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Society Contra State:
Murray Rothbard's Conception of the Proper Role of Coercion in Society

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Introduction

Under the prevailing theory, government holds a forceful monopoly on the use of violence, and therefore on coercion, which is heavily based on the political theory of Thomas Hobbes. Hobbes uses a now common thought-experiment called the State of Nature to try to understand the nature of man. In the State of Nature, man is without a superior on earth and,

Though it bee found one man sometimes manifestly stronger in body, or of quicker mind then another; yet when all is reckoned together, the difference between man, and man, is not so considerable as that one man can thereupon claim to himselfe any benefit to which another may not pretend as well as he. For as to the strength of body, the weakest has strength enough to kill the strongest, either by secret machination, or by confederacy with others, that are in the same danger with himselfe.¹

This natural equality of men, in Hobbes' view, is problematic because it "is the nature of men, that howsoever they may acknowledge many others to be more witty, or more eloquent, or more learned' yet they will hardly believe there be many so wise as themselves: For they see their own wit at hand, and other mens [sic] at a distance," and this equality of ability would lead to competition over scarce resources required to meet varied desires, which "they cannot both enjoy", at which point, "they become enemies".²

Hobbes famously opines that this philosophical, fictional existence is "solitary, poore, [sic] nasty, brutish, and short,"³ and in order to lift man out of this "time wherein men live without other security than what their own strength and their own invention shall furnish them withal," he attempts to establish an extremely powerful sovereign distinct from the people, "an Artificiall [sic] Man" called The Leviathan or Common-Wealth, over mankind in the form of

¹ Thomas Hobbes, *The Leviathan, or The Matter, Forme, & Power of a Common-Wealth Ecclesiasticall and Civile* (New York: Dover Publications, Inc., 2006), 68-69.

² Ibid., 69.

³ Ibid., 70.

government.⁴ This social contract that Hobbes wishes to establish is “instituted when a multitude of men do agree, and covenant, everyone with everyone, that to whatsoever man, or assembly of men, shall be given by the major part the right to present to the person of them all, that is to say, to be their representative.”⁵

From his consideration of the State of Nature, Hobbes derives several important natural laws. Out of this state, he writes, men will seek to secure some of their rights and the maintenance of peace through contract as opposed to the unlimited, yet unsecure rights and the constant state of war in the State of Nature. This state of peace that men seek is highlighted by Hobbes as the fulfillment of defending the fundamental right of self-preservation.⁶ In order to achieve this peace, fear and reason prompt men to give up certain rights that they had in the state of nature, though only in equal measure.⁷ Finally, the third law complements the first two in that the system would be useless if it were not a Natural Law that men must keep their promises and covenants. For Hobbes, this keeping of promises is the foundation of justice in society.⁸

Once this unanimous contract is established, all of the legislative, executive, and judicial power becomes entirely bequeathed unto the Leviathan.⁹ Since the Leviathan has been created by and is not party to the contract, it is established as enforcer of contracts, only allowing for the release of the citizens from the original contract in the event of a physical loss of the government’s power to maintain itself.¹⁰ All of the moral rightness of coercive force, then, is in

⁴Ibid., 70, 118.

⁵ Ibid., 96. This is to establish majority rule.

⁶ Ibid., 73-74.

⁷ Ibid.

⁸ Ibid., 80.

⁹ Ibid., 96.

¹⁰ Ibid., 179-187.

the hands of the Leviathan, freeing it to use that force in any way necessary “to the end [of men living] peaceably amongst themselves, and [being] protected against other men.”¹¹

In detailing the thought experiment of the State of Nature and Natural Laws, Hobbes highlights three major concepts in political theory. He first calls for unanimous entrance into a social contract, which is a nod to self-governance.¹² Next, he allows for voting on an assembly of men to be the “sovereign representative,” giving the caveat that all men must abide by the decisions of the majority as though they had voted in that way, allowing for democracy.¹³ Finally, the defining feature of his theory is the idea of sovereignty, the right to make political decisions, which he describes as “an Artificiall [sic] Soul, as giving life and motion to the [commonwealth]”.¹⁴

A contemporary of Hobbes who likewise touched on each of these issues using the State of Nature and Natural Law, and who is more relevant to American Political Theory, is John Locke. Locke’s theory of a socially contracted government which retains all legislative and executive power so long as it follows the idea “*salus populi suprema lex*,” or the welfare of the people is the supreme law, heavily influenced the American Founders in their development of The American System.¹⁵ Beginning with the State of Nature and divine ordinance, Locke advanced the ideas of human nature determining the natural order of human affairs in a natural law, saying,

The state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions: for men being all the workmanship of one omnipotent, and infinitely

¹¹ Ibid., 97.

¹² Ibid., 96.

¹³ Ibid., 96-97.

¹⁴ Ibid., 5.

¹⁵ John Locke, *Two Treatises of Government and A Letter Concerning Toleration*, ed. Ian Shapiro, contributing authors John Dunn and Ruth W. Grant, (New Haven: Yale University Press, 2003), 170-171.

wise maker; all the servants of one sovereign master, sent into the world by his order, and about his business; they are his property, whose workmanship they are, made to last during his, not one another's pleasure.¹⁶

Locke takes this law of nature handed down by God in the form of reason and shows that in the state of nature, “all the power and jurisdiction is reciprocal, no one having more than another.”¹⁷ This equality of authority is expanded upon through the establishment of the concept of self-ownership, as Locke states man has “an uncontrollable [sic] liberty to dispose of his person or possessions,” while in the state of nature, but “though this be a state of liberty, yet it is not a state of licence [sic],” for Locke¹⁸. Even with this *prima facie* self-ownership, man “has not liberty to destroy himself, or so much as any creature in his possession, but where some nobler use than its bare preservation calls for it,” because “men[are] ...sent into the world by [H]is order and about [H]is business; they are his property, whose workmanship they are¹⁹.”

Though Locke's system implies that the entire universe is owned by God, the practical application that he seeks to set up, as acknowledged in his chapter on property, requires that “man [have] a property in his own person: this no body [sic] has any right to but himself²⁰.” Though he states it this way, ownership is the exclusive right of control over something, something which Locke says that we do not have over our bodies or wills, as they are owned by God. Regardless, Locke needs to establish the right of self-ownership as part of man's nature in his political construct because it is the foundation upon which the entirety of the individualist classical liberal political philosophy rests.

He furthers the development of this law of nature along the same lines by deriving from self-ownership the idea of property rights because “God gave the world to men in common; but

¹⁶ Ibid., 102.

¹⁷ Ibid., 101

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid., 111.

since he gave it them for their benefit, and the greatest conveniencies of life they were capable to draw from it, it cannot be supposed he meant it should always remain common and uncultivated.”²¹ Though God may own the universe and gave a common grant to mankind in common, he asserts that property rights form the proper construct for man to grow the value of that common grant. For Locke, since all men are self-owners, they own the labor involved in transforming something found in nature into something more useful – a broad term, including the placing of something in a more useful place, thus transforming its relationship with the rest of the world, such as gathering acorns into a basket.²² Founded upon these ideas that man owns his labor and that the object would not be as useful as it is if left in the state of nature, Locke asserts that in attempting to appropriate an owned object the thief seek to reap the “benefit of another’s pains”, to which they do not have a right.²³ Thus he has a theory of property spheres.

This improvement famously comes with two caveats, however. A man must leave enough and as good for the rest of mankind in the common stock.²⁴ Thus, his rightful claim to amassing wealth is limited in relation to the ability of other men to amass wealth of a similar quality to the extent that they desire. Further, he must only gather as much as he can use so that none will go to waste. This causes Locke to bemoan the arrival of money as a way of amassing wealth without it spoiling, but notes that the system is in place and it is too late to go back.²⁵

These rights to the self and to property are the most important facets of Locke’s system, as he sees government as set up to protect these rights and such rights are lexically prior to the establishment of the state, a break from the Hobbesian development. Locke, however, uses the same triggers of fear and reason as impetus into a social contract. Fearing the “inconveniences

²¹ Ibid., 114.

²² Ibid., 112.

²³ Ibid., 114.

²⁴ Ibid., 111-118.

²⁵ Ibid.

of the state of nature,” Locke posits that “God hath certainly appointed government to restrain the partiality and violence of men.”²⁶ Where the Leviathan has near unchecked powers over its subjects, however, Locke allows for the overthrow of oppressive governments through revolution and usurpation after “a long train of abuses, prevarications and artifices, all tending the same way, make the design [to violate their rights] visible to the people.”²⁷

This caveat to the institution of government is important because “freedom of men under government,” Locke says, “is to have a standing rule to live by, common to every one of that society, and made by the legislative power erected in it; a liberty to follow my own will in all things, where the rule prescribes not; and not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man: as freedom of nature is, to be under no other restraint but the law of nature.”²⁸ Further, “a man, not having the power over his own life, cannot, by compact, or his own consent, enslave himself to anyone, nor put himself under the absolute, arbitrary power of another, to take away his life when he pleases.”²⁹ Crucial to Locke’s point is the reference back to his belief that God owns our body, and thus, “nobody can give more power than he has himself; and he that cannot take away his own life cannot give another power over it.”³⁰

This inclusion of a classically liberal account of Natural Law to limit the size and scope of the moral use of coercion available for a government is of utmost importance to the present work.³¹ The major distinction that it raises is the difference between power and rights. A person may have the power but not the right to do something and vice versa. It is unnecessary to worry about those times when someone has neither the right nor the power – or potential power –

²⁶ Ibid., 105.

²⁷ Ibid., 199.

²⁸ This formulation of freedom is reminiscent of F.A. Hayek’s explanation of Spontaneous Order, addressed later in this work. Ibid., 109-110.

²⁹ The Jews, as he points out, sold themselves into drudgery and not into slavery. Ibid., 110.

³⁰ Ibid.

³¹ An account based on reason and rule of law, placing the importance of the individual as a prime concern.

because it lies outside the realm of possible actions, and when someone has both the power *and* the right, it is not a legal issue. The use of coercion, then, will rest on those times when people have only one or the other, and while a liberal egalitarian might justify coercive action in certain cases when people have rights but not the power to exercise them, a classical liberal or a libertarian might instead argue that coercive force may only be used to combat those who use power where they do not have a right to do so.³²

One major libertarian thinker, in fact, 20th century laissez-faire economist, Murray Rothbard, claims to build off of Locke's work to establish a logically consistent and objectively ethical account of the correct use of coercion in society. A pillar of libertarian ideological history, Rothbard has written more extensively than any other modern libertarian intellectual and done more to establish the groundwork of the modern anarcho-capitalist movement than any of his contemporaries.³³ Like Ayn Rand, Ludwig von Mises, Karl Marx, and many other intellectual heavyweights, not all of Rothbard's ideas were original, but he stands as the face of an ideological faction, his gray-scale profile appearing on mugs, t-shirts, and other paraphernalia just over the italicized phrase "Enemy of the State." His iconic influence extends even to the large portion of minarchists who fall under the general heading of "libertarian," a fast growing faction of the American electorate. If one wishes to understand the influence that faction wishes to have on American politics, then they must understand Rothbard's claims about the proper role of coercion, beginning with his claim to the tradition of Locke.³⁴

³² Murray Rothbard, *The Ethics of Liberty*, (New York: New York University, 1998), 42.

³³ Jim Powell, "Markets Unlimited", in *The Triumph of Liberty*, (New York: The Free Press, 2000), 274-281.

³⁴ It should be noted that Rothbard chooses Locke to draw from rather than Hobbes because of the aspects of Hobbes that cause Rothbard to condemn him as a statist rather than a father of an individualist tradition, offering Williamson M. Evers' critique, "Hobbes and Liberalism" as well as the endorsement of a statist interpretation of Hobbes by Hobbesian, Carl Schmitt, a one-time Pro-Nazi Theorist, in a note on page 22 of *The Ethics of Liberty*. Rothbard, *Ethics of Liberty*, 22.

Above all else, Rothbard claims that market anarchism is the most moral organization of coercion among men, as opposed to the governmental structures discussed above, on the grounds that objective facts about human nature cause man to retain self-sovereignty regardless of contract. Being that a social contract is not a property title-transfer contract, he believes that it is a mere promissory agreement, which places much heavier Natural Law constraints on governmental actions than Locke's system. This is mainly due to the fact that Rothbard does not view government as any separate or raised organization, but rather as an organization of individuals calling themselves "the government", indistinguishable from all other corporations except for the use of unjust force to affect their aims³⁵. According to the definition of government given at the beginning of this paper, Rothbard sees the government as "a gang writ large."³⁶

As he is primarily an economist by training and profession, it is no surprise that Rothbard is most attracted to Locke's conception of property. Rothbard does, however, believe that he improves upon the concept because Locke "was riddled with contradictions and inconsistencies," – the Lockean Proviso being chief among them.³⁷ "After all," he quips, "the pioneers of any discipline, any science, are bound to suffer from inconsistencies and lacunae that will be corrected by those that come after them."³⁸ *The Ethics of Liberty*, so Rothbard claims, is the intellectual fulfillment of Locke's work in *Two Treatises of Government*, going so far as to say that any "divergences from Locke in [*Ethics*] are only surprising to those steeped in the unfortunate modern fashion that has virtually abolished constructive political philosophy in favor

³⁵ Rothbard, *Ethics of Liberty*, 166-169.

³⁶ *Ibid.*, 169.

³⁷ *Ibid.*, 22.

³⁸ *Ibid.*

of a mere antiquarian interest in older texts,”³⁹ and then tracing the intellectual lineage through Herbert Spencer and Lysander Spooner toward his school of thought.

In claiming this, however, Rothbard must account for the fact that he is not a philosopher. He was primarily trained as a statistician at Columbia University⁴⁰ and then as an anti-orthodox economist in Columbia’s graduate program.⁴¹ After that, participating in Ludwig von Mises’ lectures and seminars only solidified his adherence to and eventual influence upon value-free laissez-faire economics. This study under Mises also became his first inclination toward the idea of Natural Law, despite Mises never using the term.⁴²

Rothbard seeks to move beyond this value-free economics, however, and give a moral explanation for the data and principles that are found in his own economic work. He extrapolates normative principles from the metaphysical and epistemological premises garnered from his thinking in the value-free vacuum which he believes “the main body of economics” must be because he wishes to cause change in the world and, in his words, “economists must *either* make their value judgments explicit and defend them with a coherent ethical system, *or* strictly refrain from entering, directly, or indirectly into the public policy realm.”⁴³

As Rothbard’s philosophical inquiry is a derivation of his primary role as an economist, there will be points where his ideas may be hindered by his unsophisticated style of philosophical discourse. One instance of note is his definition of the terms “moral” and “ethical.” He distinguishes the two by declaring that he is primarily concerned with discovering a universal ethic with regard to violence and that the rules of such an ethic may in fact be

³⁹ Ibid.

⁴⁰ Justin Raimondo, *An Enemy of the State: The Life of Murray N. Rothbard*, (Amherst: Prometheus Books, 2000), 35-36.

⁴¹ Ibid., 42-45.

⁴² Ibid., 48-49.

⁴³ Murray Rothbard, “Value Implications of Economic Theory,” *American Economist* 17, no. 1: 35-39. *Business Source Complete*, EBSCOhost (accessed October 12, 2012).

contrary to the demands of morality. What the “ethics of liberty” pertains to, then “is people’s *rights* to do or not do various things, not whether they should or should not *exercise* such rights. Thus, we would argue that every person has the *right* to purchase and consume Coca-Cola from a willing seller, not that any person *should* or *should not* actually make such a purchase.”⁴⁴ It is, regardless of such breaks from standard philosophical discourse, the ideas which are of interest in the current discussion. The expression of them, while important as the only clues we have to those ideas, should not impinge upon the ideas themselves where it can be determined that an ineloquent phrase or a muddled definition may confuse the casual reader.

A major part of those ideas is the embrace of a *reductio ad absurdum* argument posed against libertarianism. Examining Rothbard’s take on Locke’s work, one finds that Rothbard believes that the true conclusion of Locke’s relevant premises requires the immediate and complete abolition of government, which Rothbard heartily accepts.⁴⁵ The current work will look at Rothbard’s conception of coercion, how it differs from Locke, and attempt to derive evaluative conclusions.

In the course of such a task, Rothbard will hit the ground running in disagreeing with Locke, slightly altering the original State of Nature thought experiment in favor of the economic version, the Crusoe Experiment. Rothbard will first examine the individual as separate from interaction, delineating the natural facts about the individual and the world at large, and then add in conclusions about the interactions between individuals from the laws which derive from such facts. Rothbard argues that this is done with much sharper contrast than Locke.⁴⁶

⁴⁴ Rothbard, *The Ethics of Liberty*, 98.

⁴⁵ Rothbard believes that Locke uses many logical fallacies and false premises, which lead him to the conclusions that he reaches in *The Second Treatise of Civil Government*, and that the correction of such logical missteps leads one to conclude that government is a violently enforced monopoly that practices unjust violence against the populace over which it is able to maintain control.

⁴⁶ Rothbard, *Ethics of Liberty*, 29.

Rothbard attempts to show that voluntary interaction is the system which leads to human flourishing and economic success.⁴⁷ Discussing the economic concepts of scarcity, production, exchange, and regulations, Rothbard establishes a laissez-faire ethic that extends to all markets. If Rothbard is successful in defending the free-market and its universal applicability, he will have disproved the moral worth of all forcibly imposed monopolies and unjust regulations, leading to a free-market even in the enterprise of law, defense, and arbitration

This deviation from the idea of territorially monopolized executive, legislative, and judicial power as laid out in Hobbes and Locke connotes chaos, but Rothbard argues that through self-interest and voluntary exchange, the major factors behind the minutia of market forces, services historically provided by governments would actually improve with added incentive to innovate and give customers what they want for the lowest price so that they will, in turn, make the provider of such services wealthy, in the same way that products and services get where they need to go in a competition heavy system like grocery stores, hardware stores, and other high demand industries.

Once Rothbard's view of the world is understood, questions can begin being asked. What, for instance, is Rothbard's conception of coercion and when can it be used? While this is the central question, it raises a few others to complement it in order to be fully understood. If there are permissible and impermissible acts of coercion, then who has a right to enforce the rules? For that matter, who is in charge of choosing the rules? Finally, who is in charge of adjudicating conflicts over justice?

⁴⁷ This may seem to imply a consequentialist argument, however, as Dr. Walter Block trenchantly points out, "Libertarianism is a deontological theory of law.... However, libertarianism also claims to be at least broadly utilitarian; that is, at least in the view of its proponents, following this philosophy tends to lead to happiness for mankind, and to a greater degree than any other perspective." Walter Block, "Libertarianism, Positive Obligation and Property Abandonment: Children's Rights," *International Journal of Social Economics*, vol. 31, no. 3 (Moulton Park: Emerald Group Publishing, 2004) 275.

It is no surprise that these three derivative questions correspond to the executive, legislative, and judicial functions of legal institutions, which Locke claims necessitates governments because it would be unjust for someone to be a judge in their own case for any of these functions. Rothbard, however, disagrees sharply with Locke here because the two agree that it cannot be right for someone to be a judge in one's own case. Rothbard questions the institution of a supreme authority – be it a Leviathan or Locke's conception. He reasons that if one has a dispute with that supreme authority, then it is legislator, judge, and enforcer in its own case. Rothbard would even use Locke's own words as proof of what he sees as cognitive dissonance.

I easily grant, that civil government is the proper remedy for the inconveniencies of the state of nature, which must certainly be great, where men may be judges in their own case, since it is easy to be imagined, that he who was so unjust as to do his brother an injury, will scarce be so just as to condemn himself for it: but I shall desire those who make this objection, to remember, that absolute monarchs are but men; and if government is to be the remedy of those evils, which necessarily follow from men's being judges in their own cases, and the state of nature is therefore not to be endured, I desire to know what kind of government that is, and how much better it is than the state of nature, where one man, commanding a multitude, has the liberty to be judge in his own case, and may do to all his subjects whatever he pleases, without the least liberty to any one [sic] to question or control [sic] those who execute his pleasure and in whatsoever he doth, whether led by reason, mistake or passion, must be submitted to. Much better it is in the state of nature, wherein men are not bound to submit to the unjust will of another. And if he that judges, judges amiss in his own, or any other case, he is answerable for it to the rest of mankind.⁴⁸

Again hearkening back to the state as a monopoly of violence, Rothbard would say that this necessitates that the government be a judge in its own case because it has no higher power to which to appeal if there is no deity, as Rothbard's secular ethic has assumed.⁴⁹ Though it may be that the civil government is more than one person, Rothbard here appeals to the "circling the

⁴⁸ Locke, *Two Treatises*, 105-106.

⁴⁹ Locke cites Jephtha and the Ammonites when discussing the possibility of the state violating natural law and going unpunished, declaring that the dissident must appeal to God through battle; Locke, *Two Treatises*, 109.

wagons” phenomenon, readily apparent in the recent cases of Petty Officer Blumer and that of the Catholic Church.⁵⁰

What, then, are some of Rothbard’s alternatives? How does he propose society be organized without a central authority? For this, Rothbard does have several postulates, though he readily admits that they are pure conjecture – as it is characteristic of the market that it cannot always be predicted what the “invisible hand” will bring to the table. One may make reasonable guesses as to the most rational move to make in that market, but one is not always aware of all of the precipitating factors or unknown advancements and impediments that may arise from such a situation. In all cases, however, Rothbard will maintain a robust right of revolution that amounts to the same ability one has to switch from State Farm insurance to Geico because of his views on slavery contracts, which would include social contracts.

Finally, it will do to look at criticisms of Rothbard’s theory on several grounds. Rothbard will have to account for his embrace of *Reductio ad Absurdum* conclusions which can arise from his argument, such as the possibility of gang warfare erupting between different centers of polycentric legal systems or the weaknesses against stronger, unified states, issues which Hobbes believes will bar successful implementation of such a system. Moreover, there is criticism of Rothbard’s acceptance of the Lockean account of mixing one’s labor with the soil as providing adequate justification of property. Finally, a critical eye will be turned to Rothbard’s

⁵⁰ These were widely publicized examples of organizational wagon circling in the case of a brutal rape of a Petty Officer and Child Sexual Abuse respectively, placing the protection of the respective organizations’ images above the administration of justice. Sabrina Rubin Erdely, “The Rape of Petty Officer Blumer: Inside the Military’s Culture of Sex Abuse, Denial and Cover-up,” *Rolling Stone Magazine*, February 14, 2013, <http://www.rollingstone.com/politics/news/the-rape-of-petty-officer-blumer-20130214>; John Cassidy, “The Disastrous Influence of Pope Benedict XVI,” *The New Yorker*, February 12, 2013, <http://www.newyorker.com/online/blogs/johncassidy/2013/02/good-riddance-to-pope-benedict-he-was-a-disaster.html>.

construction of legal institutions to see if they do protect from the inconveniences of the state of nature, including a discussion of the supposed break down of the system in “Lifeboat Situations.”

Despite these objections, Rothbard maintains that

In all historical cases, the State has seized, by the use of aggressive violence and conquest... a monopoly of violence in society. And further, what the State has is not so much a monopoly of “coercion” as of *aggressive* (as well as defensive) violence, and that monopoly is established and maintained by systematically employing two particular forms of aggressive violence: taxation for the acquisition of State income, and the compulsory outlawry of competing agencies of defensive violence within the State’s acquired territorial area. Therefore, since liberty requires the elimination of aggressive violence in society (while maintaining defensive violence against possible invaders), the State is not, and can never be, justified as a defender of liberty. For the State lives by its very existence on the two-fold and pervasive employment of aggressive violence against the very liberty and property of individuals that it is *supposed* to be defending. The State is qualitatively unjustified and unjustifiable.⁵¹

Thus, Rothbard claims to minimize the use of physical violence to affect interpersonal relations by distinguishing between aggressive and defensive coercion, defining all human rights as negative liberties derived from property rights, and therefore making the only justified use of coercion that in defense of person or property. This breaks from the modern conception of justified coercion by removing any justification for the state, and promoting instead peaceful relations between consenting individuals for the administration of legal functions as indistinguishable from other goods and services provided by the market. He erects in the place of the state a historical, non-patterned account of justice, a strong adherence to the idea of rule of law, which is open to discovery and inquiry, and the ability to “crowd-source” good governance practices.⁵² Given his claims to plant his roots in the same foundation as the American Government, Rothbard’s conclusions are at the very least intriguing. The use of classical liberal

⁵¹ Rothbard, *The Ethics of Liberty*, 225-226.

⁵² “Crowd-sourcing” here is the distribution of creative responsibility to the general public with the ability to test new ideas and succeed or fail in order to find the best practices of governance so long as they remain in the contours provided by the rules of justice. The most readily available, yet imperfect analogue to this style of governance is the “Political Laboratory” theory of the state governments of the USA.

ideas in order to create a world that has the minimization – with the goal of eradication - of coercion and maximization of peace is indeed a goal worthy of seeking, and Rothbard claims to have achieved the system to best bring that world about. If seeking such a goal, one must, at least, *hope* that he is right.

The Crusoe Experiment and Human Nature

In the development of his conception of human nature, Rothbard starts with the simple premise that basic properties about an object will determine its nature.⁵³ That nature is value-free, being objectively based upon those properties rather than subjective desires. How, then, asks Rothbard, can it be that man of all things should have no nature? ⁵⁴ In his investigation of the concept, Rothbard is compelled to defend the very idea that there is a human nature against the intellectual and theological phalanx which had formed in opposition to the political consideration of such an idea without an appeal to faith.⁵⁵

Rothbard contends that “among intellectuals who consider[ed] themselves ‘scientific,’ ... ‘Man has no nature!’ [was] the [contemporary] rallying cry... and typical...was the assertion... that ‘man’s nature’ must be dismissed from any scientific discussion⁵⁶.” “ But if A, B, C, etc., have different attributes,” Rothbard countered, “it follows immediately that they have different *natures*.”⁵⁷ Man, as something differentiable from all other creatures and all other things, must have a nature *just* as differentiable from that of other creatures and things as those properties of

⁵³ Murray Rothbard, *The Ethics of Liberty*, 9-10

⁵⁴ Ibid.

⁵⁵ Ibid., 3-8

⁵⁶ Ibid., 3

⁵⁷ Ibid., 9

which man consists are from those of which such other creatures and things consist.⁵⁸ Rothbard then posits the idea that, scientifically speaking, if we can determine “specifically delimitable and definable” traits of man, because “specific, delimitable *causes* will have specific, delimitable *effects*,” then we should be able to determine the rules of interactions of humans given their “specifically delimitable and definable” traits.⁵⁹

In order to accomplish this task, Rothbard systematically examines man’s nature through an economic thought experiment, The Crusoe Situation, in which a man, much like Robinson Crusoe, is washed up on a deserted island and finds himself the only being in the area, leaving Rothbard to “[abstract] in the beginning from interpersonal relations,” further simplifying matters by assuming that Crusoe has amnesia of all presumed previous interpersonal relations.⁶⁰ In a footnote on the page introducing the Crusoe Experiment, Rothbard claims to choose this method because “such seventeenth and eighteenth-century constructs such as the ‘state of nature’,” while important, “were not wholly successful attempts to construct... a logical analysis” of human nature in the way that looking at Crusoe will.⁶¹

This approach, like the State of Nature, is a historical fiction built prior to the existence of government in order to understand voluntary interaction because it is man’s nature, not the state’s that is to be understood. Both systems seek to garner an understanding of the Natural Law through an understanding of man’s nature. With Rothbard’s experiment, however, one can examine man *qua* man with no other distractions, later adding one or two others to slowly build a system of interaction. In Locke’s time, The State of Nature skipped over this point, diving right into interactions among individuals without first understanding the nature of the individual in the

⁵⁸ Ibid., 9-10

⁵⁹ Ibid.

⁶⁰ Murray Rothbard, *The Ethics of Liberty*, 29.

⁶¹ Ibid.

absence of other men.⁶² Rothbard also has a heavy concentration on economic rather than political issues, placing economic activity as the master activity, all other divisions of actions merely being subsets of economics.

On Crusoe's island, he is confronted with several facts about reality independent of socialization. He first discovers that he does not have natural control over objects, but must use his physical abilities to appropriate and develop tools to satisfy the several desires that he has. He also finds that he has the ability to discover and retain knowledge, and must do so to form recipes for the fulfillment of those desires. He is, however, in complete control of these mental processes, according to Rothbard. The final conclusion of self-ownership is, however, almost entirely hinged on a single premise derived from these observations.⁶³

The individual man, in introspecting the fact of his own consciousness, also discovers the primordial natural fact of his freedom: his freedom to choose, his freedom to use or not use his reason about any given subject. In short, the natural fact of his "free will." He also discovers the natural fact of his mind's command over his body and its actions: that is, of his natural *ownership* over his self.⁶⁴

Rothbard takes ownership of the self to be absolute and inalienable control over one's body and will, dismissing slave contracts as illegitimate appropriations of one's future will. In every case, Rothbard contends,

a man can alienate his labor service, but he cannot *sell* the capitalized future value of that service. In short, he cannot, in nature, sell himself into slavery and have this sale enforced—for this would mean that his future will over his own person was being surrendered in advance. In short, a man can naturally expend his labor currently for someone else's benefit, but he cannot transfer himself, even if he wished, into another man's permanent capital good. For he cannot rid himself of his own will, which may change in future years and repudiate the current arrangement. The concept of "voluntary slavery" is indeed a contradictory one, for so long as a laborer remains totally subservient to his master's will voluntarily, he is not yet a slave since his

⁶² Locke, *Two Treatises*, 101-106.

⁶³ Rothbard, *Ethics of Liberty*, 29-32.

⁶⁴ *Ibid.*, 31.

submission is voluntary; whereas, if he later changed his mind and the master enforced his slavery by violence, the slavery would not then be voluntary.⁶⁵

Rothbard does examine the alternatives to a universal ethic in which each man is a quotal owner of all other men and in which one group of men owns another group.⁶⁶ He denounces both of these ideas, declaring that it is absurd that someone who cannot own himself should have a right to own others and that all ethics must apply universally. A society of absolute self-ownership, he asserts,

rests on the primordial fact of natural self-ownership by every man, and on the fact that each man may only live and prosper as he exercises his natural freedom of choice, adopts values, learns how to achieve them, etc. By virtue of being a man, he must use his mind to adopt ends and means; if someone aggresses against him to change his freely-selected course, this violates his nature; it violates the way he must function. In short, an aggressor interposes violence to thwart the natural course of a man's freely adopted ideas and values, and to thwart his actions based upon such values.⁶⁷

This line of thought places a heavy importance on the value of human life as the highest ideal. Thus one may ask why life should be of ultimate value in his system, to which he responds,

We may note that a proposition rises to the status of an axiom when he who denies it may be shown to be using it in the very course of the supposed refutation. Now, any person participating in any sort of discussion, including one on values, is, by virtue of so participating, alive and affirming life. For if he were really opposed to life, he would have no business in such a discussion, indeed he would have no business continuing to be alive. Hence, the supposed opponent of life is really affirming it in the very process of his discussion, and hence the preservation and furtherance of one's life takes on the stature of an incontestable axiom.⁶⁸

⁶⁵ Ibid., 40-41.

⁶⁶ Ibid., 45-47.

⁶⁷ Ibid., 46-47.

⁶⁸ Ibid., 32-33.

He further extrapolates the idea that the ownership of one's labor, as a property of the will directing the body, allows for the homesteading and ownership of property as an extension of the self in the Lockean sense, saying a man gains property

By finding land resources, by learning how to use them, and, in particular, by actually *transforming* them into a more useful shape, Crusoe has, in the memorable phrase of John Locke, "mixed his labor with the soil." In doing so, in stamping the imprint of his personality and his energy on the land, he has naturally converted the land and its fruits into his *property*. Hence, the isolated man *owns* what he *uses* and *transforms*; therefore, in his case there is no problem of what *should be* A's property as against B's. Any man's property is *ipso facto* what he *produces*, i.e., what he transforms into use by his own effort. His property in land and capital goods continues down the various stages of production, until Crusoe comes to *own* the consumer goods which he has produced, until they finally disappear through his consumption of them.⁶⁹

Rothbard is not speaking of any change in the metaphysical or psychological attributes of the objects such that they become property. He is rather speaking of an external moral property of "ownership" which is separate from any of the natural attributes of the material being subsumed under the title of "property." None of the physical changes that Rothbard is discussing are conceptually the same as the ethical state of ownership, but there is something that he believes imbues the objects with very real normative traits at the point of and not before their "transformation." "Suppose," for instance,

that Crusoe had landed not on a small island, but on a new and virgin continent, and that, standing on the shore, he had claimed "ownership" of the entire new continent by virtue of his prior discovery. This assertion would be sheer empty vainglory, so long as no one else came upon the continent. For the natural fact is that his true property—his actual control over material goods—would extend only so far as his actual labor brought them into production. His true ownership could not extend beyond the power of his own reach. [9] Similarly, it would be empty and meaningless for Crusoe to trumpet that he does not "really" own some or all of what he has produced (perhaps this Crusoe happens to be a romantic opponent of the property concept), for in fact the use and therefore the ownership has already been

⁶⁹ Ibid., 34.

his. Crusoe, in natural fact, owns his own self and the extension of his self into the material world, neither more nor less.⁷⁰

Contrary to his stance on self-ownership, Rothbard does not believe that the products of man's labor are inalienable. The products of one's labor have a distinct relationship from that of the mind to the body. While the mind cannot be alienated from the body as a fact of nature, one can be alienated from apples, butter, gold, horses, or whatever other property they have amassed through their labor. As such,

The process of exchange enables man to ascend from primitive isolation to civilization: it enormously widens his opportunities and the market for his wares; it enables him to invest in machines and other "high-order capital goods"; it forms a pattern of exchanges—the free market—which enables him to calculate economically the benefits and the costs of highly complex methods and aggregates of production.⁷¹

But Rothbard again appeals to something higher than mere physical transference, claiming

[E]conomists too often forget, in contemplating the critical importance and the glories of the free market, *what* precisely is being exchanged. For apples are *not* simply being exchanged for butter, or gold for horses. What is really being exchanged is not the commodities themselves, but the *rights to ownership* of them. When Smith exchanges a bag of apples for Jones's pound of butter, he is actually transferring his *ownership rights* in the apples in exchange for the ownership rights to the butter, and vice versa. Now that Smith rather than Jones is the absolute controller of the butter, it is Smith who may eat it or not at his will; Jones now has nothing to say in its disposition, and is instead absolute owner of the apples.⁷²

Such an exchange constitutes a contract in this system. Rothbard argues that "the right to contract is strictly derivable from the right of private property, and therefore... the only *enforceable* contracts (i.e., those backed by the sanction of legal coercion) should be those where the failure of one party to abide by the contract implies the *theft* of property from the other

⁷⁰ Ibid.

⁷¹ Rothbard, *Ethics of Liberty*, 36.

⁷² Ibid.

party.”⁷³ Promises, for instance, carry no legal weight in the Rothbardian system because there is no transfer of property in them. To enforce a promise would be a slave contract.⁷⁴

The Terminology of the System of Rights

Rothbard takes these basic principles of ownership and claims to

Thus have a theory of the rights of property: that every man has an absolute right to the control and ownership of his own body, and to unused land resources that he finds and transforms. He also has the right to give away such tangible property (though he cannot alienate control over his own person and will) and to exchange it for the similarly derived properties of others. Hence, all legitimate property-right derives from every man’s property in his own person, as well as the “homesteading” principle of unowned property rightly belonging to the first possessor.⁷⁵

He must then mold these principles into a systematic understanding of human interaction in the realm with which he is concerned, violence. What is the proper use of violence and when is it wrong to use such force? Put another way, what should and should not be legal.

It will first do to cover the terms that Rothbard uses when discussing this system. He has a very specific understanding of words such as “moral,” “ethics,” “rights,” “person,” “liberty,” and “aggression”. While we will address the concept of coercion in the next section more fully, it will also be prudent to address his definition at least briefly when discussing aggression. As discussed in the introduction, it will be important to understand each of these central concepts as Rothbard understands them because he does not always conform to the standards of philosophical discourse.

⁷³ Ibid., 133.

⁷⁴ Rothbard advocates the “moral” rectitude in keeping one’s promises, but not the violent enforcement of them. Ibid.

⁷⁵ Ibid., 60.

In the discussion in the introduction, the example provided was the Rothbardian distinction between ethics and morals. For Rothbard, ethics is the study of the appropriate role of violence in society, while morality is concerned with the proper rules governing the entirety of human behavior. One major instance in which this can be seen is his discussion of Lifeboat situations. He explains that when there is less space on the lifeboats than people in need of saving in such a situation, it may very well be the most moral action to do everything in one's power to save one's own life, however,

if a man aggresses against another's person or property to save his own life, he may or may not be acting morally in so doing. That is none of our particular concern in this work. Regardless of whether his action is moral or immoral, by any criterion, he is still a criminal aggressor against the property of another, and the victim is within his right to repel that aggression by force, and to prosecute the aggressor afterward for his crime.⁷⁶

This distinction is the primary reason for the title of the book, which focuses not on how a regard for liberty should make people act in a general sense, but purely focuses on the appropriate role of violence in society and how the political institutions in a “society of Pure Liberty” should be arranged.

An already obvious thread in this society is the existence of a robust theory of rights. As also discussed in the introduction, Rothbard makes a clear distinction between power and right, because though, “some critics have charged that [a man's freedom to do as he pleases] is illusory because man is bound by natural laws,” this is not what he means when he discusses freedom and liberty to do something, for

Man is free to adopt values and to choose his actions; but this does not at all mean that he may violate natural laws with impunity—that he may, for example, leap oceans at a single bound. In short, when we say that “man is not ‘free’ to leap the

⁷⁶ Ibid., 153.

ocean,” we are really discussing not his lack of freedom but his lack of power to cross the ocean, given the laws of his nature and of the nature of the world.⁷⁷

This is an example of poor phrasing. Though he says that “natural laws” cannot be violated, he is talking about physical, not moral or ethical laws – not the Law of Nature, as he has called it. People then have the power to impinge upon the property of others, but they do not have the freedom to do so under the Law of Nature because to allow such would violate the presupposition that he is searching for a universal human ethic.

This idea of having a universal human ethic is important for Rothbard’s understanding because, as mentioned in the previous section, he seeks a science of human nature from which to draw out the rules for human interaction. Rothbard, thus, asserts that if we are looking for an ethic derived from the nature of all humans,

To be a valid ethic the theory must hold true for *all* men, whatever their location in time or place. This is one of the notable attributes of natural law—its applicability to all men, regardless of time or place. Thus, ethical natural law takes its place alongside physical or “scientific” natural laws. But the society of liberty is the *only* society that can apply the same basic rule to every man,⁷⁸

Thus, part of this universal ethic is deeply connected with his understanding of the words “liberty” and “aggression,” which are intimately tied to the idea of a right and of coercion for him.

Rothbard contends that in order to achieve this universal ethic, one must adopt a negative conception of liberty. No one may have any rightful claim on any other to do something for them other than that they refrain from certain actions. Addressing Sir Isaiah Berlin’s famous essay *Two Concepts of Liberty*, he agrees that “the concept of ‘negative liberty’—absence of interference with a person’s sphere of action—” should be upheld “against ‘positive liberty;

⁷⁷ Ibid., 33.

⁷⁸ Ibid., 42-43.

which refers not to liberty at all but to an individual's effective power or mastery over himself or his environment."⁷⁹ Rothbard, however, wishes to clarify the difference between Berlin's conception of liberty and his own.

Superficially Berlin's concept of negative liberty seems similar to the thesis of the present volume: that liberty is the absence of physically coercive interference or invasion of an individual's person and property. Unfortunately, however, the vagueness of Berlin's concepts led to confusion and to the absence of a systematic and valid libertarian creed.⁸⁰

Rothbard outlines two major flaws that he sees in Berlin's conception. The first of such is that, while Berlin originally formulated negative liberty to be understood as "the absence of obstacles to the fulfillment of a man's desires," he had to correct this in a later edition of the essay because "[if] degrees of freedom were a function of the satisfaction of desires, I could increase freedom as effectively by eliminating desires as by satisfying them; I could render men (including myself) free by conditioning them into losing the original desires which I have decided not to satisfy."⁸¹

Rothbard next attacks Berlin's correction of the above mistake as internally contradictory. While Berlin corrected the offending passage to read "[negative liberty] is simply the area within which a man can act unobstructed by others," Rothbard asserts that, when augmented by Berlin's further declaration that he means freedom to be "'the absence of obstacles to possible choices and activities,' obstacles, that is, put there by 'alterable human practices,'" the definition then, "comes close... to confusing 'freedom' with 'opportunity'," because if "X refuses to hire Y because Y is a redhead and X dislikes redheads; X is surely reducing Y's range of opportunity," by performing an alterable human action.⁸²

⁷⁹ Ibid., 215.

⁸⁰ Ibid.

⁸¹ Ibid.; Isaiah Berlin, "Introduction", *Four Essays on Liberty*, (New York: Oxford University Press, 1969), xxxviii.

⁸² Rothbard, *Ethics of Liberty*, 215-216.

These mistakes, according to Rothbard, cause him to fall into the “positive liberty” camp because of “his failure to define negative liberty as the absence of physical interference with an individual’s person and property, with his *just property rights* broadly defined.”⁸³ Rothbard is, thus, defining “liberty” as the freedom to conduct one’s own behavior within their own rights, which, as discussed above, are those rights derived from absolute self-ownership and the absolute control of one’s justly owned property acquired through production, exchange, or gift. In this vein, “the bulk of [*The Ethics of Liberty* is] devoted to spelling out the implications of” a “society of free and voluntary exchanges...[which] may be called the ‘free society’ or the society of ‘pure liberty.’”⁸⁴

In this society of pure liberty, “every man enjoys absolute freedom—pure liberty—if, like Crusoe, his ‘naturally’ owned property (in his person and in tangibles) is free from invasion or molestation by other men.”⁸⁵ This formulation is crucial to Rothbard’s conception of society because if we say that freedom is,

the *absence of invasion* by another man of any man’s person or property... We then see clearly that a supposed “freedom to steal or assault”—in short, to aggress—would not be a state of freedom at all, because it would permit someone, the victim of an assault, to be deprived of his right to person and property—in short, to have his liberty violated.⁸⁶

We thus have a definition of aggression. To aggress is to physically invade the property rights of another person. Aggression is the abuse of one’s power to reach outside the sphere of rightful, legally sanctioned action. It should be noted that this definition does not include a reference to violence, though violent invasion is included under the umbrella of the definition. Rothbard himself uses the term “aggressive violence,” to be defined as any action in which

⁸³ Ibid., 216.

⁸⁴ Ibid., 41

⁸⁵ Ibid.

⁸⁶ Ibid., 42.

One man invades the property of another without the victim's consent. The invasion may be against a man's property in his person (as in the case of bodily assault), or against his property in tangible goods (as in robbery or trespass). In either case, the aggressor imposes his will over the natural property of another—he deprives the other man of his freedom of action and of the full exercise of his natural self-ownership.⁸⁷

Violence, however, is at least colloquially understood as a modifier that connotes a high degree of force used in an interaction, rather than just any force. The use of a single finger to lovingly caress another's cheek could not be described as violent, though without the consent of the caressed person, this constitutes an invasion of another's property rights under Rothbard's definition. Aggression, rather, reaches even farther to cover *any* action that exerts control over the justly owned property of another person. If, for instance, someone picked up my umbrella by mistake, without the intent to steal it or the knowledge that it was mine – it just happened to look like their umbrella – this would still constitute theft, though they did not wrest it from my possession in a violent altercation.

In the above definitions, the term “person” has been used several times, which should be addressed. That Rothbard attributes personhood purely to those capable of rational thought and that he believes man to be the only existing creature with such a capacity is readily apparent with his synonymous use of “person” and “man.” He justifies the pure reason approach to the attribution of personhood through the following explication:

In natural-law philosophy... reason is not bound, as it is in modern post-Humean philosophy, to be a mere slave to the passions, confined to cranking out the discovery of the means to arbitrarily chosen ends. For the ends themselves are selected by the use of reason; and "right reason" dictates to man his proper ends as well as the means for their attainment. ... “the moral law . . . is a special case of the general principles that all finite things move toward their ends by the development of their potentialities.’ And here we come to a vital difference between inanimate or even non-human living creatures, and man himself; for the former are compelled to

⁸⁷ Ibid., 45.

proceed in accordance with the ends dictated by their natures, whereas man, "the rational animal," possesses reason to discover such ends and the free will to choose.⁸⁸

Man's potentiality, which he develops, then, is rational thought and inquiry, which leads to the potential acquisition of right reason, which may direct his ends beyond hedonistic, nature driven desires.

Rothbard devotes an entire chapter elaborating on the above definition, called "The 'Rights' of Animals", referring to his definition of rights as absolute claims on all others against aggression against the property of all persons and his definition of personhood as purely that of rational creatures. Animal rights, then, are not founded on the same idea as human rights according to Rothbard; 'The fundamental flaw in the theory of animal rights,' he says, is that

the assertion of human rights is not properly a simple emotive one; individuals possess rights *not* because we "feel" that they should, but because of a rational inquiry into the nature of man and the universe. In short, man has rights because they are *natural* rights. They are grounded in the nature of man: the individual man's capacity for conscious choice, the necessity for him to use his mind and energy to adopt goals and values, to find out about the world, to pursue his ends in order to survive and prosper, his capacity and need to communicate and interact with other human beings and to participate in the division of labor. In short, man is a rational and social animal. No other animals or beings possess this ability to reason, to make conscious choices, to transform their environment in order to prosper, or to collaborate consciously in society and the division of labor.⁸⁹

He further elaborates upon the idea that the natural order of animals is different from that of humanity:

That the concept of a species ethic is part of the nature of the world may be seen, moreover, by contemplating the activities of other species in nature. It is more than a jest to point out that *animals*, after all, don't respect the "rights" of other animals; it is the condition of the world, and of all natural species, that they live by eating other species. Inter-species survival is a matter of tooth and claw. It would surely be absurd to say that the wolf is "evil" because he exists by devouring and "aggressing

⁸⁸ Ibid., 7.

⁸⁹ Ibid., 155.

against” lambs, chickens, etc. The wolf is not an evil being who “aggresses against” other species; he is simply following the natural law of his own survival.⁹⁰

Rothbard’s final word on the distinction, when it comes to the idea that humans do not begin as rational animals – many animals having the intellectual capacity and self-awareness of even 5 year olds is that

There is, in fact, rough justice in the common quip that “we will recognize the rights of animals whenever they petition for them.” The fact that animals can obviously not *petition* for their “rights” is part of their nature, and part of the reason why they are clearly not equivalent to, and do not possess the rights of, human beings. And if it be protested that babies can’t petition either, the reply of course is that babies are future human adults, whereas animals obviously are not.⁹¹

With the above terminology understood correctly, one can then properly understand what Rothbard means, when he seeks a society free from aggressive coercion, which he defines as “the invasive use of physical violence or the threat thereof against someone else’s person or (just) property.”⁹² In the next section it will be shown that this does not mean an end to any possibility of rightful coercion, but a system that seeks an eventual end to coercion entirely.

The Society of Pure Liberty as a Minimization of Coercion

The major source of the groundwork of Rothbard’s political theory, *The Ethics of Liberty*, was published in 1981, but in his explication of the Libertarian Creed, *For a New Liberty: The Libertarian Manifesto*, published nearly a decade earlier, he includes the “one central axiom” upon which the entirety of his system rests, “that no man or group of men may aggress against the person or property of anyone else. This may be called the ‘nonaggression axiom.’”⁹³ We have already detailed Rothbard’s thoughts on aggression, and here, he shows that the libertarian

⁹⁰ Ibid., 156.

⁹¹ Ibid., 156-157.

⁹² Ibid., 219.

⁹³ Murray Rothbard, *For a New Liberty*, (Auburn: Ludwig Von Mises Institute 2006), 27.

seeks its minimization. With this as the central axiom, we find that the very concept of coercion is logically bound to be minimized through its relationship with aggression. This has several implications for society, for,

If... everyone has the absolute right to be "free" from aggression, then this at once implies that the libertarian stands foursquare for what are generally known as "civil liberties": the freedom to speak, publish, assemble, and to engage in such "victimless crimes" as pornography, sexual deviation, and prostitution (which the libertarian does not regard as "crimes" at all, since he defines a "crime" as violent invasion of someone else's person or property). Furthermore, he regards conscription as slavery on a massive scale. And since war, especially modern war, entails the mass slaughter of civilians, the libertarian regards such conflicts as mass murder and therefore totally illegitimate...

...This also means that he just as emphatically opposes... interference with property rights or with the free-market economy through controls, regulations, subsidies, or prohibitions. For if every individual has the right to his own property without having to suffer aggressive depredation, then he also has the right to give away his property (bequest and inheritance) and to exchange it for the property of others (free contract and the free market economy) without interference. The libertarian favors the right to unrestricted private property and free exchange; hence, a system of "laissez-faire capitalism."⁹⁴

This is not a surprising conclusion from an Austrian Economist, though he does clash with another oft cited Austrian, Fredrick Hayek, over the idea of coercion.

After acknowledging that Hayek "begins very well, by defining freedom as the absence of coercion, thus upholding 'negative liberty' more cogently than does Isaiah Berlin," Rothbard sharply criticizes his theory of coercion as contradictory and inconsistent,⁹⁵

For instead of defining coercion as is done in the present volume, as the invasive use of physical violence or the threat thereof against someone else's person or (just) property, Hayek defines coercion far more fuzzily and inchoately: e.g., as "control of the environment or circumstances of a person by another (so) that, in order to avoid greater evil, he is forced to act not according to a coherent plan of his own but to serve the ends of another"; and again: "Coercion occurs when one man's actions are made to serve another man's will, not for his own but for the other's purpose."⁹⁶

⁹⁴ Ibid., 27-28

⁹⁵ Ibid., 219.

⁹⁶ Ibid.

While Hayek does include physical violence under the heading of coercion in his book, *The Constitution of Liberty*, he also includes several interpersonal relationships that would not be considered coercive under Rothbard's system, explicitly stating "the threat of force or violence is the most important form of coercion. But they are not synonymous with coercion, for the threat of physical force is not the only way in which coercion can be exercised."⁹⁷

Hayek rather believes that any action whereby someone directly alters someone's value hierarchy by making their – otherwise – most desired choice of action less desirable so that they will choose a course of action desired by the alleged coercive agent is coercion.⁹⁸ Rothbard points out that this would include a nagging wife or morose husband "coercing" their spouse by making their "life intolerable unless their every mood is obeyed," and that even Hayek agrees that "it would be absurd to advocate legal outlawry of sulkiness or nagging; but he does so on the faulty grounds that such outlawry would involve 'even greater coercion.'"⁹⁹ This is, however, unsatisfactory for Rothbard, as it does not seem that nagging someone and initiating force against them are differences in *degree* of coercion, but rather in *kind* of interaction. The difference is qualitative, not merely quantitative.¹⁰⁰

As a final point to this example, Rothbard makes an interesting distinction. The reason that the difference is qualitative is that "the wife or husband is free to leave the offending partner, and that staying together is a voluntary choice on his or her part. Nagging might be morally or aesthetically unfortunate, but it is scarcely 'coercive' in any sense similar to the use of physical

⁹⁷ F.A. Hayek, *The Constitution of Liberty: The Definitive Edition*, ed. Ronald Hamowy, (Chicago: The University of Chicago Press, 1960, Chicago: The University of Chicago Press, 2011), 202.

⁹⁸ Ibid., 199-214.

⁹⁹ Rothbard, *Ethics of Liberty*, 219.

¹⁰⁰ Ibid.

violence.”¹⁰¹ Rothbard is therefore making the substantive assertion that adding coercion into a situation removes the voluntary nature from any action taken by the coerced. If a mugger pulls a gun on a victim and does not physically accost the victim, but rather demands his wallet, which the victim then hands over to the mugger, it would not be said that the victim gifted his wallet to the mugger. It was not a voluntary choice for the victim to relinquish his wallet according to Rothbard’s system.

This is not to say that the very threat of violence allows an aggressor to physically control the actions of those against whom they aggress, but rather that the threat of violence, does utilize the human desire for survival to affect the actions of the victim of such aggression through introducing certain stimuli into the situation to produce specific, predictable effects. If a man pulls a gun on another man, the implication is that the man with the gun intends to shoot the gun at the man in the crosshairs. The man holding the gun has clear, present, and immediate power over the other man’s life and, in an act of coercion, either directly or indirectly implies the willingness to use such power unless the other man performs certain actions.

One might ask how this is different from Hayek’s assertion that coercion is merely “control of the environment or circumstances of a person by another (so) that, in order to avoid greater evil, he is forced to act not according to a coherent plan of his own but to serve the ends of another.”¹⁰² The obvious answer for Rothbard is that the morose husband and nagging wife have every right to behave morosely or to say nagging things under their ownership of their own bodies, while the man with the gun is threatening to use his power outside of his sphere of rightful actions. The definition of coercion then should be slightly updated to say that it is the

¹⁰¹ Ibid., 220.

¹⁰² Hayek, *The Constitution of Liberty*, 199.

“invasive use of [*unjust*] physical violence or the threat thereof against someone else’s person or (just) property.”¹⁰³

Rothbard is equally clear in his great economic tome *Power and Market*, that it must be physical interactions which are coercive, in spite of Hayek’s example of the natural monopolist. Hayek describes a desert which was once rich in water and through an accident of nature, one man comes to own the only operational well. For Hayek, even the negative action of refusing to benefit someone else through entering business relations with them is coercive. If a person refused to sell to a certain person or refused to hire them, Hayek would call this coercive.¹⁰⁴

Rothbard trenchantly counters this assertion, saying that in the case of a worker being fired from his job,

What exactly has the employer done? He has refused to continue to make a certain exchange which the worker preferred to continue making. Specifically, A, the employer, refuses to sell a certain sum of money in exchange for the purchase of B’s labor services. B would like to make a certain exchange; A would not.

...“Economic power,” then, is simply the right under freedom to refuse to make an exchange. Every man has this power. Every man has the same right to make a proffered exchange.¹⁰⁵

To believe the opposite, that refusal to interact with others for whatever reason – be it prejudice, better economic choices, or pure whim – is coercive, says Rothbard, is to invite contradiction.

For instance, let us say that,

A refuses to make an exchange with B. What are we to say, or what is the government to do, if B brandishes a gun and orders A to make the exchange? This is the crucial question. There are only two positions we may take on the matter: either that B is committing violence and should be stopped at once, or that B is perfectly justified in taking this step because he is simply “counteracting the subtle coercion” of economic power wielded by A. Either the defense agency must rush to the defense

¹⁰³ Rothbard, *Ethics of Liberty*, 219.

¹⁰⁴ Hayek, *The Constitution of Liberty*, 203.

¹⁰⁵ Murray Rothbard, *Power and Market*, 2nd ed. (Kansas City: Sheed Andrews and McMeel, 1977), 228-

of A, or it deliberately refuses to do so, perhaps aiding B (or doing B's work for him)...

B is committing violence; there is no question about that. In the terms of both doctrines (the libertarian and the "economic power" arguments), this violence is either invasive and therefore unjust, or defensive and therefore just.¹⁰⁶

The question to be asked, then, goes back to Rothbard's dismissal of Hayek's "degree" argument of physical versus "passive" coercion. It is not that B may not use violence to "[counteract] the subtle coercion" of economic sanction because he is using disproportionate coercion; he is wrong because he is violating the property rights of another, which amounts to theft or slavery if he forces someone to do business with him.

But what of this difference of which Rothbard speaks in the previous quote of invasive, or aggressive, versus defensive coercion? It may be that, "it is... a consistent creed... that no violence should ever be used by anyone against anyone else: even by a victim against a criminal," argues Rothbard, "but... the point at question is whether or not the victim has a moral *right* to employ violence in defending his person or property against criminal attack or in repossessing property from the criminal."¹⁰⁷ Harkening back to Rothbard's definition of rights, it should be remembered that they are *enforceable* claims against others to *refrain* from certain actions. The question may then be seen as "whether or not the victim ... [may] employ violence in defending his person or property against criminal attack or in repossessing property from the criminal [without justified physical interference]."

Further, it may be true that "the Tolstoyan may concede that the victim *has* such a right but may try to persuade him not to exercise that right in the name of a higher morality," however, in order to remain consistent in such a line of thought,

¹⁰⁶ Ibid.

¹⁰⁷ Rothbard, *Ethics of Liberty*, 53.

any such total objector to violence must then be consistent and advocate that *no* criminal ever be punished by the use of violent means. And this implies, let us note, not only abstaining from *capital* punishment but from all punishment whatsoever, and, indeed, from all methods of violent defense that might conceivably injure an aggressor.

Anyone who is not a Tolstoyan, then,

favours the use of force and violence to defend against and punish criminal aggression. He must therefore favor the morality, if not the wisdom, of using force to overthrow entrenched criminality. If so, then we are pushed immediately back to the really important question: *who* is the criminal, and therefore *who* is the aggressor? Or, in other words, against *whom* is it legitimate to use violence?¹⁰⁸

Rothbard's justification of this is in his definition of ownership. To own something is to exercise exclusive rightful control over its use. This right does not have to always be enforced. It is, at times, wise not to enforce such rights in certain situations, but the right exists under the system. When someone uses force to invade such property rights, they are controlling the use of that property and the only way to regain control of the property is through proportional, countervailing force applied by the victim. Defense, then, is the *sin qua non* of ownership.¹⁰⁹

We earlier defined coercion, however, as "invasive use of [*unjust*] physical violence or the threat thereof against someone else's person or (just) property," and if we have here defined defense as a *just* invasion, how can it be considered coercion?¹¹⁰ The answer does not lie in a mere "like to cure like" mentality, but rather in properties of the action itself. The original criminal invaded the property rights of the victim because they had designs about the control of such property. Because they used force to gain control of that property, they owned it in a practical sense, though they were the unjust owners. The victim, then, is invading the ownership of another person to gain control of certain property. The only difference in action, here, is a

¹⁰⁸ Ibid., 53-54.

¹⁰⁹ Ibid., 77.

¹¹⁰ Ibid., 219.

matter of historical perspective. Given only the single snapshot of time of the repossession, it might be said that the victim as in the wrong in trying to repossess their property.¹¹¹ Since the action is the same then, but the *rights involved* are different, the action may be categorized as aggressive or defensive coercion.

There is, therefore, an appropriate place in society for defensive coercion, however, it must be “confined to resisting invasive acts against person or property.” With that said, “such invasion may include two corollaries to actual physical aggression: *intimidation*, or a direct threat of physical violence; and *fraud*, which involves the appropriation of someone else’s property without his consent, and this is therefore ‘implicit theft,’” and thus, we may begin to see a legal code being set down with just a few basic laws. Violation of such a legal code makes one a criminal, according to Rothbard, regardless of what one calls themselves or their organization.¹¹²

It can thus be said that anyone “who aggresses against the person or other produced property of another as a *criminal*. A criminal is anyone who initiates violence against another man and his property: anyone who uses the coercive “political means” for the acquisition of goods and services.”¹¹³ This can, in turn, give us “a theory of *criminality*: ... Any criminal titles to property should be invalidated and turned over to the victim or his heirs; if no such victims can be found, and if the current possessor is not himself the criminal, then the property justly reverts to the current possessor on our basic ‘homesteading’ principle.”¹¹⁴

It is obvious under such a system that an apparatus – an institution or institutions – must be established for the discovery of natural laws, their enforcement, and the arbitration of disputes over rights. A great proponent of human interaction, Rothbard, certainly agrees with the idea of

¹¹¹ A more detailed explanation of this can be found in Rothbard, *Ethics of Liberty*, 51-53.

¹¹² Ibid., 77.

¹¹³ Ibid., 51.

¹¹⁴ Ibid., 60.

cooperative defense, deriving from the idea of self-defense, that every man “must also have the right to hire or accept the aid of other people to do such defending: he may employ or accept defenders just as he may employ or accept the volunteer services of gardeners on his lawn.”¹¹⁵

It must be reiterated, however that, such defense must be proportional to the crime committed. Proportionality is very important for Rothbard. As the basis for his entire system is property rights, he says that “the criminal... loses his own right *to the extent* that he has deprived another man of his. If a man deprives another man of some of his self-ownership or its extension in physical property, to that extent does he lose his own rights.”¹¹⁶ To illustrate this, he points out that,

It would clearly be grotesque and criminally invasive to shoot a man across the street because his angry look seemed to you to portend an invasion. The danger must be immediate and overt, we might say, “clear and present”—a criterion that properly applies not to restrictions on freedom of speech (never permissible, if we regard such freedom as a subset of the rights of person and property) but to the right to take coercive action against a supposedly imminent invader.

Secondly, we may ask: must we go along with those libertarians who claim that a storekeeper has the right to kill a lad as punishment for snatching a piece of his bubble gum? What we might call the “maximalist” position goes as follows: by stealing the bubble gum, the urchin puts himself outside the law. He demonstrates by his action that he does not hold or respect the correct theory of property rights. Therefore, he loses all of his rights, and the storekeeper is within his rights to kill the lad in retaliation.¹¹⁷

Rothbard is obviously opposed to such a maximalist position on the grounds that to push beyond the line of proportionality is to become an aggressor oneself.¹¹⁸

Rothbard’s insistence that “the threat of aggression be palpable, immediate, and direct; in short, that it be embodied in the initiation of an overt act,” goes back, of course to an equal

¹¹⁵ Ibid., 77.

¹¹⁶ Ibid., 80.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

respect for all rights – his universal human ethic – and the inalienability of the right to self-ownership.¹¹⁹ It is, of course, foreseeable “the inevitable case of fuzzy or unclear actions,” but Rothbard remains adamant that, “we must bend over backwards to require the threat of invasion to be direct and immediate, and therefore to allow people to do whatever they may be doing. In short, the burden of proof that the aggression has really begun must be on the person who employs the defensive violence.”¹²⁰

Once the fact of aggressive coercion has been established, much like John Locke, Rothbard establishes a “State of War” of sorts.¹²¹ Suppose A invades B’s property rights for some reason – either intentionally or otherwise. So long as the invasion continues and A resists B’s verbal and physical attempts to end the invasion, the two are in a state of war. A criticism which may be levied here is how far may one go and still say that it is a truly proportional response when in a state of war? Certainly if someone is taking B’s livelihood and has a gun pointed at him, there is little question in his gradually escalating attempts to resolve the conflict ending in lethal force. What, though, if someone has taken his twelve cents by mistake, but believes it to be theirs? Obviously arbitration should be pursued, but what if the invader *continues*, even after arbitration to abscond with B’s twelve cents?

The Lockean model of justice holds that

The state of war is a state of enmity and destruction: and therefore declaring by word or action, not a passionate and hasty, but a sedate settled design upon another man's life, puts him in a state of war with him against whom he has declared such an intention, and so has exposed his life to the other's power to be taken away by him, or any one that joins with him in his defence, [sic] and espouses his quarrel; it being reasonable and just, I should have a right to destroy that which threatens me with

¹¹⁹ Ibid., 78.

¹²⁰ Ibid.

¹²¹ Though the term “state of war” is never used, Rothbard establishes a relationship between aggressor and victim along much the same lines. Differences between the two states will rest in Locke’s assertion that the state of war is absolute and does not end until the issue is brought before arbitrators and a contract is reached. Ibid., 35-61, 77-96.; Locke, *Two Treatises*, 101-109.

destruction: for, by the fundamental law of nature, man being to be preserved as much as possible, when all cannot be preserved, the safety of the innocent is to be preferred: and one may destroy a man who makes war upon him, or has discovered an enmity to his being, for the same reason that he may kill a wolf or a lion; because such men are not under the ties of the commonlaw [sic] of reason, have no other rule, but that of force and violence...¹²²

This obviously endorses our first example of B under threat of violence by A holding him at gun point, but Locke goes so far as to say that this “State of War,”

makes it lawful for a man to kill a thief, who has not in the least hurt him, nor declared any design upon his life, any farther than, by the use of force, so to get him in his power, as to take away his money, or what he pleases, from him; because using force, where he has no right, to get me into his power, let his pretence [sic] be what it will, I have no reason to suppose, that he, who would take away my liberty, would not, when he had me in his power, take away every thing [sic] else. And therefore it is lawful for me to treat him as one who has put himself into a state of war with me, i.e. kill him if I can; for to that hazard does he justly expose himself, whoever introduces a state of war, and is aggressor in it.¹²³

Such a position would seem to validate the idea of lethal force as the end of our problem of A stealing twelve cents. Since A has made a declaration of intent to profit off of B’s property even after initial attempts at restitution and eventual arbitration – even if the value is small – and thus has set himself up as a future threat to the liberty and property of B, being unrestrained by the Law of reason or the positive law of a court of arbitration.

Under Rothbard’s system, the central aim of punishment is restitution.¹²⁴ He does not accept the existence of a supposed “crime against society”, because his system is founded upon individual property rights.¹²⁵ While Rothbard accepts the need for deterrent and rehabilitative aspects of punishment, as crime would be either a profitable gamble or a revolving door if those respective principles were ignored, he says that a system where retribution is not the central

¹²² Locke, *Two Treatises*, 107.

¹²³ Ibid., 107-108.

¹²⁴ Rothbard, *Ethics of Liberty*, 86.

¹²⁵ Ibid.

principle of punishment is absurd from the perspective of property rights.¹²⁶ For instance, there is the situation under the current system in which,

A steals \$15,000 from B. The government tracks down, tries, and convicts A, all at the expense of B, as one of the numerous taxpayers victimized in this process. Then, the government, instead of forcing A to repay B or to work at forced labor until that debt is paid, forces B, the victim, to pay taxes to support the criminal in prison for ten or twenty years' time. Where in the world is the justice here? The victim not only loses his money, but pays more money besides for the dubious thrill of catching, convicting, and then supporting the criminal; and the criminal is still enslaved, but *not* to the good purpose of recompensing his victim.¹²⁷

For Rothbard, this is even more aggression on the original victim by a *new* actor playing the role of the ostensible do-gooder.¹²⁸

If a person, however, is proven to have committed a crime, and appropriate justice is then to be carried out, Rothbard's theory of justice merely sets a maximum boundary.¹²⁹ It is not to say that it may be the moral or merciful thing to allow the criminal lenience in punishment, which is entirely within the rights of the aggressed, as they have the right to not enforce their property rights, much the way that a Tolstoyan might; it is merely the fact that to cross over the maximum penalty would be to, in turn, become an aggressor worthy of retributive punishment.¹³⁰

Obviously, the importance of punishment for crime and restitution to victims pervades society, especially the society which Rothbard envisions. If one is to advocate absolute property rights which may only be maintained by defense, the power of defense is paramount to the perpetuity of such a system. Even so,

It should be clear that no man, in an attempt to exercise his right of self-defense, may coerce anyone else into defending him. For that would mean that the defender himself would be a criminal invader of the rights of others. Thus, if A is aggressing

¹²⁶ Ibid., 92-95.

¹²⁷ Ibid., 87.

¹²⁸ Ibid., 88.

¹²⁹ Ibid., 85-86.

¹³⁰ Ibid.

against B, B may not use force to compel C to join in defending him, for then B would be just as much a criminal aggressor against C.¹³¹

It is further evident from the presented argument that we can hire others to defend our person and property in order to expand our power against the power of criminals, however, the aim should still be to eradicate aggressive violence, not simply tolerate it from certain individuals like such agencies. In short, “we *can* avoid *aggressive* violence completely by preventing it through purchasing the services of defense agencies, agencies which are empowered to use only *defensive* violence.”¹³² Rothbard, thus, recognizes the necessity of defense of rights in the Lockean Tradition, however, breaks with Locke in one very important respect on Lockean grounds.¹³³ Rothbard does not allow *any* special consideration for the violation of these rights, even by any group which calls itself the government because the relinquishment of total legislative, executive, and judicial right to an agency with impunity creates the same inconvenience of having that agency be a judge in its own case, amplified by its accumulation of ostensibly rightful power and legitimacy.¹³⁴

The State

Though Rothbard writes an entire 273 pages in *The Ethics of Liberty*, and 403 in *For a New Liberty*, the entirety of his political thesis can be summed up in a single page, roughly one third of the way through *Ethics*. In discussing the nature of The State, he says that it

Does not merely use coercion to acquire its own revenue, to hire propagandists to advance its power, and to arrogate to itself and to enforce a compulsory monopoly of such vital services as police protection, firefighting, transportation, and postal service.

¹³¹ Ibid., 83.

¹³² Ibid., 255.

¹³³ Locke’s ultimate justification of the State is the protection of the rights to life, liberty, and property, saying that the “inconveniences of the State of Nature” did not adequately provide for the defense of such rights. Locke, *Second Treatise*, 105.

¹³⁴ Rothbard, *Ethics of Liberty*, 82-83.

For the State does many other things as well, none of which can in any sense be said to serve the consuming public. It uses its monopoly of force to achieve, as Nock puts it, a “monopoly of crime”—to control, regulate, and coerce its hapless subjects. Often it pushes its way into controlling the morality and the very daily lives of its subjects. The state uses its coerced revenue, not merely to monopolize and provide genuine services inefficiently to the public, but also to build up its own power at the expense of its exploited and harassed subjects: to redistribute income and wealth from the public to itself and to its allies, and to control, command, and coerce the inhabitants of its territory. In a truly free society, a society where individual rights of person and property are maintained, the State, then, would necessarily cease to exist. Its myriad of invasive and aggressive activities, its vast depredations on the rights of person and property, would then disappear. At the same time, those genuine services which it does manage badly to perform would be thrown open to free competition, and to voluntarily chosen payments by individual consumers.¹³⁵

Even with his aforementioned acceptance of the benefits of social interaction and the necessity of cooperation for both production and defense, Rothbard further attacks proponents of State power, asserting that despite collectivist attacks,

No libertarians have ever held individuals to be isolated atoms; on the contrary, all libertarians have recognized the necessity and the enormous advantages of living in society, and of participating in the social division of labor. The great *non sequitur* committed by defenders of the State, including classical Aristotelian and Thomist philosophers, is to leap from the necessity of *society* to the necessity of the *State*. On the contrary, as we have indicated, the State is an antisocial instrument, crippling voluntary interchange, individual creativity, and the division of labor. “Society” is a convenient label for the voluntary interrelations of individuals, in peaceful exchange and on the market. Here we may point to Albert Jay Nock’s penetrating distinction between “social power”—the fruits of voluntary interchange in the economy and in civilization—and “State power,” the coercive interference and exploitation of those fruits. In that light, Nock showed that human history is basically a race between State power and social power, between the beneficent fruits of peaceful and voluntary production and creativity on the one hand, and the crippling and parasitic blight of State power upon the voluntary and productive social process.¹³⁶

Rothbard further states, inquiring into the proper role – if any – of the state,

Most people, including most political theorists, believe that once one concedes the importance, or even the vital necessity, of *some particular* activity of the State—such as the provision of a legal code—that one has *ipso facto* conceded the necessity of the

¹³⁵ Ibid., 173.

¹³⁶ Ibid., 187-188.

State itself. The State indeed performs many important and necessary functions: from provision of law to the supply of police and fire fighters, to building and maintaining the streets, to delivery of the mail. But this in no way demonstrates that only the State can perform such functions, or, indeed, that it performs them even passably well.¹³⁷

While Rothbard has several arguments against the state relating to economics and logical contradictions, the purview of this thesis will focus solely on his argument that nothing overcomes the state's illegitimate coercive action. Rothbard argues, much like Lysander Spooner and Herbert Spencer before him, that the forceful monopolization of the use of force – and several other services – by the state is illegitimate, and cannot be supported by any supposed social contract.¹³⁸

What is it exactly, then, that Rothbard believes separates the State from any other organization? His first objection is that the State, unlike other organizations in society, “obtains its income by coercion and violence — i.e., by the direct threat of confiscation or imprisonment if payment is not forthcoming,” which is commonly known as taxation.¹³⁹ By contrast, legitimate organizations must obtain “income by voluntary payment: either by voluntary contribution or gift... *or* by voluntary purchase of its goods or services on the market.”¹⁴⁰

The second distinction that Rothbard draws between the state and legitimate organizations is that “*only* the government, in society, is empowered to aggress against the property rights of its subjects, whether to extract revenue, to impose its moral code, or to kill those with whom it disagrees.”¹⁴¹ Throughout history, he claims,

¹³⁷ Ibid., 161

¹³⁸ Ibid., 161-188.; Herbert Spencer, *Social Statics* (London: John Chapman, 1851, Hong Kong: Forgotten Books, 2012), 206-216; Lysander Spooner, “Constitution of No Authority”, *The Lysander Spooner Reader*, 2nd ed. (Gilbert: Cobden Press, 2010), 77-122.

¹³⁹ Rothbard, *For a New Liberty*, 57.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

By far the overwhelming portion of all enslavement and murder in the history of the world [has] come from the hands of government. And since we have seen that the central thrust of the libertarian is to oppose all aggression against the rights of person and property, the libertarian necessarily opposes the institution of the State as the inherent and overwhelmingly the most important enemy of those precious rights.¹⁴²

This type of discussion causes a typical knee-jerk reaction of believing the argument inherently false, creating a problem with its very discussion, according to Rothbard, because,

All such discussions necessarily take place within a context of centuries of State existence and State rule—rule to which the public has become habituated. The wry coupling of the twin certainties in the popular motto “death and taxes” demonstrates that the public has resigned itself to the existence of the State as an evil but inescapable force of nature to which there is no alternative.¹⁴³

Rothbard sees this problem as the “cement” of state rule. The State has been institutionalized as an accepted pattern of human behavior, and, as such, requires a detailed explanation of why a libertarian would find such an institution absurd.¹⁴⁴

Rothbard does this by highlighting what would happen if a cantaloupe dealer were to “establish a coerced monopoly over the sale of cantaloupes in a given territorial area,” examining the problem of giving all of the coercive power to a hypothetical “Jones Family”, and drawing out the analogous parallels of such situations to each of the services provided by modern states.¹⁴⁵ Above all, he highlights the idea that the necessity of a service does not entail any right to coercive action.¹⁴⁶

There are, however, two counter-claims made in favor of the state being able to monopolize coercive action. The first is that it provides useful services that allow for the progress of civilized society, for which the beneficiaries should pay, and the second is that while,

¹⁴² Ibid., 57-58.

¹⁴³ Rothbard, *Ethics of Liberty*, 175.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid., 161; Ibid., 175.;

¹⁴⁶ Ibid., 182

yes, the state should stay out of many of the things for which Rothbard has chastised it, there should at least be a *minimalist* state to perform such useful services as defense, arbitration, and the enterprise of law. These two objections are, however, really one with the second simply having a smaller scope of what is “useful” or “necessary” for the state to do.

The most famous proponent of the so called minimalist state is Dr. Robert Nozick, whose *Anarchy, State, and Utopia*, claimed to start from the state of nature foundations, build up a Rothbardian style anarchic system of “utopias”, but inevitably lead to the “Immaculate Conception of the State,” whereby one protection agency becomes the dominant provider and establishes a natural monopoly, leading to the creation of an ultra-minimalist state.¹⁴⁷

In response, Rothbard “cast[s] a cold and logical eye on the theory of ‘limited government,’” and attempts to expose it as “the chimera that [he believes] it really is.”¹⁴⁸ He in fact calls *the state* the utopia, rather than the anarchic system.¹⁴⁹ “There is no reason,” He boldly states, “to assume that a compulsory monopoly of violence, once acquired by the ‘Jones family’ or by any State rulers, will remain “limited” to protection of person and property. Certainly, historically, no government has long remained “limited” in this way. And there are excellent reasons to suppose that it never will.”¹⁵⁰ His first objection is that once the “cancerous principle of coercion... is established and legitimated” in a society, it will expand beyond its supposedly limited nature, in fact “it is in the economic *interest* of the state rulers to work actively for such expansion.”¹⁵¹ The political class, thus,

¹⁴⁷ See Robert Nozick, “Part I: State-of-Nature Theory, or How to Back into a State without Really Trying,” *Anarchy, State, and Utopia*, (New York: Basic Books 1974), 3-146.; Rothbard dedicates an entire chapter to criticizing this development in Rothbard, *Ethics of Liberty*, 231-253.

¹⁴⁸ Rothbard, *Ethics of Liberty*, 175.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid., 175-176.

¹⁵¹ Ibid., 176.

Eager to maximize its power and wealth, will stretch State power—and will encounter only feeble opposition, given the legitimacy it and its allied intellectuals are gaining, and given the lack of any institutional free-market channels of resistance to the government’s monopoly of coercion and the power of ultimate decision-making.¹⁵²

Advocates of the limited state model often protest, however, that the state is, “above the fray, refraining from taking sides or throwing its weight around, an “umpire” arbitrating impartially between contending factions in society.” But what is holding them to this idyllic standard? Are they not just as human as the rest of society, subject to the oft quoted principle of Lord Acton, “Power tends to corrupt, and absolute power corrupts absolutely?”¹⁵³

Another major problem for Rothbard is the fact that no libertarian theorist has ever put forth a cogent theory detailing the funding or the size of the state with such minimalist ideas in mind.¹⁵⁴ There is, thus, no central delineation of the structures and institutions of a limited government that will remain limited.¹⁵⁵ For instance, how much of such limited services should be provided and of what quality?¹⁵⁶ Rothbard offers the thought experiment of having the state exclusively provide clothes for everyone, saying that such a restriction “this would scarcely be any sort of viable limit.”¹⁵⁷ Should the government, for instance, provide everyone in the society,

With Balenciaga originals, for example? And *who* is to decide how much and what quality of clothing each person is to receive? Indeed, “protection” could conceivably imply anything from one policeman for an entire country, to supplying an armed bodyguard and a tank for every citizen—a proposition which would bankrupt the society posthaste. But who is to decide on how much protection, since it is

¹⁵² Ibid.

¹⁵³ Ibid.; Jim Powell, “Power Corrupts” in *The Triumph of Liberty*, (New York: The Free Press 2000), 349.

¹⁵⁴ Rothbard, *The Ethics of Liberty*, 181.

¹⁵⁵ It has been objected by some readers that the American Founding was put in to place with such intentions and structures, but that is, rather, a prime example of how limited government grows beyond its original borders through the air of legitimacy, supporting, rather than undermining Rothbard’s argument.

¹⁵⁶ Rothbard, *Ethics of Liberty*, 180.

¹⁵⁷ Ibid., 181.

undeniable that every person would be *better* protected from theft and assault if provided with an armed bodyguard than if he is not?¹⁵⁸

By contrast, such decisions on the market are decided by voluntary purchases of services, but when the Government makes such decisions, they must only be arbitrarily based upon statistics, or to reference modern cases, whatever topic upon which the media has chosen to fixate that ratings cycle.¹⁵⁹ Rothbard further rails against the answers to the question of “who should be forced to pay taxes,” and “how much should they pay” because of the same arbitrary nature of the modern answers. The most commonly proffered “‘ability to pay’ theory”, he says is,

The philosophy of the highway robber to extract as much loot from the victim as the robber can get away with—scarcely a cogent social philosophy, and at total variance, of course, from the system of payment on the free market. For if everyone were forced to pay for every good and service in proportion to his income, then there would be no pricing system at all, and no market system could work.¹⁶⁰

If such a system were to be taken to its full extent, “David Rockefeller,” he says, “might be forced to pay \$1million for a loaf of bread.” Essentially, money would cease to have any value at all, and merely be a superfluous adherence to a bygone system that no longer holds economic power.

Finally, Rothbard questions, “if the State is to have a compulsory monopoly of force in a given territorial area, *how large* is that area to be?” The politically relevant power of Russia is certainly massively more expansive than that of Luxembourg or Monaco. So, to what territorial extent should governments be limited in order to ensure that they do not expand their powers beyond the limited roles sought by laissez-faire theorists? The theorists who have written on this

¹⁵⁸ While Balenciaga might not be familiar to the uninitiated in fashion history, modern equivalent arguments might be replaced with Versace, Gucci, Armani, or Yves Saint Laurent.

¹⁵⁹ Rothbard, *Ethics of Liberty*, 181.

¹⁶⁰ Ibid.

topic, according to Rothbard, have largely ignored “the fact that the world has always lived in an ‘international anarchy,’ with no one government, or compulsory monopoly of decision-making, *between* various countries.”¹⁶¹ Locke certainly acknowledges this point, saying that “that since all princes and rulers of independent governments all through the world, are in a state of nature, it is plain the world never was, nor ever will be, without numbers of men in that state,” though he does not list any particular territorial size of his ideal commonwealth.¹⁶² He does, however, offer the existence of natural law through which men may be able to act regarding one another when not under the same governance, saying that once one becomes part of a social contract, the entirety of that nation acts as one individual against the anarchy of the rest of the world, though this does not preclude the natural rights to protect one’s property and exact punishment on aggressors against such property.¹⁶³

Rothbard notes that even in this international anarchy,

International relations between *private citizens* of different countries have generally functioned quite smoothly, despite the lack of a single government over them. Thus, a contractual or a tort dispute between a citizen of North Dakota and of Manitoba is usually handled quite smoothly, typically with the plaintiff suing or placing charges in his court, and the court of the other country recognizing the result. Wars and conflicts usually take place between the *governments*, rather than the private citizens, of the various counties.¹⁶⁴

The question that immediately follows for Rothbard, then, is if members under different governments can behave amicably and are able to arbitrate disputes, what argument is there that governments must extend over the entire territory? If a man on the border of France has a dispute with a man who lives just over that border in Italy, and they can resolve that dispute

¹⁶¹ Ibid.

¹⁶² Locke, *Two Treatises*, 106.

¹⁶³ Ibid., 141-142.; Ibid., 102-104

¹⁶⁴ Rothbard, *Ethics of Liberty*, 181-182.

amicably, why can such a principle not apply were the border not there, but that they were merely represented by two agencies with overlapping territories?

Thus, we come to the greatest objection to Nozick's argument. If the laws laid down by Rothbard are truly and faithfully followed, as Nozick implicitly argues in his "invisible hand" argument for the state, and a defense firm gains a natural monopoly – a likelihood that Rothbard says is a historical fiction and built upon a *non-sequitur* economic sequence described as "absurd" – then the very first instance that such a protection agency made the leap to "statehood" and unjustly aggressed against someone against their will by enforcing a law or restriction which was not within the rights of self-owners to enforce, it would negate the entire voluntary presupposition of Nozick's system.¹⁶⁵ Despite Nozick's central reliance on the "economy of scale" argument, even with economies of scale seen today such as Wal-Mart, Home Depot, Office Depot, and McDonalds, there are always a contingent of customers dedicated to smaller service providers like Calandro's Supermarket, Gonzalez Hardware, Louisiana Office Supply, and Raul's Burgers.¹⁶⁶

Rothbard again finds this coercion so wrong here because part of the nature of such interactions is that it creates a zero sum game. When every person produces their own property, and then exchanges through voluntary title exchanges, according to Rothbard, both sides receive something that they value more than what they exchanged away, otherwise they would not have

¹⁶⁵ Ibid., 231, 233-234,

¹⁶⁶ Each of the mentioned smaller alternatives is provided on anecdotal evidence and personal experience in the Baton Rouge, Louisiana area. While it is unquestionable that large stores are able to force out smaller competition, the larger a community that a business entity enters, the more competition it is likely to face from smaller businesses claiming to offer higher quality, more personal service, or some other assumed "more desirable" aspect not found in their larger competitors. Austrians such as Rothbard recognize both economies of scale and diseconomies of scale. A more in depth discussion of such ideas may be found in Ludwig Von Mises, "The Concentration of Capital and the Formation of Monopolies as preliminary Steps to Socialism," *Socialism: An Economic and Sociological Analysis*, new ed., trans. J. Kahane (New Haven: Yale University Press, 1951, Auburn: Ludwig Von Mises Institute, 2009 All citations refer to the Ludwig Von Mises Institute publication.), 361-392. See Also: Ludwig Von Mises, *Human Action – Scholar's Edition*, (New Haven: Yale University Press, 1949, Auburn: Ludwig Von Mises Institute, 1998 All citations will refer to the Ludwig Von Mises Institute publication.), 258-394.

made the exchange. In short, they both have more value than they had before.¹⁶⁷ When a coercive agent, however, enters the picture, they introduce an unjust, negative value into the equation, which is, theoretically, greater than the negative value perceived by the victim of doing what the aggressor wishes them to do. “The aggressor,” as such,

Is not a producer at all but a predator; he lives *parasitically* off the labor and product of others... exploiting the labor and energy of other men. Here is clearly a complete violation of any kind of universal ethic, for man clearly cannot live as a parasite; parasites must have non-parasites, producers, to feed upon. The parasite not only fails to add to the social total of goods and services, he depends completely on the production of the host body. And yet, any increase in coercive parasitism decreases *ipso facto* the quantity and the output of the producers, until finally, if the producers die out, the parasites will quickly follow suit.¹⁶⁸

Society Contra State

What then does Rothbard suggest is the true solution to the problem of aggression in society? Essentially, Rothbard says we don’t really know, though we can take an educated guess. A central tenet of the Austrian School developed by economists and philosophers ranging from Lao-Tsu to Adam Smith and Adam Ferguson, through to Carl Menger, Ludwig Von Mises, and F.A. Hayek, is the concept of Spontaneous Order, of which Rothbard is a proponent.¹⁶⁹ This concept asserts, according to Hayek, that a “co-ordination of human activities without deliberate organization by a commanding intelligence...provided that there is a known delimitation of the

¹⁶⁷Rothbard, *Ethics of Liberty*, 35-43.; See many of Rothbard’s economic works, especially Murray Rothbard, *Man, Economy and State with Power and Market*, (Boston: Ludwig Von Mises Institute, 2009) for a more detailed account of this phenomenon.

¹⁶⁸ Ibid., 50.

¹⁶⁹ Lao-Tsu, “Harmony” in *The Libertarian Reader*, ed. David Boaz (New York: The Free Press, 1998); Adam Smith, “Of the order in which Societies are by nature recommended to our Beneficence,” *The Theory of Moral Sentiments*, (Oxford: Oxford University Press, 1973, Indianapolis: Liberty Fund, 1982 All citations refer to the Liberty Fund publication) 227-234.; Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, Volume I (Oxford: Oxford University Press, 1976, Oxford: Oxford University Press, 1979, Indianapolis: Liberty Fund, 1981 All citations refer to the Liberty Fund Publication) 72-81.; Adam Ferguson, *An Essay on the History of Civil Society*, 5th ed. (London: T. Cadell, 1782) 203-225.; Carl Menger, *Principles of Economics*, (Wien: Braumüller, 1871, Auburn: Ludwig Von Mises Institute, 2007); Von Mises, *Human Action*; Von Mises, *Socialism*; Hayek, *The Constitution of Liberty*, 215-231. Menger, the generally accepted father of Austrian Economics, and Von Mises both dedicate their entire opuses to the idea.

sphere of control of each individual,” will lead to an ordered system of interactions and, because the motivating force behind a *libertarian* understanding of spheres of control is self-interest, such an ordered system will be the most optimal order for each individual within his or her given sphere of rights.¹⁷⁰

The concept further implies, however, that “such an order involving an adjustment of circumstances, knowledge of which is dispersed among a great many people, cannot be established by central direction. It can arise only from the mutual adjustment of the elements and their response to the events that act immediately upon them.”¹⁷¹ Hayek compares this phenomenon to the development of complex molecules, whereby

We must rely on the fact that in certain conditions [the atoms] will arrange themselves in a structure possessing certain characteristics. The use of these spontaneous forces, which in such instances is our only means of achieving the desired result, implies, then that many features of the process creating the order will be beyond our control; we cannot, in other words, rely on these forces and at the same time make sure that particular atoms will occupy specific places in the resulting structure.¹⁷²

In much the same way, he continues, “we can produce the conditions for the formation of an order in society, but we cannot arrange the manner in which its elements will order themselves under appropriate conditions.”¹⁷³

Thus, Rothbard’s adoption of such a principle leads him to a few educated guesses about what would likely arise, but he cannot say with certainty that such suggestions would match perfectly with such a system playing out in reality. All currently filled functions of the state except the executive, legislative, and judicial functions are easily understood as industries which can be privatized, and, in fact, most of them have private competition that is held back from full

¹⁷⁰ Hayek, *The Constitution of Liberty*, 229-231.

¹⁷¹ *Ibid.*, 230.

¹⁷² *Ibid.*

¹⁷³ *Ibid.*

participation through regulatory measures, such as the postal service's monopoly on first class mail, the virtual monopoly on road and highway construction and traffic laws, and Federal Communications Commission. It is thus most importantly the executive, legislative and judicial functions which must be examined for their possible form in a polycentric legal order such as his anarchic system of rights.

It is a basic attribute of human action that cooperation leads to increased productivity, and further that division of labor and specialization increase this effect.¹⁷⁴ It is, thus, obvious that humans would join together in society and some of the functions to be filled in society, just as that of the provision of food, transportation, and electricity, would be the discovery of laws for human interaction, the enforcement of such laws, and the adjudication of disputes among parties relating to the enforcement of such laws. Given the aforementioned attributes of human interaction, it is no surprise that a specialized industry should rise up from which the general public would purchase services.

The service most likely to have a direct relationship with the general populous would be that of the provision of defense. Harkening back to when Rothbard asserted that “we *can* avoid *aggressive* violence completely by preventing it through purchasing the services of defense agencies, agencies which are empowered to use only *defensive* violence,” it is easy to see his endorsement of private agencies providing defensive services so long as they do not violate the laws that they are meant to enforce.¹⁷⁵ Rothbard believes that such agencies would function much like modern insurance agencies, in which individuals would pay a monthly fee for protection services. If the insured individual would be aggressed against, the agency would pay the insured their compensation, and then seek justice against the aggressor – a setup which

¹⁷⁴ Rothbard, *Ethics of Liberty*, 35.

¹⁷⁵ *Ibid.*, 225.

Rothbard points to as the original structure of the role which eventually became kings in Ireland.¹⁷⁶ Such a transition did not happen the way that Nozick describes, but rather through a gradual shift of “the emphasis of punishment... from restitution to the victim, from compensation by the criminal to his victim, to punishment for alleged crimes committed ‘against the State,’” in which “as the State grew more powerful... the governmental authorities encroach[ed] ever more into the repayment process, increasingly confiscating a greater proportion of the criminal’s property for themselves, and leaving less and less to the unfortunate victim.”¹⁷⁷

While Rothbard also reserves to every person the right of self-defense under such a system, he does criticize vigilantism as “the victim will generally find it more convenient to entrust the task to the police and court agencies.”¹⁷⁸ Offering the example of a Hatfield and McCoy dispute, he explicates the complicated process through which the incentive structure would greatly push an individual to entrust their protection to professionals. It is, in effect, too easy for the vigilante to over step the bounds laid out by justice, with which the professional must be intimately aware as a part of their function in society.¹⁷⁹

He further advocates voluntary “conditional penal bonds” for the enforcement of both promises and contracts. Under such a system, prevalent in medieval times, the voluntarily contracting parties would agree that a certain sum of money was transferred to the opposite party if they did not uphold their end of the bargain.¹⁸⁰ If two parties agreed upon a contract for the sale of land, then, “A agreed to sell a parcel of land in exchange for B’s agreed upon payment of a money price, [and] *each* would obligate himself to pay a certain sum, usually twice the value of

¹⁷⁶ Ibid., 87.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid., 90.

¹⁷⁹ Ibid., 90-91.

¹⁸⁰ Ibid., 138-140.

his contractual obligation, in case of failure to pay.”¹⁸¹ Though such a system was already prominent in the past, it fell out of use because “the courts began to balk at the toughness of the law” and refused to enforce them as legitimate even though “in its centuries of use, almost no creditors bothered to sue in the courts for “damages” (in a “writ of covenant”), since the “damages” had been fixed in advance in the contract itself.”¹⁸²

The act of legal discovery has been the entire process of the detailing of natural law for centuries. The major objection is that people disagree, to which it may be pointed out that if that were a true objection, it would most certainly be levied against our current system, where “legislative gridlock” is a common occurrence. On the contrary, under a polycentric order, defense firms would either hire outside firms or have in-house academics to determine what was just to enforce and where the firm was over stepping its bounds.¹⁸³ Patrons would be able to choose which firm enforced the rights which they felt were the most just, thus creating a market for the Enterprise of Law.

What, however, of those instances where two firms disagree over where the bounds of justice lay and thus, what they can enforce? Suppose one firm promises to enforce a woman’s right to abort and another promises to enforce the child’s right to life. Rothbard flatly states that

economically, it would be absurd to expect the protective agencies to battle each other physically; such warfare would alienate clients and be highly expensive to boot. It is absurd to think that, on the market, protective agencies would fail to agree in advance on private appeals courts or arbitrators whom they would turn to, in order to resolve any dispute. Indeed, a vital part of the protective or judicial service which a private agency or court would offer to its clients would be that it had agreements to turn disputes over to a certain appeals court or a certain arbitrator or group of arbitrators.¹⁸⁴

¹⁸¹ Ibid., 139.

¹⁸² Ibid., 139-140.

¹⁸³ We call these lawyers.

¹⁸⁴ Rothbard, *Ethics of Liberty*, 234.

Much like private citizens would pay protection agencies an insurance payment, it is likely that defense firms would keep arbitration services on a retainer. A market for such services, as well as judicial reputation, would be important in such a system to produce the most just system.

Differences from Locke

Rothbard has claimed that this system is entirely Lockean and merely a correction of several “contradictions and inconsistencies,” and any “divergences from Locke in [*Ethics*] are only surprising to those steeped in the unfortunate modern fashion that has virtually abolished constructive political philosophy in favor of a mere antiquarian interest in older texts.”¹⁸⁵ Where, then does he differ and why? The chief differences are in the development of The State of Nature, Self-Ownership, Contract Theory, Property, and the eventual development of the state, but these major differences can all be brought back to the central idea of their differences on self-ownership.

Locke begins with the state of nature and draws the Natural Law from what he sees as evidence of divine ordinance, while Rothbard begins with the “Crusoe Experiment” to ascertain the Natural Law and, by Occam’s Razor, derives the morality of the state of nature without a god. This distinction in their arguments, I believe, stems from Rothbard’s work as a value-free economist and extensive use of praxeology.¹⁸⁶ Locke’s approach is indicative of a different predilection toward the biblical account of rights.

It is important to first address the religious divide between Rothbard and Locke as a matter of their logical progressions toward a theory of liberty. Though Rothbard saw the

¹⁸⁵ Rothbard, *Ethics of Liberty*, 22.

¹⁸⁶ Praxeology is the science of the *a priori* understanding of human action in terms of choice and preference based on Ludwig Von Mises’s ideas laid out in *Human Action*. Von Mises, *Human Action*, 3. The word is not common and, according to a foot note on the same page, originated in 1890 from an article entitled “*Les Origines de la technologie*”.

religions of the Christian tradition as the beginnings of a focus on the individual and therefore on liberty and highly revered the Catholic Scholastics and saw them as “the precursors of the Austrian economists,” he saw no need for God to exist in the concept of Natural Law. Man’s nature, he asserted, and therefore the Natural Law was knowable and discoverable through “reason and rational inquiry,” rather than the Augustinian view that “faith... [is] the only legitimate tool for investigating man’s nature and man’s proper ends.”¹⁸⁷ He asserted that “the statement that there is an order of natural law... leaves open the question of whether or not God has created the order... [therefore,] the assertion of an order of natural laws discoverable by reason is, by itself, neither pro- nor anti-religious.”¹⁸⁸

Locke, on the contrary, would have completely disagreed with Rothbard’s method of designing a Natural Law here, saying in his *Letter Concerning Toleration*,

Those are not at all to be tolerated who deny the being of a God. Promises, covenants, and oaths, which are the bonds of human society, can have no hold upon an atheist. The taking away of God, though but even in thought, dissolves all; besides also, those that by their atheism undermine and destroy all religion, can have no pretence [sic] of religion whereupon to challenge the privilege of a toleration. As for other practical opinions, though not absolutely free from all error, if they do not tend to establish domination over others, or civil impunity to the Church in which they are taught, there can be no reason why they should not be tolerated.¹⁸⁹

Seeing that he rejects the idea that contracts can have any hold on people without a divine enforcer, a system of ethics founded upon voluntary contractual interaction would, for Locke, require the divine grant of rights. Locke was adamant that

The state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions: for men being all the workmanship of one omnipotent, and infinitely wise maker; all the servants of one sovereign master, sent into the world by his order,

¹⁸⁷ Raimondo, *Enemy of the State*, 325-326.; Rothbard, *Ethics of Liberty*, 3.

¹⁸⁸ Rothbard, *Ethics of Liberty*, 4.

¹⁸⁹ Locke, *Two Treatises*, 246.

and about his business; they are his property, whose workmanship they are, made to last during his, not one another's pleasure.¹⁹⁰

Even though Locke sees God as the “true original of political power” and the Natural law as discoverable only through “reason, the common rule and measure God hath given to mankind,” he accepts that reason allows us to understand God’s will with adherence to scripture and facts about the nature of God’s creations – namely man.¹⁹¹ Similarly, Rothbard adopts the view that man’s nature is, “open to rational observation and reflection,” which leads the two men to follow remarkably similar descriptions of the State of Nature and the Natural Law despite coming from opposite premises about “the true original of political power.”¹⁹²

In their rational exploration of Man’s nature, Locke immediately begins the process of laying out the Natural Law from the idea of a human nature, arguing in the second paragraph of his chapter “The State of Nature,” that men are naturally in “a state...of equality, wherein all power and jurisdiction is reciprocal,” based on what he considers to be axiomatic, “that creatures of the same species and rank, promiscuously born to the same advantages of nature, and the use of the same faculties should also be equal one amongst another without subordination or subjection.”¹⁹³ It is therefore self-evident for Locke that part of man’s nature is an equality of power among individuals – no person has natural control over another. He provides a caveat excepting the case in which God places one person above all, but “it having been shown in [The first treatise of Government]” that this did not happen or at least cannot be proven to have; such an exception is not germane to the present argument.¹⁹⁴

¹⁹⁰ Ibid., 102.

¹⁹¹ Ibid., 100, 104.

¹⁹² Rothbard, *Ethics of Liberty*, 10; Locke, *Two Treatises*, 100.

¹⁹³ Locke, *Two Treatises*, 101.

¹⁹⁴ Ibid., 100.

While Locke's investigation of human nature was presupposed as a natural consequence of man existing in the state of nature, Rothbard systematically examines man's nature through the Crusoe Situation. With Rothbard's experiment, contrary to the State of Nature, one can examine man qua man with no other distractions, later adding one or two others to slowly build a system of interaction. Such a system is built absent of government in order to understand voluntary interaction because it is man's nature, not the state's that is to be understood. In Locke's time, The State of Nature skipped over this point, diving right into interactions among individuals without first understanding the nature of the individual alone.

The differences in these experiments coupled with the religious influence – or lack thereof – on their arguments leads to very different conceptions of self-ownership. While Rothbard derives his theory of self-ownership from the natural facts outlined in the above sections, Locke opts to develop it both through the religious interpretation of nature. Though Locke, similarly to Rothbard, asserts that “all men are naturally in... a state of perfect freedom to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man,” and that such a state is, “a state also of equality, wherein all the power and jurisdiction is reciprocal, no one having more than another; there being nothing more evident, than that creatures of the same species and rank, promiscuously born to all the same advantages of nature, and the use of the same faculties, should also be equal one amongst another without subordination or subjection,” he diverges from Rothbard in believing that “though this be a state of liberty, yet it is not a state of licence [sic]: though man in that state have an uncontrollable [sic] liberty to dispose of his person or possessions, yet he has not liberty to destroy himself, or

so much as any creature in his possession, but where some nobler use than its bare preservation calls for it.”¹⁹⁵

Why do they have this divergence? Locke underwrites self-ownership by reasoning that “men being all the workmanship of one omnipotent, and infinitely wise maker; all the servants of one sovereign master, sent into the world by his order, and about his business; they are his property, whose workmanship they are, made to last during his, not one another's pleasure.”¹⁹⁶ Self-ownership for Locke, then, is merely a convenient construct of God's law of reason to delineate spheres of proper action so that, “all men may be restrained from invading others rights, and from doing hurt to one another, and the law of nature be observed, which willeth [sic] the peace and preservation of all mankind.”¹⁹⁷

Even so, the Rothbardian system derides the idea of suicide, so the practical difference doesn't come from there, but rather Locke's belief on the alienability of rights. Rothbard believes that entirety of self-ownership is inalienable, but Locke believes that there are *certain* inalienable rights, while others can be given up.¹⁹⁸ Confusingly, Locke agrees with Rothbard initially, saying of freedom, that mankind is subject to a rule of law, not a rule of man.

[F]reedom of men under government,” Locke says, “is to have a standing rule to live by, common to every one of that society, and made by the legislative power erected in it; a liberty to follow my own will in all things, where the rule prescribes not; and not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man: as freedom of nature is, to be under no other restraint but the law of nature.”¹⁹⁹

¹⁹⁵ Ibid., 101-102.

¹⁹⁶ Ibid., 102.

¹⁹⁷ Ibid., 102-103.

¹⁹⁸ Ibid., 133-154, especially 143.; Murray Rothbard, *The Ethics of Liberty*, 135.

¹⁹⁹ Locke, *Two Treatises*, 109-110.

This is almost exactly the formulation of the concept of spontaneous order discussed above, which Rothbard states is unachievable if one section of the population – the government – is able to stand above the general laws of society.

Further, he derides slave contracts because, “a man, not having the power over his own life, cannot, by compact, or his own consent, enslave himself to anyone, nor put himself under the absolute, arbitrary power of another, to take away his life when he pleases.”²⁰⁰ This squares with Rothbard’s account right up until the time that Locke develops the Social Contract. Rothbard contends that when Locke says that “Whosoever therefore out of a state of nature unite into a [commonwealth], must be understood to give up all the power, necessary to the ends for which they unite into society,” and follows it up with the idea that the only way to leave such a commonwealth is when the government no longer protects the rights of life, liberty, and property to the full extent, this is a slave contract.²⁰¹

Rothbard denies the Social Contract basis of the Hobbesian and Lockean systems, echoing the sentiments expressed by Jean-Jacques Rousseau, *Cato’s Letters*, and Lysander Spooner, in saying

There is one vitally important political implication of our title-transfer theory, as against the promise theory of valid and enforceable contracts. It should be clear that the title-transfer theory immediately tosses out of court all variants of the “social contract” theory as a justification for the State. Setting aside the historical problem of whether such a social contract ever took place, it should be evident that the social contract, whether it be the Hobbesian surrender of all one’s rights, the Lockean surrender of the right of self-defense, or any other, was a mere promise of future behavior (future will) and in no way surrendered title to alienable property. Certainly no past promise can bind later generations, let alone the actual maker of the promise.²⁰²

²⁰⁰ Ibid., 110.

²⁰¹ Ibid., 143, 188-209, especially 189-198.

²⁰² The attributions of similar reasoning in Rousseau and *Cato’s Letters* are Rothbard’s. Rothbard, *Ethics of Liberty*, 147.; Spooner, *The Lysander Spooner Reader*, 77-122.

For Rothbard, the entrance into a business relationship with a defense firm can include the ending of such a relationship if either side is unhappy with the actions of the other – such as the firm discouraging customers from engaging in vigilantism, or a customer being unhappy with the color of paint the organization chose to use on their building – but Locke’s development is trapping. Only once the state has broken the trust can the “citizen” or “customer” terminate the relationship. Since there is no property title being exchanged over the future will of the citizen under Rothbard’s system, it is illegitimate for the government to force a continued business relationship with the customer. Further, under Rothbard’s system all it takes is the whim of a customer to switch services for it to be legitimate for them to do so.²⁰³

Rothbard further asserts that Locke’s central argument for the necessity of such an arrangement is contradictory. Locke offers the following justification of the state arising out of the State of Nature:

To this strange doctrine, viz. That in the state of nature every one [sic] has the executive power of the law of nature, I doubt not but it will be objected, that it is unreasonable for men to be judges in their own cases, that selflove [sic] will make men partial to themselves and their friends: and on the other side, that ill nature, passion and revenge will carry them too far in punishing others; and hence nothing but confusion and disorder will follow, and that therefore God hath certainly appointed government to restrain the partiality and violence of men.²⁰⁴

He then goes on to point out the very reason that Rothbard objects to such a justification,

I easily grant, that civil government is the proper remedy for the inconveniencies of the state of nature, which must certainly be great, where men may be judges in their own case, since it is easy to be imagined, that he who was so unjust as to do his brother an injury, will scarce be so just as to condemn himself for it: but I shall desire those who make this objection, to remember, that absolute monarchs are but men; and if government is to be the remedy of those evils, which necessarily follow from men’s being judges in their own cases, and the state of nature is therefore not to be endured, I desire to know what kind of government that is, and how much better it is than the

²⁰³ It should be noted that the economic viability of such actions discussed here is likely very poor. It is the discussion here of the *right* to act in such a manner, however, that is important.

²⁰⁴ Locke, *Two Treatises*, 105.

state of nature, where one man, commanding a multitude, has the liberty to be judge in his own case, and may do to all his subjects whatever he pleases, without the least liberty to any one to question or controul those who execute his pleasure and in whatsoever he doth, whether led by reason, mistake or passion, must be submitted to. Much better it is in the state of nature, wherein men are not bound to submit to the unjust will of another. And if he that judges, judges amiss in his own, or any other case, he is answerable for it to the rest of mankind.²⁰⁵

Rothbard's system implies that just the way that it would be absurd for Wal-Mart to hire its own in-house arbitrators to settle a dispute between itself and a customer, it is equally absurd to do so with a defense firm. The Government hires its own judges and lawyers to adjudicate any matters between itself and its customers and writes the rules by which such adjudications should be conducted – agreeing with Professor Charles Black that upholding the actions of the state as legitimate and constitutional “has been the major historic function of judicial review.”²⁰⁶ This is an entity being a judge in its own case even if it is not the case of a single person being a judge in their own case.

Critiques of Rothbard

It is understandable that there are several possible critiques of Rothbard, some of which have been addressed above, but there are others such as the idea that his theory favors the rich, promotes gang on gang violence, leads directly to Locke's “inconveniences of the state of nature”, rests on a faulty premise of labor mixing, and is unsatisfactory in so-called “life boat situations”, and so it will do to briefly address them.

It could be said that Rothbard's theory grants too much power to the rich. Without regulations by a central government, businesses could get rich off of the lazy public by providing unsafe or sub-optimum products and paying workers low wages to maximize their profits. They

²⁰⁵ Ibid., 105-106.

²⁰⁶ Murray Rothbard, “The Anatomy of the State,” *Egalitarianism as a Revolt Against Nature and Other Essays*, 2nd ed., ed. Roy A. Childs (Auburn: Ludwig Von Mises Institute, 2000) 71-76, especially 72.

could further use their economic power to expand their influence over a large number of people, essentially putting them “on the dole,” making them beholden to the success of the businessman’s interests. They might, then, use this influence and power to get away with crimes.

The obvious response to such a critique is: Thank goodness that doesn’t ever happen under the current system! The abuse of power – economic or otherwise – is prevalent in any system, but the merit of Rothbard’s system is that it claims to decentralize the main perpetrator of such power abuse, the state. Without the legitimization of coercive power, under the Austrian understanding, noted above, firms can only reach an optimum size before they grow clumsy and over extended if they remain under a centralized control system like the modern corporation. The system further allows anyone to improve their situation through competing with such large companies to provide better services and quality, causing, as Joseph Schumpeter points out, a minimization of profit margins in order to survive.²⁰⁷ It does not perhaps offer all men equal opportunity to reach *the same heights*, but certainly equal opportunity to improve upon their current position.

Another critique is one hearkening to the Hobbesian conception of an anarchic state of nature. Won’t such a system just lead to gang warfare? If people have disagreements and there’s no common court, won’t everything come down to brutal fighting until one dominant agency rules them all? Rothbard, again, responds directly to such a situation offered by Robert Nozick, saying that speaking

²⁰⁷ I quote Schumpeter here as most ardent proponent of such an idea, despite flaws in his overall system Joseph Schumpeter, *Capitalism, Socialism, and Democracy*, 3rd ed. (New York: Harper Perennial Modern Thought, 2008), 118-120. For more arguments on how free access to a market promotes competition, driving down profit margins, see any of the collected works of Murray Rothbard, Ludwig Von Mises, Carl Menger, F.A. Hayek, Frederick Bastiat, Milton Friedman, and Henry Hazlitt.

Economically, it would be absurd to expect the protective agencies to battle each other physically; such warfare would alienate clients and be highly expensive to boot. It is absurd to think that, on the market, protective agencies would fail to agree in advance on private appeals courts or arbitrators whom they would turn to, in order to resolve any dispute. Indeed, a vital part of the protective or judicial service which a private agency or court would offer to its clients would be that it had agreements to turn disputes over to a certain appeals court or a certain arbitrator or group of arbitrators.²⁰⁸

This speaks also to answering Locke's problem of no one being an arbitrator in their own case. It would make no sense for anyone to agree to a party in a dispute seeking arbitration also being said arbitrator. The near inelastic demand for such a service, furthermore, would drive the private arbitration industry to expand, offering many impartial options to parties seeking arbitration, according to the insights of Austrian Economics.²⁰⁹

What, though, of the premises upon which this system rests? It is relatively uncontroversial to assert self-ownership, but such a stringent adherence to it is fairly radical. Also, can it really be said that it extends so deeply over the ownership of one's labor as to impart ownership of objects through the labor mixing argument? Is it the fact that the labor improved the material? If so, what is the definition of improvement? It could be objected that not all efforts impart returns and in acting on the world, one merely expends and gives up one's labor. Such is the critique of any Lockean system.

Rothbard, adheres to an argument that answers this very simply, if unsatisfactorily for the objectors. In discussing the "purposeful transformation of nature-given data through the understanding of natural laws," Rothbard develops an idea whereby the crucial aspect is that something was "unused and uncontrolled by anyone, and hence *unowned*".²¹⁰ The fact that it

²⁰⁸ Rothbard, *Ethics of Liberty*, 234.

²⁰⁹ This is again a basic economic concept able to be seen in any of the collected works of Murray Rothbard, Ludwig Von Mises, Carl Menger, F.A. Hayek, Frederick Bastiat, Milton Friedman, or Henry Hazlitt

²¹⁰ Rothbard, *Ethics of Liberty*,

was unowned is much more crucial to the argument than the “finding land resources,... learning how to use them, and... actually *transforming* them into a more useful shape.”²¹¹ The act of “stamping the imprint of his personality and his energy on the land” is more involved in cordoning off the previously “unused and uncontrolled” property from the common stock into their sphere of control. Once this act of “*transforming* [the material] into [an ostensibly] more useful shape.” is done, only then can a person claim to own the property.²¹² To do otherwise would serve as no real, tangible distinction. The mixing of labor with a material imparts a new quality – even if such is merely a historical quality – upon such material, and thus transforming it.

Finally, what of the extreme ends of this type of a theory? Surely there is an objection to be made about the breakdown of such a system when it is one life or another, such as in hypothetical “life boat” situations. If A’s refusal to allow B the use of A’s property results in B’s death, there seems to be a morally significant issue to be examined. Life, after all, is at the very heart of value in Rothbard’s system. It seems that there are two different ends of a continuum to be examined in such a situation – one in which B’s use of A’s rightful property would constitute a burden on A and one in which it would not. If the burden affects the ethical nature of the situation, then it is also significant to note where a tipping point would occur along the intensity of such burden. If A and B cannot both be supported by the sole plank of wood available as a lifeboat, Rothbard argues,

It may well be objected to our theory... in this kind of extreme situation, where a man is faced with the choice of either saving himself or violating the property rights of the Lifeboat owner... it is then ridiculous to expect him to surrender his life on behalf of the abstract principle of property rights...[It is an error in considering this issue] to confuse the question of the moral course of action for the person in such a tragic

²¹¹ Ibid.

²¹² Ibid.

situation with the totally separate question of whether or not his seizing of lifeboat or plank space by force constitutes an invasion of someone else's property right. For we are not, in constructing a theory of liberty and property, i.e., a "political" ethic, concerned with all personal moral principles.²¹³

Thus, Rothbard stands his ground against such an objection, opting to fall along the idea that he holds his premises about the nature of violence in human action to be objectively true, so his conclusions must also be true. This becomes the classic Train Car thought experiment for Rothbard, who approaches it thinking, "even if... given the tragic context, [B] should throw someone else out of the lifeboat to save his own life, he is still committing, at the very least, invasion of property rights, and probably also murder of the person thrown out."²¹⁴ The issue, then, becomes very easy for Rothbard because under his system of negative rights, given two identical situations – Such as one drowning and one surviving between A and B – the situation in which less aggression took place is morally and ethically preferable. Under such conditions, then, B

Is still, in [Rothbard's] view, liable to prosecution as a criminal invader of property right, and perhaps as a murderer as well. After he is convicted, it would be the right of the lifeboat owner or the heir of the person tossed out to forgive Smith, to pardon him because of the unusual circumstances; but it would also be their right not to pardon and to proceed with the full force of their legal right to punish.²¹⁵

Rothbard's responses are not all likely to be satisfactory to his objectors because he embraces the fact that his system is the acceptance of a *reduction ad absurdum* argument against libertarianism and classical liberalism. As mentioned above, he seeks a science of the nature of human interaction, a science of ethics, and thus takes the objective properties that he sees in the world and imparts them with moral value on the basis of acceptance of the value of life and the values that lead to its fulfillment. While there is a further objection to be made in the form of an

²¹³ Ibid., 152.

²¹⁴ Ibid., 153.

²¹⁵ Ibid.

is-ought fallacy, however, I have not included it here because of his later acceptance of Hans-Herman Hoppe's Argumentation Ethics justification of a Rothbardian System.²¹⁶

Conclusion

Rothbard, then, has developed his theory of coercion based upon several natural facts about the world that he takes to be axiomatic, from which he develops self-ownership, a labor mixing account of property ownership, and clearly defined spheres of control which are protected through the Non-Aggression Principle. The concept encompasses the idea of negative liberties and strict, ontological, property rights against interference, and the idea that to physically invade the rightful property of another self-owner or to overtly threaten such invasion in an attempt to compel them to action constitutes the basic understanding of coercion under such a system. While Rothbard's system seeks to minimize such a detrimental interaction, he clearly distinguishes between aggressive and defensive coercion on the grounds that true ownership of the self and, by extension, one's property requires the right to defend such ownership in kind.

Understanding Rothbard's system is important because he claims to correct John Locke, one of the foundational Social Contract theorists upon whose shoulders much of our modern political system rests and Rothbard's fans are part of a political movement which is gaining influence in our time, the libertarians. An integral part of any "Liberty Library," Rothbard is held in the same esteem as the likes of Ludwig Von Mises, Frederick Hayek, Henry Hazlitt, and Ron Paul, heroes of the modern liberty movement. Though not all of the groups under the

²¹⁶ Hoppe justifies a Lockean system very similar if not identical to Rothbard's beginning with the nature of argumentation to draw several foundational axioms into the moral argument, which impart moral qualities as *a priori* synthetic assertions. Hans-Herman Hoppe, *A Theory of Socialism and Capitalism*, large print ed. (Auburn: Ludwig Von Mises Institute, 2010, Create Space, 2012), 154-171.

umbrella of “Libertarians” adhere to his anarcho-capitalist system, he is typically considered a must-read in understanding why liberty is important to the entire movement.

This influence is important because Rothbard’s claim to perfecting the Lockean system is tantamount to a claim to perfecting the foundations of the American system. Rothbard worked tirelessly during his life with any ideology that would agree with him even on a single issue’s practical upshot if it meant moving toward an end to government coercion.²¹⁷ He derided and dismantled the Lockean justifications of the state as “riddled with contradictions and inconsistencies,” and adjusted the Lockean understanding of ownership, both of the self and external property, to form an amended understanding of allowable coercion.²¹⁸

Essentially, for Rothbard, it is not enough to understand and live a libertarian ideal; one must accept that “Libertarianism... is a philosophy seeking a policy... [and] surely—again in Acton’s words—[such a policy] must say that liberty is the ‘highest political end,’ the overriding goal of libertarian philosophy.”²¹⁹ The anarcho-capitalists who believe this are beginning to abandon their abhorrence of the political institutions and attempting to influence policy a little at a time, so to see the moral foundation upon which they are basing their decisions is to understand the direction – and thus the political realities – involved in their identity as a voter bloc.

²¹⁷ Raimondo, *Enemy of the State*, 151-177.

²¹⁸ Rothbard, *Ethics of Liberty*, 22, 33-36.

²¹⁹ *Ibid.*, 258.

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