

## ROTHBARD AS A POLITICAL PHILOSOPHER

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MURRAY N. ROTHBARD WAS an economist, a philosopher, an historian, and a cultural commentator. He was immensely prolific, and also devoted to synthesizing strands of thought often kept separate by the disciplinary structure of modern academia.

To write an essay on Rothbard as a political philosopher is thus a somewhat problematic task. One is likely to do his thinking an injustice by approaching it through the lens of a given academic sub-field. Nevertheless, this shall be my approach. Specifically, I want to place Rothbard's thought within a wider historical context: that which is composed of both the political philosophy that preceded Rothbard and the political philosophy to which Rothbard's efforts gave rise.

Looked at in these terms, it is possible to list a number of key features of Rothbard's political thought:

- (1) *Natural Law*: Rothbard champions the natural law tradition, interpreted so as to include natural rights—and does so in direct opposition to utilitarian and related-consequentialist ethics.
- (2) *Neo-Lockean*: In interpreting the natural law, Rothbard gives a central place to Locke's theory of original acquisition of property from nature, and to Locke's account of the political justness of acquiring property through transfers of previously acquired property.
- (3) *Anti-Rousseau*: Rothbard rejects—as forms of irrational mysticism—Rousseauian accounts of the “general will” and the

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legitimizing role of democratic procedures meant to represent such a will.

- (4) *Anarchism*: Rothbard categorically rejects the State as being incompatible with natural law, where the State is defined as an organization possessing a territorial monopoly on the use of force while employing this monopoly to tax.

The natural law and neo-Lockean elements in Rothbard's thinking connect him to a wide body of thought that existed outside of academic philosophy, as found in neo-Lockean jurisprudential and political traditions in Britain and the United States. Within academic philosophy, neo-Lockean thought had a somewhat less brightly burning role prior to Robert Nozick's *Anarchy, State, and Utopia* (1974)—a work which seems to have been written as a minarchist reply to Rothbard's anarchist position.<sup>1</sup>

Relative to the re-emergence of Anglo-American philosophical interest in libertarian thought that Nozick's work ushered in, Rothbard's own writing gets placed in terms of a more radical or more anti-state neo-Lockean approach that is cleaned up to be made presentable to the established academic community. This redaction was accomplished not only by including a legitimate role for the State—and so staying truer to Locke's own account—but also by replacing Rothbard's natural law approach with some type of "reflective equilibrium" or "moral intuition" based account that was more in keeping with the anti-metaphysical, post-positivistic style of early 1970s Anglo-American philosophy.<sup>2</sup> Likewise, the policy implications of libertarianism—always at the forefront in Rothbard's thinking—are downplayed in the Nozickean brand of libertarianism.<sup>3</sup>

Rothbard was thus a somewhat lonely figure, intellectually-speaking. Few other creative thinkers in the post-World War I period embraced not only a natural law approach, but furthermore a natural rights one.<sup>4</sup> Fewer still gave these features of their thought the emphasis that Rothbard did.

At the same time, Rothbard's stance here is also the stance of Locke, Jefferson, Paine, Kant, and other figures of the Enlightenment

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<sup>1</sup>For some discussion of the personal connection between Rothbard and Nozick, see Raico (2002).

<sup>2</sup>For discussion of "reflective equilibrium," see Rawls (2001).

<sup>3</sup>See Rothbard (1998, p. xxv); in the "Introduction" Hoppe discusses Nozick *vis-à-vis* Rothbard.

<sup>4</sup>One of these few was Maritain (1943).

—all figures who continued to receive intensive study up through and after Rothbard's time, often in philosophy departments. Likewise, one can point to interpretations of the Thomistic tradition that include a role for natural rights in natural law, and this tradition likewise has been and continues to be a powerful one in academic philosophy.

The radicalism of Rothbard's natural rights approach is therefore something of an odd bird. It is a radicalism belied by the slow-boiling stew composed of, first, ongoing neo-Lockean conservation of the American Founders' thinking, and, second, of ongoing study and honoring of Enlightenment natural rights doctrines in academia. In other words, Rothbard is intellectually-speaking a conservative on this issue of natural rights: he is resisting an amazingly widespread desire on the part of Western philosophers to move to the *new* method that comes after, as one likes, Heidegger, the Logical Positivists, Quine, Trotsky, Lenin, etc.

When speaking of radicalism, it is also worth mentioning Rothbard's connection to Ayn Rand. Rand's political thought clearly influenced Rothbard to a very large extent, and Rand too had some desire to appeal to natural rights thought. But, like Nozick, Rand wanders much farther from the natural law tradition than does Rothbard.<sup>5</sup> Also like Nozick, Rand offers a minarchism, rather than the anarchism of Rothbard.

#### ANARCHISM

Rothbard's anarchism has much shallower historical roots. Nonetheless one needs to be clear that "right anarchism" or "anarcho-capitalism" is not Rothbard's invention, but rather emerges out of both European and American traditions of anti-State theory and practice. On the sinister hand, there are left-anarchist figures such as the German sociologist Franz Oppenheimer—whom Rothbard references repeatedly in his work. On the other hand, there is the British writer Auberon Herbert, an anarchist and founder of "voluntarism"; the Belgian theorist Gustave de Molinari, author of the private defense essay, "The Production of Security" (1977); and the American "individualist anarchists" such as Benjamin Tucker and Lysander Spooner. It has also been argued that the favored position of

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<sup>5</sup>Indeed, Rothbard may have been drawn to the Scholastic tradition as an alternative to Rand, whose person he began to find objectionable after his involvement with the Randian movement—the members of which unconvincedly accused him of having committed various moral wrongs.

Rothbard—*anarcho-capitalism*—is one which conserves traditions of anarchy that operated in the American “*Not So Wild West*” (Anderson and Hill 1979).

Rothbard’s anarchism is essentially an attack on the minarchism of the classical-liberal tradition typified by Locke. If, in appealing to Locke and Smith, theorists conclude that the unhampered market is fairer and/or more efficient in producing nondefense goods than is the hampered one, why does the superiority of the unhampered market not also apply to defense goods? Rothbard brought these questions to the fore of intellectual debate among the heirs of classical-liberal thought. Moreover, his work addresses, implicitly and explicitly, all of the prominent answers given to this question which attempt to explain how the apparent contradiction involved can be obviated.

Thus Rothbard responds to Nozick’s fairness-centered justification of the State by pointing to the lack of fairness involved in relying upon pre-emptive reduction of risk and upon the validity of rights-violations *made good* through compensation; and by suggesting that the “federalism” that Nozick imagines springing up from anarchy contains conceptual defects and structural deformities that would doom it to the gross unjustness of the centralized, modern State (Rothbard 1998, pp. 232–39).

Likewise, Rothbard offers a critique of “public goods” centered accounts by pointing, *à la* Mises’s account of interventionism, to the counterproductive nature of attempts to increase societal utility through State ownership of allegedly “pure public goods.” At the same time, Rothbard—in spirit, fundamentally a deonticist of the Thomistic School—is unwilling to offer a purely immanent critique of utilitarian justifications of State defense, and so further points to the lack of fairness involved in assuming that “what is good for all” is determinable to such a degree that one could coerce public ownership of a good (Hoppe 1993, pp. 176–77). If everyone agrees that a good should be left unowned, or managed by some specific agency, then of course no one is wronged when such situations obtain. However, if the State has to be used to enforce these situations, then obviously not everyone agrees with the construal of a specific good as a pure public good. Rothbard thus shows that State ownership of an alleged pure public good—such as the means to national defense—can only be justified through an axiology that either: (1) purports to demonstrate a robust conception of the value of specific ownership schemes apart from the preferences of those affected, where such a conception must be accepted on pain of coercion, or (2) purports to demonstrate a robust conception of the value of specific

ownership schemes with reference to preferences revealed apart from consensual action, where such a conception must be accepted on pain of coercion.

The first alternative is the “collectivist” one, demolished by Mises in his account of methodological individualism and the horrors of Nazi, Communist, and Church authoritarianism (Mises 2003, pp. 44–45). Rothbard, for all his admiration of tradition and “the organic,” concurs with the Misesian view here.

The second alternative is the one favored by the minarchists and their fellow travelers. In response, Rothbard here too appeals to the Misesian understanding of action-as-value-revealing and the difficulties of value-calculation outside of the price-calculation that the unhampered market alone allows.<sup>6</sup> However, Rothbard “ethicizes” the Misesian account, to focus on the issue of how our ignorance of individuals’ preferences and the utility of goods relative to those preferences places logical limits on paternalistic intervention. If one’s statist paternalism is of the form “I know what is best for you because I know what you would find to be best for you,” one is caught in error: insofar as one attempts to be the coercing *patron*, one removes the unhampered market activity that would allow one to determine what the individual prefers and what are the best means to realize those preferences. In other words, if Mises’s *Wertfrei* account of interventionism is incorrect in some limiting cases—as Rothbard claims—then it might be possible for the “collectivist”-statist paternalist to achieve desired ends through state intervention. But a logical contradiction results once we place certain ethical limits on the paternalist—namely, that he not coerce anything that the individual would not agree was in his best interests, at least given the proper rational perspective on the individual’s part. For, with such an ethical limit in place, we get a contradiction between, on the one hand, the requirement not to coerce that to which an individual would not agree, and, on the other hand, the value-occlusion that comes with the use of coercion. Coercion makes it impossible to know what it is that the individual would want. Insofar as the non-collectivist paternalist coerces, he cannot justify the claim that the coercion was legitimate. Thus such a paternalist must refrain from coercing on paternalist grounds, even if this means giving up a role for the State in managing alleged public goods such as national defense.

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<sup>6</sup>See Rothbard (2001, pp. 1–66, 542–43, 548), and compare with Mises (1998).

## ANTI-ROUSSEAU

“Anti-Rousseau” is surely the most controversial of the four elements that I claim are key to Rothbard’s political philosophy. Not only is Rothbard’s secessionist brand of anti-Rousseauian thought deeply controversial in itself—even for the Nozickian-style libertarian—but to use this label to cover one of four core elements requires some explanation.

To understand what it means to cast Rothbard as fundamentally anti-Rousseauian, we need to compare his thinking to that of Rousseau-influenced defenders of individual rights. For even if we look to thinkers such as Kant or Nozick, who are fundamentally in agreement with Rothbard concerning the centrality of individual liberty and the horrors of the paternalist state, we find significant arguments and—more often—presuppositions which Rothbard’s views strongly challenge.

Between Rousseau and Kant on the one hand, and Nozick on the other, lie Hegel, the New England Transcendentalists, Lincoln, Bismarck, FDR, and John F. Kennedy. We find an entire line of thought which, in making the case for *strong* government, appeals not to pragmatic calculations of a Hobbes, but to spiritualized notions of national unity and its beneficial harnessing via centralized governmental power.

This is the same line of thought which informs the “civil libertarian” and libertarian activism of many prominent champions of individual liberty—who seek to achieve such liberty for themselves and others via the intervention of the United States Federal government. Thus those elements in Rothbard’s thought are tied to his outspokenly anti-interventionist views regarding foreign policy, the Copperhead primacy of secession in his political thought, and his dislike of an activist Supreme Court—these are all a source of much rancor and discomfort.

Hence it behooves us to see how Rothbard diverges from Rousseau-informed thinkers such as Kant and Nozick. The contrasts with Rousseau himself are stark, but Rothbard’s engagement with Rousseau’s influence involves greater subtleties—ones that are very much in need of exploration.

How does the divergence from the Rousseauian show itself? Rothbard looks to writers such as Calhoun, and to a decentralist stream of thought stretching back to Hume, Althusius, and the Middle Ages (Althusius 1995).<sup>7</sup> This is another origin than that

<sup>7</sup>See Rothbard (1998, pp. 176–77), for a discussion of Calhoun. For a Hume-centered discussion of this stream of thought, see Livingston (1998).

provided by Hobbes and Rousseau. It is one which conceives of authority in terms of interlaced units such as the family, the village, the local church, the city, the state, the larger church structures, the leagues of states, etc.<sup>8</sup> It is a stream of thought which gives a large place to traditions of just interaction among power-units, as opposed to the merely tradition-informed commands of an overarching enforcer of reason; and which more generally lacks or fears a conception of the leader of the nation-state as being a qualitatively different type of authority from that found in the leader of smaller or larger power-units.

Kant, in contrast, speaks of “a state,” a state legislature, and a state ruler (Kant 1995, Ak. 311–13). For Kant, the fundamental unit of political analysis is the nation-state and its “united will” (a concept derived from Rousseau’s (1955) “general will”).<sup>9</sup>

Kant does agree with Rothbard to a fair extent concerning the centrality of individual property rights, and so, following Locke, conceives the chief function of the state to be the protection of these rights, together with individual rights to free speech and related negative, individual liberties.<sup>10</sup> And while the Kantian “*Staat*” is not the Rothbardian “State”—so that the incompatibility between their two positions does not hinge directly on Kant’s view that the state is legitimately to exist and act coercively—we do, however, soon come to a great divide between the Kantian and Rothbardian approaches to understanding the nation-state. For Kant offers a vision of the state as an indissoluble entity whose government is to act to preserve, in perpetuity, its unified existence under law (Kant 1995, Ak. 326).<sup>11</sup> Rothbard, in contrast, imagines the legal order to properly exist in upholding of natural law and empirical agreements among individuals; where no indissoluble state could exist, unless—perhaps—this were explicitly agreed to by all members of the state.<sup>12</sup>

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<sup>8</sup>This is not to say that Rousseau did not allow a role for political communities that are smaller in size than the modern nation-state: rather, it is to contrast the Rousseauian interest in political-communal unity with other models of thought that provide more extensive intellectual resources for anti-centralist and secessionist politics.

<sup>9</sup>For Kant’s discussion of the role of the united will in the state, see Kant (1995, Ak. 313–34).

<sup>10</sup>See Locke (1988, pp. 350–51) and Kant (1995, Ak. 237–38, 311). See also Verhaegh (2004, pp. 11–32).

<sup>11</sup>One should note that Rothbard presumably would reject the Kantian vision of the state on the grounds that it is not possible to alienate one’s will to form a perpetually existing entity.

<sup>12</sup>Here there is still the issue of the State ceasing to exist when its last member passes away. Of course, even a believer in an indissoluble State must

Kant posits an *a priori* unity of wills among all individuals, together with the need for empirical unity among the wills of various groups of individuals as they enter into lateral agreements with each other to settle property claims and end violent conflict.<sup>13</sup> This, it seems to me, is largely in keeping with the Rothbardian natural law vision. It is true that Rothbard does not have this notion of an *a priori* unity of choice, or of empirical agreements in keeping with it. However, Rothbard's account might benefit from a grounding in such Kant-derived basis; even as performing such a grounding would seem to require the purging of certain realist, neo-Aristotelian elements in Rothbard's methodology. But such tensions in a Kantian-Rothbardian synthesis are minor compared to the contradictions that would result from trying to meld Rothbard with the next move that Kant makes: Kant, having posited an *a priori* unity of wills that supplies a norm for empirical unity, then goes on to describe the perpetuity of the agreements by which authorities derived their coercive powers to tax and to define positive-law property titles.<sup>14</sup> These points are in turn conjoined with discussion of the "national" character of states, and of the need for politico-religious unity.<sup>15</sup> The end result is that Kant's abstract account of the unity of will turns into a defense of the surrender of "private lives and private plans" to the needs for cultural, political, and religious unity in the territorial nation-state. The *a priori* unity of wills—we all by our nature agree to respect the innate freedom of others, and further agree to (in time) agree about who owns what—together with the empirical agreements among individuals that flow from this unity, is used to construct a proto-Hegelian account of the world as divided

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recognize the possibility of a State ending in this manner (say, due to enemy attack).

<sup>13</sup>See Verhaegh (2004).

<sup>14</sup>Kant (1996, Ak. 326) mentions the perpetuity notion. The powers of the state have already been substantially described by this point in *The Metaphysics of Morals* text.

<sup>15</sup>Kant (1995, Ak. 311; 1992; 1998). In discussing the higher vs. lower faculties in the *Conflict* (1992), Kant makes clear that government is to regulate the clergy (Ak. 18), and that properly minimalistic regulation should promote the coming together of faiths into one church per state (Ak. 52). Of course, Kant has also been taken to claim that a more universal unity of faith will come about "in the end," based on his statements in the *Religion* (1998). However, this second reading tends to misunderstand the nature of "the end" that Kant discusses: as Kant makes clear in "The End of All Things" (1998, pp. 195–205), "the end" is not necessarily something that one can expect to occur in a finite, historical time-stream.

into nation-states that have powers to form agreements among each other that do not reduce to the power of individuals to contract with each other.

Kant's vision of the perpetuity of nation-state unity is precisely what the consistent Misesian would label a "collectivist" account (Mises 2003, pp. 44–45). And, again, Rothbard shares the Misesian view of collectivism. There can be no collective apart from the preferences of individuals forming the collective; if the whole is greater than the sum of its parts on certain individuals' view of the matter, for Rothbard there is still no way to demonstrate the existence of this surplus in such a way as to derive legitimate powers of coercion that are other than the sum of individuals' legitimate powers of coercion. Thus the shared vision of Rousseau and Kant, wherein the will of individuals grouped together as a "people" under one-or-another label can be properly enacted by a small set of government officials, either is so wildly optimistic as to be unworthy of serious consideration, or is simply incorrect. The individual has no reason to believe that others beside himself will better promote his view of how his property rights have or have not been violated, or how they will or will not be best protected. One makes agreements with others about ownership not in order to let higher authorities define one's property against one's consent, but in order to secure the recognition, trust, and good will of one's neighbors (Kant 1995, Ak. 308–09).<sup>16</sup> One accedes to a higher political authority only because one must in order to receive effective policing and military protection. But it is not clear why the notion of forming a new entity with "emergent" rights or powers to coerce should enter into the picture. One may believe in such entities, but insofar as one actually uses these alleged "surplus" powers of coercion—rather than simply submitting to such an entity's claims or making claims in its name—the Rothbardian analysis would be that one violates the individual's rights.

As Rothbard demonstrates, there is no escaping the problem of the disconnect between power and right. Either one has the power to enforce one's view of what is right as regards one's property, or one is in danger of having one's property rights be violated (and here I am assuming self-ownership). The danger comes from two directions: a lack of bonds with others that would make impossible the repulsion of a nonallied invader—whether territorial or otherwise—but also the improper formation of social bonds so as to give an initially friendly-seeming group of individuals undue power over one.

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<sup>16</sup>See also Verhaegh (2004).

This second danger—"conquest by consent"—is one to which Kant, in his writings, seems remarkably blind. Likewise, the danger is apparently opaque to the customers of protection agencies in Nozick's hypothetical anarchy, or is otherwise presented as unavoidable (based on flawed, Prisoner's Dilemma reasoning).<sup>17</sup> Thus, like the Kantian agent in a state of nature, these customers also blithely form a federal system of judicial-protective services that centralizes power without any evident checks against its threat.

Rothbard thus provides a healthy alternative to both Kantian and Nozickean accounts of individual rights and their proper protection. "Kant minus Rousseau" is not quite Rothbard, but it is certainly a step in that direction—and is, as should be evident, furthermore a step in the right direction. However, both Kant and Nozick provide some equally important alternatives to Rothbard.

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<sup>17</sup>Nozick (1974, p. 16). Here there is no mention of the possibility of customers' being willing to pay for the costs of occasional battles between separate protection agencies in order to avoid the dangers of rule by a federal monolith. At pages 130–31, we find approximately seven sentences devoted to the problem of the "Frankenstein" state, wherein Nozick refers back to his earlier Prisoner's Dilemma model of the move to the State (pp. 121–25) to suggest that the individual will not choose to avoid forming the State because he or she will realize that this decision will have no effect. Suffice to say, Nozick's assumption that "it is better to be a client of the powerful dominant protective agency, than not to be" (p. 123) is groundless, and involves the further assumption of an agent-psychology based in short-term appreciation of being on the winning side. If one's actions give others the power to enslave one, it is not "better" to perform those actions: and that some other individual might take a similar action that gets both you and him enslaved is not a counterargument here. This is particularly true given that informal bonds might keep a group of independents from taking such immoral action.

Whether it is "better" to support the dominant agency is determined entirely by comparing the dangers of supporting that agency vs. the dangers of being outside of it. The proportion here will vary from case, as determined by issues such as the loyalty of agency employees to the agency, their feelings of solidarity with different customer groups, the personal military power of various customer groups, etc. To suggest that the nonlinear dynamic that would exist among clients and employees of various protective agencies in a given territory is one bound by an overriding tendency toward centralization—this is an entirely specious claim. Centralizing tendencies are but one dynamic that would exist among many—proper understanding of individuals' ability to signal and coordinate their decisions (and of the lack of realism involved in construing agent self-interest in narrow terms) reveals a far greater variety of powerful, interlacing dynamics occurring within multiagent rational action.

## PROBLEMS WITH ROTHBARD'S POLITICAL PHILOSOPHY

I cannot here offer a full-scale critique of Rothbard's political philosophy, so I will instead simply point to what I take to be problematic areas in Rothbard's thought.

First, there is Rothbard's neo-Lockean approach to original acquisition and homesteading. This is an approach directly rejected by Kant: "The first working, enclosing, or, in general, *transforming* of a piece of land can furnish no title of acquisition to it" (Kant 1995, Ak. 268). What is the natural law basis of original acquisition through "use" homesteading? Why can land not be acquired otherwise, such as through the building of fences and placement of cannons in expectation of the *future*, personal utility of presently-unworked, but now enclosed land?<sup>18</sup> This latter, more Kantian approach needs to be defeated on *a priori* grounds, accepted, or incorporated into Rothbard's approach.

What does this approach involve? Centrally, the method here is to see property rights as the product of a movement from a situation of control via physical means, to a situation of control via appeal to the morality of agents who have communicatively recognized a given set of ownership claims.<sup>19</sup> However, complete reliance upon moral action is not required: the individual controller or his agents may retain physical means of enforcing agreements in the face of humanity's ongoing corruption.

The difficulty with the approach is that there will be constant need for negotiation insofar as there are disputes at hand: goods that may be owned, but whose ownership is challenged by one who has not yet agreed to a definite assignment of the good to an individual owner.<sup>20</sup> Still, the Rothbardian cannot rest with pointing this

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<sup>18</sup>For discussion of such modes of acquisition, see Verhaegh (2004). See also Kant (1995, Ak. 265). Rothbard perhaps did not think you had to do substantial work on land to acquire it (as David Gordon kindly pointed out to me). However, the Kantian view would be that you wouldn't need to do *any* work on the land in the way of improvements, even if you would have to establish some degree of military control, and post a sign somewhere (this could be via fence, but also by simply posting a sign in the village square, etc.) So the views differ here markedly. Where they come together somewhat is in the fact that Kant thinks that there has to be some potential use of the land for you, if you are to rightly own it (Kant 1995, Ak. 258).

<sup>19</sup>See Verhaegh (2004).

<sup>20</sup>One may also point to difficulties involved in Kant's own view that the state, as bound by government, is to have a kind of final role in deciding conflicts

out.<sup>21</sup> For one, it is not clear how the neo-Lockean approach would involve a lesser need to negotiate, even if it does posit a “fact of the matter” about who owns what. It is true that the broadly Kantian approach that I have been outlining does not offer such a fact of the matter. But what is significant is the possibility of demonstrating a rightful property assignment to all affected parties, not correspondence with some extra-communicative order. Thus one might point to the problems involved in publicly determining when labor was mixed, when violence was improperly used, etc., as requiring just as much give-and-take in a Lockean system of property claims adjudication, as in a Kantian one. Likewise, such give-and-take can just as easily explode into violent conflict. Positing a fact of the matter does not in itself help with the type of problems that Kant addressed with account of communicative consent in justifying property claims.

Moreover, one of the points that the Rothbardian might point to as providing a means of settling conflicting property claims—that current control trumps unclear claims from the past—is just as much subject to question as the reliance upon a neo-Lockean theory of original acquisition (Rothbard 1998, pp. 63–76). Kant, too, makes a similar point in discussing the “right of prolonged possession,” but this point does not have the same transcendental status as his more general claims about communicative consent and ownership. And I too find it sensible to give precedence to the current occupant of property when earlier owners are dead and there is too great a lack of clarity concerning the claims of alleged heirs.<sup>22</sup> What, though, is the exact justification for the overlapping Kantian-Rothbardian-Verhaeghian views? One may point to issues such as furtherance of economic growth and societal stability, but there are surely cases where one might legitimately judge these types of considerations to be outweighed by the scale of past wrongs done to previous, now-deceased owners.

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over property. See Verhaegh (2004) for further discussion of why this is not quite as pernicious a doctrine as one might first think. More important, though, is the fact that Kant’s account of the authority of government is logically distinct from his account of the need to get consent from challengers to one’s property claims in order to finalize one’s claims: after all, private individuals and organizations can enforce the agreements that are consented to.

<sup>21</sup>Neither can the Rothbardian simply appeal to Hoppe’s “argumentation ethics” here: for this ethics does not on its own rule out Kantian homesteading in favor of Lockean homesteading. Rather, it holds that the individual must have a right to homestead to acquire rightfully-held property. See Hoppe (1993, pp. 203–08).

<sup>22</sup>An essentially-concurring view is found in Epstein (1995, pp. 64–65).

I would suggest, then, that the Rothbardian account of property acquisition should receive further attention as an area in Rothbard's thinking in need of clarification and buttressing.

Another area I would point to is Rothbard's engagement with Nozick *vis-à-vis* the linked topics of risk and pre-emptive coercion. It is not clear that Rothbard has adequately countered Nozick's arguments in this area.

Nozick bases his account of the emergence of the State on the right of individuals to use coercion to stop the risky behavior of others, even before this behavior causes physical harm. If such a right exists, the dominant protection agency in a given area may legitimately use it to preclude the "vigilante" justice of independents, insofar as the workings of such justice subjects the agency's clients to undue risk, or undue fear of risky behavior (Nozick 1974, p. 88). However, the dominant agency must compensate the independents for depriving them of the right of self-defense, by providing protective services to them (p. 110). When this occurs, the dominant agency is the State: it controls the use of force in a given area, as funded by user fees (p. 113). Nozick's suggestion is further that the dynamics of dominant vs. independent interaction are such that the dominant agency will choose to become a State (pp. 16–22).<sup>23</sup>

Rothbard suggests that

once it is permitted to proceed beyond defense against an overt act of aggression, once one can use force to defend against someone because of his "risky" activities, the sky is then the limit, and there is virtually no limit to aggression against the rights of others. (1998, p. 238)

Rothbard gives a few examples here: Since black teenagers are at a high risk of committing criminal acts, would not Nozick's principle give others the right to intern them until they reach a less-risky age?<sup>24</sup> If alcohol-use increases the risk that an individual will commit a crime, would it not be legitimate to enforce prohibition? Furthermore, should we not screen adolescents for criminal tendencies, and subject the likely offenders to therapeutic treatment?

The first and last example are, however, not particularly relevant. Nozick is concerned with banning behavior by individuals—such as rights-enforcing activities—and not certain constitutions.

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<sup>23</sup>At times Nozick claims that the dominant protective agency simply is the State: I suppose this is a stipulative use of "dominant."

<sup>24</sup>Such is in fact discussed at Nozick (1974, pp. 142–46).

Thus Nozick is not committed to the claim that one can be coerced simply for being a certain way. One must engage in risky activities.

Indeed, Nozick is focused on activities that are inherently disruptive to others, such as putting people on trial and interfering with their person and property as a form of punishment. Such disruption is not always wrong, but it does always involve damage to the individual subjected to it.

By the standard of “inherent disruption,” alcohol consumption would also not be a legitimate activity to exclude on grounds of risk. Drinking alcohol does not necessarily involve disruption for others.

However, given Nozick’s account of pre-emptive attack and risk in arms races, the standard of “one can only prohibit risky actions when disruption for others is inherent in performance of them” may be too stringent a standard to assign to Nozick (1974, pp. 126–30). Nozick seems to think that one can prohibit risky activities that are not inherently disruptive: for example, if a nation tries to develop nuclear weapons without having “good (nonaggressive) reasons,” other parties would seem to have the right, on Nozick’s view, to use coercion to stop this development (p. 128). But how is there something inherently disruptive about developing nuclear weapons (in the sense of physical interference with person and property that I have been referring to with “disruptive”)? Trials that never disrupt would seem to be wholly ineffectual; but weapons that never disrupt are another matter. Russia, for example, has found such weapons to be quite effective for achieving certain geopolitical aims.

At the same time, one might argue that, just as punishment is essential to the activity of conducting trials, so to is destruction inherent to the activity of developing weapons. Moreover, even if one rejects this argument, and assigns Nozick a less stringent principle of risk-countering coercion, one is going to be able to distinguish development of nuclear weapons from drinking alcohol in all foreseeable scenarios. If destruction is not inherent to developing weapons—or, more neutrally, “nuclear explosives”—one may still apply something like Nozick’s no “good (nonaggressive) reasons” test. One can argue that nuclear explosives, while not inherently tied to disruption, are at present reasonably judged as always tied to disruption. But one cannot say the same thing about drinking alcohol.

Thus the Rothbardian must show why it is wrong to prohibit noncoercive but risky activities that are reasonably judged as always tied to disruption: activities such as conducting rights-enforcing trials, building antihuman weapons (e.g., tanks), or conducting military training exercises. The Nozickean, of course, can allow that such prohibitions are not always wrong, but are often so: for example, it is

wrong to prohibit such activities when they are performed for “good (nonaggressive) reasons.”

In suggesting that Rothbard has not refuted Nozick’s account of risk and pre-emption, I do not mean to claim that Nozick has provided a justification of any existing State. As it happens, my view is that Nozick is indeed correct that a State can be formed through legitimate means, but that he has not demonstrated any tendency for a State to so-emerge from anarchy: the rational individual in anarchy will avoid Nozick’s “federal system.” And the rational individual in anarchy will do so on the Rothbardian grounds that existence of *the State* offers far greater risks than those found in a situation where one’s primary protection agency fails to secure a monopoly on violence.<sup>25</sup> Thus the market for defensive services will be bound by the dynamic of agents consciously conducting their purchasing of defensive services so as to avoid the construction of monopolies: like the British Empire viewing the Continent, such agents will strive to maintain a balance of power—a system of “checks and balances,” if you will.

Hence it seems to me that libertarian political theory “in the grand style” arrives at a certain impasse represented by the conflicting views of Rothbard and Nozick. On the one hand, Rothbard is correct to claim that from anarchy, the proper course of action is to pursue a truly federal, contractual political arrangement among individuals and associations—on Rothbard’s terms, anarchy is to lead to continuing anarchy. Likewise, Rothbard is correct to claim that a right of secession must be pursued as a check on centralizing political powers, particularly when these were formed partly through morally-illegitimate means (as all existing nation-state governments have been formed). On the other hand, Nozick is correct to imply that it may be morally legitimate for centralizing powers to attempt to incorporate or reincorporate independent and/or secessionary individuals or associations. Thus, in conjoining these features of Rothbard’s and Nozick’s philosophies, we achieve an account where centralizing and resisting powers may violently conflict, while it is also the case that both have good grounds for thinking themselves correct in sustaining the conflict.

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<sup>25</sup>A parallel issue is whether it is appropriate to stop others from forming a state to eliminate the risks such an entity might pose to one. See Nozick (1974, p. 121).

My sense is that classical-liberal theory could make progress by attempting to refine Nozick's account of risk-prohibiting and pre-emptive action to bring it closer to Rothbard's total ban on such action; or by otherwise offering clearer guidelines that would be rationally acceptable to both sides in various, potentially centralist-secessionist conflicts, without offering blanket condemnations of either pole of this dynamic.

Pursuing such an anti-Rousseauian agenda would provide a fitting means of carrying-on some key projects in Rothbard's political philosophy.

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