



JE KINDLE-NOTITIES VOOR:

The Ethics of Liberty

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87 Highlights

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Rothbard's unique contribution is the rediscovery of property and property rights as the common foundation of both economics and political philosophy, and the systematic reconstruction and conceptual integration of modern, marginalist economics and natural-law political philosophy into a unified moral science: libertarianism.

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What Rothbard objected to was the argumentatively unsubstantiated acceptance, on the part of Coase and the Chicago law-and-economics tradition, of the positivistic dogma concerning the impossibility of a rational ethic (and by implication, their statism) and their unwillingness to even consider the possibility that the concept of property might in fact be an ineradicably normative concept which could provide the conceptual basis for a systematic reintegration of value-free economics and normative ethics.

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While one would think that scarcity ranks among the general facts of society and economic theory, Rawls's parties, who supposedly knew about scarcity, were themselves strangely unaffected by this condition. In Rawls's construction of the "original position," there was no recognition of the fact that scarcity must be assumed to exist even here. Even in deliberating behind a veil of ignorance, one must still make use of scarce means—at least one's physical body and its standing room, i.e., labor and land. Even before beginning any ethical deliberation then, in order to make them possible, private or exclusive property in bodies and a principle regarding the private or exclusive appropriation of standing room must already be presupposed. In distinct contrast to this general fact of human nature, Rawls's moral "parties" were unconstrained by scarcities of any kind and hence did not qualify as actual humans but as free-floating wraiths or disembodied somnambulists.

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Such beings, Rawls concluded, cannot but "acknowledge as the first principle of justice one requiring an equal distribution (of all resources). Indeed, this principle is so obvious that we would expect it to occur to anyone immediately."⁷ True; for if it is assumed that "moral parties" are not human actors but disembodied entities, the notion of private property must indeed appear strange. As Rawls admitted with captivating frankness, he had simply "define[d] the original position so that we get the desired result."⁸ Rawls's imaginary parties had no

resemblance whatsoever with human beings but were epistemological somnambulists; accordingly, his socialist-egalitarian theory of justice does not qualify as a human ethic, but something else entirely.

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If anything useful could be found in Rawls in particular and contemporary political philosophy in general, it was only the continued recognition of the age-old universalization principle contained in the so-called Golden Rule as well as in the Kantian Categorical Imperative: that all rules aspiring to the rank of just rules must be general rules, applicable and valid for everyone without exception.

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In distinct contrast, a territorial monopoly of protection and jurisdiction—a state—rests from the outset on an impermissible act of expropriation, and it provides the monopolist and his agents with a license to further expropriation (taxation). It implies that every property owner is prohibited from discontinuing his cooperation with his supposed protector, and that no one except the monopolist may exercise ultimate jurisdiction over his own property. Rather, everyone (except the monopolist) has lost his right to physical protection and defense against possible invasion by the state and is thus rendered defenseless vis-à-vis the actions of his own alleged protector. Consequently, the price of justice and protection will continually rise and the quality of justice and protection will continually fall. A tax-funded protection agency is a contradiction in terms—an invasive protector—and will, if permitted, lead to increasingly more taxes and ever less protection. Likewise, the existence of a judicial monopoly will lead to a steady deterioration of justice. For if no one can appeal for justice except to the state and its courts and judges, justice will be constantly perverted in favor of the state until the idea of immutable laws of human conduct ultimately disappears and is replaced with the idea of law as positive state-made legislation.

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Based on this analysis, Rothbard considered the classical-liberal solution to the fundamental human problem of protection—of a minimal or night-watchman state, or an otherwise “constitutionally limited” government—as a hopelessly confused and naive idea. Every minimal state has the inherent tendency to become a maximal state, for once an agency is permitted to collect any taxes, however small and for whatever purpose, it will naturally tend to employ its current tax revenue for the collection of ever more future taxes for the same and/or other purposes. Similarly, once an agency possesses any judiciary monopoly, it will naturally tend to employ this privileged position for the further expansion of its range of jurisdiction. Constitutions, after all, are state-constitutions, and whatever limitations they may contain—what is or is not constitutional—is determined by state courts and judges. Hence, there is no other possible way of limiting state power except by eliminating the state altogether and, in accordance with justice and economics, establishing a free market in protection and security services.

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Despite his politically incorrect conclusions, Nozick’s libertarianism was deemed respectable by the academic masses and elicited countless comments and replies, because it was methodologically non-committal; that is,

Nozick did not claim that his libertarian conclusions proved anything. Even though one would think that ethics is—and must be—an eminently practical intellectual subject, Nozick did not claim that his ethical “explorations” had any practical implications. They were meant to be nothing more than fascinating, entertaining, or suggestive intellectual play. As such, libertarianism posed no threat to the predominantly social-democratic intellectual class. On account of his unsystematic method—his philosophical pluralism—Nozick was “tolerant” vis-à-vis the intellectual establishment (his anti-establishment conclusions notwithstanding). He did not insist that his libertarian conclusions were correct and, for instance, socialist conclusions were false and accordingly demand their instant practical implementation (that is, the immediate abolition of the social-democratic welfare state, including all of public tax-funded education and research). Rather, Nozick’s libertarianism was, and claimed to be, no more than just an interesting thought. He did not mean to do any real harm to the ideas of his socialist opponents. He only wanted to throw an interesting idea into the democratic open-ended intellectual debate, while everything real, tangible, and physical could remain unchanged and everyone could go on with his life and thoughts as before.

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Rothbard’s “unkind” and “intolerant” libertarianism took first hold among the non-academic public: among professionals, businessmen, and educated laymen of all backgrounds. Whereas Nozick’s “gentle” libertarianism never penetrated outside academia, Rothbard and his “extremist” libertarianism became the fountainhead and theoretical hardcore of an ideological movement. Rothbard became the creator of modern American libertarianism, the radical offspring of classical liberalism, which, in the course of some three decades, has grown from a handful of proponents into a genuine political and intellectual movement. Naturally, in the course of this development and transformation, Rothbard and his libertarianism did not remain unchallenged or undisputed, and there were ups and downs in Rothbard’s institutional career: of institutional alignments and realignments. Yet, until his death Rothbard, remained without doubt the single most important and respected moral authority within the entire libertarian movement, and his rationalist—axiomatic—deductive, praxeological, or “Austrian”—libertarianism provides to this day the intellectual benchmark in reference to which everyone and everything else in libertarianism is defined and positioned.

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So as to avoid any misunderstanding, in the next sentence Rothbard reminded his reader of the strictly delineated scope of his treatise on political philosophy and noted that “whether or not a parent has a moral rather than a legally enforceable obligation to keep his child alive is a completely separate question.” However, this explicit qualification and the general thrust of *The Ethics of Liberty* notwithstanding, these pronouncements were used in conservative circles in the attempt to prevent a libertarian infiltration and radicalization of contemporary American conservatism. Of course, conservative political theory was a contradiction in terms. Conservatism essentially meant not to have, and even reject, any abstract theory and rigorous logical argument. Not surprisingly, Rothbard was singularly unimpressed by conservative critics such as Russell Kirk, whose “theoretical” work he considered devoid of analytical and argumentative rigor. Consequently, Rothbard did not see any reason to abandon his original conclusions. Until the end of his life, he would not budge on the problem of abortion and child neglect and insisted on a mother’s absolute legal (lawful) right to an abortion and of letting her children die. In fact, if women did not have such rights and had committed instead a punishable crime, it would seem that their crime then must be equivalent to murder. Should abortion accordingly be threatened with

capital punishment and convicted abortionist mothers be executed? But who, except its mother, can possibly claim a right to her fetus and child and thus be considered as the rightful victim of her actions? Who could bring a wrongful death suit against her? Surely not the state. For a conservative in particular, any state interference in the autonomy of families should be anathema. But who else, if indeed anyone?

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Thus, while in favor of a woman's right to have an abortion, Rothbard was nonetheless strictly opposed to the U.S. Supreme Court's decision in *Roe v. Wade*, which recognized such a right. This was not because he believed the court's finding concerning the legality of abortion wrong, but on the more fundamental ground that the U.S. Supreme Court had no jurisdiction in the matter and that, by assuming it, the court had engendered a systematic centralization of state power.

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The assertion of an order of natural laws discoverable by reason is, by itself, neither pro- nor anti-religious.

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Thus, let there be no mistake: in the Thomistic tradition, natural law is ethical as well as physical law; and the instrument by which man apprehends such law is his reason—not faith, or intuition, or grace, revelation, or anything else.¹¹ In the contemporary atmosphere of sharp dichotomy between natural law and reason—and especially amid the irrationalist sentiments of “conservative” thought—this cannot be underscored too often. Hence, St. Thomas Aquinas, in the words of the eminent historian of philosophy Father Copleston, “emphasized the place and function of reason in moral conduct. He [Aquinas] shared with Aristotle the view that it is the possession of reason which distinguished man from the animals” and which “enables him to act deliberately in view of the consciously apprehended end and raises him above the level of purely instinctive behavior.”¹²

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In the case of man, the natural-law ethic states that goodness or badness can be determined by what fulfills or thwarts what is best for man's nature.⁸

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Value in the sense of valuation or utility is purely subjective, and decided by each individual. This procedure is perfectly proper for the formal science of praxeology, or economic theory, but not necessarily elsewhere. For in natural-law ethics, ends are demonstrated to be good or bad for man in varying degrees; value here is objective—determined by the natural law of man's being, and here “happiness” for man is considered in the commonsensical, contentual sense. As Father Kenealy put it:

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We have seen from our discussion that the doctrine of natural law—the view that an objective ethics can be established through reason—has had to face two powerful groups of enemies in the modern world: both anxious

to denigrate the power of man's reason to decide upon his destiny. These are the fideists who believe that ethics can only be given to man by supernatural revelation, and the skeptics who believe that man must take his ethics from arbitrary whim or emotion. We may sum up with Professor Grant's harsh but penetrating view of the

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In fact, the legal principles of any society can be established in three alternate ways: (a) by following the traditional custom of the tribe or community; (b) by obeying the arbitrary, ad hoc will of those who rule the State apparatus; or (c) by the use of man's reason in discovering the natural law—in short, by slavish conformity to custom, by arbitrary whim, or by use of man's reason. These are essentially the only possible ways for establishing positive law. Here we may simply affirm that the latter method is at once the most appropriate for man at his most nobly and fully human, and the most potentially “revolutionary” vis-à-vis any given status quo.

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It was, in contrast, the Levellers and particularly John Locke in seventeenth-century England who transformed classical natural law into a theory grounded on methodological and hence political individualism. From the Lockean emphasis on the individual as the unit of action, as the entity who thinks, feels, chooses, and acts, stemmed his conception of natural law in politics as establishing the natural rights of each individual. It was the Lockean individualist tradition that profoundly influenced the later American revolutionaries and the dominant tradition of libertarian political thought in the revolutionary new nation. It is this tradition of natural-rights libertarianism upon which the present volume attempts to build.

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It should not be surprising that Locke's natural-rights theory, as historians of political thought have shown, was riddled with contradictions and inconsistencies. After all, 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. Divergences from Locke in the present work 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. In fact, libertarian natural-rights theory continued to be expanded and purified after Locke, reaching its culmination in the nineteenth century works of Herbert Spencer and Lysander Spooner.³

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As long as an individual remains isolated, then, there is no problem whatever about how far his property—his ownership—extends; as a rational being with free will, it extends over his own body, and it extends further over the material goods which he transforms with his labor. Suppose 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 his. Crusoe, in natural fact, owns his own self and the extension of his self into the material world, neither more nor less. 1

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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.

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But economists 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.

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In short, there is only one route to ownership of goods: production-and-exchange. If Smith gives up a product in exchange for Jones’s which Jones also acquired in a previous exchange, then someone, whether the person from whom Jones bought the product or someone else down the line, must have been the original finder-and-transformer of the resource.

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At each step of the way, then, a man produces—by exerting his labor upon tangible goods. If this good was previously unused and unowned, then his labor automatically brings the good under his control, his “ownership.” If the good was already owned by someone else, then the owner may either sell this (capital) good to our laborer for money, after which his labor is exerted on the good; or the previous owner may purchase the labor service for money in order to produce the good further and then sell it to the next buyer. This process, too, reduces back to the original production of unused resources and to labor, since the capitalist—the previous owner in our example—ultimately derived his own ownership from: original production; voluntary exchange; and the saving of money. Thus, all ownership on the free market reduces ultimately back to: (a) ownership by each man of his own person and his own labor; (b) ownership by each man of land which he finds unused and transforms by his own labor; and (c) the exchange of the products of this mixture of (a) and (b) with the similarly-produced output of other persons on the market.

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As we have seen, money is either (1) produced by one’s own labor transforming original resources (e.g., mining gold); or (2) obtained by selling one’s own product—or selling goods previously purchased with the proceeds of

one's own product—in exchange for gold owned by someone else. Again, just as (c) in the previous paragraph reduces logically back to (a) and (b) production coming before exchange—so here (2) ultimately reduces logically back to (1).

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In the free society we have been describing, then, all ownership reduces ultimately back to each man's naturally given ownership over himself, and of the land resources that man transforms and brings into production.

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The free market is a society of voluntary and consequently mutually beneficial exchanges of ownership titles between specialized producers. It has often been charged that this market economy rests on the wicked doctrine that labor "is treated as a commodity." But the natural fact is that labor service is indeed a commodity, for, as in the case of tangible property, one's own labor service can be alienated and exchanged for other goods and services. A person's labor service is alienable, but his will is not. It is most fortunate, moreover, for mankind that this is so; for this alienability means (1) that a teacher or physician or whatever can sell his labor services for money; and (2) that workers can sell their labor services in transforming goods to capitalists for money. If this could not be done, the structure of capital required for civilization could not be developed, and no one's vital labor services could be purchased by his fellow men.

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The distinction between a man's alienable labor service and his inalienable will may be further explained: 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 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. But more of coercion later on.

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Absolute freedom, then, need not be lost as the price we must pay for the advent of civilization; men are born free, and need never be in chains. Man may achieve liberty and abundance, freedom and civilization.

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For if we define freedom, again, as the absence of invasion by another man of any man's person or property, the fatal confusion of freedom and power is at last laid to rest.⁴ 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. 5 Each man's power, then, is always necessarily limited by the facts of the human condition, by the nature of man and his world; but it is one of the glories of man's condition that each person can be absolutely free, even in a world of complex interaction and exchange. It is still true, moreover, that any man's power to act and do and consume is enormously greater in such a world of complex interaction than it could be in a primitive or Crusoe society. A

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It is impossible for any other social system to qualify as universal natural law; for if there is any coercive rule by one person or group over another (and all rule partakes of such hegemony), then it is impossible to apply the same rule for all; only a rulerless, purely libertarian world can fulfill the qualifications of natural rights and natural law, or, more important, can fulfill the conditions of a universal ethic for all mankind.

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In contrast, the society of absolute self-ownership for all 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.

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Thus, the crucial question in society is not, as so many believe, whether property should be private or governmental, but rather whether the necessarily "private" owners are legitimate owners or criminals. For, ultimately, there is no entity called "government"; there are only people forming themselves into groups called "governments" and acting in a "governmental" manner.⁶ All property is therefore always "private"; the only and critical question is whether it should reside in the hands of criminals or of the proper and legitimate owners. There is really only one reason for libertarians to oppose the formation of governmental property or to call for its divestment: the realization that the rulers of government are unjust and criminal owners of such property. In short, the laissez-faire utilitarian cannot simply oppose "government" ownership and defend private; for the trouble with governmental property is not so much that it is governmental (for what of "private" criminals like our watch-stealer?) but that it is illegitimate, unjust, and criminal—as in the case of our Ruritanian king. And since "private" criminals are also reprehensible, we see that the social question of property cannot ultimately be treated in utilitarian terms as either private or governmental. It must be treated in terms of justice or injustice: of legitimate property-owners vs. illegitimate, criminal invaders of such property, whether these invaders are called "private" or "public." The libertarian may now be getting rather worried. He may say:

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To sum up, for any property currently claimed and used: (a) if we know clearly that there was no criminal origin to its current title, then obviously the current title is legitimate, just and valid; (b) if we don't know whether the

current title had any criminal origins, but can't find out either way, then the hypothetically "unowned" property reverts instantaneously and justly to its current possessor; (c) if we do know that the title is originally criminal, but can't find the victim or his heirs, then (c1) if the current title-holder was not the criminal aggressor against the property, then it reverts to him justly as the first owner of a hypothetically unowned property. But (c2) if the current titleholder is himself the criminal or one of the criminals who stole the property, then clearly he is properly to be deprived of it, and it then reverts to the first man who takes it out of its unowned state and appropriates it for his use. And finally, (d) if the current title is the result of crime, and the victim or his heirs can be found, then the title properly reverts immediately to the latter, without compensation to the criminal or to the other holders of the unjust title.

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We 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.

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We also have a theory of criminality: a criminal is someone who aggresses against such property. 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.

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American conservatives, in particular, exhort the backward countries on the virtues and the importance of private foreign investment from the advanced countries, and of allowing a favorable climate for this investment, free from governmental harassment. This is all very true, but is again often unreal to the undeveloped peoples, because the conservatives persistently fail to distinguish between legitimate, free-market foreign investment, as against investment based upon monopoly concessions and vast land grants by the undeveloped states. To the extent that foreign investments are based on land monopoly and aggression against the peasantry, to that extent do foreign capitalists take on the aspects of feudal landlords, and must be dealt with in the same way.

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We need not search far for examples of land aggression and monopoly in the modern world; they are indeed legion. We might cite one example not so very far removed from our hypothetical king of Ruritania: "The Shah owns more than half of all arable land in Iran, land originally taken over by his father. He owns close to 10,000 villages. So far, this great reformer has sold two of his villages."⁵ A typical example of foreign investment combined with land aggression is a North American mining company in Peru, the Cerro de Pasco Corporation. Cerro de Pasco, having legitimately purchased its land from a religious convent a half century ago, began in

1959 to encroach upon and seize the lands of neighboring Indian peasants. Indians of Rancas refusing to leave their land were massacred by peasants in the pay of the company; Indians of Yerus Yacan tried to contest the company's action in the courts, while company men burned pastures and destroyed peasant huts. When the Indians retook their land through mass non-violent action, the Peruvian government, at the behest of the Cerro de Pasco and the regional latifundia owners, sent troops to eject, assault, and even murder the unarmed Indians.⁶ What, then, is to be our view toward investment in oil lands, one of the major forms of foreign investment in underdeveloped countries in today's world? The major error of most analyses is to issue either a blanket approval or a blanket condemnation, for the answer depends on the justice of the property title established in each specific case. Where, for example, an oil company, foreign or domestic, lays claim to the oil field which it discovers and drills, then this is its just "homesteaded" private property, and it is unjust for the undeveloped government to tax or regulate the company. Where the government insists on claiming ownership of the land itself, and only leases the oil to the company, then (as we will see further below in discussing the role of government), the government's claim is illegitimate and invalid, and the company, in the role of homesteader, is properly the owner and not merely the renter of the oil land.

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On the other hand, there are cases where the oil company uses the government of the undeveloped country to grant it, in advance of drilling, a monopoly concession to all the oil in a vast land area, thereby agreeing to the use of force to squeeze out all competing oil producers who might search for and drill oil in that area. In that case, as in the case above of Crusoe's arbitrarily using force to squeeze out Friday, the first oil company is illegitimately using the government to become a land-and-oil monopolist. Ethically, any new company that enters the scene to discover and drill oil is the proper owner of its "homesteaded" oil area. A fortiori, of course, our oil concessionaire who also uses the State to eject peasants from their land by force—as was done, for example, by the Creole Oil Co. in Venezuela—is a collaborator with the government in the latter's aggression against the property rights of the peasantry.

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In recent years, the doctrine has gained ground among American conservatives that feudalism, instead of being oppressive and exploitative, was in fact a bulwark of liberty. It is true that feudalism, as these conservatives point out, was not as evil a system as "Oriental despotism," but that is roughly equivalent to saying that imprisonment is not as severe a penalty as execution. The difference between feudalism and Oriental despotism was really of degree rather than kind; arbitrary power over land and over persons on that land was, in the one case, broken up into geographical segments; in the latter case, land tended to concentrate into the hands of one imperial overlord over the land-area of the entire country, aided by his bureaucratic retinue. The systems of power and repression are similar in type; the Oriental despot is a single feudal overlord with the consequent power accruing into his hands. Each system is a variant of the other; neither is in any sense libertarian. And there is no reason to suppose that society must choose between one and the other—that these are the only alternatives.

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itself. Actually, the strong state and feudalism were not antithetical; the former was a logical outgrowth of the latter, with the absolute monarch ruling as the super-feudal overlord. The strong state, when it developed in

Western Europe, did not set about to smash feudal restrictions on trade; on the contrary, it superimposed its own central restrictions and heavy taxes on top of the feudal structure. The French Revolution, directed against the living embodiment of the strong state in Europe, was aimed at destroying both feudalism with its local restrictions, and the restrictions and high taxes imposed by the central government.⁸ The true dichotomy was liberty on the one side versus the feudal lords and the absolute monarch on the other. Furthermore, the free market and capitalism flourished earliest and most strongly in those very countries where both feudalism and central government power were at their relative weakest: the Italian city-states, and seventeenth-century Holland and England.⁹ North America's relative escape from the blight of feudal land and land monopoly was not for lack of trying. Many of the English colonies made strong attempts to establish feudal rule, especially where the colonies were chartered companies or proprietorships, as in New York, Maryland, and the Carolinas. The attempt failed because the New World was a vast and virgin land area, and therefore the numerous receivers of monopoly and feudal land grants—many of them enormous in size—could only gain profits from them by inducing settlers to come to the New World and settle on their property.

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The important exception to this agrarian idyll, of course, was the flourishing of the slave system in the Southern states. It was only the coercion of slave labor that enabled the large plantation system in staple crops to flourish in the South. Without the ability to own and coerce the labor of others, the large plantations—and perhaps much of the tobacco and later the cotton culture—would not have pervaded the South. We have indicated above that there was only one possible moral solution for the slave question: immediate and unconditional abolition, with no compensation to the slavemasters. Indeed, any compensation should have been the other way—to repay the oppressed slaves for their lifetime of slavery. A vital part of such necessary compensation would have been to grant the plantation lands not to the slavemaster, who scarcely had valid title to any property, but to the slaves themselves, whose labor, on our “homesteading” principle, was mixed with the soil to develop the plantations. In short, at the very least, elementary libertarian justice required not only the immediate freeing of the slaves, but also the immediate turning over to the slaves, again without compensation to the masters, of the plantation lands on which they had worked and sweated. As it was, the victorious North made the same mistake—though “mistake” is far too charitable a word for an act that preserved the essence of an unjust and oppressive social system—as had Czar Alexander when he freed the Russian serfs in 1861: the bodies of the oppressed were freed, but the property which they had worked and eminently deserved to own, remained in the hands of their former oppressors. With the economic power thus remaining in their hands, the former lords soon found themselves virtual masters once more of what were now free tenants or farm laborers. The serfs and the slaves had tasted freedom, but had been cruelly deprived of its fruits.¹¹

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Defensive violence, therefore, must be confined to resisting invasive acts against person or property. But 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 is therefore “implicit theft.”

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As a corollary, police can never be allowed to commit an invasion that is worse than, or that is more than proportionate to, the crime under investigation. Thus, the police can never be allowed to beat and torture someone charged with petty theft, since the beating is far more proportionate a violation of a man's rights than the theft, even if the man is indeed the thief.

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Thus, it should be quite clear that, under libertarian law, capital punishment would have to be confined strictly to the crime of murder. For a criminal would only lose his right to life if he had first deprived some victim of that same right. It would not be permissible, then, for a merchant whose bubble gum had been stolen, to execute the convicted bubble gum thief. If he did so, then he, the merchant, would be an unjustifiable murderer, who could be brought to the bar of justice by the heirs or assigns of the bubble gum thief. But,

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But restitution, while the first consideration in punishment, can hardly serve as the complete and sufficient criterion. For one thing, if one man assaults another, and there is no theft of property, there is obviously no way for the criminal to make restitution. In ancient forms of law, there were often set schedules for monetary recompense that the criminal would have to pay the victim: so much money for an assault, so much more for mutilation, etc. But such schedules are clearly wholly arbitrary, and bear no relation to the nature of the crime itself. We must therefore fall back upon the view that the criterion must be: loss of rights by the criminal to the same extent as he has taken away.

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In the case of theft, then, we may say that the criminal must pay double the extent of theft: once, for restitution of the amount stolen, and once again for loss of what he had deprived another.⁶

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The victim, then, has the right to exact punishment up to the proportional amount as determined by the extent of the crime, but he is also free either to allow the aggressor to buy his way out of punishment, or to forgive the aggressor partially or altogether. The proportionate level of punishment sets the right of the victim, the permissible upper bound of punishment; but how much or whether the victim decides to exercise that right is up to him.

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It should be evident that our theory of proportional punishment—that people may be punished by losing their rights to the extent that they have invaded the rights of others—is frankly a retributive theory of punishment, a “tooth (or two teeth) for a tooth” theory.¹² Retribution is in bad repute among philosophers, who generally dismiss the concept quickly as “primitive” or “barbaric” and then race on to a discussion of the two other major

theories of punishment: deterrence and rehabilitation. But simply to dismiss a concept as “barbaric” can hardly suffice; after all, it is possible that in this case, the “barbarians” hit on a concept that was superior to the more modern creeds.

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The proper groundwork for analysis of abortion is in every man’s absolute right of self-ownership. This implies immediately that every woman has the absolute right to her own body, that she has absolute dominion over her body and everything within it. This includes the fetus. Most fetuses are in the mother’s womb because the mother consents to this situation, but the fetus is there by the mother’s freely-granted consent. But should the mother decide that she does not want the fetus there any longer, then the fetus becomes a parasitic “invader” of her person, and the mother has the perfect right to expel this invader from her domain. Abortion should be looked upon, not as “murder” of a living person, but as the expulsion of an unwanted invader from the mother’s body.² Any laws restricting or prohibiting abortion are therefore invasions of the rights of mothers.

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Another argument of the anti-abortionists is that the fetus is a living human being, and is therefore entitled to all of the rights of human beings. Very good; let us concede, for purposes of the discussion, that fetuses are human beings—or, more broadly, potential human beings—and are therefore entitled to full human rights. But what humans, we may ask, have the right to be coercive parasites within the body of an unwilling human host? Clearly, no born humans have such a right, and therefore, a fortiori, the fetus can have no such right either. The

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In short, it is impermissible to interpret the term “right to life,” to give one an enforceable claim to the action of someone else to sustain that life. In our terminology, such a claim would be an impermissible violation of the other person’s right of self-ownership. Or, as Professor Thomson cogently puts it, “having a right to life does not guarantee having either a right to be given the use of or a right to be allowed continued use of another person’s body—even if one needs it for life itself.”³ Suppose

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For the child has his full rights of self-ownership when he demonstrates that he has them in nature—in short, when he leaves or “runs away” from home. Regardless of his age, we must grant to every child the absolute right to run away, and to find new foster parents who will voluntarily adopt him, or to try to exist on his own. Parents may try to persuade the runaway child to return, but it is totally impermissible enslavement and an aggression upon his right of self-ownership for them to use force to compel him to return. The absolute right to run away is the child’s ultimate expression of his right of self-ownership, regardless of age.

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Now if a parent may own his child (within the framework of nonaggression and runaway-freedom), then he may also transfer that ownership to someone else. He may give the child out for adoption, or he may sell the rights to

the child in a voluntary contract. In short, we must face the fact that the purely free society will have a flourishing free market in children. Superficially, this sounds monstrous and inhuman. But closer thought will reveal the superior humanism of such a market. For we must realize that there is a market for children now, but that since the government prohibits sale of children at a price, the parents may now only give their children away to a licensed adoption agency free of charge.¹² This means that we now indeed have a child-market, but that the government enforces a maximum price control of zero, and restricts the market to a few privileged and therefore monopolistic agencies. The result has been a typical market where the price of the commodity is held by government far below the free-market price: an enormous “shortage” of the good. The demand for babies and children is usually far greater than the supply, and hence we see daily tragedies of adults denied the joys of adopting children by prying and tyrannical adoption agencies. In fact, we find a large unsatisfied demand by adults and couples for children, along with a large number of surplus and unwanted babies neglected or maltreated by their parents. Allowing a free market in children would eliminate this imbalance, and would allow for an allocation of babies and children away from parents who dislike or do not care for their children, and toward foster parents who deeply desire such children. Everyone involved: the natural parents, the children, and the foster parents purchasing the children, would be better off in this sort of society.¹³ In the libertarian society, then, the mother would have the absolute right to her own body and therefore to perform an abortion; and would have the trustee-ownership of her children, an ownership limited only by the illegality of aggressing against their persons and by their absolute right to run away or to leave home at any time. Parents would be able to sell their trustee-rights in children to anyone who wished to buy them at any mutually agreed price.

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In short, a person does not have a “right to freedom of speech”; what he does have is the right to hire a hall and address the people who enter the premises. He does not have a “right to freedom of the press”; what he does have is the right to write or publish a pamphlet, and to sell that pamphlet to those who are willing to buy it (or to give it away to those who are willing to accept it). Thus, what he has in each of these cases is property rights, including the right of free contract and transfer which form a part of such rights of ownership. There is no extra “right of free speech” or free press beyond the property rights that a person may have in any given case. Furthermore,

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Similarly, the private ownership of all streets would resolve the problem of the “human right” to freedom of immigration. There is no question about the fact that current immigration barriers restrict not so much a “human right” to immigrate, but the right of property owners to rent or sell property to immigrants. There can be no human right to immigrate, for on whose property does someone else have the right to trample? In short, if “Primus” wishes to migrate now from some other country to the United States, we cannot say that he has the absolute right to immigrate to this land area; for what of those property owners who don’t want him on their property? On the other hand, there may be, and undoubtedly are, other property owners who would jump at the chance to rent or sell property to Primus, and the current

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laws now invade their property rights by preventing them from doing so.

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The libertarian society would resolve the entire “immigration question” within the matrix of absolute property rights. For people only have the right to move to those properties and lands where the owners desire to rent or sell to them. In the free society, they would, in first instance, have the right to travel only on those streets whose owners agree to have them there, and then to rent or buy housing from willing owners. Again, just as in the case of daily movement on streets, a diverse and varying pattern of access of migration would undoubtedly arise.

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Again, as in the case of libel, a boycott may well diminish a firm’s customers and therefore cut into its property values; but such an act is still a perfectly legitimate exercise of free speech and property rights. Whether we wish any particular boycott well or ill depends on our moral values and on our attitudes toward the concrete goal or activity. But a boycott is legitimate per se. If we feel a given boycott to be morally reprehensible, then it is within the rights of those who feel this way to organize a counter-boycott to persuade the consumers otherwise, or to boycott the boycotters. All this is part of the process of dissemination of information and opinion within the framework of the rights of private property.

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Furthermore, “secondary” boycotts are also legitimate, despite their outlawry under our current labor laws. In a secondary boycott, labor unions try to persuade consumers not to buy from firms who deal with non-union (primary boycotted) firms. Again, in a free society, it should be their right to try such persuasion, just as it is the right of their opponents to counter with an opposing boycott. In the same way, it is the right of the League of Decency to try to organize a boycott of pornographic motion pictures, just as it would be the right of opposing forces to organize a boycott of those who give in to the League’s boycott. Of

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But the fundamental flaw in the theory of animal rights is more basic and far-reaching.¹ For 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. Thus, while natural rights, as we have been emphasizing, are absolute, there is one sense in which they are relative: they are relative to the species man. A rights-ethic for mankind is precisely that: for all men, regardless of race, creed, color or sex, but for the species man alone. The Biblical story was insightful to the effect that man was “given” or,—in natural law, we may say “has”—dominion over all the species of the earth. Natural law is necessarily species-bound.

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We have seen clearly why the State needs the intellectuals; but why do the intellectuals need the State? Put simply, it is because intellectuals, whose services are often not very intensively desired by the mass of consumers, can find a more secure “market” for their abilities in the arms of the State. The State can provide them with a power, status, and wealth which they often cannot obtain in voluntary exchange. For centuries, many (though, of course, not all) intellectuals have sought the goal of Power, the realization of the Platonic ideal of the “philosopher-king.” Consider, for example, the cry from the heart by the distinguished Marxist scholar, Professor Needham, in protest against the acidulous critique by Karl Wittfogel of the alliance of State-and-intellectuals in Oriental despotisms: “The civilization which Professor Wittfogel is so bitterly attacking was one which could make poets and scholars into officials.” Needham adds that “the successive [Chinese] emperors were served in all ages by a great company of profoundly humane and disinterested scholars.”⁹ Presumably, for Professor Needham, this is enough to justify the grinding despotisms of the ancient Orient.

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But we need not go back as far as the ancient Orient or even as far as the proclaimed goal of the professors at the University of Berlin, in the nineteenth century, to form themselves into “the intellectual bodyguard of the House of Hohenzollern.” In contemporary America, we have the eminent political scientist, Professor Richard Neustadt, hailing the President as the “sole crownlike symbol of the Union.” We have national security manager Townsend Hoopes writing that “under our system the people can look only to the President to define the nature of our foreign policy problem and the national programs and sacrifices required to meet it with effectiveness.” And, in response, we have Richard Nixon, on the eve of his election as President, defining his role as follows: “He [the President] must articulate the nation’s values, define its goals and marshal its will.” Nixon’s conception of his role is hauntingly similar to the scholar Ernst Huber’s articulation, in the Germany of the 1930s, of the Constitutional Law of the Greater German Reich. Huber wrote that the head of State “sets up the great ends which are to be attained and draws up the plans for the utilization of all national powers in the achievement of the common goals . . . he gives

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the national life its true purpose and value.”¹⁰ Thus, the State is a coercive criminal organization that subsists by a regularized large-scale system of taxation-theft, and which gets away with it by engineering the support of the majority (not, again, of everyone) through securing an alliance with a group of opinion-moulding intellectuals whom it rewards with a share in its power and pelf. But there is another vital aspect of the State that needs to be considered. There is one critical argument for the State that now comes into view: namely, the implicit argument that the State apparatus really and properly owns the territorial area over which it claims jurisdiction. The State, in short, arrogates to itself a monopoly of force, of ultimate decision-making power, over a given territorial area—larger or smaller depending on historical conditions, and on how much it has been able to wrest from other States. If the State may be said to properly own its territory, then it is proper for it to make rules for anyone who presumes to live in that area. It can legitimately seize or control private property because there is no private property in its area, because it really owns the entire land surface. So long as the State permits its subjects to leave its territory, then, it can be said to act as does any other owner who sets down rules for people living on his property. (This seems to be the only justification for the crude slogan, “America, love it or leave it!,” as well as

the enormous emphasis generally placed on an individual's right to emigrate from a country.) In short, this theory makes the State, as well as the King in the Middle Ages, a feudal overlord, who at least theoretically owned all the land in his domain. The fact that new and unowned resources—whether virgin land or lakes—are invariably claimed as owned by the State (its “public domain”) is an expression of this implicit theory.

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Calhoun goes on to point out that a Constitution will not be able to keep the government limited; for given a monopoly Supreme Court selected by the self-same government and granted the power of ultimate decision-making, the political “ins” will always favor a “broad” or loose interpretation of the wording of the Constitution serving to expand the powers of government over the citizenry; and, over time, the “ins” will inexorably tend to win out over the minority of “outs” who will argue vainly for a “strict” interpretation limiting State power.²

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But there are other fatal flaws and inconsistencies in the concept of limited, laissez-faire government. In the first place, it is generally accepted, by limited-government and by other political philosophers, that the State is necessary for the creation and development of law. But this is historically incorrect. For most law, but especially the most libertarian parts of the law, emerged not from the State, but out of non-State institutions: tribal custom, common-law judges and courts, the law merchant in mercantile courts, or admiralty law in tribunals set up by shippers themselves. In the case of competing common-law judges as well as elders of tribes, the judges were not engaged in making law, but in finding the law in existing and generally accepted principles, and then applying that law to specific cases or to new technological or institutional conditions.³ The same was true in private Roman law. Moreover, in ancient Ireland, a society existing for a thousand years until the conquest by Cromwell, “there was no trace of State-administered justice”; competing schools of professional jurists interpreted and applied the common body of customary law, with enforcement undertaken by competing and voluntarily supported tuatha, or insurance agencies. Furthermore, these customary rules were not haphazard or arbitrary, but consciously rooted in natural law, discoverable by man's reason.⁴ But, in addition to the historical inaccuracy of the view that the State is needed for the development of law, Randy Barnett has brilliantly pointed out that the State by its very nature cannot obey its own legal rules. But if the State cannot obey its own legal rules, then it is necessarily deficient and self-contradictory as a maker of law. In an exegesis and critique of Lon L. Fuller's seminal work *The Morality of Law*, Barnett notes that Professor Fuller sees in the current thinking of legal positivism a persistent error: “the assumption that law should be viewed as a . . . one-way projection of authority, originating with government and imposing itself upon the citizen.”⁵ Fuller points out that law is not simply “vertical”—a command from above from the State to its citizens, but also “horizontal,” arising from among the people themselves and applied to each other. Fuller points to international law, tribal law, private rules, etc. as pervasive examples of such “reciprocal” and non-State law. Fuller sees the positivist error as stemming from failure to recognize a crucial principle of proper law, namely that the lawmaker should itself obey its own rules that it lays down for its citizens, or, in Fuller's words, “that enacted law itself presupposes a commitment by the government authority to abide by its own rules in dealing with its subjects.”

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Next, no laissez-faire writer has ever provided a theory of the size of the State: if the State is to have a compulsory monopoly of force in a given territorial area, how large is that area to be? These theorists have not

given full attention to 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. And yet, 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 countries.

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Finally, there is a crucial inconsistency in the proffered criterion of laissez-faire itself: limiting the government to protection of person and property. For, if it is legitimate for a government to tax, why not tax its subjects to provide other goods and services that may be useful to consumers: why shouldn't the government, for example, build steel plants, provide shoes, dams, postal service, etc.? For each of these goods and services is useful to consumers. If the laissez-fairists object that the government should not build steel plants or shoe factories and provide them to consumers (either free or for sale) because tax-coercion had been employed in constructing these plants, well then the same objection can of course be made to governmental police or judicial service. The government should be acting no more immorally, from the laissez-faire point of view, when providing housing or steel than when providing police protection. Government limited to protection, then, cannot be sustained even within the laissez-faire ideal itself, much less from any other consideration. It is true that the laissez-faire ideal could still be employed to prevent such “second-degree” coercive activities of government (i.e., coercion beyond the initial coercion of taxation) as price control or outlawry of pornography; but the “limits” have now become flimsy indeed, and may be stretched to virtually complete collectivism, in which the government only supplies goods and services, yet supplies all of them. 1.

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It has often been maintained, and especially by conservatives, that the development of the horrendous modern weapons of mass murder (nuclear weapons, rockets, germ warfare, etc.) is only a difference of degree rather than kind from the simpler weapons of an earlier era. Of course, one answer to this is that when the degree is the number of human lives, the difference is a very big one. But a particularly libertarian reply is that while the bow and arrow, and even the rifle, can be pinpointed, if the will be there, against actual criminals, modern nuclear weapons cannot. Here is a crucial difference in kind. Of course, the bow and arrow could be used for aggressive purposes, but it could also be pinpointed to use only against aggressors. Nuclear weapons, even “conventional” aerial bombs, cannot be. These weapons are ipso facto engines of indiscriminate mass destruction. (The only exception would be the extremely rare case where a mass of people who were all criminals inhabited a vast geographical area.) We must, therefore, conclude that the use of nuclear or similar weapons, or the threat thereof, is a crime against humanity for which there can be no justification.¹

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In short, the libertarian is interested in reducing as much as possible the area of State aggression against all private individuals, “foreign” and “domestic.” The only way to do this, in international affairs, is for the people of each country to pressure their own State to confine its activities to the area which it monopolizes, and not to

aggress against other State-monopolists—particularly the people ruled by other States. In short, the objective of the libertarian is to confine any existing State to as small a degree of invasion of person and property as possible. And this means the total avoidance of war. The people under each State should pressure “their” respective States not to attack one another, and, if a conflict should break out, to negotiate a peace or declare a cease-fire as quickly as physically possible.

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While the Unanimity Principle may at first appear superficially attractive to libertarians, however, there is at its heart a vital and irredeemable flaw: that the goodness of free contracts or unanimously approved changes from the existing situation depends completely on the goodness or justice of that existing situation itself. Yet neither Pareto Optimality, nor its Unanimity Principle variant, can say anything about the goodness or justice of the existing status quo, concentrating as they do solely on changes from that situation, or zero point.⁷ Not only that, but the requirement of unanimous approval of changes necessarily freezes the existing status quo. If the status quo is unjust or repressive of liberty, then the Unanimity Principle is a grave barrier to justice and liberty rather than a bulwark on its behalf. The economist who advocates the Unanimity Principle as a seemingly value-free pronouncement for liberty is instead making a massive and totally unsupported value judgment on behalf of freezing the status quo.

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see, therefore, that Mises’s attempt to advocate laissez-faire while remaining value-free, by assuming that all of the advocates of government intervention will abandon their position once they learn of its consequences, falls completely to the ground.

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What can Mises reply to a majority of the public who have indeed considered all the praxeological consequences, and still prefer a modicum—or, for that matter, even a drastic amount—of statism in order to achieve some of their competing goals? As a utilitarian, he cannot quarrel with the ethical nature of their chosen goals, for, as a utilitarian, he must confine himself to the one value judgment that he favors the majority achieving their chosen goals. The only reply that Mises can make within his own framework is to point out that government intervention has a cumulative effect, that eventually the economy must move either toward the free market or toward full socialism, which praxeology shows will bring chaos and drastic impoverishment, at least to an industrial society. But this, too, is not a fully satisfactory answer. While many or most programs of statist intervention—especially price controls—are indeed cumulative, others are not. Furthermore, the cumulative impact takes such a long time that the time-preferences of the majority might well lead them, in full acknowledgment of the consequences, to ignore the effect. And then what? Mises

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And, on his own country, Switzerland, Dean Rappard pointed out that the urban industrial and commercial majority of the country have repeatedly, and often at popular referenda, endorsed measures to subsidize the minority of farmers in a deliberate effort to retard industrialization and the growth of their own incomes.

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The point here is that Mises, not only as a praxeologist but even as a utilitarian liberal, can have no word of criticism against these statist measures once the majority of the public have taken their praxeological consequences into account and chosen them anyway on behalf of goals other than wealth and prosperity.

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Thus, Berlin's fundamental flaw was 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. Failing to hit on this definition, Berlin fell into confusion, and ended by virtually abandoning the very negative liberty he had tried to establish and to fall, willy-nilly, into the "positive liberty" camp. More than that, Berlin, stung by his critics with the charge of upholding laissez-faire, was moved into frenetic and self-contradictory assaults on laissez-faire as somehow injurious to negative liberty. For example, Berlin writes that the "evils of unrestricted laissez faire . . . led to brutal violations of 'negative' liberty . . . including that of free expression or association." Since laissez faire precisely means full freedom of person and property, including of course free expression and association as a subset of private property rights, Berlin has here fallen into absurdity.

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There are several grave and basic problems with Berlin's fulminations. One is a complete ignorance of the modern historians of the Industrial Revolution, such as Ashton, Hayek, Hutt, and Hartwell, who have demonstrated that the new industry alleviated the previous poverty and starvation of the workers, including the child laborers, rather than the contrary.⁹ But on a conceptual level, there are grave problems as well. First, that it is absurd and self-contradictory to assert that laissez-faire or economic individualism could have injured personal liberty; and, second, that Berlin is really explicitly scuttling the very concept of "negative" liberty on behalf of concepts of positive power or wealth.

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The crucial fallacy of Berlin here is insistently to identify freedom and the free market economy with its opposite—with coercive aggression. Note his repeated use of such terms as "arm," "brutal," "wolves and sheep," and "bloodstained," all of which are applicable only to coercive aggression such as has been universally employed by the State. Also, he then identifies such aggression with its opposite—the peaceful and voluntary processes of free exchange in the market economy. Unrestrained economic individualism led, on the contrary, to peaceful and harmonious exchange, which benefitted most precisely the "weak" and the "sheep"; it is the latter who could not survive in the statist rule of the jungle, who reap the largest share of the benefits from the freely competitive economy. Even a slight acquaintance with economic science, and particularly with the Ricardian Law of Comparative Advantage, would have set Sir Isaiah straight on this vital point.¹¹

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But not only confusion but also self-contradiction, for Hayek includes in the concept of "coercion" not only invasive physical violence, i.e. a compulsory action or exchange, but also certain forms of peaceful, voluntary

refusal to make exchanges. Surely, the freedom to make an exchange necessarily implies the equivalent freedom not to make an exchange. Yet, Hayek dubs certain forms of peaceful refusal to make an exchange as “coercive,” thus lumping them together with compulsory exchanges. Specifically, Hayek states that

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Yet, “dismissal” is simply a refusal by the capital-owning employer to make any further exchanges with one or more people. An employer may refuse to make such exchanges for many reasons, and there are none but subjective criteria to enable Hayek to use the term “arbitrary.” Why is one reason any more “arbitrary” than another? If Hayek means to imply that any reasons other than maximizing monetary profit are “arbitrary,” then he ignores the Austrian School insight that people, even in business, act to maximize their “psychic” rather than monetary profit, and that such psychic profit may include all sorts of values, none of which is more or less arbitrary than another. Furthermore, Hayek here seems to be implying that employees have some sort of “right” to continuing employment, a “right” which is in overt contradiction to the property rights of employers to their own money. Hayek concedes that dismissal is ordinarily not “coercive”; why then, in conditions of “acute unemployment” (surely, in any case, not of the employer’s making), or of the mining town? Again, miners have moved voluntarily to the mining town and are free to leave whenever they like.

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The situation may well be unfortunate for the customers, as are many situations in life, but the supplier of a particularly scarce and vital service is hardly being “coercive” by either refusing to sell or by setting a price that the buyers are willing to pay. Both actions are within his rights as a free man and as a just property owner. The owner of the oasis is responsible only for the existence of his own actions and his own property; he is not accountable for the existence of the desert or for the fact that the other springs have dried up.⁷

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Thus, Hayek, and the rest of us, are duty-bound to do one of two things: either to confine the concept of “coercion” strictly to the invasion of another’s person or property by the use or threat of physical violence; or to scrap the term “coercion” altogether, and simply define “freedom” not as the “absence of coercion” but as the “absence of aggressive physical violence or the threat thereof.” Hayek indeed concedes that “coercion can be so defined as to make it an all-pervasive and unavoidable phenomenon.”¹³ Unfortunately, his middle-of-the-road failure to confine coercion strictly to violence pervasively flaws his entire system of political philosophy. He cannot salvage that system by attempting to distinguish, merely quantitatively, between “mild” and “more severe” forms of coercion.

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The absurdity of relying on general, universal (“equally applicable”), predictable rules as a criterion, or as a defense, for individual liberty has rarely been more starkly revealed.²⁰ For this means that, e.g., if there is a general governmental rule that every person shall be enslaved one year out of every three, then such universal slavery is not at all “coercive.” In what sense, then, are Hayekian general rules superior or more libertarian than any conceivable case of rule by arbitrary whim? Let us postulate, for example, two possible societies. One is

ruled by a vast network of Hayekian general rules, equally applicable to all, e.g., such rules as: everyone is to be enslaved every third year; no one may criticize the government under penalty of death; no one may drink alcoholic beverages; everyone must bow down to Mecca three times a day at specified hours; everyone must wear a specified green uniform, etc. It is clear that such a society, though meeting all the Hayekian criteria for a noncoercive rule of law, is thoroughly despotic and totalitarian. Let us postulate, in contrast, a second society which is totally free, where every person is free to employ his person and property, make exchanges, etc. as he sees fit, except that, once a year, the monarch (who does literally nothing the rest of the year), commits one arbitrary invasive act against one individual that he selects. Which society is to be considered more free, more libertarian?

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Thus, we see that Hayek's Constitution of Liberty can in no sense provide the criteria or the groundwork for a system of individual liberty. In addition to the deeply flawed definitions of "coercion," a fundamental flaw in Hayek's theory of individual rights, as Hamowy points out, is that they do not stem from a moral theory or from "some independent nongovernmental social arrangement," but instead flow from government itself. For Hayek, government—and its rule—of law creates rights, rather than ratifies or defends them.²² It is no wonder that, in the course of his book, Hayek comes to endorse a long list of government actions clearly invasive of the rights and liberties of the individual citizens.²³ 1.

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Thus, we have seen (1) that no existing State has been immaculately conceived—quite the contrary; (2) that therefore the only minimal State that could possibly be justified is one that would emerge after a free-market anarchist world had been established; (3) that therefore Nozick, on his own grounds, should become an anarchist and then wait for the Nozickian invisible hand to operate afterward, and finally (4) that even if any State had been founded immaculately, the fallacies of social-contract theory would mean that no present State, even a minimal one, could be justified.

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To conclude: (1) no existing State has been immaculately conceived, and therefore Nozick, on his own grounds, should advocate anarchism and then wait for his State to develop; (2) even if any State had been so conceived, individual rights are inalienable and therefore no existing State could be justified; (3) every step of Nozick's invisible hand process is invalid: the process is all too conscious and visible, and the risk and compensation principles are both fallacious and passports to unlimited despotism; (4) there is no warrant, even on Nozick's own grounds, for the dominant protective agency to outlaw procedures by independents that do not injure its own clients, and therefore it cannot arrive at an ultra-minimal state; (5) Nozick's theory of "nonproductive" exchanges is invalid, so that the prohibition of risky activities and hence the ultra-minimal state falls on that account alone; (6) contrary to Nozick, there are no "procedural rights," and therefore no way to get from his theory of risk and nonproductive exchange to the compulsory monopoly of the ultra-minimal state; (7) there is no warrant, even on Nozick's own grounds, for the minimal state to impose taxation; (8) there is no way, in Nozick's theory, to justify the voting or democratic procedures of any State; (9) Nozick's minimal state would, on his own grounds, justify a maximal State as well; and (10) the only "invisible hand" process, on Nozick's

own terms, would move society from his minimal State back to anarchism. Thus, the most important attempt in this century to rebut anarchism

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Gradualism in theory, in fact, totally undercuts the overriding goal of liberty itself; its import, therefore, is not simply strategic but an opposition to the end itself and hence impermissible as any part of a strategy toward liberty. The reason is that once immediate abolitionism is abandoned, then the goal is conceded to take second or third place to other, anti-libertarian considerations, for these considerations are now placed higher than liberty. Thus, suppose that the abolitionist of slavery had said: "I advocate an end to slavery—but only after five years' time." But this would imply that abolition in four or three years' time, or a fortiori immediately, would be wrong, and that therefore it is better for slavery to be continued a while longer. But this would mean that considerations of justice have been abandoned, and that the goal itself is no longer highest on the abolitionist's (or libertarian's) political value-scale. In fact, it would mean that the libertarian advocated the prolongation of crime and injustice.
