

Radical Libertarianism: Applying Libertarian Principles to Dealing with the Unjust Government, Part I

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Late one night in Washington, D.C. a mugger wearing a ski mask jumped into the path of a well-dressed man and stuck a gun in his ribs.

"Give me your money!" he demanded.

Indignant, the affluent man replied, "You can't do this. I'm a United States Congressman!"

"In that case," replied the robber, "give me my money!"¹

1. Introduction

The present paper attempts to trace out the implications of the libertarian philosophy for the proper relationship between an inhabitant of a country, and its unjust government.

Part I of this paper includes section 2, in which the stage is set for answering this challenging question, section 3, in which the essence of the state is discussed, section 4, in which libertarian punishment theory is introduced and the beginning of section 5, in which the concept of the libertarian Nuremberg trial is explored, and in 5a. the assumption that all citizens are guilty of the crimes of the unjust state is rejected.

In Part II of this paper, we begin with section 5b. which considers the possibility that all and only minions of the unjust state are guilty for its crimes, in a continuation of our libertarian Nuremberg trial analysis, and 5c. introduces libertarian ruling class theory. Section 6 traces out the proper relations between the subjects and the unjust government, section 7 asks if it is ever legitimate to disrupt such an institution, and we conclude in section 8.

¹ The present author wishes to express a debt of gratitude to N. Joseph Potts for editing this paper. All remaining errors are the author's, alone. The present paper is an academic study of the implications of the libertarian philosophy. It makes no threats against anyone. As the title implies, there is nothing in the present paper that is inconsistent with the existence of a just government. This paper is written in memory of Ragnar Danneskjold. May he never be forgotten.

2. Libertarian Implications

What is the proper relationship between an inhabitant of a country, and its unjust government?² This is an interesting and important question for the libertarian or objectivist philosopher, one to which not much attention has been paid in the literature.

In what is to follow I do not *advocate* that anyone do anything; certainly not anything illegal under the laws of the country concerned. I confine myself merely to legal speculation; I attempt only to explore the logical implications of libertarian theory in this area. Nevertheless, as per the Star Trek motto, it is my intention that this quest shall enable us to "go boldly where no man has gone before."

Libertarianism is based upon the building blocks of self-ownership, private property rights, the non-aggression axiom, and Lockean homesteading theory.³ In this philosophy, it is improper for governments, private criminals, or anyone else, to initiate violence against innocent persons or their property. All interaction is to take place on a voluntary basis.

That is to say, the individual can do whatever he wants to do. In the libertarian society, he has complete freedom. Except; he cannot violate the equal rights of all others, by attacking their bodies (murder, rape, assault and battery), or their property (theft, fraud, counterfeiting), or even threaten such activities⁴. To put this in another way, there would be no uninvited border crossings between one person and his property and another. Invited ones, in contrast, e.g., voluntary sadomasochistic acts, would be legitimate. Another way to put this is that in addition to social or sexual acts between consenting adults being lawful, this would apply, also, to "capitalist acts between consenting adults"⁵. This does not mean that anything devised by people on a voluntary basis would be moral; merely that there would be no warrant under the libertarian legal code to initiate violence against them, for example, by incarcerating them. The only legitimate titles to property would stem from creation of them by one's own hands, trade, gifts, gambling, or any other voluntary mutually agreeable way of transferring

² As examples, think in terms of Nazi Germany, the U.S.S.R., Cuba, North Korea, etc. There are other states to which the appellation "unjust government" might apply, but for safety's sake I do not wish to discuss any I may ever live in, or even visit.

³ For more on this see Hoppe, Hans Hermann, *The Economics and Ethics of Private Property. Studies in Political Economy and Philosophy* (Boston: Kluwer Academic Publishers, 1993).

⁴ The fatwa issued against author Salman Rushdie for writing a book found insulting by certain theocrats would be illegal in a free society. Anyone who offered support for this dicta, too, would be found guilty under libertarian law.

⁵ Nozick, Robert, *Anarchy, State, and Utopia*, New York: Basic Books Inc., 1974, p. 163).

property.

This may sound unobjectionable to all men of good will, but if followed, fully, a large part of what now passes for legitimate law would have to be repealed. For example, discrimination of whatever kind or variety would be allowed, since refusing to deal with people on the basis of their sex, or race or national origin does not constitute a physical attack on them, the only thing proscribed by libertarian law. Thus, the Civil Rights Act of 1964 would have to be eliminated. Similarly, virtually all of labor law would fall by the wayside, as most of it is predicated upon forcing the employer to deal fairly with unionized workers. But suppose he does not wish to deal with them at all? That is part and parcel of his right of free association, under the libertarian legal code. There would of course be no victimless crimes concerning sex, drugs, pornography, prostitution, since by definition, if they are voluntary, they involve no uninvited border crossing. Nor would there be any economic crimes, such as disobeying rent controls, maximum hours, minimum wages, zoning, tariffs, for such laws are themselves violations of the right to buy and sell at any mutually agreeable terms.

I do not intend to fully rehearse the anarchy vs. limited government libertarian controversy, which debates whether there *could* be a legitimate state apparatus. For present purposes, I shall assume, with the minarchist libertarians, simply for the sake of argument, that this concept is not an internal self-contradiction; that is, that there could be such a thing as a government that does not violate libertarian rights. However, I shall also assume that there are at least *some* states that *are* illegitimate⁶. The purpose of the present paper is to discuss

⁶ Could it be claimed that the present paper is incompatible with Rand's notion of government? Nothing could be further from the truth. This is a serious misreading of not only my paper but also of Atlas Shrugged. It cannot be denied that for Rand, governments are not criminal gangs per se (that is, when they limit themselves to their proper role of protecting rights via armies, police and courts). However, when governments exceed their proper authority, when their scope goes beyond the protection of man's rights, then they most certainly *are* akin to criminal gangs; this is a direct implication of her political philosophy. How else can we account for the fact that Ragnar, a hero of her novel if ever there was one, utilized force against the government depicted in Atlas, which *did* (vastly) exceed its proper authority? To claim that I am in opposition to Rand on this point, e.g., that I am herein advocating anarcho-capitalism, is to confuse how Ragnar treated excessive government with how he would have dealt with a properly limited state. That is, he would never have used violence against minarchism. That he *did* use force against the "People's State of America" definitively shows she thought this was an improper government. The present paper may thus be interpreted as an attempt to unearth the logical implications of Ragnar's justified actions. Please do not interpret this footnote as evidence that I agree with Miss Rand on all issues; to the contrary, in Block, Walter. 2002. "The Libertarian Minimal State?" A critique of the views of Nozick, Levin and Rand, *Journal of Ayn Rand Studies*, Vol. 4, No. 1, pp. 141-160, I do take issue with her views on anarchism.

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how the citizen of one of the *latter* may properly act, in a manner compatible with libertarianism.

In any case, similarities between these perspectives are more important than their differences, regarding our present analysis. For both variants of libertarian thought agree that when the government exceeds its proper role, the presumption is that it is illegitimate. For the anarchist, of course, all states necessarily violate this stricture. However, even for the limited government libertarian a state may usurp power not properly belonging to it, specifically, if it organizes manages and runs anything more than courts, armies and police. In this case, both varieties of libertarian, anarchist and minarchist, would unite in declaring such an entity improper.

But this does not at all imply that *every* act undertaken by an agent of an illegitimate state is improper. Suppose a cop employed by an illicit government stops a murderer from killing an innocent victim. That is, a Nazi policeman saves this particular person from death. Now, while it is indeed true that the Nazis themselves are guilty of mass murder, and that this particular representative of that regime may well be implicated in such injustice in other contexts (to be discussed below), it cannot be denied that in the present situation, the one where our Nazi cop is about to foil a different non Nazi murderer, his actions are entirely appropriate from a libertarian point of view.

I intend to examine a plethora of government activities and programs, and to determine what the libertarian point of view on each should be. Private property and the non-aggression axiom are necessary guidelines for our analysis. Also helpful will be what has been called "taxi cab" theory⁷.

Suppose you are in the southern part of a city, and want to go to the western sector. You get in a taxi, and say, "Please take me to such and such an address, in the western part of the city." The driver replies, "I only go to the northern and eastern areas. Sorry, I can't take you to the west." What do you do? Do you choose the northern part of the city, on the ground that, if it is not exactly where you want to go, at least it is closer to the west than your other option, the east? Not a bit of it. Instead, you get out of that cab, bid the driver a curt adieu, and take another one to the west. The point is, as a libertarian, you do *not* compromise with libertarianism. If you do, you are no longer a member of this particular club.

There are many political economic controversies that, seemingly, offer us *only* a choice between two options, neither of which is compatible with libertarianism. The key, here, is to keep our eye on the ball; *not* to be deflected

⁷ I owe this insight to Michael Edelstein and Nando Pelusi. For a further treatment of this concept, see Whitehead, Roy and Walter Block, "Direct Payment of State Scholarship Funds to Church-Related Colleges Offends the Constitution and Title VI," *Brigham Young University Journal of Public Law*, Vol. 14, No. 2, 2000, pp. 191-207.

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from the one true political philosophy.

Let us consider a few of them.

Should public school children be forced to wear uniforms? The arguments in favor of such a policy are reasonable. Such a policy promotes esprit de corps amongst children. There appears to be a correlation between the wearing of such uniforms and a reduction in truancy and fighting; as well, marks on exams rise and graduation rates increase. On the other hand, self-styled civil libertarians object to forcing youngsters to adopt school uniforms. There are claims that this is a violation of free speech. So which is it? Do libertarians favor this policy, or not?

The answer, of course, is that we reject both horns of this dilemma: in the free society, there would be no such thing as a public school, there would be only private ones. And the student uniform policies of private institutions would be no more a public policy issue than are the table-cloth colors of restaurants at present⁸. Admittedly, this sounds like a "cop out." We are, after all, refusing to enter into the lists on this important debate of the day. But to do so would be to go "north," or "east," when "west" is the only proper direction for us to travel in. Libertarians must not be seduced from their philosophy by the siren song of relevance. Both public school uniforms, and public school non-uniforms policy are contrary to freedom. *Both* must be rejected.

A similar analysis applies to whether K-12 public schools should embrace phonetics or whole language teaching methods, the "new" math or the old. With no public schools, the question does not arise, and private educational enterprises can and should make these decisions for themselves, and then sink or swim on the basis of how their customers evaluate these choices. Ditto for sex education, condom distribution, and the burning question of whether 7 year olds should be exposed to lesbian feminist texts such as *Heather Has Two Mommies*.

This perspective also sheds light on the issue of school vouchers vs. the status quo manner of financing public schooling: taxes and neighborhood schools.

We want to go west (full private schooling). There is no sense debating whether vouchers or the present system is north or east, closer to the full and complete separation of education and state. Milton Friedman, an advocate of vouchers⁹, notes that at present the government both finances and manages public schools. His plan would eliminate the latter while retaining the former¹⁰. But the Nazis

⁸ In countries with government provision of restaurants, this might indeed be an equally vexing problem in need of solution. Libertarians would absent themselves from this debate, too, and counsel immediate privatization of all restaurants.

⁹ He also calls himself a libertarian, a claim that cannot be sustained based on the analysis of this paper.

¹⁰ <http://www.cato.org/pubs/pas/pa-269.html>;
<http://www.salon.com/news/feature/2000/03/27/vouchers/>;
<http://pw1.netcom.com/~garretc/politics/friedman.html>;

both financed and managed their concentration camps. Would it be libertarian to advocate their continued financing by the Nazi government, while giving over actual operation to private hands? Hardly.

Should there be academic tenure in public universities? Again, each side has something to be said for it. On the one hand, tenure allows academics free rein to express their beliefs. Out of this process, it is alleged, will come greater insights than if they have to look over their shoulders, in fear of their jobs, were they to express an unpopular opinion. On the other hand, some professors use tenure as an early retirement guarantee. Secure in their jobs, they become so much intellectual dead weight, making no further intellectual contributions, and slackening off on everything else (e.g., teaching) as well.

The libertarian answer, here, is easy to see. Privatize all universities, and allow them to determine these essentially labor management decisions for themselves. Perhaps the market survival test will point in the direction of one or the other of these options; perhaps both will survive. In any case, the question does not even arise in the absence of public institutions of higher learning. And, as for the private colleges, they should be free to choose either of these options¹¹.

This steely determination *not* to see both sides of such debates will be of help in revolving numerous other public policy issues. Should this highway be widened or straightened? Should a bridge or tunnel be built here or there? The answer is to privatize the industry of road building and management, and allow private owners to make all such decisions, in conjunction with the owners of private property.¹² Should the government install air-conditioned subway trains,

<http://www.ncpa.org/pi/edu/july98c.html>

¹¹ For more on this, see McGee, Robert W. and Walter Block, "Academic Tenure: A Law and Economics Analysis," *Harvard Journal of Law and Public Policy*, Vol. 14, No. 2, Spring 1991, pp. 545-563.

¹² For the case in favor of private roads, see Beito, David T., "From Privies to Boulevards: The Private Supply of Infrastructure in the United States during the Nineteenth Century," in Jerry Jenkins and David E. Sisk, eds., *Development by Consent: The Voluntary Supply of Public Goods and Services* (San Francisco, 1993): 23-48; Beito, David T. and Linda Royster Beito, "Rival Road Builders: Private Toll Roads in Nevada, 1852-1880," *Nevada Historical Society Quarterly* 41 (Summer 1998), 71-91; Beito, David T. "Voluntary Association and the Life of the City," *Humane Studies Review*, Fall 1988; Beito, David T. "Owning the Commanding Heights," *Essays in Public Works History*, vol. 16, 1989; Block, Walter, "Free Market Transportation: Denationalizing the Roads," *Journal of Libertarian Studies: An Interdisciplinary Review*, Vol. III, No. 2, Summer 1979, pp. 209-238; Block, Walter, "Congestion and Road Pricing," *The Journal of Libertarian Studies: An Interdisciplinary Review*, Vol. IV, No. 3, Fall 1980, pp. 299-330; Block, Walter, "Public Goods and Externalities: The Case of Roads," *The Journal of Libertarian Studies: An Interdisciplinary Review*, Vol. VII, No. 1, Spring 1983, pp. 1-34; Block, Walter, "Theories of Highway Safety," *Transportation Research Record*, #912, 1983, pp. 7-10;

Block, Walter "Road Socialism," *International Journal of Value-Based Management*, 1996, Vol. 9, pp. 195-207; Block, Walter and Block, Matthew, "Roads, Bridges, Sunlight and Private Property Rights," *Journal des Economistes et des Etudes Humaines*, Vol. VII, No. 2/3, June-September 1996, pp. 351-362; Block, Walter, "Roads, Bridges, Sunlight and Private Property: Reply to Gordon Tullock," *Journal des Economistes et des Etudes Humaines*, Vol. 8, No. 2/3, June-September 1998, pp. 315-326; Foldvary, Fred, *Public Goods and Private Communities: The Market Provision of Social Services* (Edward Elgar, 1994); Cadin, Michelle, and Block, Walter, (1997), "Privatize the Public Highway System," *The Freeman*, February, Vol. 47, No. 2., pp. 96-97; Cobin, John, M. (1999), Market Provisions of Highways: Lessons from Costanera Norte. Planning and Markets, Volume 2, Number 1; De Palma, Andre and Robin Lindsey, "Private toll roads: Competition under various ownership regimes," *The Annals of Regional Science*, 2000, Vol. 34, pp. 13-35; De Palma, Andre and Robin Lindsey, "A Model of Curb Rights In Private Urban Transit Markets," *Canadian Transportation Research Forum*, Proceedings of the 36th Annual Conference, 2001, pp. 581-596; Klein, Dan, "The Voluntary Provision of Public Goods? The Turnpike Companies of Early America," *Economic Inquiry*, October 1990, pp. 788-812; Klein, Dan, Majewski, J., and Baer, C., "Economy, Community and the Law: The Turnpike Movement in New York, 1797-1845," *The Journal of Economic History*, March 1993, pp. 106-122; Klein, Dan, Majewski, J., and Baer, C., "From Trunk to Branch: Toll Roads in New York, 1800-1860," *Essays in Economic and Business History*, 1993, pp. 191-209; Klein, Dan and Fielding, G.J., "Private Toll Roads: Learning from the Nineteenth Century," *Transportation Quarterly*, July 1992, pp. 321-341; Klein, Dan and Fielding, G.J., "How to Franchise Highways," *Journal of Transport Economics and Policy*, May 1993, pp. 113-130; Klein, Dan and Fielding, G.J., "High Occupancy/Toll Lanes: Phasing in Congestion Pricing a Lane at a Time," *Policy Study*, No. 170, Reason Foundation, November 1993; Lemennicier, Bertrand, "La Privatisation des rues," *Journal des Economistes et des Etudes Humaines*, Vol. VII, No. 2/3, June-September 1996, pp 363-376; Semmens, John, "Road to Ruin," *The Freeman* (December, 1981); Semmens, John, "The Privatization of Highway Facilities," *Transportation Research Forum*, (November, 1983); Semmens, John, "Highways: Public Problems and Private Solutions," *The Freeman* (March, 1985); Semmens, John, "Intra-urban Road Privatization," *Transportation Research Record* 1107 (1987); Semmens, John, "Using Competition to Break the U.S. Road Monopoly," Heritage Foundation (December 14, 1987); Semmens, John, "Privatization: Saving While Serving the Public," Goldwater Institute (April 25, 1988); Semmens, John, "Taking Over the Roads," *Liberty* (November 1988); Semmens, John, "Why We Need Highway Privatization," Laissez Faire Institute (March 1991); Semmens, John, "Private Highways? They're Cheaper, Better, Fairer," *Phoenix Gazette* (April 3, 1991); Semmens, John, "The Rationale for Toll Roads: You Get What You Pay For" *Phoenix Gazette* (December 16, 1992); Semmens, John, "Highway Privatization: What Are the Benefits for Arizona?," Goldwater Institute (December 1992); Semmens, John, "From Highways to Buy-Ways," *Spectrum* (Fall 1993); Semmens, John, "How to Solve Mandatory Auto Insurance," Goldwater Institute (July 1995); Semmens, John, "Highway Investment Analysis," Arizona Department of Transportation (December 1994); Semmens, John, "Privatize Driver's License, Registration System," *Tribune* (December 25, 1994); Semmens, John, "Privatizing Vehicle Registrations, Driver's Licenses and Auto Insurance," *Transportation Quarterly* (Fall 1995); Semmens, John,

a catamaran or regular ferry, and/or hinged busses? Transportation should be completely a private matter, with government limited to (at most) upholding the law against criminals, whether foreign or domestic.

Should this given patch of land be used for a golf course, a housing development, a recreational area or a national park? All acreage should be privately owned, and the landlords should make all such decisions.¹³

Milton Friedman is perhaps the most thorough going and determined violator of taxi cab theory of all quasi free enterprise commentators. He is responsible for a large number of policies which are neither defense of governmental status quo, nor, yet, compatible with full free enterprise. For example, he advocates, in addition to school vouchers, a 3% monetary rule instead of the entire elimination of the Federal Reserve System¹⁴. He favors flexible exchange rates between the various fiat national currencies instead of free market money, e.g., gold¹⁵. He champions the negative income tax, eschewing the complete elimination of the welfare system; he has been associated with the withholding tax, an attempt to make an illegitimate tax system more efficient; he favored the volunteer military during the Viet Nam War, as a means of more effectively pursuing this unjustified act of aggression¹⁶.

The radical libertarian perspective enables us to see another panoply of issues in a different light. I refer here to the question of activist courts, legislatures, presidents, states rights, decentralization, subsidiarity, etc.

"Selling the Roads: Privatizing Transportation Systems," *Liberty* (1996); Semmens, John, "Goodbye, DMV," *Liberty* (January 1996).

¹³ The only exception would be for the limited government libertarian, and for land needed to accommodate courts, armies and police.

¹⁴ Friedman, Milton, *Studies in the Quantity Theory of Money*, Chicago: University of Chicago Press, 1956; Friedman, Milton, *A Program for Monetary Stability*, New York, Fordham University Press, 1960; Friedman, Milton, *The Optimum Quantity of Money, and Other Essays*, Chicago, Aldine Pub. Co., 1969; Friedman, Milton and Anna J. Schwartz., *Monetary Trends in the United States and the United Kingdom, Their Relation to Income, Prices, and Interest Rates, 1867-1975*, Chicago: University of Chicago Press, 1982; Friedman, Milton, *Money and Economic Development*, New York, Praeger, 1973; Friedman, Milton, *Money Mischief: Episodes in Monetary History*, New York: Harcourt Brace Jovanovich, 1992.

¹⁵ For a critique, see Block, Walter, "The Gold Standard: A Critique of Friedman, Mundell, Hayek, Greenspan," *Managerial Finance*, Vol. 25, No. 5, 1999, pp. 15-33;

¹⁶ Friedman, Milton, and Friedman, Rose D., *Two Lucky People*, Chicago: University of Chicago Press, 1998; Friedman, Milton, *There's No Such Thing as a Free Lunch*, LaSalle, Ill.: Open Court, 1974; Friedman, Milton, *Tax Limitation, Inflation and the Role of Government*, Dallas, Tex.: The Fisher Institute, 1978; Friedman, Milton, Friedman, Rose, *Free to choose: a personal statement*, New York: Harcourt Brace Jovanovich, 1980; Friedman, Milton, *Capitalism and Freedom*, with the assistance of Rose D. Friedman; Chicago: University of Chicago Press, 1982; Friedman, Milton & Rose Friedman. *Tyranny of the Status Quo*, San Diego: Harcourt Brace Jovanovich, 1984

Remember, we are talking about criminal *gangs*. Surely, the only relevant issue for libertarians is to reduce their depredations by the greatest degree possible, and to undermine their much-vaunted authority. It matters not one whit, then, which *level* of this criminal conspiracy undertakes which act; the only desiderata is to *reduce* statism to the greatest degree possible. Or, rather, it only matters if there is a systematic causal relation, say, between greater decentralization and more freedom. But in any given case, if greater centralization is coupled with more freedom, then it is incumbent upon us to *favor* the policy.

For example, how do we stand on a president withholding funds from a city that practices rent control? This would undoubtedly tend to centralize power.

However, rent control is undeniably a blatant evil. Therefore, we must favor this presidential initiative. We are *not* in the business of accepting a lesser evil, now (e.g., rent control) so as to obviate a later and greater abomination (whatever it is that greater presidential power and centralization will lead to). Rather, we are in the business of opposing all present wrongdoings, period. In any case, without interpersonal comparisons of utility¹⁷, there is simply no way to make such trade offs in any case¹⁸.

¹⁷ For the importance of subjectivism in economics, see Barnett II, William, "Subjective Cost Revisited," *Review of Austrian Economics*, Vol. 3, 1989b, pp. 137-138; Buchanan, James M. and G.F. Thirlby, *L.S.E. Essays on Cost*, New York: New York University Press, 1981; Buchanan, James M., *Cost and Choice: An Inquiry into Economic Theory*, Chicago: Markham, 1969; Mises, Ludwig von, *Human Action*, Chicago: Regnery, 1949, 1963, 1966; Rothbard, Murray N., *Man, Economy and State*, Auburn AL: Ludwig von Mises Institute, 1993; Rothbard, Murray N., "Toward a Reconstruction of Utility and Welfare Economics," in *The Logic of Action: Method, Money and the Austrian School*, Vol. I, Cheltenham, UK: Edward Elgar, 1997.

¹⁸ For an alternative view on this matter, penned by a leading libertarian theorist, see Hoppe, Hans-Hermann, "Introduction to the Ethics of Liberty by Murray Rothbard," in Rothbard, Murray N., *The Ethics of Liberty*, New York: New York University Press, 1998, pp. xli-xlii, who states: "Libertarians, Rothbard stressed ... must be opposed, as are traditional conservatives ... on principled grounds, to any and all centralization of state power, even and especially if such centralization involves a correct judgment ... It would be anti-libertarian, for instance to appeal to the United Nations to order the breakup of a taxi-monopoly in Houston, or to the U.S. government to order Utah to abolish its state-certification requirement for teachers, because in doing so one would have illegitimately granted these state agencies jurisdiction over property that they plainly do not own..."

In contrast, the thesis of the present paper is that it would be entirely justified to appeal to the very devil himself, in order to get rid of rent control, or to break up Houston's taxi-monopoly, or to rid Utah of its state-certification requirement. The argument is that there are really two gangs at war with one another: the local and the more centralized. Neither has any moral inner track over the other (albeit the local is to be presumptively preferred on practical grounds, but this presumption can be overcome when it is stipulated, as it is in this case between Hoppe and myself, that the central, not the local government, is in the right on any particular case). The motto of libertarianism, at

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On the other hand, we would also favor a municipality withholding funds from the central government, if the goal was to stop the latter from pursuing an unjust foreign war. This of course promotes decentralization vis-a-vis centralization, but this is irrelevant to our main purpose.

What of activist vs. strict constructionist courts? Again, this is not our battle. We are sublimely indifferent to such considerations. For us the only thing of relevance is what the activist and strict constructionist courts *do*. If it is in the direction of libertarian principle, well and good. If not, not.¹⁹

2. The State

There are two possible views of the state with which libertarians have associated themselves. One I shall call the moderate libertarian perspective, the other the radical. In the former case, the government means well. It may be inefficient (it *is* inefficient), and perhaps bumbling, in that it does not benefit from the market test of survival²⁰, but, at least in some meaningful sense, it is *us*. That is, it is composed of friends, neighbors, people with whom we went to school, fellow members of the PTA, the Kiwanis Club, etc. It may be prone to err, particularly when it oversteps its proper bounds, but these are sins almost of benevolence, certainly not of viciousness. This moderate view includes both libertarian anarchists²¹ and minarchists.

least the way I see it, is "Justice though the heavens fall!" If the U.N. could have intervened on the justified (e.g., southern side) of the War of Northern Aggression, or in behalf of the Jews in the Nazi concentration camps, or ... my claim is that this would have been entirely compatible with libertarianism. True, the U.N. would have thereby increased its powers, but that is the problem for another day. We do what is right, this minute, and damn the consequences. The alternative is to refuse to do what is justified, at present, because in the future something worse might occur. But suppose that the Martians threatened to blow up the entire earth unless we killed innocent person Smith. The proper libertarian response, I contend, would be to say, "Bomb us and be damned; not a penny, nor a single innocent life, in tribute to evil."

As for "illegitimately grant(ing) these state agencies jurisdiction over property that they plainly do not own," the point is that *neither* level of government has any libertarian legitimacy. This being the case, it is difficult to understand why, purely as a matter of principle, the decision to favor one side or the other can be made on the basis of anything *but* being "in the right on any particular case."

¹⁹ See on this Barnett, Randy E., *The Structure of Liberty: Justice and the Rule of Law*, Oxford: Clarendon Press, 1998; Barnett, Randy E., 1978, "Toward a Theory of Legal Naturalism," *The Journal of Libertarian Studies*, Vol. 2, No. 2, Summer, pp. 97-108; Barnett, Randy, "Pursuing Justice in a Free Society Part One: Power vs. Liberty," *Criminal Justice Ethics*, 4: 50-72, 1985.

²⁰ Hazlitt, Henry, *Economics in One Lesson*, Arlington House Publishers, New York, 1979.

²¹ The only libertarian anarchist who falls into this category is David Friedman. See his

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In the radical world-view, the government is nothing like a doddering old uncle who is well intended but somewhat accident-prone. In sharp contrast, the state is a predatory gang. In earlier days, it attacked peaceful villages, engaged in theft, murder and rapine, and then stole back to its highland hangout. With increasing sophistication, it gave up its hit and run tactics. The next time it attacked the peaceful settlement, it stayed there, taking on the role of the mayor and the town council. The iron fist was still there, but it now became wrapped in the velvet glove of democracy²². And along the way this band of thieves bought out the academic and religious classes, paying them to weave apologetics about its wise and benevolent rule.

This radical view also includes both libertarian anarchists and minarchists, as Chart 1 makes clear. That is, there are radical anarchists (A), moderate anarchists (B), radical minarchists (C), and moderate minarchists (D). The first group (A) would eliminate the government entirely, and interprets it as a predatory gang of criminals. The second group (B) also wishes a total end to the state, but does not see it as a group of crime lords; rather, as bumbling. The third group (C) wants government to be limited to armies, police and courts, and perceives government as a veritable "Murder Inc." when it oversteps these bounds. The fourth group (D) calls for state limitation to the same three functions, but does not at all interpret it as a criminal gang when it exceeds these roles.

Chart 1

	Libertarians	
	Radical	Moderate
Anarchists	A	B
Minarchists	C	D

The usual debate, within libertarian circles, is between A and B on the one hand and C and D on the other. For purposes of the present paper, however, the disagreement is not so much AB vs CD, as it is AC vs BD.

In the BD perspective, the correct attitude toward the state is to rein it in toward its proper role (nothing in the case of B, something limited for D). In sharp contrast, the attitude of AC is pretty much hatred and seething indignation. After all, not only does the state engage in theft on an enormous scale and in

Friedman, David, *The Machinery of Freedom: Guide to a Radical Capitalism*, La Salle, IL: Open Court, 2nd ed., 1989; see also Friedman, David, "How to Think About Pollution; or, Why Ronald Coase Deserved the Nobel Prize," *Liberty*, Vol. 5 No. 3, January 1992, pp. 55-59.

²² For a libertarian critique of this particular curious institution, see Hoppe, Hans-Hermann, *Democracy - The God That Failed: The Economics and Politics of Monarchy, Democracy, and Natural Order*, Rutgers University, N.J.: Transaction Publishers, 2001

massive murder²³, but it has the effrontery to pose as a benevolent institution²⁴.

A word about the seemingly anomalous groups, B and C. One might expect B to take a radical position; after all, they are anarchists. But anarchism, for purposes of this paper applies only to the proper role for government envisioned. It has nothing to do with the perspective from which one views those who violate this limit. Thus, it is a logically consistent position to push for the end of the government, with no wish, whatsoever, for retaliation against the perpetrators. Similarly C. Here, since there is no call for a total end of the government, for its complete elimination, one might think that a desire for revenge would be entirely lacking. But this need not be so; to think that it is, is to confuse what a philosophical perspective considers the proper scope of government with how it views the standing of those guilty of exceeding this scope.

4. Libertarian punishment theory

Suppose it was not the U.S. that had liberated the victims of Nazi Germany, but rather Libertariana, an entity based on libertarian principles²⁵. How would the trials have differed, and in what way might they have been similar? The short answer is that there would have been broad congruencies between the two, but the latter would have been far more extensive. After all, libertarianism consists of a theory of just initial ownership, the proper transfer of property, and thus rectification for its improper transfer, e.g., the return of stolen property. However, this applies not only to physical property, but to human life as well. Say what you will of the Nazis, it cannot be denied that they violated human life on a massive scale, and were guilty of theft of a gargantuan dimension as well. If anyone deserved the hand of justice raised against them, it was they.

²³ Conquest, Robert (1990) *The Great Terror*, Edmonton, Alberta: Edmonton University Press; Conquest, Robert (1986), *The Harvest of Sorrow*, N.Y.: Oxford University Press; Courtois, Stephane, Nicolas Werth, Jean-Louis Panne, Andrzej Paczkowski, Karel Bartosek and Jean Louis Margolin, *The Black Book of Communism: Crimes, Terror, Repression*, trans. from French by Murphy, Jonathan and Mark Kramer, Cambridge, MA: Harvard University Press, 1999; Rummel, R. J., *Death By Government*, New Brunswick, NJ: Transaction, 1994; Rummel, R. J., *Democide: Nazi Genocide and Mass Murder*. Rutgers, New Jersey: Transaction Publishers, 1992; Rummel, R. J., *Statistics on Democide*. Center on National Security and Law, University of Virginia, 1997; Rummel, R. J., *Death By Government*, New Brunswick, NJ: Transaction, 1996.

²⁴ Let it be repeated here: we are now discussing governments such as Nazi Germany, the now happily defunct U.S.S.R., North Korea and Cuba. Nothing herein should be interpreted as applying to the U.S., Canada, Europe, Japan, Australia or any other country I might ever be resident of, or even visit.

²⁵ For the radical minarchists, this would be a libertarian government; for the radical anarchists, this would be a private group of cooperating people.

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Another similarity is that there definitely would have been a Nuremberg type trial had Libertarianism conquered the Nazis, and been placed in a position of trying out justice to them. There is no barrier in this philosophy to ex post facto law. The axiom proscribing aggression against innocent people is the absolute bedrock of civilization. All of those who violate it do so at their peril, in this view, whether they acknowledge this or not, whether they themselves enact legislation incompatible with this principle or not.

In order to probe the extent of libertarian concerns in this venue, it is necessary to first discuss the punishment theory of this philosophy. In encapsulated form, it calls for two teeth for a tooth, plus costs of capture and a premium for scaring. How does this work?

Suppose I steal a TV set from you. Surely, the first thing that should occur when I am captured is that I be forced to return to you my ill-gotten gains. So, based on the first of two "teeth," I must return this appliance to you. But this is hardly enough. Merely returning the TV to you its rightful owner is certainly no punishment to me the criminal. All I have been forced to do is not give up my own TV to you, but to return *yours* to you. Thus enters the second tooth: what I did (tried to do) to you should instead be done to me. I took your TV set; therefore, as punishment, you should be able to get mine (or some monetary equivalent). This is the second tooth.²⁶

But this is only the beginning of the attempt to turn the future back into the sort of place it would have been had the theft not occurred in the first place, the ultimate (and of course impossible) goal of libertarian justice. For so far we have ignored the costs of searching for the criminal, capturing him, trying him, etc. These, too, must be taken into account, apart from the rare exception where the guilt struck criminal turns himself in to the authorities immediately, with a full confession. But even here there is the fourth dimension of crime to be considered. For when I entered your home, in order to steal your TV, you didn't know *what* I was capable of, or intended. In short, I scared you half to death, in addition to making off with your valuable property. Where is the compensation, the "making whole" for that bit of wickedness? In contrast, when I am punished under the rule of law²⁷, there is no such risk. That is, punishment²⁸ is clear and

²⁶ It should be clear why the libertarian punishment theory calls for exactly two teeth, not 1.9 nor 2.1. The first one comes from returning stolen property, the second from doing to the thief what he tried to do to the victim.

²⁷ See Hayek, Friedrich A., *The Constitution of Liberty*, Henry Regnery Company, Chicago, 1960; see also Hamowy, Ronald, "Law in the liberal society: F.A. Hayek's Constitution of Liberty," *The Journal of Libertarian Studies*, Vol. 2, No. 4, Winter 1978, pp. 287-297.

²⁸ This is apart from that "little" matter of the authorities being either so incompetent, vicious and/or both so as to allow the inmates to conduct homosexual rape, beatings and murders against one another.

foreseeable.

In order to make good this imbalance, the libertarian code of justice requires that the perpetrator pay for the fear he imposed upon his victim, in addition to the more objective costs. To this end, all criminals shall be forced to play a game of Russian roulette, with the number of bullets and the total number of chambers to be determined by the severity threat he imposed on his victim. For example, for a relatively minor crime of TV theft, when the owner was not home and the criminal unarmed, with no record of past violence, there might be 1,000 chambers and only one bullet. But, with the victim at home, who is tied up, an armed criminal, a violent background, etc. -- as the risk increases, so does the punishment -- the number of bullets increases and the number of chambers decreases.

So far, we have not mentioned the criterion of crime prevention. That is because the libertarian is not a utilitarian theory of punishment, designed to limit *future* crime. Rather, it is totally backward looking, to the past crime itself. It asks only what is the requirement of justice for that particular rights violation. However, as can be seen, the freedom philosophy implies a far more Draconian approach to crime than most. Crime prevention thus enters the libertarian equation not directly but indirectly. We do not ratchet up the penalties until the optimal rate of crime is reached.²⁹ Rather, we allow the "punishment to fit the crime," and consider such benefits as retardation of future criminality to be much beside the point of justice. As long as justice is done, the future will likely take care of itself.

To whom is the penalty for crime owed? It is to the *victim*, not to "society" or to the state, or to the office of the attorney general, or to any other such entity. As such, the victim is free to forgive the perpetrator for the crime³⁰, or to charge a mutually agreeable monetary fee in lieu of imposing any part of it. For example, the criminal may escape having to play Russian roulette by paying off the victim.³¹

What of the crime of murder? Although this may be more complicated from the libertarian point of view, the very same model, of theft, is employed. What, then, did the murderer steal? Why, he stole a life, of course. Applying the two teeth for a tooth model, then, we arrive at the conclusion that the first tooth

²⁹ For this utilitarian approach, see any mainstream economic treatment of "optimal" crime rates.

³⁰ A pacifist might adopt this as a general policy.

³¹ If there is any fear on the part of victims against further retaliation from the criminal or his friends if the full penalty is imposed, the victim can sign a prior agreement with the private defense agency giving up this right; a limited government police force might be able to offer this service, since it would not be so busy doing everything else under the sun.

would be to transfer the life the murderer stole from the victim, back from him and into the body of the dead victim.

At this point, no doubt, the detractor will criticize that there is simply no way to transfer a life from the body of the live murderer into that of the dead victim. There are several ways to deal with this spurious objection. First, we are here staking out the requirements of justice. The mere state of reality at any given epoch is of no moment whatsoever; justice is timeless. Second, we can posit a machine that can do just that task³². Perhaps, in 10,000 or 100,000 or 1,000,000 years science will arrive at this point. Then, for the concrete bound, there will be a way of actually attaining full justice, as opposed to merely sketching out its contours, as at present. However, this machine, whether or not it ever comes into being, can already play an important role as heuristic device. For with its aid we can now see that the life of the murderer is forfeit. Plain and simple, he took a life; he owes a life. Whether or not this can be transferred to the dead body of the victim, the murderer is no longer the appropriate owner of his own life. If it cannot be transferred to the dead victim, at least it can be given over to his heirs, to do with as they wish. Perhaps they can enslave him for life. Or hang him publicly, charging admission for the spectacle. Whatever.

Of course, with this machine, the case is more direct, at least for the first tooth. However, we need the further assumption that man is like the cat in having nine lives in order for the full panoply of libertarian justice to come into its own. Then, we take one life from the murderer in order to return it to the dead victim, as before. We take a second life from him in order that what he did to another be done to him.³³ We still charge him for the costs of capture, we may conceivably worth a third life, and we certainly force him to play Russian roulette with as many bullets as there are chambers, which yields, for sure, a fourth life. Call it 3 and a half for one; no matter the exact number, it is a reasonably steep price.

This analysis also sheds light on so called mitigating circumstances such as accident, mental handicap, extreme youth of the perpetrator. We can now more clearly see that these are the merest of excuses to evade justice. The difficulty is that the focus is placed almost entirely on the killer. What of the victim? With the latter in the picture (whether through courtesy of the life transfer machine or of the libertarian concern with the return of stolen property), we can see not one but *two* people; not only the person who killed by "reason of insanity"³⁴ or drunkenness, or accident, but also the *victim*. Given that there is

³² See Nozick, 1974, for arguments based on imaginary machines.

³³ This also addresses the issue of whether mass murderers would pay a greater debt than killers of a single innocent victim: yes, they would. They owe a life for *each* of the ones they shed. Too bad cat-humans have but nine lives to give up for this purpose.

³⁴ For an antidote to this sort of thinking, see Szasz, Thomas Stephen, *The Myth of Mental Illness: Foundations of a Theory of Personal Conduct*, New York, Hoeber-Harper [1961]; Szasz, Thomas Stephen, *Law, Liberty, and Psychiatry: An Inquiry into the Social Uses of*

only one life available, but *two* not merely *one* candidates for it, which of them is the *more* deserving of it? Is it the killer, who is at least somewhat responsible, or the victim, who is *totally* innocent of any wrong doing whatsoever? To ask this is to answer it. Consider, even, the two-month old baby who somehow finds a pistol in his crib, pulls the trigger, and kills a passerby³⁵. Who should keep the life now under the control of the baby: the infant, or the victim? It is not a matter of blame³⁶. The baby, certainly, is not blameworthy; but he *did* kill someone³⁷.

5. Nuremberg trials, libertarian style

With this as a background, we are now ready to launch into a consideration of our forthcoming libertarian Nuremberg Trials. It will be remembered that we are concerned with far more than murder or outright theft. *Every* violation of the libertarian code is potential grist for our mill.

a. All are guilty

Suppose that Nazi Germany had a law against the manufacture, sale, transport and use of alcohol. This is clearly incompatible with the libertarian legal code, in that beer, wine and liquor are not invasive weapons. Their use, by adults, is certainly a non-aggressive act. Anyone who used violence against those involved in this industry, whether on the supply or demand side, is thus guilty of criminal behavior. At least as a first approximation, *every* German involved in the promulgation, adjudication, promotion and enforcement of this unjust law is thus guilty of a violation of libertarian principle, and should be treated as a thief, kidnapper, or worse.

Or consider a Nazi German minimum wage law. Surely, it is the right of people to work at whatever wages to which they can mutually agree. Perpetrating a law prohibiting this, such as one mandating wage minima, is thus a criminal act. All those responsible for enacting it, enforcing it, incarcerating violators of it, etc., would therefore have to be considered law-breakers by libertarians.

Another case. It is impermissible for the government to own, manage, run, develop, or have anything to do with roads, streets or highways. For neither

Mental Health Practices. New York, Macmillan [1963].

³⁵ I owe this example to Matthew Block.

³⁶ Intent is not entirely absent from libertarian criminal law. Its presence implies two teeth for a tooth, plus additions; its absence, e.g., accident, calls forth only one tooth, compensation. Also, intent is crucial in distinguishing between a guilty accomplice to a crime, and someone who innocently sells the criminal something necessary to commit his nefarious deed, e.g., food or clothing. I owe this latter point to Michael R. Edelstein.

³⁷ In a real case of this sort, presumably the person who would have to give up his life would be the one who put the gun in the crib, or the guardian who failed to ensure that such an occurrence did not take place.

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minarchists nor anarchist libertarians would the state be involved in this vehicular industry. One possibility, then, is that *any* motorist who uses a highway, along with all those responsible for the improper nationalization of this industry, would be considered guilty of a crime by the libertarian Nuremberg judges. But there are many other facilities typically organized by government which are equally improper under the libertarian legal code: libraries, schools, museums, Post Offices, parks, welfare, social security, socialized medicine, anti trust, rent control, etc.

The problem with arresting and incarcerating all those who have had anything to do with these laws or institutions (and there are many many more) is that virtually the entire Nazi populace would be then found guilty of criminal behavior. The only exceptions might be children, or those long ensconced in mental institutions. But surely there is something profoundly wrong with labeling as criminal virtually an entire society. This is all too similar to the leftist complaint that "we are all guilty" for the sins of modernity. If so, there are some who are much more responsible for social failings than others, so much so that it is only the former who should be considered guilty, and the latter as victims. This is, further, all too similar to the invalid idea that "we are all" the state, or that "Government Are Us." Not only have we already rejected this notion as not compatible with radical libertarianism, it is to be further (rejected) in that if we are *all* guilty, then, none of us really is.

Radical Libertarianism: Applying Libertarian Principles to Dealing with the Unjust Government, Part II

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This is Part II of an essay that attempts to trace out the implications of the libertarian philosophy for the proper relationship between an inhabitant of a country and its unjust government.¹ Part I of this essay included Section 2, which set the stage for addressing this challenging task, Section 3, in which the essence of the state was discussed, Section 4, in which libertarian punishment theory was introduced, the beginning of Section 5, in which the concept of the libertarian Nuremberg trial was explored, and Section 5a, wherein the assumption that all citizens are guilty of the crimes of the unjust state was rejected.

In Part II of this essay, we now begin with section 5b, which considers the possibility that all and only minions of the unjust state are guilty for its crimes, in a continuation of our libertarian Nuremberg trial analysis. Section 5c introduces libertarian ruling class theory. Section 6 traces out the proper relations between the subjects and the unjust government. Section 7 asks whether it is ever legitimate to disrupt such an institution, and we conclude in Section 8.

5b. All and only minions of the state are guilty

A second possibility is that all politicians, judges, bureaucrats, and any other type of government employee of the Nazi German state are guilty of crimes against freedom, and that this applies to no one else.

There are grave problems with this perspective as well. First, it is over-inclusive. It will capture in its net of guilt people at the very bottom of the statist pyramid of power: those who clean government cesspools, carry away the garbage, rake the leaves, deliver the mail door to door, wash the public toilets, etc. These people, surely, are more sinned against than sinning. As well, it includes anyone associated with a public university: professor,

¹ Part I of this paper appeared as Walter Block, "Radical Libertarianism: Applying Libertarian Principles to Dealing with the Unjust Government, Part I," *Reason Papers* 27 (Fall 2004), pp. 117-33.

student, administrator, grounds keeper, etc., and anyone involved in a state hospital: doctor, nurse, floor-sweep, etc. It will also declare guilty those who have striven mightily to overturn the evil system, but from a position within government. Take Ron Paul, for example.² Although he is a member of the U.S. House of Representatives, he is a libertarian in good standing. His congressional votes are all on the side of liberty.³ During any proper libertarian Nuremberg trial, he would be on the bench, not in the dock.

Second, it is under-inclusive. It gives a free ride to all those not officially part of the government who may have nevertheless played important roles in supporting the Nazi evil, for example, the businessmen who bankrolled Hitler into power not out of defensive motives, but for their own purposes,⁴ as well as the intellectuals who wove apologetics and defenses for the regime.⁵

c. Ruling class theory

A third perspective, which far better separates the innocent wheat from the guilty chaff is ruling class theory. It must be admitted at the outset that this sounds rather tinny to the libertarian ear since it is usually couched in Marxist rhetoric. According to Marxism, the ruling class is composed of those who employ labor and the victims are employees. The exploitation of the latter by the former occurs because of the labor theory of value. Workers are responsible for the total product; they receive it, but only when profits are subtracted. The difference between the entire GDP and labor's share of it, typically in the neighborhood⁶ of 75 percent, measures the level of exploitation.

² Whenever a person from the U.S. is mentioned, or from any country other than Cuba, North Korea, the U.S.S.R., or Nazi Germany, I am using him only as a hypothetical example. More specifically, in referring to Ron Paul, I have in mind the contrary-to-fact case of his equivalent in one of these four outlaw states.

³ Typically, whenever there is a 436 to 1 vote, it is Ron Paul who is in the minority.

⁴ Motive is not always unimportant. I argued that it should all but be ignored in the case of accidental murder, or in the shooting of an innocent person by a baby in the crib. However, motive can also determine membership in the ruling class, or not, as I shall discuss below.

⁵ We discuss below the difference between aiding and abetting evil, on the one hand, e.g., being a member of a criminal gang who himself commits no explicit violence such as the getaway car driver, and free speech, on the other hand.

⁶ Morgan O. Reynolds, *Economics of Labor* (South-Western College Publishing, 1995).

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But this is nonsense on stilts, apart from the fact that millions of people have been killed by communists under the banner of this philosophy, and millions more made to suffer economically because of it.⁷ Mud pies are worth far less than cherry pies, even if an identical amount of labor goes in to the creation of the two "products."⁸ A gold nugget lying on the ground in plain sight, big as a fist, is highly valuable, even though it takes no virtually no labor to pick it up. So much for Marxist class theory. But libertarian class analysis is entirely another matter. In this case, the exploiter is not the employer, nor the exploitee the employee. Very much to the contrary, the "bad guy" is the thief or murderer, and the "good guy" is the victim of this aggression against non-aggressors.

John C. Calhoun⁹ noted that the fiscal activities of the government—taxing and subsidizing—necessarily¹⁰ divided the populace into two groups of people: net tax-payers and net tax-consumers. Those who paid in more than they were reimbursed would be considered victims, and those who spent less than they took from the system would be victimizers. This is a reasonably good, but only first, approximation to the distinction between members of the ruled and ruling classes. If we could but ignore what I will below call the Ragnar Danneskjold phenomenon, there would be a perfect congruency between the two sets of concepts.

One group that would receive the attention of our libertarian Nurembergers is, of course, private criminals: purse snatchers, auto thieves, rapists, etc. There is nothing controversial here. But this also applies to all those responsible for government (for the libertarian anarchist) and excessive government (in the case of the minarchist); they would also and very properly be considered criminals. Government of this sort is the very embodiment of

⁷ Eugen Bohm-Bawerk, *Capital and Interest* trans. George D. Hunke and Hans F. Sennholz (Libertarian Press, 1959 [1884]); see particularly Part I, Chapter XII, "Exploitation Theory of Socialism-Communism."

⁸ The Marxist might reply that only "socially necessary" labor counts, and it has been applied to the cherry pie, not its mud counterpart. But this is circular, as the only way we can beforehand know that the one embodies socially necessary labor, and the other not, is by already having information as to the very different values of these two products. That is, there is no definition of socially valuable labor that is independent of markets and consumer demands, the real source of value.

⁹ John C. Calhoun, *A Disquisition on Government* (Liberal Arts Press, 1953), pp. 16-18.

¹⁰ Unless, of course, what each person pays into the government coffers, in the form of taxes, is exactly what he takes out of them in the form of subsidies. But this, in the words of Calhoun, "would make the process nugatory and absurd . . ." Ibid., p. 17.

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the violation of the libertarian non-aggression axiom. The state is systematic, organized, initiatory violence. The only difference between the two sources of brutalization is that the latter has achieved a modicum of legitimacy, based on the massive amounts of its very well invested money in suborning the academic, journalistic, religious and intellectual classes.

A word is needed about free speech. The right to *say* exactly what you please¹¹ is something near to the very core of libertarianism. This philosophy, indeed, takes a rather extremist position on free speech, championing such things as libel,¹² blackmail,¹³ even incitement¹⁴ to violence.

¹¹ On your own property, of course.

¹² Murray N. Rothbard, *The Ethics of Liberty* (New York University Press, 1998), pp. 126-28; Walter Block, *Defending the Undefendable* (Fox and Wilkes, 1991), pp. 59-62.

¹³ Eric Mack, "In Defense of Blackmail," *Philosophical Studies* 41 (1982), p. 274; Rothbard, *The Ethics of Liberty*; Murray N. Rothbard, *Man, Economy and State* (Mises Institute, 1993), p. 443 n. 49; Ronald Joseph Scalise, Jr., "Blackmail, Legality and Liberalism," *Tulane Law Review* 74 (2000), pp. 1483-1517; Walter Block, "The Blackmailer as Hero," *The Libertarian Forum* (December 1972), pp. 1-4; Walter Block, *Defending the Undefendable* (Fox and Wilkes, 1976), pp. 44-49; Walter Block and David Gordon, "Extortion and the Exercise of Free Speech Rights: A Reply to Professors Posner, Epstein, Nozick and Lindgren," *Loyola of Los Angeles Law Review* 19, no. 1 (November 1985), pp. 37-54; Walter Block, "Trading Money for Silence," *University of Hawaii Law Review* 8, no. 1 (Spring 1986), pp. 57-73; Walter Block, "The Case for De-Criminalizing Blackmail: A Reply to Lindgren and Campbell," *Western State University Law Review* 24, no. 2 (Spring 1997), pp. 225-46; Walter Block, "A Libertarian Theory of Blackmail: Reply to Leo Katz's 'Blackmail and Other Forms of Arm-Twisting,'" *Irish Jurist* XXXIII (1998), pp. 280-310; Walter Block and Robert W. McGee, "Blackmail from A to Z," *Mercer Law Review* 50, no. 2 (Winter 1999), pp. 569-601; Walter Block and Robert McGee, "Blackmail as a Victimless Crime," *Bracton Law Journal* 31 (1999), pp. 24-28; Walter Block, "Blackmail and Economic Analysis," *Thomas Jefferson Law Review* 21, no. 2 (October 1999), pp. 165-92; Walter Block, "Blackmailing for Mutual Good: A Reply to Russell Hardin," *Vermont Law Review* 24, no. 1 (Fall 1999), pp. 121-41; Walter Block, "The Crime of Blackmail: A Libertarian Critique," *Criminal Justice Ethics* 18, no. 2 (Summer/Fall 1999), pp. 3-10; Walter Block, "Replies to Levin and Kipnis on Blackmail," *Criminal Justice Ethics* 18, no. 2 (Summer/Fall 1999), pp. 23-28; Walter Block and Christopher E. Kent, "Blackmail," *Magill's Legal Guide* (Salem Press, 1999), p. 109; Walter Block, Stephen Kinsella, and Hans-Hermann Hoppe, "Second Paradox of Blackmail," *Business Ethics Quarterly* 10, no. 3 (July 2000), pp. 593-622; Walter Block, "The Legalization of Blackmail: A Reply to Professor Gordon," *Seton Hall Law Review* 30, no. 4 (2000), pp. 1182-1223; Walter Block, "Threats, Blackmail, Extortion and Robbery and Other Bad Things," *University of Tulsa Law Journal* 35, no. 2 (Winter 2000), pp. 333-51; Walter Block, "Blackmail Is Private Justice," *University of British Columbia Law Review* 34, no. 1 (2000), pp. 11-37; Walter Block, "Reply to Wexler:

And yet, in our analysis, we appear to be not only questioning this stance, but also actively attacking the free speech rights of Marxists, statists, and other opponents of libertarianism.

Nothing could be further from the truth. In the viewpoint being put forth here, communists are free to express themselves in any *private* venue they wish. However, when they take on a position at, say, a state university, now the expression of their ideas takes on a very different and far more ominous perspective. As part and parcel of the apparatus of the state, they are now not merely expressing an opinion; rather, they are now actively aiding and abetting in the rights violations of the multitudes of the people.

Take Hitler, himself, as an example. He may never have pulled a single trigger, nor directly killed anyone. Let us stipulate, only for the sake of argument, that he did not. Are we then to let him off the Nuremberg hook on the ground that he limited himself to an exercise of his free speech rights? Not a bit of it. His role was an instrumental one in the mass murder committed by the Nazi regime; indeed, he played a chief role in this regard. His is not to be interpreted merely as free speech. Rather, he gave orders, with implicit and explicit threats backing them up, which were part of the process of rights violation.

But the same can be said of the Marxist professor in a public university. His salary, too, is paid for out of compulsive levies. He, too, aligns himself with the evil empire, and, by the very nature of the enterprise, promotes his views through force.

Another way to tease out the implications of ruling class theory is to borrow a leaf from the European military practices of the eighteenth and nineteenth centuries. It was typical for each country to impress the common sailor or soldier, but to commission the officers. When captured, the officers were traded for their equivalents in the other army or navy, and given parole for the duration of imprisonment. Often, they were allowed to wear their

Libertarianism, Blackmail and Decency,” *University of British Columbia Law Review* 34, no. 1 (2000), pp. 49-53; Walter Block, “Toward a Libertarian Theory of Blackmail,” *Journal of Libertarian Studies* 15, no. 2 (Winter 2001), pp. 55-88; Walter Block, “The Logic of the Argument in Behalf of Legalizing Blackmail,” *Bracton Law Journal*, 33 (2001), pp. 56-80; Walter Block and Gary Anderson, “Blackmail, Extortion and Exchange,” *New York Law School Law Review* 44, nos. 3-4 (2001), pp. 541-61.

¹⁴ Rothbard, *The Ethics of Liberty*, p. 126; for a critique of this position, from a self-styled libertarian, see Frank van Dun, “Against Libertarian Legalism,” *Journal of Libertarian Studies* (forthcoming); for rejoinders, see Walter Block, “Reply to ‘Against Libertarian Legalism’ by Frank van Dun,” *Journal of Libertarian Studies* (forthcoming), and Stephan Kinsella, “Rejoinder to van Dun on Libertarian Legalism,” *Journal of Libertarian Studies* (forthcoming).

swords. A different fate awaited the commoners; they were impressed into the fighting forces of the country that captured them.¹⁵

The point of this analogy is to blame the officers of the government, but not the common soldiers. Just as the Nuremberg trials went after the general and colonels, not the privates and corporals, the libertarian authorities will make a similar distinction with respect to the minions of the state.

Well, then, who are the leaders of the modern state, or the officers, and who are the followers, or the common soldiers? There are no hard-and-fast conclusions; there are gray areas; there is a continuum, perhaps, between guilt and innocence; there are complications. Nevertheless, through the clouds and fog, there are principles that can help us shed light on the issue.

Let us first divide governmental activities into two categories: those things that are intrinsically evil, and those which would occur even in a free society, but which are improperly taken over by the bureaucrats. In the first case, for example, it is wrong, plain wrong, to incarcerate people for engaging in prostitution, drug sales, paying wages below legal minima, or charging more than allowed by a rent control law. Everyone, *everyone*, directly involved in such viciousness, without exception, would be considered guilty of a rights violation, and punished appropriately by a libertarian court. This includes, but is probably not limited to, the police who capture such people, the wardens who jail them, the attorneys general who prosecute them, the judges and juries who find them guilty, etc. However, it would *not* include people only indirectly involved in such activities, such as those who sweep the floors in the court houses which find guilty such innocent (but actual) violators of these unjust laws, nor in the jails which later house them.

Members of the coast guard and soldiers fighting in defensive wars would have nothing to fear from the libertarian court.¹⁶ Matters would be completely otherwise for those who have taken part in foreign wars of aggression, when there was no attack from them on the shores of the U.S. But members of the Federal Reserve System, that is, those from the professional "officer corps" and above certainly would, since there could be no such thing as a central bank in the pure free market.¹⁷

¹⁵ Similarly, when captured by barbarian forces, the common soldiers were sometimes impressed into the new army, while the officers were typically killed.

¹⁶ This applies to *both* anarchists and minarchists. For these are legitimate roles that would be filled in the free society.

¹⁷ See Murray N. Rothbard, (1994), *The Case Against the Fed* (The Mises Institute 1994); and Murray N. Rothbard, *The Mystery of Banking* (Richardson and Snyder, 1983).

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Now consider functions of government that are legitimate, or, rather, would be were they carried out by private enterprise, such as the provision of roads, libraries, schools, museums, post office, welfare (private charity), health, hospitals, etc. It would be only people at the very top of these institutions who would be considered as members of the ruling class. For example, the Postmaster General and but a handful of his top administrators would be deemed guilty of violating the libertarian edict against non-aggression. True, private enterprise equivalents would or could exist, but we cannot forget that these people have taken a leading role in managing what is an *illegitimate* enterprise, if only because it is in the public sector.

So, one general principle is that intrinsically evil government actions are to be penalized very heavily, reaching, down, for example, to the cop on the beat who busts a prostitute or drug dealer, but not to the handyman who fixes toilets in the police station, while for those functions that are not intrinsically evil (e.g., a government day care center) only those at the very top would be good candidates for membership in the guilty or ruling class. Another general principle is that the higher up you are placed in the hierarchy of government, the greater is the presumption that you are part of the ruling class.

Let us illustrate this with a three-by-three matrix, offering three choices on the two dimensions of intrinsically evil, intermediate, and not intrinsically evil, with high, medium, and low options.

<u>Evil:</u>	Yes	Intermediate	No
<u>Degree:</u>			
High	A	B	C
Medium	D	E	F
Low	G	H	I

Let us suppose that A is the judge or legislator who promulgates the policy of setting free murderers and rapists who are guilty beyond any doubt at all on the totally frivolous and spurious grounds that they were not Mirandized, or that the arresting officers had no ground to search the premises of the murderer,¹⁸ D is the police captain who orders his beat cop to carry out

¹⁸ Libertarians hold no brief with the thumbscrew school of interviewing prisoners. But if the police err in the enthusiasm of their interviewing techniques, then surely it is *they* who should be punished, proportionally to the crime committed. To allow a stipulated murderer or rapist to roam free as a result is surely a perversion of justice.

this malevolent plan, and G is the jailer who sets free the murderer.¹⁹ It is clear that A is by far the most guilty, D occupies an intermediate position, and that perhaps only a light penalty should be imposed upon G.

Anti-trust is an illegitimate law, since people are punished who did not initiate any violence or theft against anyone else.²⁰ Again, the legislators, judges, and top prosecutors responsible for this occupy the top position of guilt, or B, the assistant prosecutors position E, and the professionals who take part in this judicial travesty (e.g., legal aides, assistants, researchers) position H. But promoting murder and rape are far more serious crimes against humanity than is punishing economic non-crimes such as monopolization. Therefore, the guilt level of A would be the most serious; B and D might be roughly equal, as are E and G. The Librarian of Congress, call him the Chief Librarian of the country, would occupy position C, and would achieve a level of guilt similar to that attained by E and G. In other words, there is a rate of exchange between height in the hierarchy and evilness of the deeds.

A similar analysis would apply to several types of courts. If what a court is confined to doing is per se violations of human and property rights (e.g., courts upholding and promoting slavery in the pre-Civil War South, or

¹⁹ Remember that, under the libertarian code, a murderer owes a very heavy debt to the victim or his heirs. Anyone who allows him to escape is thus "stealing" from the latter.

²⁰ On this point, see William Anderson, Walter Block, Thomas J. DiLorenzo, Ilana Mercer, Leon Snyman, and Christopher Westley, "The Microsoft Corporation in Collision with Antitrust Law," *The Journal of Social, Political and Economic Studies* 26, no. 1 (Winter 2001), pp. 287-302; Dominick T. Armentano, *The Myths of Antitrust* (Arlington House, 1972); Dominick T. Armentano, *Antitrust and Monopoly: Anatomy of a Policy Failure* (Wiley, 1982); Dominick T. Armentano, *Antitrust Policy: The Case for Repeal* (The Cato Institute, 1991); Donald Armstrong, *Competition versus Monopoly: Combines Policy in Perspective* (The Fraser Institute, 1982); Walter Block, *Amending the Combines Investigation Act* (The Fraser Institute, 1982); Walter Block, "Austrian Monopoly Theory – A Critique," *The Journal of Libertarian Studies* 1, no. 4 (Fall 1977), pp. 271-79; Walter Block, "Total Repeal of Anti-trust Legislation: A Critique of Bork, Brozen, and Posner," *Review of Austrian Economics* 8, no. 1 (1994), pp. 35-70; Thomas J. DiLorenzo, "The Myth of Natural Monopoly," *Review of Austrian Economics* 9, no. 2 (1997), pp. 43-58; Donald J. Boudreaux, and Thomas J. DiLorenzo, "The Protectionist Roots of Antitrust," *Review of Austrian Economics* 6, no. 2 (1992), pp. 81-96; Jack High, "Bork's Paradox: Static vs Dynamic Efficiency in Antitrust Analysis," *Contemporary Policy Issues* 3 (1984-1985), pp. 21-34; Fred McChesney, "Antitrust and Regulation: Chicago's Contradictory Views," *Cato Journal* 10 (1991); Murray N. Rothbard, *Man, Economy, and State* (Nash, 1970); William F. Shugart II, "Don't Revise the Clayton Act, Scrap It!" *Cato Journal*, 6 (1987), p. 925; Fred L. Smith, Jr., "Why not Abolish Antitrust?" *Regulation* (Jan-Feb 1983), p. 23.

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landlord-tenant courts in a city with rent control), then guilt reaches further down into the hierarchy than for more ordinary courts, which combine legitimate functions (e.g., stopping crime with real victims) with illicit statist activity.

Another complication is that all of this can be used only to establish a refutable presumption. For example, suppose that a Nazi German equivalent of our Saint Ron Paul were to become chief librarian to the country, in category C. Would he necessarily have to pay the moderate penalty appropriate for that position? Not necessarily. If he could prove that he was really a "mole," or an enemy of the evil state, working behind "enemy lines," he would certainly save himself from such a fate. For example, if he contributed money surreptitiously (but not anonymously) to libertarian causes, this would certainly be evidence in his favor.

What about businessmen who are hand-in-glove with the apparatus of the state? According to Rand,²¹ businessmen are "America's Most Persecuted Minority." What with the modern level of regulations, there is no doubt at least some truth to this contention. But the issue is far more complicated than this. For there are also businessmen active in the dissolution of the free-enterprise system. They do so, presumably, for ideological reasons of their own, or in order to attain a short-run profit advantage.²² That is, they actively promote government intervention into the economy in general, and subsidies (and/or the reduction of competition against them) for themselves. The key element in guilt or innocence, unfortunately, is often motive. A ruling class businessman and an innocent one might undertake very similar or even the same acts (e.g., contributions to politicians, bribes to public officials, etc.). The difference is that the one is an initiator of the system, while the other only engages in such acts out of self-defense. How do we tell the difference between them?

Evidence for the difference consists, in part, of the publications and speeches of the business executives. If they are promoting regulations to handicap their competitors, then this is an indication of ruling class behavior. As a first approximation, if they oppose subsidies to firms in their industry, but fight for them if others are given them, then this is evidence in the other direction.²³ How about if they voluntarily contribute money to the

²¹ Available online
at <http://www.free-market.net/features/pageoftheweek/98spring.html>.

²² Gabriel Kolko, *Triumph of Conservatism* (Quadrangle Books, 1963).

²³ But see the discussion below of accepting government subsidies.

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government or to ruling class institutions such as Harvard²⁴ or Yale Universities? These acts would clearly support membership in the ruling class.

Bill Gates²⁵ is an anomaly in this regard. On the one hand, some of his own signed editorials are very much in keeping with the free market philosophy,²⁶ while others are not²⁷; on the other hand, his charitable giving seems directed toward Harvard University, surely no bastion of laissez-faire capitalist thinking, and other similar institutions beloved of the liberal left.

²⁴ I again remind the reader that the examples used in the text are *not* from the United States. Therefore, the names of the universities mentioned should be read as “the equivalent of Harvard and Yale in a country which has an illegitimate government, such as North Korea, Cuba, Nazi Germany, the USSR, etc.”

²⁵ Ditto. This should be read as “the equivalent of a Bill Gates character in a rogue country.”

²⁶ Available online at <http://home.laforge.com/~iicsla/politics/gates.htm>; <http://www.cato.org/gatesvisit.html>.

²⁷ Here is a question posed by the *Marin Independent Journal* (August 3, 1998), p. C5, followed by an answer from Bill Gates:

Q: “In a speech, you spoke of bringing citizens and the government into closer contact via a ‘digital nervous system.’ Don’t you think that this concept is contrary to what people want—distance from the government?”

A: “Government is pervasive, and most interactions people have with it are positive. Governments create order and provide services, including school and health systems.

“Even if you don’t personally reach out to the representatives of government, certain infrastructures and issues related to the rule of law are important to you. Nobody challenges the right of governments to issue a parking ticket, or to ask you to get a business license or a passport or to pay your real estate taxes.

“Because we agree these are legitimate functions of government, why not use technology to make government more efficient, for the benefit of the people it serves—you and me?

“As we make governments more efficient by equipping them with digital nervous systems, they’ll have new potential to gather and consolidate information about individuals and groups. This will give rise in many societies to explicit rules about what governments can or can’t do with the information they accumulate.”

The problem here, it should be clear to any libertarian, is that there is nothing here that couldn’t or wouldn’t be articulated by Hillary or Bill Clinton. This sort of thing will not save “a” Bill Gates from the libertarian tribunal.

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The foundation he has set up promotes almost entirely left-wing socialistic causes.

What is the dividing line between universities in the ruling class and those apart from it? A first approximation is that all public institutions of higher learning are illegitimate. This follows directly from the fact that education is not a proper role for the state. But what of private colleges? Some are, some are not; Hillsdale College, Grove City College, and Bob Jones University clearly fall outside of the realm of ruling class institutions. None of them accepts any government money whatsoever, not even scholarships directed at students. In that way, they are not subject to onerous rules such as those mandating affirmative action.²⁸

But ruling class status does not depend upon the amount of money received from the government, for, as we shall see below when we discuss Ragnar Danneskjold, it is *licit* for non- ruling class members to relieve the government of its ill-gotten gains. The criterion, then, must be something else, similar to that used to separate the business sheep from the business goats: principles espoused in speeches and publications on the part of the owners, boards of trustees, presidents, and other high officers of the establishment.

Thus, Harvard, Yale, Princeton, and other Ivy Leaguers are members of the ruling class in good standing *not* because they accept (scads of) government money, but rather, because they are diploma mills for the government. They weave apologetics for its rule; they are safe houses for out-of-work politicians; they provide vast armadas of professorial talent to the government²⁹ for programs not compatible with libertarianism.

University professors also furnish an interesting example with which to flesh out our theory. Those working at non-ruling class (non-public, and non-private but non-ruling class) institutions may profess on their own time and with their own private property anything they wish without falling afoul of libertarian sensibilities. The right of free speech, after all, protects them from violence no matter what they say. They can advocate the complete takeover of private initiatives if they wish, and libertarianism stands foursquare behind their right to mouth such platitudes.

However, the presumption of innocence vanishes when one enters the halls of a ruling class institution. Now, a bit more care needs to be taken. Publications and speeches no longer need be interpreted purely as a matter of

²⁸ All, however, were among the earliest to accept blacks and women as students and teachers.

²⁹ G. William Domhoff, *The Higher Circles: The Governing Class in America* (Vintage Books, 1971); G. William Domhoff, *Who Rules America?* (Prentice-Hall, 1967).

free speech. In this venue the professor is part of an apparatus that is engaged in a massive enterprise of rights violations. He indulges in his free speech only at his own risk. It is the difference between a Nazi scribbler on his own and as part of the public relations apparatus of the German regime. The role of "court historian" is a pivotal one, potentially a dangerous one.³⁰

What is proper behavior in the modern mixed economy? In a word, it is to act in such a way as not to invite the negative attention of the future libertarian Nuremberg tribunal.

If you want to go "behind enemy lines," so to speak, and become a bureaucrat, an advisor, a judge, a politician, or a general in the army, then clear it with at least one libertarian who stays "out" of the closet. Do this, or risk becoming indistinguishable from real anti-libertarians.³¹

Don't do anything evil per se. If you join the FBI, then don't shoot or fire-bomb innocent people at places like Waco or Ruby Ridge. Don't become a murderous bastard. Don't violate libertarian law in any way. If you are a prosecuting attorney, then don't take on drug cases. If you are a cop, then don't arrest prostitutes (or Johns). If you are a faculty member in a ruling class institution, then don't profess statism, unless it is on your own time, separate from any organized criminal behavior such as occurs at all state universities and most "private" ones (e.g., the ones that are part of the ruling class). In the free society, there will of course be policemen, prosecuting attorneys, and professors, but not ones who act incompatibly with the libertarian strictures of non-aggression.

6. Proper Relations between the Subjects and the Government

Let us consider a series of cases under the rubric set out in the previous subsection. Should the libertarian use the public sidewalks? At first glance, this would appear to be a trap for the follower of this philosophy. For in the ideal fully free society, there would be no such thing as socialized sidewalks. All would be privatized. It would appear, then, that for the libertarian who favors privatization to nevertheless utilize governmental

³⁰ Available online at <http://www.mises.org/fullstory.asp?control=1541>; <http://www.mises.org/blockonmnr.asp>; http://www.mises.org/misesreview_detail.asp?control=28&sortorder=issue.

³¹ At the risk of being overly repetitive, I again reiterate that the only countries under discussion for a future Nuremberg trial on libertarian principles in this essay are those with "bandit" governments, such as Mao's China, Stalin's Russia, Pol Pot's Cambodia, Hitler's Germany, and Castro's Cuba.

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amenities of this sort is the rankest of hypocrisy. "Why can't you act consistently with your own principles?" the critic might ask.³²

There are more than mere sidewalks at stake, here. For this problem applies to *everything* now provided by the state for the anarchist libertarian, and to everything except courts, armies, and police for the minarchist. Were the libertarian forced by the logic of his own premises to eschew everything from roads to libraries to schools to museums to baseball stadiums to welfare offices to social security benefits to unemployment insurance to use of U.S. fiat currency, he would be driven to lead a very narrow and constricted life, one, perhaps, of complete hermitage.

Unfortunately, the libertarian response to this challenge has been less than fully satisfying. For example, states Jane Shaw, "I cringe at the thought of well-off and able-bodied friends accepting unemployment compensation, but I generally accept the fact that there is no immorality in receiving what's available. I expect to receive Social Security. I do not think that we must all be as high-minded as Rose Wilder Lane and reject it."³³

There are problems here. If it is moral to accept government largesse, why the "cringing"? If it is "high-minded" to reject statist benefits, then there *must* be at least some immorality involved in accepting it. It would appear that there is more than just a little bit of ambivalence involved in this perspective.

The problem comes about, I contend, due to failure to perceive (excessive) government as a criminal activity. Once we realize that the state is nothing more than a puffed-up robber gang with great spin-doctors,³⁴ relations with it become clear.

Suppose that the local Mafia, or Blood, or Crips, or Jesse James Gang were to come around to your neighborhood, force you and all your neighbors to pay for sidewalks or a retirement plan, and then actually spend some small proportion of the "swag" on these amenities in your behalf.

³² For another reply, see Roy Whitehead and Walter Block, "Direct Payment of State Scholarship Funds to Church-Related Colleges Offends the Constitution and Title VI," *Brigham Young University Journal of Public Law* 14, no. 2 (2000), pp. 191-207.

³³ Jane Shaw, "Responsibility and the State," *Liberty Magazine* (September 1998), p. 10.

³⁴ All right. Give the devil his due. I refer to no less than the best public relations efforts in the history of the universe. Who else could fool the populace into believing that the institution that has murdered more innocents than any other is actually our friend? R. J. Rummel, *Death by Government* (Transaction, 1996), calculates the total number of noncombatants killed by their own governments during the twentieth century as 169,198,000.

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Would you have any reservations at all about accepting this largesse, which you had paid for in the first place? Not at all. It was theft, pure and simple, on their part. In allowing you to avail yourself of these programs, you are merely engaging in a bit of returning stolen property. You would have no compunctions about this at all. It would not at all be "high-minded" to refuse. "Cringing" would be the last thing on your mind. You might admire the audacity of the gang in thinking they could actually buy your good will by returning a small part of what they had stolen from you, but there would be absolutely no guilt involved on your part in accepting their largesse, which stemmed, originally, from your pocket.

But let us pursue this example further. Would you have any moral reservations about breaking into this gang's warehouse in the middle of the night, assuming that you could get away with it for sure, and relieve them of their ill-gotten booty? No more so than with any other gang, criminal conspiracy, or group of pirates. These people are the lowest of the low, and pretty much anything you do to or against them will be more than fully deserved.

We can also see that the proper reply to the question of why libertarians are justified in walking on public sidewalks even though they oppose them cannot be answered by resort to legality. That is, the fact that it is legal to traverse public sidewalks is no answer at all. For the law, as enacted, that is, *de jure* law, is what *they* have determined it should be. There is a *higher* law, libertarian law, and the laws of the land, particularly of rogue states such as Nazi Germany, Stalin's USSR, etc., are of no moment at all. Their doctrine is that of legal positivism, that is, whatever the law is, that is the correct law; this doctrine deserves to be consigned to the dust bin of legal theory. Were we to accord any credence to this theory at all, this would sound the death knell of the Nuremberg trials, whether on a libertarian basis or any other. For, according to legal positivism, whatever the law is, it is justified. So, too, would be the argument: "But I was only following (legal) orders." The real Nuremberg trials gave the back of their hands to this claim, and very properly so.

As it happens, the Nazis came to power not through a *coup d'etat*, but rather, as a result of *democratic elections*. So much, therefore, says the libertarian, for democratic elections. Merely because a majority of people can be fooled, or inspired, or convinced of anything at all, this does not make it right. Were democracy a good justification for anything, it could be used (horrors!) to defend Nazi depredations. Nor was there ever any prior

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agreement to be bound by ensuing elections, which would indeed lend them some much needed libertarian legitimacy.³⁵

But suppose that a stranger came to your neighborhood and passed by on the sidewalk. He had made no financial contribution to the creation of the sidewalk, since he did not live in the area under the control of the gang. Would he have any right to walk on this public property? Or, were he to be able to break into the gang's warehouse and take some of their stolen property, would he be in the right in doing so?

For the libertarian, these are questions it is easy to answer in the positive. For if there is anything clear, it is that the *gang* is the sole "bad guy" in this little scenario, and that anything done to them, up to and including exacting two teeth for a tooth from them, would be justified.

The point is that while "getting my own money back" is indeed a sufficient justification for relieving the state of its ill-gotten gains, it is by no means a necessary one. *Anyone*, whether stolen from by the government or not, is justified in taking from the public coffers.³⁶ Note my steadfast refusal to refer to taking from the government as "stealing." This is because, as a matter of logic, it is only possible to steal from the rightful owner. When one relieves the thief (e.g., the illicit government) of what it had itself stolen from the citizenry,³⁷ this is not theft, but a transfer of funds away from robbers. It is a logical impossibility, a veritable misuse of language, to describe taking from a thief as "robbery." Thieves are by the laws of logic prevented from stealing from those who are not the rightful owners; from them, they can only "liberate" or "transfer from," but never "steal."

But what of the original and rightful owners, those whose private property it was before the renegade government stole from them? Shouldn't the liberator of state property return what he has taken from governmental coffers to these people?

Let us put this in letter format. A stands for the rightful owner, B stands for the evil government which has stolen A's property through taxation,

³⁵ On this point, see Lysander Spooner, *No Treason* (Ralph Myles, 1966 [1870]); Roberta A. Modugno and Murray N. Rothbard, e l'anarco-capitalismo americano (Soveria Mannelli, 1998).

³⁶ The headline of the *U.S. News and World Report* of August 3, 1998, states: "Dirty Diamonds: How the FBI and some Honest Moscow Cops Broke Up a Ring that was Looting Tons of Gold and Gems from the Russian National Treasury." Had this applied to the evil empire U.S.S.R., then, according to the logic of this article, it would have been fully justified.

³⁷ Yet again, here is a reminder. We are now limiting our discussion to countries such as the old U.S.S.R., Cuba, North Korea, and Nazi Germany.

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and C depicts the heroic Ragnar Danneskjold,³⁸ who relieves B of its booty. One important question which arises is, Must C return the stolen property back to its rightful owner, A? And the libertarian answer to this question is, Yes, but

Yes, but what? There are several complications. First of all, let us get one thing straight. Even if Danneskjold does *not* return the property to the rightful owner,³⁹ the situation is far improved, from a libertarian point of view, compared to the one where he does not get into the act at all and the government, B, keeps the entire swag. Let us put this into hierarchical order.

I. The best case scenario: B steals money from A; C takes money from B and returns it to A.

II. The next best case: B steals money from A; C takes money from B and keeps it for himself.

III. The worst case: B steals money from A; C does nothing; B keeps its prize.

Yes, we do well to dwell on the fact that I is preferable to II from a libertarian perspective. However, let us spend a little time, also, in contemplation of the undeniable fact that II is also vastly preferable to III, which is the status quo in all too many cases. Surely, it is better that a *non-thief*, Danneskjold, end up with the valuables, than that a *thief*, the government, be placed in this position.

The second complication is as follows. How *much* of the stolen property that C just took from B does he have to return to A? At first glance, this seems simple. Why, all of it, is the easy response. A utilitarian consideration, perhaps not even worthy of mention, is that if C has to return all of A's losses to him, then he has no financial incentive to beard the den of B and relieve him of his improper enrichment. B, after all, is a powerful, evil government. It is no mean attainment to be able to break into (a non-U.S.) Fort Knox and transfer money out of that stronghold. If *all* of it must go back to A, only benevolence will be the motivator of this act in the first place. But we all know what Adam Smith⁴⁰ said about benevolence. Surely, we would

³⁸ Ayn Rand, *Atlas Shrugged* (Random House, 1957).

³⁹ We are, of course, now assuming that this rightful owner is not a member of the ruling class. If he is, then his claim over this property is greatly and perhaps fatally compromised.

⁴⁰ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (Modern Library, 1965 [1776]), pp. 26-27: "It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity but of their

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do well to consider, also, self-interest, particularly if we want to encourage relieving the state of its illegitimate gains.

But this, as I say, is merely a utilitarian consideration. More to the point, C is *owed* something for undertaking this Herculean task. There is a principled justification for allowing Danneskjold to keep part of what he returns. This is based on the law of the sea merchant, which is a part of the common law.⁴¹ When ships are lost at sea, the common practice, instituted throughout many centuries and thus entrenched in the common law, was for the salvager to keep one third of the value of what he turned over to the original owner. I suggest that we borrow a leaf from this tried and true practice, and apply it to the present situation. Accordingly, C would be compelled, on pain of violating libertarian law, to return only 2/3 to A⁴² of what he takes from the coffers of B.⁴³

advantages"; see also, Arthur Seldon and Ralph Harris, "Not from Benevolence: Twenty Years of Economic Dissent" (Institute for Economic Affairs, 1977).

⁴¹ Bruce L. Benson, "The Spontaneous Evolution of Commercial Law," *Southern Economic Journal* 55 (1989), pp. 644-61; Bruce L. Benson, *The Enterprise of Law: Justice Without the State* (Pacific Research Institute for Public Policy, 1990); Bruce L. Benson, "Customary Law as a Social Contract: International Commercial Law," *Constitutional Political Economy* 2 (1992), pp. 1-27; Bruce L. Benson, "The Impetus for Recognizing Private Property and Adopting Ethical Behavior in a Market Economy: Natural Law, Government Law, or Evolving Self Interest," *The Review of Austrian Economics* 6, no. 2 (1993), pp. 43-80.

⁴² I am unable to intellectually justify 2/3 as opposed to 1/2 or 3/4 or 4/5. This is in sharp distinction to the case of *two* teeth for a tooth.

⁴³ This case must be distinguished from another one with the same 1/3-2/3 split. During the epoch of U.S. slavery, white masters in effect stole labor from blacks, and used this to enhance the value of their holdings. Full justice at the end of the Civil War would have implied the application of "two teeth for a tooth" against the masters on behalf of their slaves. But what can be done at present, some 150 years later? The land that white grandfather W passed on to his son, W', which is now in the hands of the grandson, W'', should instead have been given to slave B, who, in the ordinary course of events would have bequeathed this to his son, B'. In justice, B'', the black grandson of the slave would now be in possession of this property.

The libertarian answer is to now change the present pattern of property titles so as to as closely as possible approximate what *would* have obtained were we able to promote justice at the earliest possible moment. What this means, specifically, is that the land which embodies the labor of B should be taken away from W'' and turned over to B'. W'' is himself innocent of the crime of slave holding (e.g., kidnapping); thus, this is not a *punishment* directed against him. But W'' is now sitting on property which, in justice, never should have been given to him in the first place. He must vacate it.

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Let us now consider an attempted *reductio ad absurdum* of the libertarian perspective on justice in property titles. I have been employed as a college professor for a governmental institution.⁴⁴ Let us suppose further that I came from another country,⁴⁵ and thus there was no question of getting my own money back, or that which my parents had spent in my behalf, from the state. You now approach me and demand 1/3 of my salary (your buddies wait behind you to also insist on their 1/3 of my rapidly decreasing funds). Have I a leg to stand on, or must I give in to your demands?

There are several possible responses. First, why don't you go and get your money directly from the criminals, not from those, such as myself, who are themselves acting in opposition to them? Under the theory of the enemy of my enemy is my friend, you are, in attacking me in this way, supporting the state. That is, you are removing my economic incentive to relieve the state of its illicit gains. Thus, you perhaps reveal yourself as a member of the ruling class.

Suppose that this land is worth \$1 million, but W" has erected a house on it with a value of one-half million dollars. He did so with his own rightful earnings. Who should get what? The answer is that W" should keep 1/3 of the total value, and B" 2/3. This familiar set of fractions does not emanate from salvage considerations, but merely from the accident of these numbers. For more on this point, see Murray N. Rothbard, "The Problem of Land Theft," in *The Ethics of Liberty* (New York University Press, 1998), pp. 63-67; see also Walter Block and Guillermo Yeatts, "The Economics and Ethics of Land Reform: A Critique of the Pontifical Council for Justice and Peace's 'Toward a Better Distribution of Land: The Challenge of Agrarian Reform,'" *Journal of Natural Resources and Environmental Law* 15, no. 1 (1999-2000), pp. 37-69.

Consider another complication. Suppose that 100 slaves worked on the plantation, but only one heir of any of them, B", can now be found. Does B" get the entire value of the landed estate (apart from the house), or only one percent of it. The answer is the latter. For possession is 9/10ths of the law. He who is the present land holder (W" in our case) is always deemed to be the proper owner, unless evidence to the contrary can be adduced. But the claim of B", stemming from the work of his grandfather, B, can at most encompass what *he*, B, that is, contributed to the enhancement of the value of the property. The other ninety-nine percent of the value of this land will remain with W", until and unless other grandchildren of slaves come forth with proof of parentage.

⁴⁴ It is full confession time. As it happens, during my career as an academic, I have been employed by the following fully public institutions: Stony Brook SUNY, Baruch College CUNY, Rutgers Newark, and the University of Central Arkansas. I have also been employed by Holy Cross College, which is clearly "ruling class" in terms of the present analysis, in that it takes anti-free-enterprise institutional positions.

⁴⁵ Or a different planet, as some of my detractors might suppose.

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Second, I owe at most only 1/3 of any property I took from the government, not a series of 1/3 of what I have remaining from this amount to all and sundry. Once I have paid this amount, I owe no more.

Third, while I owe 1/3 to *some* victim of state aggrandizement, it need not be *you*. I can if I wish choose the victim *I* wish to compensate. In the novel *Atlas Shrugged*, Danneskjold chose Hank Rearden as the person he first wished to compensate out of liberated funds. Surely, this choice would, similarly, be up to me, given that I am in this position.

Fourth, this consideration will only disrupt the financial incentive libertarian professors have in working for the state, given the assumption that the government has not all along been taxing them. It is only a possible *reductio*, that is, for those from another country—given no entangling relations between their host and original nations, which is another unlikely assumption.⁴⁶

7. Disrupting Government

a. Destruction

Is it legitimate to disrupt government, to destroy its property? Of course; remember that we are discussing such states as the USSR, Cuba, North Korea, and Nazi Germany. Why ever would it *not* be licit to interfere with these evil empires, and as much as ever possible?

Let us consider libraries, for the moment. Here, we are not discussing a libertarian borrowing a book, even though he opposes public libraries; we have already answered the possible charge of hypocrisy. Nor, yet, are we thinking about borrowing a book, not returning it, and somehow escaping the payment of a fine. We are asking whether it is legitimate to blow up the public library. And the answer must be in the affirmative for the libertarian, but subject to one constraint: no innocent persons must perish, or

⁴⁶ What of the argument that if the state taxes people, then it at least returns to them services which, by the very nature of things, are at best far more valuable than what was taken? If so, then there is no warrant to consider the government as a thief, nor that it has any "ill-gotten" gains of which it would be justified to relieve it.

This argument cannot be accepted, because the chief element in proving benefits is mutual agreement. That is, if I trade you my tie for your pen, then the outside economist is forced to conclude that I value your pen more than my tie (otherwise, why would I give up my tie for your pen?) and that you make the opposite evaluation. But if we were *forced* to make this trade, then no such conclusion would be warranted. As all dealings between government and individual are under duress, we can never conclude that they are beneficial.

even be (physically) harmed, as they were at the blowing up in 1995 of the Murrah Building in Oklahoma.⁴⁷

Let us consider a few objections to the foregoing view. First, it is one thing for Dannekjold to liberate government property, and to do so without destroying it; in this way, he could always, at least in principle, return it to its rightful owners. But when C destroys the property now in B's hands, which actually belongs to A, then the very possibility of return is destroyed as well. Therefore, it is never justified to destroy government property.

The problem with this objection is that it is *no longer* A's property; it is *now*, actually, the property of the *state*. Of course, it is still the legitimate possession of A; this can never change.⁴⁸ But that is entirely irrelevant to the point that, but for libertarian activity to the contrary, this bit of property will remain in state hands, presumably to be used for evil purposes. Surely, it is preferable that the property be destroyed rather than be used by the government to reduce human welfare.

Here is another case. Dannekjold is about to toss a hand grenade at a Nazi German Panzer tank, when along comes A, who argues, "No, don't do it! One thousandth of the value of that tank belongs to me. If you destroy the tank, you will be destroying *my* property, and I refuse you permission to do so."

There are difficulties with this objection, too. For A is taking the part of the ruling class, no matter how innocent he may have been of such a charge before his recent rash action of defending the tank against Dannekjold's onslaught. The point is that there is *not* here an option to melt down the tank into 1,000 bits of equal value and return them all to their rightful owners. Rather, the only options are to blow it up now or stand by and allow this implement of war to be used for nefarious Nazi purposes. If the owner still insists upon leaving the tank as is, so that it can be used to kill good guys, then he becomes converted, himself, into genus ruling class member, species Nazi bad guy. This is enough, more than enough, to override his initial claim as a legitimate property owner.

b. Seizure

Similarly, it would be quite within keeping of the libertarian philosophy for a group of citizens to go out and seize part of a public highway,⁴⁹ thus converting it to the private sector. This group could then

⁴⁷ Ayn Rand depicted, positively, a similar episode (i.e., blowing up a public housing project) in her novel *The Fountainhead*.

⁴⁸ There are no statutes of limitation on justice in libertarianism.

⁴⁹ This would not be justified under the doctrine of "just war" of Catholic social thought unless those who engaged in this activity were unable to achieve their just goals in a peaceful way, the gains were more than commensurate with the risks, etc.

charge tolls, improve the roadway, impose speed limits, penalize drunken drivers, etc., just like any other entrepreneur could manage his own property. Alternatively, they would be well within their rights to destroy any stretch of government highway they could put their hands on. There are several other sorts of seizure that come to mind. A libertarian could be a squatter in public housing, or could organize a "sit in" at a state museum or park.

And then there is the famous "bum in the library" controversy. Here, a smelly bum comes into a library, sits down, and starts reading a book. Due to his odoriferousness, however, no one else can sit comfortably within 100 feet of him. There are some commentators, such as Hans-Hermann Hoppe, who maintain that the bum should be thrown out on his rear end,⁵⁰ that, in effect, we should treat public property exactly as we do its private counterpart. Since no private library owner in his right mind would allow his establishment to be overrun with bums, this should apply as well to public libraries.

There are difficulties here, however. We may well agree with Murray Rothbard that, as a matter of managerial considerations, it is not at all good business practice to allow the bum access to one's premises. But this is pretty much beside the point. The real question is, Does the private owner have a *right* to admit bums to his place of business, whether or not it maximizes profits? The obvious answer is, "Yes, he does." If so, then it cannot be shown that putting public property on a business basis yields the conclusion that the bum must be tossed out. As well, Rothbard is on record in *opposing* for very good reason putting government commercial activities on a business basis. He states: "Government . . . has no checkrein on itself, i.e., no requirement of meeting a test of profit-and-loss or valued service to consumers . . ." ⁵¹ Why these considerations should not apply to the present case is unclear.

Another difficulty with this position emerges when we consider the ownership status of government property, that is, it is not being used for legitimate state purposes. Since both anarchist and minarchist libertarians

On this issue, see available online at <http://www.utm.edu/research/iep/j/justwar.htm>. Libertarianism, in contrast, is not bound in this manner.

⁵⁰ Hans-Hermann Hoppe, *Democracy—The God That Failed: The Economics and Politics of Monarchy, Democracy, and Natural Order* (Transaction Publishers, 2001), pp. 180-81.

⁵¹ Murray N. Rothbard, *Man, Economy, and State*, pp. 821-22. See, more generally, *ibid.*, "The Fallacy of Government on a 'Business Basis,'" pp. 821-25. See also, Murray N. Rothbard, "Government in Business," *Freeman* (September 1956), pp. 39-41, reprinted in *Essays on Liberty IV* (Foundation for Economic Education, 1958), pp. 183-87.

would agree that this applies to public libraries, the analysis is straightforward: The library is un-owned property, despite statist claims to the contrary. It is thus there for the taking. It would be licit for *anyone*, not himself a member of the ruling class, to seize this property. Surely, a bum qualifies in this regard. But if the bum may seize library property, then surely he may occupy it for a time.⁵²

c. "Cheating"

Is it okay to cheat on your income taxes? You bet it is. It is not quite a duty, that is, you are not required to resist acting under duress,⁵³ but it at least a virtue.⁵⁴ If you can evade road tolls, then this too is a good deed. The less money there is in the coffers of the criminal state, the better. This reasoning also holds with regard to bus fares. And, if you can manage it, this also goes for museum entry fees, paying for credits at state universities, sneaking into governmental recreation centers, etc.

What about cheating on exams in public schools? The same analysis applies. These are not legitimate institutions. Therefore, their rules may be disobeyed with moral impunity. Imagine the bloody cheek of a criminal band of thieves insisting upon virtue from those in their thrall. The state may have the de facto power to penalize you for any of these acts, and on pragmatic grounds you might do well *not* to act in this supererogatory manner, but that is entirely another matter. As far as *virtue*⁵⁵ is concerned, it is all on the side of resisting the power of the tyrant, not knuckling under to it. Of course, none of this applies to *private* institutions. To cheat on private school exams, or to steal from them (e.g., by evading their legitimate demands for payment), is the very paradigm case of violation of libertarian principles. The reason this does not apply in the case of the (rogue) government is that this institution is *itself* in violation of these norms of civilized behavior.

⁵² We need not (but will) add the proviso that we are limiting our discussion to public libraries in the U.S.S.R., Cuba, North Korea, and Nazi Germany.

⁵³ At least when it comes to paying taxes to rogue governments. However, if a marauder pulls a gun on you, and threatens to shoot you (or a loved one) unless you kill another innocent person in your sights, then libertarianism requires you to refrain (assuming these are the only options). If *he* kills someone, then that is on his head. *You*, as a libertarian, cannot do any such thing. If you do, then you cease to be acting as a libertarian.

⁵⁴ Let it be repeated here once again that we are discussing the U.S.S.R., Nazi Germany, North Korea, and Cuba, *not* the U.S., Canada, Great Britain, Australia, or any other country I might ever visit or reside in.

⁵⁵ For a very different view of virtue, see William Bennett, *The Book of Virtues* (Simon & Schuster, 1993).

Counterfeiting, too, is entirely justified⁵⁶ on these grounds. It is one thing to fraudulently substitute a fake currency for a real one, e.g., gold backed notes. But fiat currency is entirely a different matter.⁵⁷ Here, the government has *already* engaged in counterfeiting, in effect, in supplanting its own fake currency for the gold backed dollar. Thus, anyone who *now* comes along and counterfeits statist currency is actually counterfeiting *counterfeit* currency, which can be no crime—at least according to libertarian law.⁵⁸

We can borrow a leaf from warring governments in this regard. One of the many arrows in their quiver is to destabilize the country with which they are at war. There are records, for example, in the attempt of the allies and the axis powers to destabilize each others' economies by flooding their enemy with vast amounts of counterfeit currency.⁵⁹ If this is good enough medicine for one illegitimate government, then why not for others? And if this is justified when done by one state against another, then why not by disaffected libertarians within a given illicit country?

d. Political assassination

We have seen that in the libertarian philosophy, the death penalty is justified for those whose crimes rise to a sufficient degree of severity. Surely, there are heads of state whose evil deeds many times eclipse such a level. Thus, it would altogether be justified to end their lives by violence.

How many novels have been written with a motif of, What would have happened had Hitler been assassinated, during different epochs of his career? There is no doubt that the lives of Hitler, Pol Pot, Stalin, Lenin, Mao, Castro, etc. were morally forfeit, that it would have been the highest form of justice to end them.

Were there a case in Nazi Germany equivalent to Ruby Ridge or Waco and the Davidians, then, only those directly responsible for the murder of innocent civilians would be liable for the death penalty, not their fellow

⁵⁶ See Walter Block, pp. 109-20.

⁵⁷ On this, see Murray N. Rothbard, *What has Government Done to Our Money?* (Mises Institute, 1990); Murray N. Rothbard, "The Case For a 100 Percent Gold Dollar," in *In Search of a Monetary Constitution*. ed. Leland Yeager, (Harvard University Press, 1962), pp. 94-136. Reprinted as *The Case For a 100 Percent Gold Dollar* (Libertarian Review Press, 1974); Hans-Hermann Hoppe, Guido Hulsmann, and Walter Block, "Against Fiduciary Media," *Quarterly Journal of Austrian Economics* 1, no. 1 (1998), pp. 19-50.

⁵⁸ This case exactly parallels the fact that you can only steal from the rightful owner. You cannot steal from the thief; you can only liberate the property from him.

⁵⁹ See available online at <http://www.ess.uwe.ac.uk/documents/eight.htm>.

colleagues in arms.⁶⁰ It is simply not the case, for example, that *all* U.S. servicemen posted in Vietnam were responsible for the My Lai massacre. This applies only to those who actually pulled the relevant triggers. And, of course, this also applies to those who gave the orders, or "took responsibility" for these outrages. The Nuremberg trials quite properly focused attention on the generals who gave the orders, even in preference to those closer to the ground who were more directly responsible. If there were a Nazi German or Soviet Janet Reno who "took responsibility" for an abomination of this sort, then that person, certainly, would also fall under this purview.

8. Conclusion

Among the worst possible roles for the libertarian to play is that of being an efficiency expert for the state, under the guise of promoting economic and civil freedom. In many cases, this is all too easy a trap in which to fall. The government is so obviously inefficient. It is a matter of almost child's play to see the flaws in its operation, and to set them straight.

In what follows, I should like to defend myself against the possible charge of violating this edict. Starting in the 1980s, I published a spate of articles advocating the privatization of roads, highways, streets, sidewalks, and other pedestrian and vehicular thoroughfares.⁶¹ I made the moral case in behalf of this initiative, tried to show how it might function economically speaking, and defended it against possible objections. But, in so doing, I discussed why private road owners would be led by Adam Smith's "invisible hand" in the direction of making innovations that would improve safety records and other functioning of government highways. In this vein I made a number of specific suggestions—speculations, really—as to how entrepreneurial management might improve matters. For example, I maintained that road owners might well install peak load pricing in order to iron out demand over rush hour times, and impose electronic credit card charges, instead of utilizing the present very inefficient highway toll booths. I am not at all grandiose enough to think that these initiatives were and have been recently introduced because of my writings. Yet, there is some disquiet. Should I have kept silent, lest, inadvertently, I contributed to the better functioning of an enterprise that is at bottom illegitimate?

In my view, in order to answer this conundrum, we need to return to basic libertarian principles of non-aggression against non-aggressors. In

⁶⁰ Needless to say at this point, we are limiting our focus on countries such as the U.S.S.R., North Korea, Cuba, and Nazi Germany. As the U.S. government is not on this list, the cases in that country are mentioned for illustrative purposes only.

⁶¹ See my articles cited in note 13 above.

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trying to demonstrate the virtue of private ownership of highways by pointing out how entrepreneurs might improve matters, I violated no personal or private property rights. If the civil service managers of these amenities saw fit to adapt some suggestions made in this regard to their own nefarious purposes, then a commentator in my position is still blameless. It is as if Henry Ford invented the automobile, and a criminal utilized one as a getaway car from a robbery; we would hardly blame the automobile manufacturer for the robbery. But this is to be sharply distinguished from actually going out and advising governments⁶² with the goal of improving their management of that which they should not be managing in the first place.

⁶² See text associated with notes 14-16 above.