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Market Failure, the Tragedy of the Commons, and Default Libertarianism in Contemporary Economics and Policy

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Abstract and Keywords

Many political theorists take the phenomenon of market failure to show that arguments for libertarianism fail in a straightforward way. This chapter explains why the most common form of this objection depends on invalid reasoning, and why a more sophisticated examination of the relevant economics has led most contemporary economists and policy experts to a view that might be called Default Libertarianism, according to which the strong default for public policy—even in response to market failures—should be toward decentralized, pro-individual freedom policies that involve minimal government intervention in markets. Some experts (but by no means all) similarly believe that even in the face of substantial market failures, libertarian policies are generally best all things considered. This shift toward more libertarian policy represents an important change from the middle of the twentieth century. This chapter explains the structure of the arguments that have led to this shift.

Keywords: market failure, libertarianism, public policy, political theory, government regulation, tragedy of the commons

1. Default Libertarianism in Contemporary Economics and Policy

When Milton Friedman died, Larry Summers offered the following commentary on his importance to policymaking in a *New York Times* editorial entitled “The Great Liberator”:

> [A]ny honest Democrat will admit that we are now all Friedmanites. Mr. Friedman, who died last week at 94, never held elected office but he has had more influence on economic policy as it is practiced around the world today than any other modern figure. I grew up in a family of progressive economists [including Ken Arrow and Paul Samuelson], and Milton Friedman was a devil figure. But over time, as I studied economics myself and as the world evolved, I came to have grudging respect and then great admiration for him and for his ideas. No contemporary economist anywhere on the political spectrum combined Mr. Friedman's commitment to clarity of thought and argument, to scientifically examining evidence and to identifying policies that will make societies function better.

At first glance, it may not be clear what Summers means by his claim that "now we are all Friedmanites." For one thing, Summers intends this claim to be consistent with his view that Friedman voted for the wrong candidate in every election, and Summers also intends this claim to be universal in the sense that it would be endorsed by nearly all experts in economics and policy. This means, first, that his claim that now we are all Friedmanites must be interpreted as consistent with the sort of highly redistributive progressivist policies that Summers and many other experts favor, and second, it cannot be interpreted as endorsing Friedman's many specific theoretical views in economics, most of which are highly controversial. What then does Summers mean by his claim that now we are all Friedmanites?

Here is an answer: A large part of what Summers means by "now we are all Friedmanites" is that economists and policy experts at the highest levels now generally agree on a Friedmanian view that might be called *Default Libertarianism*, to coin a useful term that summarizes the policy evolution to which Summers draws attention. On this view there is a strong presumption in favor of laissez-faire policies that let individuals live their lives as they see fit and that let markets operate without interference. In order for this presumption to be overridden, there must be a very clear case for intervention based on positive empirical evidence that intervention would in practice actually make things substantially better, even in light of impressive empirical evidence that intervention has a natural tendency to fail. And when this presumption against intervention *is* overridden, a presumption remains that policy interventions should involve minimalistic, highly market-based policies that leave individuals as free from regulatory interference and as free to choose as possible and that function primarily by incentivizing socially advantageous behavior, competition, experimentation, and innovation by individuals and firms.

The nature of this presumption derives from empirical evidence that is outlined below, which is taken by proponents to show that a Default Libertarian approach to policy is more effective than the more interventionalist default advocated by economists and policy experts until the 1980s. This evidence has had an important impact on policy experts' estimates of the probability of success associated with the spectrum of more or less libertarian policy alternatives, which in turn has been taken to provide good reason for institutionalizing various presumptions against regulation and in favor of decentralized, market-based regulation when regulation is implemented. So, the "default" in Default Libertarianism refers to two types of presumption: both an *epistemic* presumption about the probability that a more libertarian approach is best when faced with social problems, as well as a resulting *procedural* presumption that is institutionalized in the way that policy is made, which is designed to favor adoption of more libertarian policies in the absence of impressive positive evidence that a departure is warranted.

It is important to stress that endorsing this kind of *strong presumption* in favor of libertarian approaches to policy is consistent with rejecting libertarianism[1] as an all-things-considered approach to policy, and instead endorsing progressivist policies that involve high levels of redistribution of wealth, as Summers himself would endorse along with most other Democratic party experts. The crucial point is that progressivists like Summers believe that overriding the presumption requires impressive reasons, and even when it is overridden, redistribution and other forms of intervention should generally be based on straightforward mechanisms such as (at the limit) simple taxes and cash transfers that, again, involve minimalistic, highly market-based policy that leaves individuals as free to choose as possible, and that allow markets to operate freely. The striking fact to which Summers's claim draws attention is that this Default Libertarian approach is now widely taken to be the gold standard among even leading progressivist policymakers, rather than the radical proposal it was in 1962 when Friedman first defended it at length in his classic book *Capitalism and Freedom*.[2]

2. Objections from Social Critics vs. More Ambitious Arguments for Empirical Libertarianism

In contrast to Summers's celebration of Default Libertarianism, political theorists and social critics often bemoan the fact that candidates from both sides of the aisle now embrace free markets with such enthusiasm. These critics tend to criticize such a market-friendly approach on the basis of what they take to be straightforward objections, where the take-home message is supposed to be that such an approach depends on naive views of both ethics and economics. The economic strand of these objections is particularly important, because it aims to show that such an approach fails by its own lights even if ethics are set aside. These critics see the current near-consensus around market-based policy as the result of regrettable and irrational ideological drift, rather than any sort of genuine intellectual progress.

In what follows, I argue that these critics' objections, far from reflecting a superior understanding of economics, are outdated, and getting up to date on the economics and related research is the key to explaining why there has been such a shift toward Default Libertarianism.

In addition, getting up to date on the contemporary research also helps to explain why many experts endorse an all-things-considered libertarian view that might be called *Empirical Libertarianism*. This view is a contemporary version of the sort of consequentialist libertarian view defended by Milton Friedman and many others, now supported by more detailed arguments, which are often empirical in nature. Whereas Default Libertarianism is *not* a libertarian view because it implies merely that there is an important *presumption* in favor of libertarian policies that leads to policies with a libertarian flavor often being best all-things-considered, Empirical Libertarianism adds the controversial empirical claim that overriding this presumption *almost always* leads to worse outcomes and thus concludes that libertarian policies are almost always best.

The goal here in connection with Default Libertarianism and Empirical Libertarianism is not to argue for either of these views, but merely to explain why these views appear reasonable given contemporary economics, and to argue that if one or both of these views are false, it is for complex empirical reasons, and not for straightforward reasons that should be clear given our current evidence, contrary to what critics so often suggest. More generally, the goal throughout this chapter is to explain *the structure of the arguments* for these views, and in the process to explain why standard objections from political theorists fail to engage with many of the most respected contemporary economic arguments. I set aside the task of evaluating the ultimate *soundness* of the relevant arguments, because as will be clear from the following discussion, evaluating the soundness of these arguments is a task for economics and related disciplines, and it is a task that most experts would agree is ongoing and evolving.

3. The Tragedy of the Commons and the Standard Market Failure Argument Against Libertarianism

With that introduction in hand, let us turn toward articulating the standard economic argument offered by political theorists against libertarianism. Perhaps the simplest way into this argument is to see how it is deployed against the maximally libertarian view of laissez-faire, according to which markets should be allowed to operate with as little interference as possible, except to protect basic rights and enforce contracts.[3]

Laissez-faire is an important view to consider because it is often defended in public discourse on the grounds that any additional governmental interference beyond laissez-faire would violate individual rights, and on the grounds that additional interference would also lead to worse outcomes, primarily by preventing free exchange that "promotes the common good as if by an invisible hand," "adds to the size of the pie," and thereby contributes to "a rising tide that lifts all boats."[4] As such, the main argument for laissez-faire in public discourse combines strands of both ethical and economic reasoning.

The most familiar ethical argument *against* laissez-faire is that it ignores important goals that government is justified in promoting, such as distributive justice, democratic equality, and the like, and that these goals are actually undermined by laissez-faire, thus justifying additional government interference. Such an objection tends to go hand in hand with skepticism about the ethical grounds of property rights,[5] as well as the thought that there are particular markets—such as markets for prostitution—that must be highly regulated because "some things should not be for sale."[6]

In what follows, I set aside these ethical objections, and focus instead on the main economic argument (i.e., the main *consequentialist* argument) against laissez-faire and other libertarian views. This economic argument begins by claiming that the case for laissez-faire ignores the pervasive phenomenon of *market failure*, which arises from the fact that real-world acts and exchanges tend to impose costs and/or benefits on non-consenting third parties (impose *externalities* on third parties), or lead to inefficient outcomes in other ways (for example, as a result of lack of information, or monopoly power within markets), where these costs frequently exceed the benefits to society from allowing the relevant acts and exchanges. Examples of market failure include the predictable undersupply under laissez-faire of public goods, and the harms associated with the predictable oversupply under laissez-faire of public bads (such as pollution). In the worst cases of market failure, free exchange makes society worse off rather than better off, even though no rights or contracts are violated.

Most political theorists take this phenomenon of market failure to show that laissez-faire fails in an obvious and dramatic way on its own terms, even setting aside the question of whether there are additional legitimate objectives of government beyond those endorsed by laissez-faire. Furthermore, the fact that in real-world transactions market failure is the rule rather than the exception is taken to show that government intervention is justified far beyond any limits that could reasonably be called "libertarian." In what follows, it will be argued that this *Standard Market Failure Argument* is invalid, and that the particular way it fails provides a natural segue into the impressive contemporary arguments for Default Libertarianism.

Perhaps the best way into a detailed examination of the Standard Market Failure Argument is via the example of the tragedy of the commons, which is a paradigmatic illustration of market failure. For example, imagine a village that subsists largely on fish, where those fish are harvested from a fishery that is an *unregulated commons* in the sense that anyone can fish as much as they want without violating anyone's rights. Somewhat more technically, this natural kind of fishery is an *unregulated common pool resource* in the sense that its resources (namely, fish) are both *non-exclusionary*—no one has the right to exclude others from harvesting them—and *subtractable/rivalrous*—each act of harvesting reduces the amount available for others and thus reduces the expected value of the next similar act of harvesting.[7] With such a fishery in mind, it does not take sophisticated economic theory to see why laissez-faire could lead to overharvesting and even catastrophe in connection with such a fishery. The explanation is that each individual fisher might do best by harvesting as much as possible regardless of what the other fishers do, even far beyond the point at which the collective result of all of the fishers' harvesting leads to the collapse of the fishery and a terrible outcome for all.

If the fishers' situation is as just described, then the economic logic of their situation is roughly a *multi-player prisoner's dilemma* where every player can be represented as having a choice between the same two options, OVERHARVEST and SUSTAINABLE HARVEST, where it is common knowledge that every individual does worse if all choose OVERHARVEST than if all choose SUSTAINABLE HARVEST, but where it is also common knowledge that choosing OVERHARVEST is the *dominant strategy* for each player, in the sense that regardless of what choices the others make, each does best for herself by choosing OVERHARVEST:

		Player n	
		Sustainable harvest	Overharvest
Player 1	Sustainable harvest	3,3	–4,5
	Overharvest	5,–4	–1,–1

A tragedy of the commons that is properly modeled as a prisoner's dilemma and in which individuals act in pursuit of self-interest is a classic example of *market failure*: a situation in which free action and free exchange lead to an outcome that is *inefficient* (*Pareto-inferior)* compared to another possible outcome, in the sense that another outcome that could have been brought about would have made some people better off without making anyone worse off. (For example, if the fishers follow self-interest in the situation described, the outcome that results is as described by the lower right-hand box above, which is Pareto-inferior to the possible outcome described by the upper left-hand box.) Furthermore, such a situation is the most famous example of a *social dilemma*, which is a situation in which the pursuit of self-interest by members of society is *directly collectively self-defeating*, in the sense that it leads to an outcome that is clearly worse from everyone's perspective than if everyone had not pursued self-interest and acted in a more "universalizable" way instead.[8] In social dilemmas, free action threatens to make not just someone but *everyone* worse off.

Social dilemmas are of great practical and theoretical importance because they approximate many real-world situations in which all members of society would prefer a different outcome than a free market can seem destined to deliver, including the oversupply of public bads such as pollution and the undersupply of public goods. Because free action and free exchange can seem destined to make everyone worse off in such cases, most political theorists take this type of market failure to provide an uncontroversial demonstration that economic arguments for laissez-faire and other libertarian views fail by their own lights, and that a more robust role for government is therefore justified to ensure better outcomes.

When this argument for more expansive government is understood in a straightforward way, it is an instance of what might be called the *Standard Market Failure Argument Against Libertarianism*:

> *Main Premise*: In a wide range of identifiable real-world cases, acts and transactions that respect rights but are otherwise done out of self-interest would impose externalities on third parties or lead to market failure for other reasons.
>
> *Intermediate Conclusion*: Therefore, market failure will occur in such cases.
>
> *Main Conclusion*: Therefore, public policy is justified in such cases beyond laissez-faire and beyond anything that could properly be called “libertarian” to remedy these market failures.

For example, here is the philosopher Derek Parfit explaining what he takes to follow from the existence of social dilemmas:

> If each rather than none does what will be better for himself, or his family, or those he loves, this will be worse for everyone. … There is then a practical problem. Unless something changes, the actual outcome will be worse for everyone. This problem is one of the chief reasons why we need more than laissez-faire economics—why we need both politics and morality.
>
> Parfit, 1984: 62)

4. Why the Standard Market Failure Argument Is Invalid: Cooperative Behavior, Individuals’ Superior Knowledge and Incentives, Government Failure

However, there are two independent objections to the Standard Market Failure Argument, each of which shows that it is invalid. First, the argument from the Main Premise to the Intermediate Conclusion presupposes the problematic neoclassical assumption that individuals will always act in their own narrow self-interest. Second, the argument from the Intermediate Conclusion to the Main Conclusion presupposes that public policy can correct market failures, or can at least improve outcomes over laissez-faire, which in many cases is at least as contentious as the neoclassical assumption. As a result, because the conclusion of the Standard Argument does not follow even if all of its premises are true, it is invalid, and the premises that must be added to make it valid are highly controversial and rejected by many leading experts.

Although these problems with the Standard Argument are occasionally acknowledged by political theorists, they are typically dismissed on the grounds that the assumptions of the Standard Argument are *close enough* to being correct about individual behavior and about the efficacy of government intervention to vindicate its Main Conclusion against libertarian views.

However, this is precisely where political theorists' understanding of economics and relevant disciplines is importantly outdated, as in the last several decades evidence has mounted that these assumptions may not be even approximately correct, at least for the spectrum of cases where they were assumed to hold by theorists of an earlier era. In very rough terms, the contemporary arguments that are most relevant here, which have led to several recent Nobel Prizes in economics, are that:

> First, in a wide range of cases including social dilemmas, individuals are actually disposed to act more altruistically and to cooperate to produce outcomes that are much better than what is predicted by standard neoclassical assumptions.[9]
>
> Second, in these and other situations where market failure threatens, the outcomes facilitated by Default Libertarian policies are often roughly *optimal in practice*, in the sense that over the long run they are better than the results of any practically feasible alternatives, and in particular are better than the results of more substantial interference by government to require individuals to act in accord with a plan that is *optimal in theory* according to standard neoclassical models. In other words, a solution that arises "internally" via individual choice, coordination, bargaining, and experimentation is often superior to an "externally imposed" solution devised by government, even when neoclassical theory implies that the internally generated solution is destined to be inefficient. This is especially true when coordination among individuals and experimentation is facilitated by minimalistic government assistance of the sort that advocates of Default Libertarianism endorse, such as government provision of short-term legal, administrative, and financial assistance in getting individuals together to communicate, coordinate, and get their own chosen form of cooperation up and running, which then removes any future need for government involvement or financing.[10]

In other words, the main thread of these contemporary arguments is that individuals are surprisingly good at coping with situations where market failure threatens when conditions are even somewhat favorable, and that the best outcome that is practically possible is often secured by leaving individuals free to coordinate and solve these problems themselves, free from government interference—except (importantly) via minimalistic government measures endorsed by Default Libertarianism that make the relevant background conditions as favorable as possible without prejudging the details of what solution is best.

To illustrate why experts now tend to maintain a Default Libertarian posture even when market failure threatens, it is useful to note one example of the kind of evidence that is taken to support the claims above. As just one such example, Elinor Ostrom describes a fishery in Alanya, Turkey that had become overfished by the 1960s, which caused economic decline and discord in the adjacent community that depended on the fishery for its livelihood. In response to this tragedy of the commons, the community deliberated internally for over a decade, and experimented with a variety of arrangements to cope with the problem, from which ultimately evolved a low-cost system of self-governance that led to sustainable use of the fishery and thus a “libertarian” solution to their commons dilemma. The solution that the fishers ended up coordinating on involved identifying how fishing locations of varying quality could ideally be spaced out and allotted to one fishing boat each to avoid overharvest and unnecessary interference between fishers and thus to yield maximum aggregate profits; then the initial use of each of those locations was allocated via lottery to individual fishers; then, each day the fishers rotated to the next adjacent spot either east to west, or west to east, depending on the fishing season, so that they could share those spots in a way that was perceived to be fair to all.

Once this system evolved, it was a *stable self-governing system* that did not require government interference or privatization of the fishery, contrary to what policy experts in an earlier era generally advocated as necessary features to any solution to such social dilemmas.[11] In describing the day-to-day facts on the ground relevant to the success of this particular solution, Ostrom notes that “fishers can expect that the assigned fisher will be at [their] spot bright and early. Consequently, an effort to cheat on the system by traveling to a good spot on a day when one is assigned to a poor spot has little chance of remaining undetected.… The few infractions that have occurred have been handled easily by the fishers at the local coffeehouse.”[12]

At a more theoretical level, Ostrom explains why, given the superior knowledge and incentives of individuals compared to government, this self-governing solution was almost certainly better than what would have resulted from a more interventionalist approach on the part of government:

> Central-government officials could not have crafted such a set of rules without assigning a full-time staff to work (actually fish) in the area for an extended period. … Mapping this set of fishing sites, such that one boat’s activities would not reduce the migration of fish to other locations, would have been a daunting challenge had it not been for the extensive time-and-place information provided by

> the fishers and their willingness to experiment for a decade with various maps and systems. Alanya provides an example of a self-governed common-property arrangement in which the rules have been devised and modified by the participants themselves and are also monitored and enforced by them. The case of the Alanya inshore fishery is only one empirical example of the many institutional arrangements that have been devised, modified, monitored, and sustained by the users of renewable [common pool resources] to constrain individual behavior that would, if unconstrained, reduce joint returns to the community of users. [Similar] arrangements have been well documented for many farmer-managed irrigation systems, communal forests, inshore fisheries, and grazing and hunting territories.
>
> (Ostrom, 1990: 20–21)

Ostrom draws a more general lesson about how this sort of Default Libertarian response to market failure compares favorably to the sort of *government failure* that is frequently the much worse outcome of greater intervention by government in such situations:

> [Advocates of more centrally planned solutions] presume that unified authorities will operate in the field as they have been designed to do in the textbooks—determining the best policies to be adopted based on valid scientific theories and adequate information. Implementation of these policies without error is assumed. Monitoring and sanctioning activities are viewed as routine and unproblematic. … Many policy prescriptions are themselves no more than metaphors. Both [advocates of centrally planned solutions and privatization schemes] frequently advocate oversimplified, idealized institutions—paradoxically, almost 'institution-free' institutions. … Relying on metaphors as the foundation for policy advice can lead to results substantially different from those presumed to be likely. Nationalizing the ownership of forests in Third World countries, for example, has been advocated on the grounds that local villagers cannot sustain forests so as to maintain their productivity and their value in reducing soil erosion. In countries where small villages had owned and regulated their local communal forests for generations, nationalization meant expropriation. In such localities, villagers had earlier exercised considerable restraint over the rate and manner of harvesting forest products. In some of these countries, national agencies issued elaborate regulations concerning the use of forests, but were unable to employ sufficient number of foresters to enforce those regulations. The foresters who were employed were paid such low salaries that accepting bribes became a common means of supplementing their income. The consequence was that nationalization created *open-access resources* where limited-access *common property resources* had previously existed.[13] The disastrous effects of nationalizing formerly

> communal forests have been well documented for Thailand, Niger, Nepal, and India. Similar problems occurred in regard to inshore fisheries when national agencies presumed they had exclusive jurisdiction over all coastal waters.[14]
>
> (Ostrom, 1990: 22–23)

In addition to Ostrom's point that government intervention often makes things worse rather than better even when that intervention is intended to correct inefficiencies, a further point is that many market failures and other social problems that at first glance might appear to be caused by free markets are actually caused by government interference that prevents markets from operating freely. In such cases, it is even clearer why the best solution might be to make markets freer, rather than to add further regulation that could make the problem even worse and create further problems elsewhere.

In some cases, when there is reliable evidence that the sort of ultra-minimalistic response to market failure illustrated here in connection with the Turkey fishery case will not be enough, the remaining Default Libertarian presumption is that incentives should be created by government for individuals to cooperate via a clear and straightforward market-based measures, such as, for example, a *Pigovian tax*, which levies a fee for actions that impose externalities on others based on the magnitude of those externalities. For an example of such a Pigovian tax, consider a tax on pollution that levies a fee for each ton of a pollutant emitted based on a calculation of the *marginal social cost* of an additional ton of that pollutant—that is, the aggregate cost of an additional ton of that pollutant to all of those in society.[15] Such a tax creates incentives for pollution reductions in a way that incentivizes socially beneficial innovation and technological progress, while interfering in individual choice as little as possible—it leaves individuals free to choose whether to continue with their polluting behavior and pay its true cost, or to adopt less polluting technologies instead, or to change their behavior in some other way that is best from their perspective after the true costs of their actions are "internalized" by the tax into the possible outcomes of their choices, thereby leveraging the generally superior time-and-place knowledge of individuals. Of particular note, such a tax is designed to achieve all of this—and the goal of securing the optimal level of pollution for society at the least cost—without the sort of *command and control* requirements of particular behavior and technologies that are one hallmark of more substantial government interference that was the default in the previous era.[16] In a situation where an ultra-minimalistic response has been tried and has failed, adding such market-based incentives without command and control often suffices to spur individuals to coordinate and innovate in a way that is roughly optimal in practice, without need for further governmental determination of specific actions and outcomes.

Taken together, these empirical results about the superior knowledge and incentives of individuals and the frequent ability of individuals to cope better than government with situations where market failure threatens are among the leading factors in explaining why Default Libertarianism has become the dominant view in contemporary economics and public policy. They also bring into sharp focus what is ultimately the crucial issue for practical purposes, as well as for the evaluation of libertarianism, which is the extent to which market failure should be expected to occur in situations that involve externalities or other social dilemma–like incentive structures, and the comparative benefits of more or less robust governmental intervention into those situations.

5. The Crucial Empirical Issue in Debates about Libertarianism

As the discussion thus far shows, whether any kind of market failure argument against libertarianism can be salvaged depends on the *empirical* question of *the extent to which* market failure should be expected to occur in situations in which it is predicted by neoclassical assumptions, and *to what extent* government intervention should actually be expected to make things better rather than worse in those situations beyond the limits of what could reasonably be called a “libertarian” approach to policy. With the empirical nature of this issue in mind, and with some indication now in hand of some of the reasons why government might not generally be the best solution to these problems, we are now in a good position to reflect on the *Characteristic Claim of Empirical Libertarianism*, which goes well beyond the claims of Default Libertarianism explained above:

> Market failures under laissez-faire are generally not as bad as the outcomes that would result over the long run from attempting to solve those failures with greater government intervention. In the rare cases where policy can make things better, the best feasible outcomes are provided by non-intrusive, market-based regulation incorporating Pigovian taxes, cash transfers, and other measures that are the strong default according to *Default Libertarianism*. In sum, the best overall package of government policies will involve only very modest government interference beyond laissez-faire, where that interference will tend to be highly market-based and decentralized in its implementation.[17]

This empirical claim is highly controversial but yet not obviously mistaken given contemporary economics, especially in light of the contemporary research outlined above, which will be described in somewhat more detail in subsequent sections. Empirical Libertarianism follows from this empirical claim together with Default

Libertarianism, and such a view is similar to Milton Friedman's consequentialist libertarian view, although now supported by a wider range of empirical arguments.

The important point to make here in connection with this all things considered libertarian view is that if it is false, it is false for complex empirical reasons, and not for obvious reasons that follow from the phenomenon of market failure—contrary to what many political theorists assume. At the same time, it is much more controversial than Default Libertarianism, because it adds the more controversial claim that the default against governmental intervention should be very seldom overridden.

6. Contemporary Empirical Arguments for Libertarianism vs. Older A Priori Public Choice Arguments

Having now laid out the structure of the dialectic between, on the one hand, the Standard Market Failure Argument against Libertarianism and, on the other hand, Default Libertarianism and the more controversial view Empirical Libertarianism, the next step is to explain why contemporary arguments for Default Libertarianism have been so compelling to experts across the political spectrum. The primary explanation is that these contemporary arguments are based firmly on impressive *empirical evidence* rather than the kind of neoclassical *a priori reasoning* that was the hallmark of older libertarian economic arguments such as early public choice arguments. In other words, contemporary arguments tend to be based directly on real-world experience with how policies play out in practice, rather than derivations of how things ought to work according to a simplistic economic theory.

For example, older economic arguments for libertarianism tend to begin by noting the familiar fact that government intervention can create perverse incentives and can have seriously bad unintended consequences; furthermore, expanding government power creates new opportunities for bureaucrats within government and special interest groups to benefit themselves at the expense of the public. When these kind of facts are conjoined with the neoclassical assumption that individuals will act to enrich themselves, this allows for the derivation of results in public choice theory such as that bureaucrats will act to fleece the public whenever possible to benefit themselves, including by becoming essentially employees of private interests in exchange for government favors, such as by providing government protection of inefficient monopolies.[18]

The great value in these older public choice arguments is in showing that just as inefficiencies due to *market failure* will arise in a wide range of cases given neoclassical assumptions, so too inefficiencies due to this phenomenon of *government failure* will arise in a wide range of cases given neoclassical assumptions. This is in fact the neoclassical economic objection to the Standard Market Failure Argument Against Libertarianism, which provides another way of showing that the Standard Argument is invalid even given neoclassical assumptions.

However, the great limitation of these older economic arguments when used as arguments *for* libertarianism is that just as the threat of market failure does *not* show that government intervention will make outcomes better, so too the threat of government failure does *not* show that government intervention will *not* make outcomes better than a libertarian approach to policy. So, this kind of older public choice argument fails as an argument *for* libertarianism for structurally the same reasons that the Standard Market Failure Argument fails as an argument *against* libertarianism.

Furthermore, even setting that issue aside, these older public choice arguments for libertarianism can seem unconvincing because they are essentially a priori demonstrations of how things ought to work according to neoclassical economic models, which is a form of argument that is often unimpressive to those outside of the discipline of economics. In particular, such arguments may seem to depend on an implausibly cynical view of government insofar as they are taken to support libertarian conclusions, even if one agrees that some amount of cynicism about government is justified. In light of all this, it is reasonable that political theorists and others do not take these older public choice arguments to provide a decisive economic argument for libertarianism or even Default Libertarianism. In contrast, contemporary empirical arguments are based on impressive evidence about how policies play out in practice, and the comparative outcomes that can thus be expected to result from more or less libertarian policies—which is the kind of argument that is actually needed to answer the crucial questions about what policies should actually be expected to work best in particular cases.

7. Contemporary Empirical Arguments for Default Libertarianism in More Detail

The great evolution in contemporary economics that is important for our purposes is what might be called *the empirical and institutional turn* of the past several decades, which leads directly into the relevant contemporary arguments, which marshal impressive empirical evidence about how policies play out in practice, often based directly on real-world experience. In this section, the elements of this contemporary research that are most relevant to social dilemmas will be described in somewhat more detail, but no attempt will be made to go far enough into the details to do justice to these arguments on their own terms, much less to evaluate the soundness of all deployments of these arguments. Such an undertaking would require a multi-volume series of handbooks of its own. Instead, the goal here is merely to provide a high-level explanation that is sufficient to explain in somewhat more detail why these contemporary arguments, in contrast to older, more a priori libertarian economic arguments, have been so influential in moving experts and policymakers toward more libertarian policy.

First and perhaps most importantly, in the last several decades market-based policies have been increasingly implemented despite the protests of non-economists, and have generally experienced success when deployed in the way that Default Libertarian practitioners favor, arguably performing better than more traditional command and control policy approaches insofar as such an assessment is possible, and often performing dramatically better. As just a few leading examples, the success of the SO_2 cap-and-trade system to reduce acid rain the United States is often cited along with many analogous successful market-based solutions to environmental problems elsewhere in the world.[19] More recent examples include many successes under the Obama administration in a diverse range of initiatives, including reducing overfishing in domestic fisheries via property rights creation and market-based trading schemes that involve minimal government prohibitions on individual choice, and leave the details of how individuals will ultimately coordinate to produce a collectively acceptable outcome almost entirely to those individuals to figure out, given their superior knowledge and incentives.[20] Other examples include conditional cash transfer programs to benefit the poor that have been arguably more effective than other less minimalistic policy measures with the same goals,[21] and the trend is now toward further movement toward these policies in the realm of social welfare, and toward even more Default Libertarian implementation of these policies to make them simpler and more economically efficient, based on these repeated successes.

More indirect support for Default Libertarianism across the full spectrum of policy is provided by the successes associated with various procedural presumptions that have been created against regulation in recent decades, such as requiring that regulations pass a cost-benefit analysis test, which is a requirement that has been in place on regulations issued by the federal executive branch in the United States since the Reagan administration. In practice, this requirement has created a Default Libertarian–like presumption against regulation, where the presumption requires positive empirical evidence to override.[22] In the United States, President Obama has expanded this requirement by adding *retrospective* cost-benefit analyses of policies already in place with the aim of eliminating policies that are not empirically shown to be effective in retrospect.[23] Further initiatives include moves to simplify policies and make improvements based on the results of insights from empirical psychology about the behavioral dispositions of people that are highly sensitive to non-financial cues, and thus lead to predictable departures from neoclassical assumptions about behavior. As Cass Sunstein, the czar of regulation in the Obama administration (and widely cited scholar), argues in his book *Simpler: The Future of Government*, these initiatives are showing success in outcomes while at the same time reducing the burdens of government on firms and individuals compared with approaches to policy that go beyond Default Libertarianism (Sunstein, 2013).

Reflection on the kind of regulation that does pass an empirically adequate cost-benefit analysis illustrates why Default Libertarianism is at the same time consistent with some substantial government regulation based on compelling empirical evidence, such as limits on pollutants in drinking water.[24] As this example illustrates, Default Libertarianism is not the view that we should have *less* regulation—instead, it is exactly the kind of more nuanced view about regulation that is needed, which counsels us to have not merely *more regulation* or merely *less regulation*, but rather the *best regulation* based on sound empirical analysis and elegant design—which now tends to rely heavily on markets, experimentation, and individual innovation and choice. The other side of this coin is that further support for Default Libertarianism is provided by comparing these successes of Default Libertarian policy with the widespread failure, over many decades, of aid and welfare programs that involve government interference and central planning beyond what is endorsed by Default Libertarianism.

In addition to this wide range of experiences with such failures,[25] the research of Nobel Laureates Elinor Ostrom, Vernon Smith, and others has undermined the assumption of standard neoclassical models that individuals are disposed to avoid cooperation in, for example, the wide range of situations commonly modeled as social dilemmas.[26] Ostrom's research program has been particularly influential in policy circles because it involves meticulous study of hundreds of real-world situations in which individuals use common resources, and has led to great progress in identifying the conditions under which cooperative outcomes that are superior in practice to government intervention are likely to emerge when individuals are left more or less free to solve these problems themselves, especially when such solutions are facilitated by minimalistic government assistance of the sort that is prescribed by Default Libertarianism.[27] In addition to the successes with overfishing and other initiatives noted above that were partly guided by this research, this tradition marshals many examples as diverse as communal forests, grazing areas, and traditional water allocation systems across the world, where individuals have achieved results that are roughly optimal in practice even though they are suboptimal according to standard neoclassical models that in an earlier era were taken to justify large governmental takeovers of such systems, which often had disastrous results.[28] One impressive sign of the resulting shift toward Default Libertarianism is that leading resource management policymakers from both the Democratic and the Republican parties, such as Jane Lubchenco and Lynn Scarlett (from the Obama and George W. Bush administrations, respectively), explicitly endorse these lessons from Ostrom as among the most important we have learned in recent decades.[29] A more general reason why this research is so important is that these examples represent the vast range of cases where policy commentators of the previous era, such as Garrett Hardin, mistakenly claimed that a catastrophic tragedy of the commons was unavoidable without large-scale governmental intervention through either regulation or a privatization scheme.[30]

Somewhat relatedly—and illustrated by many of the examples alluded to above—there is also now increased recognition that policy challenges such as market failures must be understood as embedded within the complex system of local, national, and global economies, which also have similarly complex ties to institutions that overlap and interact in incredibly diverse ways that resist simple modeling. As a result, the status quo equilibrium of such a system, which may seem highly inefficient from the perspective of a simple neoclassical model of one policy challenge that arises within that system, may at a deeper level be a highly evolutionarily tuned equilibrium with many desirable stability properties that would be upset by social engineering. Along one dimension, this is merely a sophisticated way of explaining why an outcome that appears highly suboptimal in theory may be nearly optimal in practice. But an important further point is that evolutionarily tuned complex systems can have more subtle properties that explain this optimality in practice, such as becoming more resilient and even generating better outcomes over time as they are exposed to external shocks.[31] In contrast, when such a system is replaced by a socially engineered system, the result can be a system that is optimized for the short run, given an incomplete and flawed model of the underlying complex system, but that as a side effect becomes highly fragile in the face of external shocks. For example, Nassim Taleb argues that by replacing the allegedly “inefficient” banking system of an earlier era (involving many disconnected banks that occasionally failed and occasionally led to panic) with a more-efficient-in-theory central banking system embedded in a highly socially engineered society with far-reaching government influence, the result was a fragile system that could be utterly destroyed by a financial crisis, rather than merely temporarily set back only to grow back stronger as in an earlier era.[32] Although this particular example is controversial, the point it illustrates is the need for modesty about the ability of government to make sustainable improvements in society, in light of the fact that the economy is a complex system in which the gains in stability from decentralization must not be underestimated, and in which the complex interconnections and contributions of institutions to outcomes cannot be overlooked in the way that was characteristic of more interventionalist approaches to policy in the previous era.

Once these basic points are made salient, it is easy to recognize that many historical failures of social engineering are explained by the replacement of finely tuned, evolutionarily adapted systems with more fragile planned systems that quickly fail. James C. Scott and many other scholars have provided a range of examples of this sort, sometimes interrelated, ranging from monoculture in forest and crop management, to city planning (Scott, 1999).[33] Another example is the following from Elinor Ostrom and collaborators, which illustrates recurring problems with planned development efforts:

> The government-owned Chiregad irrigation system…was constructed in Nepal to replace five farmer-owned irrigation systems whose physical infrastructures were [much more primitive]. In planning the Chiregad system, designers focused entirely on constructing modern engineering works and not on learning about the rules and norms that had been used in the five earlier systems. Even though the physical capital is markedly better than that possessed by the earlier systems, the Chiregad system has never been able to provide water consistently to more than two of the former villages. Agricultural productivity is lower now than it was under farmer management. Not only do the farmers invest heavily in the maintenance of [their systems], they have devised effective rules related to access and the allocation of benefits and costs. They achieve higher productivity than most government-owned systems with modern infrastructure.[34]

Even if one disagrees with the application of this analysis to some specific examples (such as, perhaps, the recent financial crisis), the more general point remains that when social problems appear at first glance to be caused by free markets, sometimes in actuality they are caused by government interference in markets, where this fundamental cause goes unnoticed by society because it is not perceptible to an untrained observer.

This concludes the outline of why contemporary economic arguments have been so influential in moving leading experts and policymakers to Default Libertarianism. Again, the main reason why these arguments have had such influence is that they are based on impressive empirical evidence rather than the kind of neoclassical a priori reasoning that was the hallmark of older libertarian economic arguments. Much of this impressive empirical evidence is based directly on real-world experience with how policies play out in practice, rather than merely derivations of how things ought to work according to simplistic economic models.

8. Empirical Replies to Ethical Objections to Libertarianism

In response to all of the preceding arguments for Default Libertarianism, some critics may be tempted to fall back on *ethical* objections to that view. However, at this point it is possible to see the structure of an impressive reply to such objections—namely, that whatever additional ethical goals we might have, the best way of achieving them is by the sort of policy mechanisms endorsed by Default Libertarianism.[35] With this in mind, it is possible to agree with egalitarian philosophers such as John Rawls or Peter Singer concerning "ideal theory" questions about what ideals and goals society and policy should pursue, while disagreeing with, for example, Rawls's view that public policy should aim for a social structure more analogous to that of the former Yugoslavia than any other form of government with which we have experience.[36] According to a Default Libertarian line of thought, we should not adopt such a Rawlsian approach to policy, given the actual cause and effect relationships in the real world, because doing so would make society worse rather than better along the ethical dimensions that ultimately matter. Instead, the Default Libertarian progressivist thought is that we should instead agree with equally progressive contemporary experts who favor a more *effective altruism*, in which growing inequality and other social ills are best combatted by the sort of policies recommended by Default Libertarianism given those goals, such as cash transfers and other social welfare measures originally advocated by Milton Friedman as the most effective way of achieving such ethical goals.

Along these lines, it is telling that some influential political theorists are increasingly incorporating some of the insights outlined above, thereby providing a more empirically informed understanding of how societies can flourish, what the best form of deliberative democracy would be,[37] how to promote global justice and design effective and legitimate global governance institutions,[38] and how best to promote other important political values. For example, in a 2013 editorial in the *New York Times* Peter Singer praises the virtues of charities that facilitate unconditional cash transfers to the poor in developing countries, on the grounds that contemporary evidence indicates that this is likely to be the most effective way of helping such people (Singer, 2013). In response to this, it is easy to imagine Milton Friedman, the original defender of a Default Libertarian approach to policy, writing a response to this kind of change in progressivist attitudes to policymaking over the past several decades:

> Although I do not necessarily endorse Mr. Singer's ethical arguments for the dramatic redistribution of wealth, I applaud his wisdom in endorsing the libertarian mechanisms for such proposed redistribution that I outlined in *Capitalism and Freedom* fifty years ago. To theorists like Mr. Singer I say: Welcome aboard!

9. Conclusion

In sum, although many political theorists take the phenomenon of market failure to show that arguments for libertarianism fail in a straightforward way, this chapter has explained why the most common form of this objection depends on invalid reasoning, and why a more sophisticated understanding of the relevant economics has led most contemporary economists and policy experts to the view here called *Default Libertarianism*. According to this view, the strong default for public policy—even in response to market failures—should be toward decentralized, pro-individual freedom policies that involve minimal government intervention in markets. Many experts (but by no means all) also take these considerations to show that even in the face of substantial market failures, libertarian policies are generally best, all things considered. This shift toward more libertarian policy represents an important change from the mid- to late twentieth century, when the default stance involved more substantial government intervention. The focus of this chapter has been on explaining the *structure* of the arguments that have led to this shift, especially in connection with work that has led to many recent Nobel Prizes in economics—but no pretense has been made of evaluating the *soundness* of these arguments, which is an ongoing project for economics and related disciplines.

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Notes:

([1]) Here and throughout, for ease of exposition the term “libertarianism” is used to refer to the general family of views that include more specific views sometimes described as “classical liberalism,” “right libertarianism,” “hard libertarianism,” “neoclassical libertarianism,” and “bleeding heart libertarianism.” Importantly, “left libertarianism” is not included under this heading. For discussion of this family of views, and similar use of the term “libertarianism,” see Brennan, 2012, especially pp. 8–12.

([2]) Notably, this Default Libertarian approach to policy has not wavered even in the wake of the recent financial crisis. For some limited arguments for change, see Stiglitz, 2010. At the same time, it is telling that even Stiglitz, who is perhaps the most distinguished and withering critic of laissez-faire among leading economists, nonetheless appears largely an ally of the Default Libertarian approach to policy discussed here, and in stating the upshot of his work for policymaking, he can be seen as endorsing a version of that approach analogous to that attributed to Summers here. For example, in “Government Failure vs. Market Failure: Principles of Regulation,” Stiglitz criticizes advocates of laissez-faire on the grounds that they commonly “take it as a matter of faith that government attempts to correct market failures by and large make things worse.” However, in the next sentence he continues, “To be sure, there are examples of badly designed government regulations, but the disasters associated with unfettered markets at least provide a prima facie case for the desirability of *some* regulation” Stiglitz, 2008: 2–3, italics in the original). Note Stiglitz’s own emphasis on ‘some’. Similarly, Stiglitz writes in his Nobel Prize autobiography that in his opinion the most important contribution of his tenure on the Council of Economic Advisors during the Clinton administration was in “helping define a new economic philosophy, a ‘third way,’ which recognized the important, but limited, role of government, that unfettered markets often did not work well, but that government was not always able to correct the limitations of markets. The research that I had been conducting over the preceding twenty-five years provided the intellectual foundations for this ‘third way’” (Stiglitz, 2001). Note the reference to the “limited” role of government here. For related discussion see also Stiglitz, 1991. As a separate point, there is a sense in which Default Libertarianism might be claimed to be a particular kind of “neoliberalism,” which is a term that is used to mean so many different things that it has little determinate content. However, the forms of neoliberalism that are generally discussed and criticized—leading to corporate welfare, lack of concern for values beyond short-run GDP, and so on—are also forms of neoliberalism that would be rejected by defenders of Default Libertarianism. As a result, Default Libertarianism is a superior alternative to the forms of neoliberalism that are discussed in popular discourse, and is not a version of those forms of neoliberalism.

([3]) For our purposes, laissez-faire might be understood more precisely as the view that government should not interfere with individual acts insofar as those acts do not violate the directives of well-functioning minimalistic background institutions that exist to protect rights and enforce contracts, and, beyond that, perform only functions that *all* citizens *explicitly agree* to have performed by those institutions by means of such directives. In this definition of laissez-faire, the requisite background institutions are not referred to as "governmental institutions" because, as Elinor Ostrom and others have argued, public goods up to and including police protection and dispute settlement regimes are sometimes best supplied in the real world by non-governmental institutions created by inspired individual public entrepreneurs, rather than by government or governmental actors. Ostrom's views are discussed in greater detail below; see also Schmidtz, 1990. Note also that this definition of laissez-faire captures the intentions of actual defenders of that view that individuals can be required to comply with directives that are purely conventional (e.g., pure coordination conventions, such as what side of the road it is permissible to drive on), insofar as those conventional rules are necessary for the relevant institutions to be well-functioning and/or to solve problems that all citizens agree to have solved by those institutions by means of such directives. In connection with this, in *Capitalism and Freedom* Milton Friedman imagines a society in which all citizens agree that a safety net be provided for the poor via governmental taxation and a voucher scheme. Such a scheme would not violate laissez-faire if all citizens explicitly agreed to it and continued to endorse it over time, and the definition offered here yields that result. Furthermore, any definition of laissez-faire that does not allow for such possibilities is a definition that does not capture the intended notion and the one that is thus of intellectual interest. Contrary to an objection often raised by political theorists, it is also no objection to laissez-faire that such a society has never existed. At a former point in history it was true that no society had ever existed that did not condone human slavery in one form or other, but that did not show that there was any good objection to promoting a society that did not condone human slavery, and it certainly did not show that such a society was impossible in practice. In light of all of these considerations, I disagree with many political theorists who claim that laissez-faire is impossible in practice. For example, Debra Satz (2012) makes the even stronger claim that laissez-faire is "logically impossible."

(4) Despite the allusion to Adam Smith in this popular argument, Smith does not endorse this reasoning. For example, in the most relevant passage Smith writes: "by directing that industry in such a manner as its produce may be of the greatest value, [an individual] intends only his own gain, and he is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention. Nor is it *always* the worse for the society that it was not part of it. By pursuing his own interest he *frequently* promotes that of the society more effectually than when he really intends to promote it" (Smith, 1776: Book IV, Chapter II, emphasis added). Note that by Smith's explicit use of "always" and "frequently" he implies that acts and exchanges in the pursuit of self-interest do *not* always promote the common good. On the other hand, it is important to note that Smith also anticipates the phenomenon of government failure discussed below, continuing: "I have never known much good done by those who affected to trade for the public good."

(5) For consideration of these issues, see for example Gaus, 2012; Murphy and Nagel, 2004.

(6) See for example Satz, 2012. For a response, see Schmidtz, 2011; Fleurbaey, 2011; Brennan and Jaworski, 2015.

(7) This is a gloss on these economic concepts that is intended to be useful for current purposes. However, unlike the gloss just given, economists draw the excludable/non-excludable distinction based on whether exclusion is *possible* or not (rather than whether there are currently rights to exclude). In connection with these concepts, it is common to distinguish between the following types of goods via a chart like the following:

	Excludable	Non-excludable
Rivalrous	**Private goods** food, clothing, cars, personal electronics	**Common goods (Common-pool resources)** fish stocks, timber, coal
Non-rivalrous	**Club goods** cinemas, private parks, satellite television	**Public goods** free-to-air television, air, national defense

For our purposes, it is worth noting that in contrast to a common pool resource, a public good is non-excludable and *non*-rivalrous, which gives rise to *positive* externalities as a result of each act of its *provision*. This gives rise to an argument for the inefficient undersupply of public goods under laissez-faire that is the other side of the coin to the argument for the inefficient overharvesting of common pool resources described in the main text.

([8]) For the concepts of social dilemma and direct collective self-defeat, see respectively Dawes, 1980 and Parfit, 1984, especially part one. See also van Lange et al., 2013. Not all tragedies of the commons can be represented as prisoner's dilemmas, as Michael Taylor explains in *The Possibility of Cooperation* (1987), chapter 2. However, those that can be so represented provide a particularly clear and useful example of the kind of situation and incentives that lead to a conflict between free action and the promotion of welfare even when no rights are violated.

([9]) See for example Ostrom and Walker, 2005; Smith, 2003, especially section 3, "Personal Social Exchange"; Bicchieri, 2006; Kagel and Roth, 1997; Kagel and Roth, unpublished; Ostrom, 1998, and the references therein.

([10]) See for example Ostrom, 1990; Scott, 1999; Dietz et al., 2002; Ostrom et al., 1999, and the references therein. See also Connelly, 2008 for specific discussion of the negative effects of population control policies motivated by analyses such as that of Hardin, 1968.

([11]) See for example Hardin, 1968.

([12]) Ostrom, 1990: 20. See the rest of that book, the other references above, and the references therein for a wide variety of other real-world examples.

([13]) In connection with common pool resources, four main types of property-rights systems might obtain: *open access*, which involves an absence of enforced property rights; *group property*, in which resource rights are held by a group of users who can exclude others; *individual property*, in which resource rights are held by individuals or firms who can exclude others; and *government property*, in which resource rights are held by a government that can regulate or subsidize use.

([14]) Footnotes have been omitted, in which Ostrom cites numerous other works in support of her claims. See also the references above.

([15]) For further discussion, including of some important further subtleties, see Metcalf, 2001; for more general discussion, see Stavins, 2012. The locus classicus for Pigovian taxes is Pigou, 1920; see also Baumol, 1972. Note that Pigou recognized that government failure was a general phenomenon and could often represent a cure worse than the disease of market failure—e.g., his discussions of the issue approximate the Default Libertarian view articulated here: "…where there is reason to believe that the free play of self-interest will cause an amount of resources to be invested different from the amount that is required in the best interest of the national dividend, there is a *prima facie* case for public intervention. The case, however, cannot become more than a *prima facie* one, until we have considered the qualifications, which governmental agencies may be expected to possess for intervening advantageously. It is not sufficient to contrast the imperfect adjustments of unfettered private enterprise with the best adjustment that economists in their studies can imagine. For we cannot expect that any public authority will attain, or will even wholeheartedly seek, that ideal. Such authorities are liable a like to ignorance, to sectional pressure, and to personal corruption by private interest" (Pigou, 1920, II, XX, 4).

([16]) In other words, in avoiding "command and control," such a tax avoids "performance regulations" and "technical regulations" that require respectively specific actions and specific technology. For example, such a tax does not require that any particular individual reduce pollution, and it does not require that any individual implement lower-pollution technology.

([17]) Note that this last claim goes beyond what progressivist Default Libertarians like Larry Summers would endorse, given that progressivists favor more substantial interference via highly redistributive policies. Compare Friedman, 2002.

([18]) See for example Buchanan, 1999; Mueller, 2003; Cowen, 1991; Buchanan and Tullock, 1962.

([19]) See for example Environmental Protection Agency; Environmental Defense Fund. For criticism of the details of this cap-and-trade system (but not of a market-based approach to environmental problems more generally), see Muller and Mendelsohn, 2013.

([20]) See for example National Oceanic and Atmospheric Administration, 2010.

([21]) See for example Gertler et al., 2006; Sadoulet et al., 2001; de Mel et al., 2008; Skoufias and De Maro, 2008.

([22]) The role of cost-benefit analysis (CBA) in executive branch regulation is to introduce a further hurdle that regulation must pass—not to necessitate or even encourage all regulation that would pass CBA. So, the requirement that regulation pass CBA adds a procedural presumption against regulation, and in that sense is a move in the direction of Default Libertarianism.

([23]) See USA Executive Order 13563.

([24]) In addition to these straightforward examples, one can also see general advances in other areas as related successes that bolster the case for Default Libertarianism. For example, the move toward open access to government data in machine-readable formats whenever possible, enabling entrepreneurs to create new products packaging that information for citizens in useful formats, thereby adding value and efficiency to the economy and making citizens better informed without government interference; Data.gov.; and advances in property rights engineering aimed at making the economy more efficient, all give some indication of the wide range of areas ripe for further progress, such as in patent reform and other technology sector domains where property rights may need to be simplified or reengineered to promote efficiency. As Friedrich Hayek wrote long ago, we need a legal framework that is continually adjusted as facts about society and technology change. For some important complications and objections, see Heller, 2010, and his discussion throughout of “the tragedy of the anticommons.”

([25]) As just one example, the non-partisan Coalition for Evidence-Based Policy claims: “U.S. social programs, set up to address important problems, often fall short by funding specific models/strategies (‘interventions’) that are not effective. When evaluated in scientifically-rigorous studies, social interventions in K-12 education, job training, crime prevention, and other areas are frequently found ineffective or marginally effective. Interventions that produce sizable, sustained effects on important life outcomes tend to be the exception. Meanwhile, respected government measures show that the United States has made little progress over the past 40 years in key areas such as reducing poverty and increasing K-12 educational achievement” (Coalition for Evidence-Based Policy, citing DeNavas-Walt, Proctor, and Smith, 2011; U.S. Census Bureau, 2011; Short, 2005; Rampey, Dion, and Donahue, 2009).

([26]) See for example Smith, 2003; Kagel and Roth, 1997; Kagel and Roth, unpublished; Ostrom, 1998; Ostrom, 2010. For general arguments regarding the importance of institutions for flourishing societies, see Acemoglu and Robinson, 2012; ; compare Deaton, 2013.

([27]) Ostrom, 2009. See also Ostrom, 1990.

([28]) For examples, see references in Ostrom et al., 2007 and Scott, 1999.

([29]) Jane Lubchenco was the administrator of the U.S. National Oceanic and Atmospheric Administration and undersecretary of commerce in the Obama administration, and Lynn Scarlett was the chief operating officer of the U.S. Department of Interior and deputy secretary of the Interior in the George W. Bush administration. For some representative discussion, see Scarlett, 2012; National Oceanic and Atmospheric Administration, 2010.

([30]) Hardin, 1968. For a concise reply, see Ostrom et al., 1999; and also Ostrom, 1990.

([31]) Nassim Taleb (2012) calls this property "anti-fragility." See also Page, 2008 for more general discussion, including of complex systems. For criticism of Page's arguments, see Thompson 2014.

([32]) Taleb, 2012.

([33]) Scott, 1999, and references therein.

([34]) Ostrom et al., 1999: 280. See also other examples referenced there, and in Ostrom et al., 2007.

([35]) At least insofar as these goals are commonly shared by most progressivists, as opposed to idiosyncratic goals among political theorists. With this proviso in mind, I ignore here idiosyncratic views such as that government must perform many functions *itself* even when those functions would be much better performed by non-governmental actors and markets, which is a view defended by some political theorists. The argument for such a view in contemporary political theory is that many functions, such as criminal punishment and social welfare, are mandated "in the name of US citizens," and thus must be performed by government to be legitimate. However, there are number of independent, powerful objections these arguments. First, they arguably show a lack of serious concern for the very people that their proponents claim to care about, namely the less well-off members of society—because, by hypothesis, endorsing such an approach to policy would knowingly make those people worse off than they would have been without the sort of government involvement at issue. More importantly from a philosophical point of view, it simply does not follow from the fact that mandates are "in our name" that the government must perform the relevant functions itself for legitimacy. For example, the government often mandates "in our name" that various records be kept about the activities of firms and individuals (i.e., tax returns, and many other forms of records). But it does not follow that government agents must be the ones who keep those records, or even that the government itself must keep those records. (A further complication for many other deployments of "in our name" reasoning is that it does not follow from the fact that the government *claims* to be acting in our name that it actually *is* acting in our name, for the same reason that it does not follow that a person who purports to be signing a contract in your name actually is acting in your name if you have not consented or explicitly given him or her permission or power to make a contract with that content in your name.

([36]) See Gaus, 2010: 257. The implication results from the Rawlsian idea that the fair value of political liberty requires workers to directly control decision-making at their firms.

([37]) See for example Cohen and Sabel, 1997; Sabel and Simon, 2011. I do not mean to imply that these political theorists would agree with Default Libertarianism, merely that they incorporate (having contributed to understanding) some of the considerations outlined here.

([38]) See for example de Burca, Keohane, and Sabel, 2014.

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