will prevent others from improving their lives just so the aggravating changes will be averted. No, they really have no right to do this, but the myth of the supreme rule of democracy blinds them to that fact, as if the principle of lynch mobs were OK except, well, when it comes to outright lynching.

What is needed is for folks to accept the fact that changes will occur and they will have to prepare for them. How? That is one of the questions they will have to answer and implement. The alternative is imposing stagnation and regress on all.

## **6. COMPETITION – WHY SO HUMAN?**

At Harvard University, a famous defender of communitarianism, Michael Sandel of the Department of Government, has denounced competition and reportedly has insisted that his own kids play only noncompetitive baseball. The reason? He believes that competition is too individualistic, supports a spirit of rivalry, and undermines the cooperative attitude that we should foster in ourselves.

At those times, when people are gearing up for the Olympic Games, we might as well pay some attention to Professor Sandel's lament and ask ourselves whether competition is or is not a good thing. And, as with so many matters, it will come to light that no "one-size-fits-all" answer is available to us. Nor, however, will we find that competition is some kind of human evil that has managed to infiltrate the human situation just to corrupt us all.

It will help to reflect for a moment on why some folks feel as Professor Sandel does. It comes from a view of human life that was nicely sketched by Karl Marx, namely, the belief that when humanity becomes fully mature, it will look something like a wonderful choir in which we all stand next to one another, wearing about the same outfit and harmonizing in a way that gives none of us a distinctive voice but merges all voices together into a single collective sound. It is this view that has excited the imagination of thousands of political thinkers, and it is one from which most have drawn their lesson of what is best for human beings as they try to flourish in their communities. It has also led, tragically, to massive totalitarian experiments in which people are coerced into a single mold that does violence to their human nature in the name of a misconceived dream.

A very pictorial illustration of this ideal comes to us from Communist China where, during Mao's rule, it was customary for millions of Chinese to march through the country together, all wearing identical-looking blue pajamas. (Never mind that the fabric of these garments revealed a serious class differentiation – that could not be seen as the world witnessed the Chinese spectacle.)

Instead of this image of humanity as one big, identically populated choir, the real story is quite another matter. We are much more different from one another than we are alike, and that is not just some temporary stage but the permanent condition of our human lives. We are significantly different in our biological make-up, and our free will leads us to make different decisions as we face the diverse circumstances of our lives. Most importantly, even where we face common circumstances, we often exert different levels of attention and effort, leading to different outcomes in our diverse lives.

As usual, there are symbolic ways that these basic facts are literally played out in human communities. The Olympic Games are the most visible and celebrated ways that we have come to register the spirit of competition in our lives. This competition is not at all the disharmonizing, acrimonious, alienating and hostile affair that critics make it out to be; quite the contrary. If you watch carefully, you will notice that the bulk of the events, quite like much of competitive life, are peaceful and even friendly, but demonstrative of the fact that human living requires close attention and much effort so that we may flourish at it. It may not be for everyone, either, this spirit of competition. But where it exists, it can be a show of human beings making the effort to do their best at some task.

In fact, competition isn't primarily a rivalry at all. That part of it may sometimes overshadow what is most important about it, namely, the mutual and harmonious effort to excel at something. Sure, the spectators and the promoters often stress the rivalry, but it would be a mistake to take that to be the essence of what is going on and what is being symbolically represented about human community life.

Competition is built into the fact of our individuality and mutual striving to make something of ourselves through the myriad of activities in which we take part. And apart from some cases of corruption – which, of course, can plague any aspect of human living – competition gives us a symbolic expression of one of life's realities, namely, that there is no guarantee of success and that everyone needs to work hard to get ahead but can do this with mutual respect and even in friendship. Competition, of course, is also spurred on by the fact of scarcity, as many economists would argue, although that's not sufficient for it to occur. After all, people are sometimes quite satisfied with exactly what they have and seek no more, certainly not necessarily something that is scarce (unless by 'scarce' is meant 'not available at the lowest conceivable price'). Sure, people often strive to obtain what others also want, and there may not be enough for all at a preferred price. In that case, they will need to engage in competitive bidding for it, so that someone can be selected as the winner.

But this is not the most basic reason for competition, which is that people want to do well, including doing well at obtaining economic benefits, and this leads to seeking advancement as best as they can, compared to others. After

all, much of competition is largely unrelated to economics – as exemplified by athletics.

## **7. REVISITING ZONING V. PRIVATE PROPERTY RIGHTS**

Among the elements of a free society, the institution of private property rights looms very large. It is this element that gives concrete, practical expression to a citizen's right to liberty. Moreover, business would be impossible without it – one cannot trade what one cannot own!

Generally, living free means doing what one chooses to do someplace, connected to the world around oneself. John Locke, the major theorist of individual rights in the history of political thought, believed that private property rights punctuate our jurisdiction over our lives since what our lives amount to is, to a large extent, interacting and mixing our labor with the rest of nature. If we lack the right to private property, we lack the freedom to live on our own terms.

No one who defends freedom suffers from the illusion that free men and women always do what is right, and this is true about how they make use of their property. But, in a genuinely free society, that is one of the troubling yet unavoidable conditions of living with other people. Just as one is, so are others free to use what belongs to them as they judge proper. If this is undermined, so is human freedom.

One of the areas in community life where this element of freedom is often evaded and opposed is the institution of zoning ordinances. Zoning amounts to the regulation of one's ability to use one's land and home and business as one judges fit, in favor of how others do. In a democratic society, these 'others' are usually representatives of the majority, although very often they become nearly independent agents who can dictate the ways land and buildings must be built, decorated, rebuilt, and so forth. The justification offered for this, as for most other violations of private property rights, has to do with protecting the members of the majority from the choices of members of the minority, choices that the majority would find objectionable. Thus the typical announced objective of a zoning ordinance is to preserve the styles that the majority of the community prefers within a neighborhood, and to keep out undesirable colors and architectural styles, not to mention business establishments and lifestyles.

All this is usually put in terms of establishing and maintaining community standards, of course, as if there were such a thing as the community apart from all of its members. But there isn't. So what is left is some members of the community deciding for all the members how private property will be used. In effect, of course, this means the abolition of private property rights, that great goal that was first on the list of Karl Marx's and Frederick Engels's *Communist*



*Manifesto.* Sure, defenders of zoning laws will insist that they simply want to protect the private properties of members of the neighborhood against those who would undermine property values, and the desirability of the vicinity as a residential, commercial or industrial region. However, whatever their motives, these defenders are still working to undermine – and have been succeeding at undermining – the institution of private property rights.

You see, a right is a freedom to do what one wants, be this good or bad, provided no one's rights are violated in the process. Freedom of speech, for example, means one may say anything one wants that amounts to speech, provided it does not violate another's rights. What is said could be filthy, false, offensive, unwise, and so forth. But free men and women may not be stopped from speaking out, whatever the quality of their speech.

Perhaps it appears to many that freedom of speech is more important than property rights, but this is easily disproved. Indeed, without private property rights, there cannot be freedom of speech. The community would own or control all places where things could be said and published, and thus, also, what can be said and published. (This is why, for example, government can regulate television and radio content but not that of magazines and newspapers. The BBC, for example, banned Churchill in the late 1930s and, of course, PBS and NPR, all tied in with government, are very selective in what viewpoints they air. And even in commercial broadcasting, the government 'owns' the electromagnetic spectrum on which signals travel, so governments can impose many rules on those who use this medium!)

But perhaps, in the case of certain kinds of property, such as land and buildings, the borders between what one person owns and others own cannot be determined, so there really cannot be any private property rights applicable in such spheres. There seems to be something to this, mainly because many people think that when they own a piece of land or a house, the surrounding views also belong to them – or at least they ought to have a say as to what happens to whatever is in view. (The famous Chicago economist and law professor Ronald Coase had argued that it doesn't matter who owns what, so long as ownership is identified and kept consistent. But this is clearly false – it matters to those whose ownership rights are at stake.)

If one's neighbor is a nice-looking person but then decides not to remain nice-looking, one has no right to stop the person from changing, however disappointing this may be to one. Indeed, this is true about another's automobile, backyard, and so forth. And that should be the model on which to base our understanding of private property – those who own it must have control over it; otherwise, they aren't free persons but belong to other people who claim to represent the community.

So what now? If zoning ordinances violate certain valid principles of a free society, how can one nevertheless work to keep one's neighborhood pre-

sentable? How can one influence, if not control, other people so that they do not make the neighborhood unpleasant and allow it to deteriorate?

So far I have tried to show in rather general terms why zoning laws are inconsistent with a free society's principles, in particular with the principle of private property rights. Basically, they amount to the imposition by some people on others of conditions for using property that are the owners' proper, justified authority to determine. No one has that right, however tempting and desirable it may appear to imagine otherwise.

But what about the perfectly honorable wish to have a nice neighborhood in which to live, work and play? How, besides by means of zoning ordinances, could people protect their neighborhoods?

Before answering this question, it must be noted, quite emphatically, that zoning ordinances by no means achieve what their advocates claim justifies their use. Indeed, in many communities that have stringent zoning ordinances, there are neighborhoods that are a mess, to put it mildly. Especially right where the zoning provisions change, say from commercial to residential use, the areas are usually in a deteriorating condition. That is where buildings are usually dilapidated, shabby. And it is usually those who lack political clout who must live there.

In more general terms, by no means is the institution of zoning laws a panacea. Just as with the welfare state in general, which simply shoves around the misery it aims to eliminate, zoning laws are mostly an expression of special-interest clout. A drive through any of the heavily zoned communities will demonstrate this, right away.

In fact, the record of the institution of zoning, as far as making areas of residential, commercial and recreational living orderly and pleasant for all, is by no means a good one. Let us look at this briefly, without entering into the ample scholarship that exists on that topic. (But anyone wishing to check for detailed studies can examine William A. Fishel's works, *Regulatory Takings: Law, Economics, and Politics, Do Growth Controls Matter?: A Review of Empirical Evidence on the Effectiveness and Efficiency of Local Government Land Use Regulation; The Economics of Zoning Laws: A Property Rights Approach to American Land Use Controls*, and *Land Economics: Private Markets Public Decisions*, as well as Bernard H. Siegan's seminal book, *Land Use Without Zoning*. Finally, there is Steven Greenhut's previously mentioned fine book, *Abuse of Power*.)

For one, there is a city in the USA that has enjoyed freedom from zoning and has worked pretty well, so far. It is Houston, Texas. No disaster, no catastrophe, no mess, no property devaluation, nada. Just a city where what zoning was supposed to achieve has been achieved without it, more peacefully, more through cooperation than through coercion.

Second, a little imagination and history should suffice to teach us all that it is better all around to strive to achieve goals without forcing people to accept what they would freely reject. And this applies as much to education or military service as it does to not keeping their neighborhoods in good shape. Free men and women simply do better, on the whole, than do those who are regimented by their fellows and made to act as they do not choose.

Third, what zoning aims for can easily be achieved through voluntary agreements among members of neighborhoods. Restrictive covenants work to this end wonderfully, provided those concerned make the effort to bring them into play. As with all things, the free approach always appears cumbersome, at first – talking someone into a course of conduct takes more time than doing this by coercing the person. But in the end, the result is much more rewarding – all kinds of political hostilities, vested-interest battles, and politicking in the worst sense of that term can be avoided if agreements are reached peacefully, through mutual effort – e.g., via home owners associations.

Of course, in most communities this is at best an ideal, or more likely a political fantasy, along the lines that abolishing prohibition had been at one time, and that substituting a private for a public education system is now. But that does not make it any less feasible and right! So, in the current dispute about whether this or that kind of zoning ordinance is needed for a community, it is vital that some voices keep announcing what is the truly best solution, after all.

What is needed, once all the infighting has betrayed itself as the fruitless effort it really is, is the abolition of zoning and the institution of market-based, voluntary agreements among members of neighborhoods, commercial establishments and so forth, to achieve what these members want to achieve. There will, of course, be limits to what is possible – one cannot live in Shangri-La if one isn't financially equipped to do so; one cannot live deep in the woods if one's budget provides for only an apartment in the middle of town. But within the limits that one must live with in all realms of ordinary life, the solutions reached via voluntary negotiations and bargaining are far superior to those acrimonious ones that are reached via the political process.

Will this be done tomorrow morning at 9 AM? No. But should we stress its desirability and real availability for any community? Yes.