Priceless Demand: The Killer-Ape Menace*

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Two entrepreneurs:
"How do you do?"
"I will not tell; you will do so too."

I. INTRODUCTION

Praise for the free market has been sung in many keys, especially by libertarian political philosophers. Firstly, the market is supposed to be *efficient*; secondly, the market is supposed to be *innovative*; thirdly, the market is supposed to be *just* or *fair*. Here I will ask how these libertarian appraisals of the free market relate to each other. Along the way in answering this question we will find, or so I argue, that libertarianism needs a thorough reinterpretation, if not a reconstruction, if it is to hold its threads together.

II. THE FIRST PRICE

Advocates of the free market point out that the market mechanism guarantees that goods and services will be produced efficiently, namely when there is a demand for them, and that they will be distributed efficiently, namely to those whose demand for them is highest. Hayek (1994, 22-56) has revealed how the price system is essential for this

* This article is a thorough elaboration with major novel elements of a Dutch publication in Rijpkema et al 2009. Ultimately I would like to include it as a chapter in a book on *economics and imagination*. Some passages refer to, rely on, or establish coherence with other materials that I want to include in that projected book, but are not required reading to follow my present argument about the killer-ape menace, and therefore can be skipped by the time-pressed reader. For commercial reasons I have not removed these passages, but on one occasion, because reading them may stimulate interest in the book as a whole. I indicate these passages by putting them in *Italics*.

I am aware that some points I raise are not at all my own, or even already quite common, and that this article is very poorly embedded in the literature. I would be especially grateful for references that would repair this academic deficit.

effect.[1] Whenever the market price for a certain product or service is high (in general or in a certain place) it will be a signal for potential producers that demand for it is high, and that will move them to bring it to the market too. There are profits to be made. Thus supply will increase, and subsequently the price will go down, until ideally a price will be established at which supply and demand are in equilibrium. As it is said: the market clears. At that moment we can say that the distributive (or allocative) outcome of the market is efficient, at least *Pareto*-efficient: no two participants in the market can be found whose positions could be improved through (yet another) exchange.[2]

This ideal result of free market exchange stands in stark contrast to the reality of centrally governed or planned economies, such as, say, that of the Soviet Union in the nineteen fifties, which often showed both shortages and surpluses because production and allocation were directed by the command from a government that, even if in good faith, speculated about the future needs of the population, but did not, and could not, respond to the signaling function of prices, as set by the market.

Hayek's analysis certainly seems convincing at face value.

As I said before: a market functions without overseers and that is one of its virtues compared to slave or wage labor economic systems, and therefore also, which is Hayek main claim, compared to economies with central overseers.

But still, we can formulate a very essential question already here: if producers were only motivated by the prices they know that a certain product will yield, then who has introduced that product for the first time and on the basis of what information? Hayek's analysis of the price system cannot be the whole story about the benefit of free markets. The high price that people pay for Eve's apples will certainly motivate others to start an apple yard of their own so as to compete with Eve next season, but what moved Eve herself to start a yard? She had no price information when she started, so she must have received her brilliant idea from somewhere else. Well perhaps, in her case and in retrospect we can imagine how that went. She was, after all the first .. .. well, it was the event that started the history of mankind.

[1] In fact it was Von Mises. I have to check and compare the relevant passages.
[2] More precisely: not a single person can be identified whose position could be improved without someone else being made worse off.

But in many other cases of true innovation the ways of the innovators can be mysterious. Earlier I argued that the great human achievements that Hobbes mentioned as we know them today (account of time, knowledge of the face of the earth), have probably come about by a series of smaller innovations, each of which opened the opportunity of conceiving the next one, but that is inconsequential for my point here.

Whether great or small, the innovative steps can only be taken by the use of something else than the mere price system provides. Hayek may have explained how competition emerges – basically it is competition by *imitation* - and how such competition leads to clearing markets, but he has not explained how, as I will call them, *true* entrepreneurs go about: people who enter the market with novel ideas, products and services that have not been priced by the market before, or otherwise appreciated by anyone but the innovators themselves (who perhaps received some encouragement from their intimates: Adam .. this is an apple .. it is good .. why don't you ..?). Their way of going about I will call: competition by *imagination* or *originality*.

And it cannot be otherwise: the possibility of competition by imitation presupposes the existence of true entrepreneurs who compete by imagination. After all, Z cannot imitate something α that was imitated by Y that was imitated by X, and so on to W, V, and U, *etcetera*, unless there is someone A who originally produced α to stop the infinite regress. If all the world was inhabited by apes only, no-one would ever stir. They would all sit still and do nothing, and they would not even be imitating each other in that.

True entrepreneurs answer to an unknown demand. It is a demand that is not signaled by prices and therefore I will call it *priceless demand*. If the price system were all there is to a market, we should conclude that anything not (yet) priced is not in demand.

However, as I mentioned, the market is often celebrated precisely as the institution that eminently encourages initiative, independence, experiment, innovation or indeed: imagination. You will know the slogan: "Competition builds character". Usually it is applied to sports but occasionally you will find it applied to the competitive market as well. Intuitively this claim is sufficiently clear. I will not elaborate on it.

Those who are so spirited as to enter the market with a novel idea, and willing to take a certain risk, will be rewarded.

But, as I pointed out earlier, this claim can only be true for market players who already have a certain degree of independence – artisans, as I called them – who stand to gain from their imagination; it cannot be true for wage laborers who do not own the products of their labor. They are typically not encouraged to display 'initiative, independence, experiment, innovation or imagination.' Rather their 'character' is effectively undermined by the market failure of capitalism. Wage laborers gain their livelihood by following orders of their overseers and they are rather encouraged to display docility in doing so, and to be mediocre in their efforts, just like chattel slaves are. They are withdrawn from the economy of imagination. And, as I also pointed out, it was Adam Smith himself who suggested (perhaps he was the first to do so) that capitalist societies, in order to compensate for the lack of imagination that wage labor enforces on those who do the productive work, should maintain a contingent of 'professional speculators' outside the supply & demand discipline of the market: the 'makers of machines' and 'philosophers who do nothing but observe and speculate'.

A first thesis I will argue in this essay is that Hayek's explanation of the function of competition by imitation in the reaching of clearing markets is at odds with the idea that markets are innovative. I will argue that in some cases competition by imitation will exclude competition by imagination, therefore innovation. A sub-thesis will be that we cannot know how extensive this mismatch is as long we stick to the price system only.

III. THE MARKET: MECHANISM AND CONDITIONS

A next claim the advocates of the free market often make is that it is eminently just. But most of these advocates accept a serious proviso on their claim of justice for the market outcome. What they mean to say is that the market *mechanism* is just because that mechanism works according to the principle, in Robert Nozick's famous phrase: 'to each as he is chosen, from each as he chooses'.

What Nozick meant to argue is that the outcome of market exchanges considered in themselves, the allocation of goods and services comes about by the voluntary exchanges of all participants, and that for that reason the market outcome cannot be objectionable, or be called unjust or unfair.

But the advocates of the free market, including Nozick himself, do tend to make a distinction between the justice of the conditions under which the market mechanism operates and the justice of that mechanism itself. That is their proviso. They are, for instance, advocates of the right to so-called self-ownership, which means that they, following Locke, think that people are the 'natural' owners of their own bodies and minds, their own labor power, their capacities and talents. No-one, they think, should be a slave. But it would be absurd to suggest that people are self-owners because they purchased themselves on the market. Such a suggestion would be hopelessly regressive: ultimately the right to exchange something through the market cannot have been obtained through the market itself. Whatever constitutes self-ownership, it is not the market. And that means that the considerations that lead us to judge the justice of the conditions of the market have nothing to do with our judgement of the justice of the free market mechanism, the fact that its outcomes results from voluntary exchanges.

To wit, and as a dismal observation: a slave market is also a market and it will answer to the same *mechanism* as any market for commodities or services. The slave trader is not an unjust 'entrepreneur' because he answers to the price system and seeks to sell at a place where slaves are in high demand and expensive rather than at a place where competition for slaves is low among buyers. *Any* outcome of a slave market is unjust, not because of the market mechanism, but because of the (legal) conditions that allow some persons to treat others as private property and merchandise, as a commodity.

Self-ownership as a condition for just economic relations and transactions is by now widely accepted as more or less self-evident, at least among libertarians. But besides self-ownership as a condition for justice a large problem remains to which no solution has been given with a similar plausibility or universal appeal: what *self*-owning producers bring to the market can hardly ever be attributed to their mere 'selves'. The theory about justice in the distribution of so-called 'external means of production' has remained controversial ever since, with the rise and expansion of the market in European early modernity, philosophers like Grotius, Puffendorf and Locke broke their heads over the question how a private person could become the legitimate owner of a pristine piece of nature, like land, that initially seems to belong to no-one, or perhaps to every-one. What is a justified original acquisition? One answer that has been influential to this day came from John Locke: he or she who is first to mix labor with some productive piece of nature, who picks an apple, or shoots a stag, catches a fish, cuts a tree, or clears a ground, or *encloses* a ground [!], should be regarded as the legitimate owner of that piece of nature.

But Locke developed his doctrine of justice in original acquisition for a state of nature without scarcity, in which all appropriations through labor would automatically satisfy his first proviso on original acquisition: appropriators should leave something as good for the others in common. First appropriations in that state would be like taking a good draught from an ever streaming well from which all others could still slurp their own good draughts after that first draught. But even if, Locke argued, some would be excluded from making their own appropriations from nature, they would be amply *compensated* by the economic opportunities provided by a capitalist market system based on privileged property rights in the means of production and wage labor. Thus he concluded his normative argument with an empirical claim:

> A day labourer in England is better off than a king of a large and fruitful territory in America.

A century later, and perhaps with more empirical evidence to go by, this claim was contradicted. Thus the American revolutionary Thomas Paine wrote:

> Among the Indians of North America, there is not any of those spectacles of human misery which poverty and want present to our eyes in all the towns and streets in Europe .. .. The life of an Indian is a continual holiday, compared with the poor in Europe.

Unconvinced that the labor market would automatically compensate for unequal, indeed arbitrary, opportunities for original acquisition in external resources, Paine was the first, in *Agrarian Justice,* to give a fully developed argument for a direct monetary compensation for those who lost their opportunity to acquire their own means of production. The utopian socialist Joseph Charlier argued in a similar manner.[3]

Nozick, a declared modern follower of Locke, also seems to side with his predecessor on the empirical claim about how capitalism ‘compensates’ wage laborers, only he is somewhat less assertive about it, as he says:

> Fourier held that since the process of civilization had deprived the members of society of certain liberties (to gather, pasture, engage in the chase), a socially guaranteed minimum provision for persons was justified as compensation for the loss. But this puts the point too strongly. This compensation would be due to those persons, if any, for whom the process of civilization was a *net loss*, for whom the benefits of civilization did not counterbalance being deprived of these particular liberties. (Nozick, 1974: 178-9,*)[4]

So this is a contest between so-called left and right wing libertarians, who are now doing exactly what Adam Smith said would be of no use. Smith too considers the ‘original state of things’ when all were the owners of the products of their labor, before the introduction of landed property and stock. Then he says:

> (..) it would be to no purpose to trace further what might have been its effects upon the recompense or wages of labour.” (Smith 2010: 75)[5]

The contesting right and left libertarians want to frame and conclude their controversy with speculative empirical claims about the introduction of capitalism and wage labor in terms of there being ‘compensation’ for wage laborers. But in doing so they use terms like ‘better off’ (Locke), the presence or absence of ‘misery’ (Paine), and/or there being

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[3] See Cunliff, John and Guido Erreygers (2001)

[4] Fourier never argued for an *unconditional* compensation, so Nozick’s second thought here is superfluous. However, the aforementioned Charlier, like Paine, did argue for the non-conditionality of the compensation. See http://basicincome.org/basic-income/history/

[5] I repeat Smith’s full quote, which is also in Essay X: “(..) this original state of things, in which the labourer enjoyed the whole produce of his own labour, could not last beyond the first introduction of the appropriation of land and the accumulation of stock. It was at an end, therefore, long before the most considerable improvements were made in the productive powers of labour; and it would be to no purpose to trace further what might have been its effects upon the recompense or wages of labour.” (Smith 2010: 75)

a 'net loss' (Nozick). And these are references to the well-being of wage laborers rather than to their liberty or freedom. Wage laborers *might* be quite contented but do they also retain their liberty under capitalism?

Hayek, also a modern libertarian, seems to make a claim that would avoid this problem. He argues that as long as multiple employers compete for labor, if property in the means of production is dispersed, wage laborers still have the liberty to choose the job they want to do, a liberty that *replaces* their liberty to make their own natural acquisitions, hence compensates them in terms of their freedoms. (Hayek 1991, 97)

Modern left wing libertarians, however, such as Philippe Van Parijs and Bruce Ackerman & Anne Alstott will reject this Hayekian argument about the compensating freedoms for the wage laborer .[6] They regard the *libertas* of their libertarianism as a person's freedom to make her choices and live her life independently of the will or the permission of others. That a laborer can choose this or that employer or yet a third-one merely means that she can choose whom she will have to obey, whose orders she shall follow, and who will be entitled to 'boss her around'. That hardly compensates for the liberty of the person who has her own share in the means of production and can decide what to do with it on her own terms, and inspired by her own *imagination*! Without independent resources she cannot decide to be her own boss, to be an entrepreneur herself, say as an artisan.[7] To put it in the neo-republican terms as introduced by Quentin Skinner and Philip Pettit: that you can choose by whom you will be *dominated* does not mean you can also choose not to be dominated at all.

So what, if anything, can justify capitalism? It is, says Philippe Van Parijs, that there will be *real* freedom for all. How can that be realized? It can be realized by allowing all to have an Unconditional Basic Income (UBI), an income in monthly installments with no strings attached, independently of household situation, employment history, and most importantly: independently of a willingness to accept available employment. Van Parijs follows Ronald Dworkin's interpretation of Equality of (external) Resources. I will skip the various details of that interpretation. But with only one resource, say fertile land, it implies that all would end up with a mathematically equal share of it. From here Van Parijs continues his real-libertarian argument for UBI.

[6] See also: Karl Widerquist, Stuart White, Simon Birnbaum, Michael Howard, Matt Zwolinski.
[7] Of course, and as we shall encounter shortly, she can still turn to a bank with a business plan and ask for a loan, but then her liberty will be constrained the pay-back requirement and the rent.

Assume not all are equally eager to put their equal share of the productive land to use, say because some value leisurely activities to a high degree – Van Parijs calls them 'Lazies' - and assume that some are eager to put more than their equal share to use – Van Parijs calls them 'Crazies'. Indeed assume that with many people with various preferences for combinations of 'income' (from the productive use of land) and leisure, then we can expect that some, the Lazies, will be wanting to sell parts of their equal share, or all of it, while others, the Crazies, will be ready to buy shares of land in addition to their own equal share. So a market for land will emerge, and if all are free to sell and buy as they see fit (as they choose and are chosen) a competitive equilibrium price for land will emerge at which the market clears and its outcome will be Pareto-efficient. And just!

> There is a non-arbitrary and generally positive legitimate level of basic income that is determined by the per capita value of society's external assets and must be entirely financed by those who appropriate those assets. (..) Thus, in our society of Crazies and Lazies, the legitimate level of basic income is just the endogenously determined value of their equal tradable right to land. (Van Parijs 1995: 99)

IV. THE LIBERTARIAN SYLLOGISM OF MARKET JUSTICE.

All libertarians, whether from the left or the right, regard justice as the result of an economic syllogism, and it is a *modus ponens*. This is how it runs:

Premise 1. The *conditions* of the market are just.

1a. There is self-ownership

1b. The distribution of the external means of production is morally justified, e.g. by a principle of first acquisition, or a principle of equality.

Premise 2. The exchange of commodities and services (and of resources!) happens through a free market, which means according to Nozick's dictum, which means *laissez faire*.

ERGO

Conclusion 3. The *allocative outcome* of the market - who gets or loses what - is just.

What we cannot do according this syllogism (which is, in Nock's terms, strictly 'backward-looking' and 'historical') is to discern a 'pattern', or lack of it, in the outcome of the market and then on the ground of that pattern, or its absence, by a *modus tollens* as it were, find that something must have gone wrong in the preceding steps, or that the outcome calls for a correction. Dire poverty and 'misery' can be part and parcel of the outcome, even predictably so, but if the preceding steps have been taken correctly, there is no reason of justice for a redistribution of wealth from the rich to the destitute (according to some: not even to include them as citizens, or clients really, of the 'minimal' Night Watchman State for which they cannot pay the contribution).

I disagree with the libertarian syllogism both in its left wing and its right wing version for a number of reasons. The reason that concerns me here is that the *modus ponens* does not preclude, in either case, that the outcome of the market will reflect that economic relations are abusive and parasitic, or, in other words, that they will violate, with a phrase that I borrow from Stuart White, a principle of reciprocity. Indeed, I believe there is ample room for a *modus tollens*.

Let me define the parasitic relationship, or the abusive relationship between two persons, one taking advantage of the other, thereby violating reciprocity, as I take it from David Gauthier (1986, 205-206), as follows:

> There is a parasitic relationship between two persons A and B if A is worse off because of B while B is better off because of A.

Elsewhere I have argued (extensively) that the right-wing libertarians' qualms about *laissez faire* in original acquisition, the constraint by Locke's first proviso, are best understood as a covert recognition of the *modes tollens* I mean. The typical limit Nozick wants to set on original acquisition goes back to the somewhat warn-out example

> (..) of someone who comes upon the only water in the desert several miles ahead of others who will also come to it and appropriates it all.

But what *is* the problem of someone coming ahead of others to the only water hole around, and then does not just take a good draught from it as in Locke's scenario, but also appropriates it, say by enclosing it by a fence? Well, why would the first arriver *want* to enclose it and exclude the others from freely using the water, which in itself is not scarce? The only reason for his act of original appropriation can be that he wants to enable himself to *sell* the water to those he excluded. He wants to make a profit out of their deprivation, after having deprived them himself. Thereby the relation between this ‘entrepreneur’ and his ‘customers’ in this scenario must be characterized as parasitic and abusive. They would have been better-off without him; he would have been worse-off if not for them. And we can see how such a formal characterization of the *outcome* of the market as parasitic can be applied to the social realities as we know them. If only a couple of persons are really in control of such an essential supply as drinking water it will turn all the others into serfs. We see the contours of feudalism arising, a class of aristocratic large landowners that would be worse-off without the rural workforce, serfs or tenants, while that workforce would rather have enjoyed its own productive surplus in the absence of its masters.

The left-libertarian syllogism meets with the same objection, though perhaps with a less disturbing effect. Let us concentrate on one of Van Parijs’ lazy persons, indeed on the one whose rights Van Parijs is anxious to protect: the Surfer off Malibu. The surfer finds the market price for land sufficiently attractive to sell his equal share in its entirety, so that he can live off his basic income and dedicate his life to a full-time leisurely activity: surfing. But the problem is that in selling his land he, like the ahead-rushing seller of the water, does not make anything available to the others that would not also be available in his absence. Neither makes a contribution to the social surplus; they just tap that surplus without reciprocating. And they do so at the expense of those who now have to buy what would have been freely available otherwise. Without the surfer there would have been larger quantities of unencumbered land available for the others to share equally. They are worse-off because of him; he to the contrary can afford a life style that would have been impossible without them. He is a parasite. Therefore I conclude there is no *libertarian* argument for a UBI.[8]

The original inspiration of left-libertarians was to counter the privileged concentration of the means of production in the hands of a few, which leaves the mass of the have-nots dependent on wage labor. But the relevant opposite to wage labor is not

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[8] Philippe Van Parijs is not just a left libertarian. He also advocates special support for those with low earning capacity. However I feel safe to put him in the left libertarian camp for my present purposes because his argument *for basic income* is left libertarian in nature.

full-time leisure but self-employment. The Surfer off Malibu proves to be neither interested in wage labor *nor* in being self-employed and yet he is fully accommodated by the left-libertarian syllogism. That is the mistake of that scheme of justice. The serve-or-surf dichotomy is false. What it ignores is that, ever since Eve picked her apple, labor is a human condition.[9]

V. 'MALICE ENCREASETH BY BEING VENDIBLE'

The header to this section is a quote from Thomas Hobbes' *Leviathan*. The section is on tort law, and in it I argue against the so-called law-and-economics tradition, including such authors as Guido Calabresi and Ronald Coase, that tort law can create disastrous results if it is applied without being informed by the objection against abuse. I skip that section for now but for those who are burning with desire to follow the argument: it will be very similar to Van Donselaar 2009, 36-42.

VI. THE INNOVATOR AND HER KILLER-APE

Having shown how the libertarian theory about the conditions of the market by original property rights and the law of torts followed by market *laissez faire* fails to address the problem of abuse, let me now show how the market mechanism *itself* can run into similar trouble, if unchecked. I have promised to demonstrate that the relation between competition by imitation, via Hayek's price system, and competition by imagination, that is by innovation, are at odds with each other. This 'oddity' is distinctly related to the problem of abuse.

So consider a true entrepreneur, such a one with an almost visionary foresight of market possibilities, who observes that in a certain quarter of a large French city, say Toulouse, there is no single *croissanterie*. The people living there have no croissants for breakfast with their coffee. At first, and constrained by the price system, she might be tempted to think that these specific Toulousians are no real Frenchmen, with no desire for croissants for breakfast. But since she also observes that they do have lots of wine with lunch she quickly abandons this thought. Very probably, she second guesses, they do want croissants for breakfast, only they cannot signal their demand by their spending

[9] I maintain this despite Paine's reference to the 'continual holidays' of the American Indians. As far as I am aware they did not live of something like a basic income; rather I am certain they catered for themselves, even though under conditions of very mild scarcity.

behavior because there is no supply. So she brilliantly second-guesses the desires of this particular community. And she thinks of the innovative plan to initiate a croissanterie right in the middle of that deprived neighborhood.

But in order to develop her initiative she should first do a couple of things to secure its potential for success. First, she should do a market research to sustain her initial second guess, just to make sure. If response to this research is sufficiently encouraging, she will want to invest in setting up the croissanterie, hiring a neat establishment, buying the ovens and the furniture, but then she will also need to launch an expensive advertisement campaign to alert her intended clientele, the inhabitants of the neighborhood, to her existence as the local supplier of croissants**.** All those preliminary activities before the actual setting up shop require substantial investments, and since she has no ready capital at hand, she turns to a bank with a business plan and asks for a loan.

Let us first pursue a sunny scenario - darkness will soon follow. So let us first assume the bank is convinced by her second guess of the priceless demand for croissants, and her business plan, and therefore is willing to extend the requested loan. But bankers are also profit seekers, so they will offer her a standard combination of repaying the loan and paying interest on it in regular installments in case the croissanterie is successful. But they will also want to minimize their risks, so they will demand a surety in case the croissanterie is not successful. They will claim the private house of our entrepreneur, and perhaps some of her other assets, in case her business fails.[10] All of this is part of the contract the bankers will be ready to offer her.

So it is up to her to accept these conditions or not. She is bold, and she does. And she is right. The croissanterie becomes a flourishing business. The Toulousians are happy because they have a much better breakfast than they used to, and our entrepreneur after deducting what she owes to the bank still makes an attractive profit. All are Pareto happy.

But now a second entrepreneur enters the stage, and a darker scenario unfolds. He is not a very imaginative person but he need not be because his entrepreneurship relies on the price system. He is a competitor by imitation. As he passes by the crowded

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[10] Unless they are Islamic bankers, who consider the taking of rent without bearing (some of the) risk as usura.

croissanterie in Toulouse he notices that the now *manifest* demand for croissants is high, so he need not do a market research such as our original entrepreneur had to do. He also realizes that he need not invest in an advertisement campaign such as our original entrepreneur had to do. If he smartly sets up shop right across the street of the original croissanterie his ‘campaign’ can remain restricted to a large shield on his façade: *Here the same croissants are ten cents cheaper!* The Toulousians will certainly notice him because they already flock to the place every morning. After a short consult of his calculator he finds that he can compete right here and now with great success, even devastating success. Thus it happens.

The imitator gradually draws away the customers from the original entrepreneur. She cannot afford to lower her price for the croissants all the way down to that of her imitator because then she will not be able to pay what she owes to the bank, and though she struggles for a while trying to economize on production costs, inevitably she goes bankrupt. She cannot even maintain a share in the market that will cover her expenses but with a lower profit for herself. She loses her house to the bank. She desperately searches for other work but when she applies for a job at the European Competition Network she is rejected for the unorthodox views she has developed on the economic necessity of monopolies. And all this happens because *she* had an original idea that required investments to bring it to life, while her imitator can spare himself precisely these investments because *her* successful example makes them redundant. He sells cheaper, because he invests cheaper. And thus the innovator is eliminated by her imitator, someone who apes her, a killer-ape.

At this point someone might want to object that our true entrepreneur as I presented her has no right to complain because she is an imitator herself. Is not originality a relative thing that allows of gradations? Did not somehow she get her idea for the croissanterie in Toulouse by observing the success of croissanteries in countless other communities in the French realm? Did not she imitate these other entrepreneurs who initiated such establishments in other places? Is not she an ape herself? Well, she may be, and yes originality is a relative thing. But the crucial point here is that she never *competed* with the examples she imitated. By starting her enterprise in Toulouse she never challenged the success of croissanteries in Bordeaux or elsewhere. Toulouse or not Toulouse, that's the question. *If* she is an ape, her apery is benign. She is not a killer-ape.

But will she really end up so miserable, with no livelihood and no house? Will the dark scenario really unfold? I think not. Of course, she might want to hire an entrepreneur of a *third* kind to pay her imitator a visit with an 'offer he can't refuse'. I wouldn't object if she did, because I regard her imitator as nothing better than a predator, but that is not what I mean. The dark scenario will not unfold if our original entrepreneur is what we said she is: someone with an almost visionary foresight of market possibilities. If we may assume that her foresight not only extends as far as her initial success but also as far as the subsequent disaster, if she understands how imitation works through Hayek's price system, then she will never engage in the whole enterprise to begin with. When she realizes right from the beginning how easily her eventual success can be aped gratis by others, with devastating results for herself, she would make no investment, take no initiative and no risk at all, and stay where she was.[11] Her foresight may reach further still. After the first ape, a second will arrive and a third and so on - a whole street full of croissanteries will soon emerge - until all the apes will sell at a market clearing price, which will be even lower than the ten cents reduction with which the first ape undercut her monopoly, making it even more difficult for here to survive.

So the dark scenario will not unfold. But then neither will the sunny-one. Our entrepreneur's perfect foresight would mean that this neighborhood in Toulouse would remain deprived of croissants altogether, perhaps for good. Instead of a whole street of croissanteries they will not have a single one. If the inhabitants cannot have croissants at her monopoly price, reflecting her investments, they will not have them at all. She was the one with the original idea; her imitator(s) would never have shown up if she had not been there first.

And so it becomes clear how competition by imitation, apery, can ruin the benefits of competition by imagination, innovation. And it becomes clear how competition by imitation can stand in the way of Pareto-efficient market results. The price system creates a deficient reward structure for true entrepreneurs and therefore it creates market failure. Potential market partners, such as our original entrepreneur and

[11] Alternatively her bank might be aware of her vulnerability to killer-apes, with the same result.

her customers will not meet because the world is known to be a jungle full of killer-apes. Supply and demand, production and consumption will miss each other to the detriment of all. Sometimes only non-competitive, monopolized markets can be efficient. That is my first thesis. It is the killer-ape theory of market failure.

My sub-thesis is that we cannot have an idea about the extent of this particular kind of market failure, as long we have only the price system to go by. It might be trivial or it might be serious; we have no clue. What innovations, and how many of them, remain undeveloped because the innovators foresee their rapid elimination by imitators, and therefore abstain from making the required investments in the innovation? We have no clue to what extent the price system shuts down imagination. Given the price system we cannot infer from the market result what the market has *failed* to bring forward. Second guessing priceless demand certainly requires a particular imagination, but *third* guessing the second guesses that have never manifested themselves is squarely impossible. They must remain hidden imaginations. We have no idea of what it is that we have no idea of. Unless there is way of making innovations manifest in ways that will ward-off the killer apes. As we shall see, there is.

I now turn to the *justice* of the dark scenario as described above, using the objection to abuse as discussed in the previous sections as a yardstick. So assume our true entrepreneur had not been sufficiently keen on her vulnerability to killer-apery, and that she had not foreseen her eventual downfall. It is clear that in the absence of her imitator, or any, she would have been better off: in that case she would have benefitted for a long time, perhaps for good, from her innovative establishment. For the imitator the exact reverse holds: in her absence he would never have had the idea to start a croissanterie right there and then and he would never have had any profits from it. She is dramatically worse off because of him, while his profits are boosted because of her. It is clear: the imitator is a parasite. As I said, he is nothing better than a predator, a robber.

I hope it is also clear what the problem in general is: when competition consists in the imitation of successful innovations then competitors enrich themselves to the detriment of true entrepreneurs and they harm their innovative initiatives. When moreover the damages are serious enough and can be foreseen the innovations will not be introduced to the market to begin with. With this it is established that free competition, *laissez faire*, is neither efficient nor just. And of course, this not only the case if, as in the case described above, the innovation consists in the discovery of what I shall describe (perhaps not quite accurately) as a 'hole in the market': a novel *outlet* for croissants. Virtually all innovations, whether they are novel products or services, require investments such as research and development costs that will put the true entrepreneur at a competitive disadvantage compared to the imitators who can produce without similar investments.

VII. THE VISCOSITY OF MARKETS

A question looms large. I argued that we have no clue how serious the market failure caused by killer-apes really is. But how do we explain that we frequently witness innovations brought forth by the market at all, and spectacular-ones at that? Why are not are not all innovative imaginations immediately smothered by the killer-ape menace? There are three causes for this, two natural and one artificial.

The first natural cause is that, as I discussed before, the exercise of imagination carries a great so-called intrinsic reward, a non-material benefit. Inspired artists, or inventors, or even Academic researchers will enjoy and continue their work whatever they are paid (within certain limits, depending) and they might even take a great satisfaction from the fact that their imaginations are imitated, processed, and spread around the world, without otherwise being rewarded. Such innovators are therefore killer-ape proof, and this may be one reason why Adam Smith said that capitalism needs 'philosophers'.

A second natural cause for the introduction of an innovation to the market can be that the innovator who is profit seeking in the economic sense anticipates making sufficient profits because there will be a certain stretch of time between the moment of the introduction of the novelty and the moment the impact of imitators will make itself felt. Assume for instance that the imitator in the croissanterie example was bound only to show up after ten years. That ten year monopoly for the true entrepreneur might be sufficient for retrieving her initial investments, for paying back her loan to the bank, after which she could proceed with her enterprise unencumbered by rent. Thus she might be able to resist her imitators on equal terms once they arrive, even at an equilibrium price for croissants, though her market share would go down.

I introduce some technical terms. The *viscosity* of a market for α indicates the stretch of time between the introduction of an innovation α and the moment that α can be successfully imitated, combined with a factor for the imitation's negative impact on α's market price.[12] If the viscosity is nihil, if the innovation can be imitated immediately and with maximal competitive impact, namely to the equilibrium price for α, I will call the market *liquid*. If on the other hand viscosity is maximal, if imitation is not possible, or if it is possible but will not affect the price for α, I will call the market *rigid*.[13]

What explains the natural viscosity of markets? A host of things may explain it or contribute to its explanation. Imitators are certainly smart and shrewd but they can also be dull: it may take them a while before they notice an innovative monopoly that they can imitate. More interestingly: not all innovations are equally transparent for apes, and can be second guessed to their origins. It takes a very skilled engineer to compete with Daimler. Taking his engines apart will not allow just any-one to figure out how they were put together, and why they are so effective.[14] So competition will reflect that only a few can compete in producing them. No-one has a monopoly but neither is the market price reduced to the clearing-one, because a cartel may be formed. And that opens up the question if the forming of cartels would obstruct *laissez faire*. Again: The *laissez faire* of whom? I will leave that question aside for now.

One can take a certain innovative chemical (say medicine) apart, even reducing it to its composite molecules, but knowing whether it is heat or cold or whatever that melts them into the novel substance, is another matter. I can be an innovative trainer of dogs, or a therapist for depressed people, but you will need to observe and understand my procedures if you are going to be able to ape me. Taking apart one of my dogs, or patients, will not help you.[15] In Dutch we have a proverb for this: *Het geheim van de*

[12] The price elasticity for croissants can play a role in this factor.
[13] As in the case that our entrepreneur imitates a croissanterie in Bordeaux but then starts her own establishment in Toulouse.
[14] It is especially here that I have a strong recollection of having read this argument before, including the example of Daimler! But I do not remember when and where. Given the theme of this essay, I don't want to stand out as a plagiarist!
[15] Sometimes entrepreneurs try to manipulate the rigidity of their own markets by pointing out that their imitators are just imitators and therefore *must* be of inferior quality. During the nineteen sixties a kind of technological superiority complex in Europe was supposed to ward off competition from Japanese imitators, notably when it came to cameras, motorcycles, and musical instruments (What? A *plastic* recorder?). In the long run it did not work. Compare an advertisement for the Volkswagen Golf from the nineteens. It is in Dutch; the voice-over says something like this: then and then we introduced this and this (a solid golf ball rolls steadily); then we had a host of imitators (a couple of unsteady ping pong balls

smid, translating as 'the secret of the smith'. It is not a reference to Adam. It means: yes I can make superior metal utensils but I am not going to tell you the alloys I use.

For an investment in an innovation to be profitable we will have to know how it relates to the viscosity of the market; I have not been able figure out an equation (yet) but one *tendency* can safely be predicted: the more rigid a market is the more friendly it is to innovators. And if markets are fully liquid no innovations will ever appear, whatever the investment required.

So the natural viscosity of a market can create a more or lesser friendly environment for the innovator, but so can the legislator. Most obviously patent law, but also law against plagiarism, law that regulates storage and reproduction of texts, music, and images, the protection of so-called intellectual property, law against industrial espionage, regulations for lending fees and royalties, the issuing of exclusive licenses, and trade mark protection, they are the many legal instruments that influence the viscosity of markets to the advantage of true entrepreneurs and to the disadvantage of imitators. They are therefore as many deliberate frustrations of Hayek's price system, but they have nothing to do with central planning or overseeing. And there seem to be several good reasons for such interferences with the liberty of imitators. They protect true innovators against parasites, which is just. And they stimulate that even, or especially, very vulnerable apery-prone novel ideas can be developed and will be brought to the market to the benefit of all. So justice, innovation and efficiency all point in the same direction, namely away from the price system and *laissez faire* in competition, and in the direction of a market that is disciplined so as to liberate the imagination of all. This is the answer to our initial question.

But then why should not all competition always be prohibited, except competition by imagination? After all, all innovations have been thought of by someone first, even Eve's apple yard, so why should not all who then compete with the innovative product or service automatically qualify as harmful imitators? The answer is that being the *first*-one is not always being the *only*-one. Let me give an example: The Dutch have stubbornly believed for ages that Laurens Janszoon Coster invented the printing press in the 16^{th} century, and they even erected a statue of him in the town of Haarlem where supposedly he lived. But indications for this are shallow and consensus

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nervously bounce after the golf ball; this formula is repeated several times. See: https://www.youtube.com/watch?v=LvZqIZkUpWM among historians is that it was Johannes Gutenberg who in fact invented the press. However, *if* it is case that Coster invented a printing press, only later then Gutenberg did, it is still virtually impossible that he aped Gutenberg's design. He would not have been an imitator. At the time of the reformation the priceless demand for the mass reproduction of texts - Bibles - was obvious and high enough to have been noticed by several people simultaneously who then went to search for an answer to that demand, independently of each other.

What is true for the 16th century and the press is true for all times and many innovations. As we may put it: often innovations are 'hovering above the market'; many are searching for an innovation because priceless demand for it is high and urgent and therefore informally manifest, say for a medicine for a hitherto unknown epidemic disease with many victims. In such a case it is arbitrary to a certain degree who comes up with a solution first. Researcher A may come up with the formula α this year, but since researchers B, and C, etc. were on the same track they would have come up with α next year. This can be a legitimate reason to restrict A's patent on α, e.g. by a time limit on it.

And this is how patent authorities in fact operate. It may seem a murky affair, but innovations brought to their desks are judged for their *originality*, and depending on their originality the innovations of entrepreneurs are assigned patents for longer or shorter stretches of time, sometimes almost perpetual as with works of art for the exposure or the reproduction of which remote heirs still receive royalties, and sometimes just for a shorter stretch of time. Just one example of that impending: Protected by its patents the firm who first developed so-called iris scan technology has dominated the market for the last decades but the protection will soon expire, and stiff competition and growth of that market is expected.

Earlier I observed that if we stuck to the price system alone it would be impossible to have an idea of how serious the damage of competition by imitation would be to the innovation of markets. After all, true entrepreneurs second-guess priceless demand, but if they don't bring their novelties to the market for fear of rapid elimination by killer-apes, no-one can third-guess the second-guessers. But with patent law in place, and its correlates, we now *have* found a way to make entrepreneurs reveal their imaginations without the risk of being eliminated. And by the same token we now also have at least some indication of the impact of *laissez faire* apery in competition. We just have to ask: how much aggregate economic value would never have been realized without the current legal protection of innovations. The answer will tell us something about the importance of constraining killer-apes.

VIII. PRICELESS DEMAND AS PROPERTY?

Many regard patent law as an extension of natural property rights. A phrase like 'intellectual property', to be protected by law, is already indicative of that. And indeed many innovations are original inventions springing from the imaginations of the innovators, who may properly say, pointing to a concrete object or procedure: I thought of this, and I made this, it was not here before, and therefore it is *mine*. But if we return to our example of the croissanterie in Toulouse we may find that this way of addressing the problem of abuse appears to be strained. What our entrepreneur 'made' or at least discovered was, as I called it, a hole in the market: a novel outlet for croissants. Certainly her initiative deserves protection as a matter of fairness e.g. by extending (perhaps a temporary) sole sale franchise to her but to call this hole in the market her property seems to me to be forced - and above all: *redundant*. We should, I think, rather refer to a principle of non-abuse directly. What we would more naturally want to say is: what she deserves is not so much a property right but a right against being taken advantage off, against being abused by killer-apes. To want to think of this abuse in terms of a property-rights violation is be to be obsessed with the libertarian *modus ponens*, which as I argued can generate abusive relations itself.

It is just as in the case of tort taw: people may have a right to play their trumpet during the night or alternatively a right to a good night's sleep, but in neither case the right would plausibly be called a property right, and in both cases the exercise of the right should be constrained by the principle of non-abuse, e.g. in the case that I would exercise my right to play my trumpet merely to move my neighbor to pay me for her night's rest.

There is one author however who really tried to go down this road and argues for something that comes very close to a patent to a hole in the market. In his 'finders-keepers ethic' (1982) Israel M. Kirzner argues that the discoverers or 'finders' of something that has economic value should be regarded as the creators of that economic value, and that they, like all creators, should have the property right to their creations, which is to that economic value. His patent to holes in the market would follow from this doctrine and one might therefore be tempted to accept it. However, some implications of that very same doctrine annihilate whatever attraction it may seem to have initially. Thus Kirzner asks the familiar question: suppose a group of very thirsty persons are on their way to the only water well they know to exist, but one them rushes ahead, quenches his thirst, then builds a fence around the well in order to make late comers pay before they are given access to the water. Should that be allowed? Kirzner seriously considers giving a positive answer to this question. After all, the rusher-ahead is the discoverer and thereby creator of the *economic* value of the water and that gives him the property right to that value: the monopoly price he can get for giving access to the water. *Is, similarly, the malevolent nightly trumpet player the creator of the 'economic' value of the good night's sleep of his neighbors*?[16]

Alas, Kirzner too has drawn the lines the wrong way, and his doctrine too creates a fatal space for the parasite. And in his case too, the failure seems to be reflective of a certain obsession with the property rights from which the libertarian syllogism is supposed to proceed.[17]

IX. CONCLUSION

I am not a libertarian, and for good reasons that I will not discuss here.[18] But if I *were* a libertarian, I would roll back the theory entirely and turn it upside down. We *do* want the outcome of the market as it operates on rights to answer to a moral principle (or 'pattern', if you wish): no-one should be abused or taken advantage off.

[16] Assume I capture and torture you and offer to stop only if you pay me. Am I now the discoverer/creator of the 'economic' value of your painless state, and therefore entitled to what you are willing to pay for it?
[17] *Once upon a Time in the West* there was a man who discovered a water hole in the desert that nobody else was aware of. Since the rail road track was near completion, and the passing trains would need a water station, this man would have made a fortune if only he (and his family) had not been so brutally murdered by Henry Fonda. Of course this is a distinctly different case than that of the rusher-ahead, and perhaps one to which Kirzner's principle should apply.
[18] One such good reason is that libertarianism does not allow me to pull the emergency brake of a train if one of my fellow travelers has a heart attack (thus allowing the called-in paramedics to proceed to save her life), because in that case I would force all my other fellow travelers to give up something (traveling time) without their prior consent and on behalf of someone else (who might otherwise lose her life). Indeed, libertarians cannot explain why trains should have emergency brakes to begin with. And that is unacceptable.

The principle of non-abuse is the unifying principle that grounds all the rights that the libertarian tradition has thought of. Self-ownership protects us against slavery and physical abuse. Property rights likewise protect us against robbery and allow us rewards for the investments we make in nature or society. The market allows us to enter into mutually beneficial relations with each other as we choose and are chosen. But all these rights should meet with legitimate constraints when the exercise of them would itself result in a violation of the principle of non-abuse, or its positive counterpart: the principle of reciprocity. A just society, dedicated to reciprocity, cannot tolerate abuse. Thus rushers-ahead in original acquisition, monopolizing scarce means of livelihood and/or production, should be constrained; but likewise there is no room for the Surfer off Malibu; *thus tort law should be organized in such a way that it does not invite 'malice' by 'making it vendible', which would be abusive*; and thus the market should be cleared by legal means of the killer-ape menace so as to unleash the imagination of all.

The principle of reciprocity expresses an ideal of mutual advantage in social and economic interaction. That ideal has emerged from a long struggle against slavery and serfdom. It is an ideal that even requires us to rethink capitalism from the libertarian point of view. It is *one* ideal that has guided modern thinking about morality, law and politics, as it should be continued.

EPILOGUE

My libertarianism, or my take on libertarianism, and my rejection of the *modus ponens* syllogism may also relieve the tradition of some of its familiar burdens. Given the way many libertarians think about gun control (especially in the USA) it is again the stubborn adherence to the *modus ponens* syllogism that obstructs their ability to give natural answers to obvious moral problems. Guns, they say, like kitchen knives, don't kill; *people* kill. Therefore the sale of fire arms should not be constrained whatever its impact on actual crime rates. After all, the trading of a gun is not the same thing as pulling its trigger. But if this is really their position then neither can they argue for a legal ban on the production of sarin and its trade to oppressive regimes. Sarin does not kill. I am not aware that it does anything else than kill - unlike a kitchen knife - but *if* sarin kills it is because oppressive regimes use it against their own populations. But the syllogism does not allow us to persecute and punish the manufacturers and traders of sarin. No-one's right is violated merely by trading the stuff *ex ante* its destructive use.

My version of libertarianism does not suffer from a similar moral and legal deficit. We just have to refer to the principle of non-abuse directly without a need to resort to any intermediate 'natural' or 'equal' rights talk. It is clear that those who produce and sell nerve gas to dictatorial regimes enable, and take a profit from, crimes against humanity even if they do not commit these crimes themselves. It is also clear that the victims of these crimes are worse off than they would have been without the producers and traders of sarin. The relation between the traders and the victims of sarin is therefore abusive. So now we also know what the *real* question is once we ask about the sale of fire arms to criminals, bazookas to motor clubs, explosives to terrorists. That question will not be answered by any *modus ponens* of justice.

Again, and perhaps even more problematic for the syllogism: hiring a hitman to commit a murder is not committing a murder and nowhere does a rights violation show up in the syllogism *ex ante* the murder. But a libertarian who does not want to bite this particular bullet can easily point out the abusive relationship between the commissioner and the victim of a crime.

And so on.

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