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"The Noblest Cause of All": The Moral Turn in American Libertarianism

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“The Noblest Cause of All”:
The Moral Turn in American Libertarianism

Senior Project submitted to
The Division of Social Studies
of Bard College

by
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To my Grandmother Judith, and my Grandfather Chandler, without whom, who I wish could be here to see this. They made it possible for me to write this project, and for me to attend this school, and my gratitude will last as long as I do.

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Introduction

In 1963, American author Ayn Rand published *For The New Intellectual*. The book would serve as the mark of an end of an era in libertarianism, not as a final articulation, but a turn of libertarianism at a crossroads. From this crossroads, I argue that a new generation of American libertarians, tentatively named the moral libertarians, emerged. Ayn Rand, Murray Rothbard, and Robert Nozick will serve as representatives of three major interpretations within this moral libertarianism: objectivism, anarcho-capitalism, and minarchism. However, these moral libertarians, coming as a new generation in the tradition of libertarian thought, did not escape the ground of the greater libertarian project: liberalism. Libertarianism necessarily is constructed out of the ideological framework that liberalism passed down to it; the ideas and vocabulary of the social contract theory, of the sovereign individual, of rights and their protection.

Before the moral libertarians came their forefathers, the economic libertarian movement led primarily by Hayek, along with acolytes and fellow travelers like Mises and Friedman. The defining feature of these economic libertarians was arguing for free trade and a free society on the basis of consequential arguments aimed towards standards of efficiency, wealth, and democracy. Economic libertarianism operated on behalf of the liberal state, it was both a defense of liberalism, and an attempt to pair together freedom of the economy with individual freedom so that both could be protected. The division between the economic libertarians and the moral libertarians is not totally distinct, but certainly there are some notable phenomena of the break between the two ideological currents. Foremost is that the economic libertarians were reacting to

totalitarianism and authoritarianism, largely fascism and bolshevism, by pushing liberalism as a benevolent antagonist to these other systems of government. The moral libertarians wrote screeds against the liberal state and its criminality, anti-rationalism, or moral turpitude, under the shadow of the Vietnam War and rising into the social open-mindedness of the 1960's.

Non-coercion as a moral absolute forced a combat with liberal norms on all new battlegrounds: driver's licenses, taxation-funded welfare, the police, entrepreneurship. Questions of bureaucratic efficiency became questions of moral abominations, the priorities of the moral libertarians were directed at a fundamentally more diverse set of institutions, the scale of the state's problematic status had grown, and the targets of libertarian ire had both diversified and grown in mundanity. For the moral libertarians, essential features of liberal democracy became tyranny, injustice, and coercion, yet again and again, the language and ideas of liberalism were used in an attempt to pull out the rug from under liberal institutions. The libertarians began a battle over the history of liberalism, drawing Locke, the Founding Fathers, and the early days of the American project into a revisionist libertarian history. Libertarianism, in an almost-sarcastic move, sought to appropriate the history of the ideology whose ideas it was already appropriating, as if it was not already a corollary of liberalism.

The general ideology of moral libertarianism is postured as a critique which demands the reduction, even at times the abolition, of the liberal state. However, moral libertarianism is certainly not wanting for a diverse ideological terrain, each strain within it arrives at distinctly different notions of the human good, of the basis and functionality of rights, and at the status and scope of 'the State' versus 'the Free-Market.' Despite the diversity, the framework of argumentation and the concepts at the core of their individual projects are all tied back to the

great progenitor, liberalism. It is this space, between inheriting the liberal project and rejecting the fruits of liberal ideology, which the ideology of moral libertarianism is navigating. This generation of thinkers, to the point, are not the Hayekians, they are not classical liberals. On a televised intra-party debate, there was a moment which captured the quintessence of moral libertarian ideals at play. The then-potential candidate Gary Johnson, answering the question “Should someone have to have a government-issued license to driver a car?”, offered the seemingly common sense response, “A license to drive? You know, I’d like to see some competency exhibited by people before they drive.” Johnson was immediately met with booing. A question which could guide a study of this generation of libertarian thought might be: “How are the moral libertarians making use of, and relating to, liberals ideas and vocabulary?” That question is only born out of the exactly the tangible differences between moral libertarianism and liberal norms which Johnson’s encounter with the libertarian electorate demonstrate.

Authors such as Ciepley and MacLean have already ventured accounts of the historical emergence of libertarian thought, but the relationship of moral libertarianism to its parent ideology, liberalism, as a matter of history and ideology, has not yet been sufficiently explored. Ciepley argues that the history of the American encounter with totalitarianism gave both a language and an impetus to invite the soft anti-government ideology of libertarianism into the political mainstream.¹ MacLean argues that wealthy interests, by funding specific, influential actors, created a libertarian intellectual movement and covertly influenced the window of acceptable political (and economic) ideologies to make space for a shadowy libertarian effort to disempower the American government.² Both of these findings are to some degree attempting to

¹ Ciepley, David, *Liberalism in the Shadow of Totalitarianism*, Cambridge: Harvard University Press, 2007.

² Nancy MacLean, *Democracy in Chains*, New York: Viking, 2017.

find an origin point for the entry of libertarianism into the mainstream by dredging the historical record. This project is also historical, but pushes back on two features of the former writers. The first is the idea of libertarianism as essentially a big tent movement with similar priorities, which Ciepley paints as a sort of an instrumentalized anti-totalitarian sentiment and MacLean paints as the design of a few billionaires and their singular agent. The second feature is that both authors are dealing with simplified models of what it means to be libertarian, without having given due accounts of the internal heterogeneity or authentic intellectual currents of the movement. This project intends to work against those latter premises to produce a conceptual account of a significant historical shift, the flourishing of ‘moral libertarians’ in the late 1960’s and early 1970’s. The project is not about critiquing the ideas of libertarianism, that ground has been thoroughly covered. Instead, it is a project about how ideologies interrelate, how ideology appropriates history and is appropriated by history, and how new ideologies are born, and inherit ideas from the ideologies which came before them.

The literature used for the study of this generation of libertarian thought will be drawn from three principal texts, and then a range of non-historical secondary literature. The primary three texts will be Rand’s *For the New Intellectual*, Rothbard’s *For a New Liberty*, and Nozick’s *Anarchy, State, and Utopia*. Each of these texts are intended to be examples of ‘mountains’ in the landscape of the libertarian thought; comprehensive, popular, and prominent works of libertarian thought according to the ‘strains’ of that era. The intent is to use the texts as snapshots of the historical movements of the ideologies of libertarianism which were arising, and to be able to reduce those movements down to critical texts for the purpose of analyzing towards a composite picture.

Ayn Rand, described as a 'cult' leader by Rothbard, represents the most bizarre and emotionally evocative of the moral libertarians, contributing to libertarian thought while refusing an association with libertarianism, calling herself an 'objectivist'. Ayn Rand easily is the most problematic author, as her most directly political work, *For The New Intellectual*, is an amalgam of unadorned, amateur political philosophy and excerpts of Rand's own literature. However, that intersection also allows for Rand to serve as an author who both was actively building the philosophical base of moral libertarianism, while also cultivating what might pass as libertarian romanticism. Rand has the most cultivated individual following, per the 'cultishness' that Rothbard ascribes to objectivism, there are many adherents who continue to honor her thought even today, although Rand receives sparse serious academic treatment from outside her camp. Rand's role in the history of the moral libertarians is as the first expressor of the basic platform, as well as functioning as a transitional figure for the purpose of understanding the origins of the ideology.

Rothbard's *For A New Liberty* offers a indictment of the concept of the liberal state during the height of the involvement of the American government's adventures in Vietnam, and is both the author who first refined and clarified the ideas of moral libertarianism, also the most ideologically extreme. Rothbard was Rothbard out of all the thinkers gets most directly at the question of the state, and offers the most powerful and clear critique of the state, but leaves important questions hung up with unsatisfying answers..

Robert Nozick's *Anarchy, State, and Utopia* is a political philosophy text which concludes that between the ideal state is a minimal one which upholds the Lockean rights of proprietorship. Nozick is arguably the most influential libertarian academic ever, and modern

libertarian intellectuals especially tend to refer to Nozick's account of a morally righteous, and thus minimal, state as perhaps the de facto account of an 'ideal' libertarian state. As the Anti-Rawls, Nozick is the most visible and academically integrated member of the moral libertarians. Nozick's philosophy is interesting in that it achieves a minimal state from the same basic assumptions as Rothbard (although both vary from their progenitor, Locke, in different ways). Nozick is, in effect, the gateway between the moral libertarian movement at large and the academy, and presents what is perhaps the most refined and developed form of the moral libertarian argument.

The ideological discontinuity between the economic and moral libertarians is defined by the two avenues of investigation. The first deals with conceptions of the state, and is an attempt to expound upon how the moral libertarians are seemingly thinking about the liberal state in a new way. Their critique is necessarily different from their forerunners in that it doesn't assume the liberal state, instead maintaining a critical stance towards liberal ideas and advancing libertarian frameworks where their criticism successfully undermines the state. Looking at how the core authors have been considering the state has been thus far revealing of a difference, but a difference that will only be verified as actually being conceptually different with further study. The second avenue is distinct but not disconnected from the first, and entails a consideration of how the moral libertarians are playing with the ideas of liberalism. This sort of play is described by how Rand weaves together capitalist rationality and the *ubermensch*, that Rothbard projects the market society out past the liberal state that birthed it, that Nozick finds utopia to be the reduction of the liberal state down into capitalist parklands. Understanding this sort of conceptual play would also necessarily involve the first avenue, as the liberal state is so integrated in the

schema of liberal *ideas* that eventually any concept-play would result in at least acknowledge the state. Moreover, the war of ideas that these thinkers were engaged in, battling the tendrils of Rooseveltian liberalism and as figures standing against the growing intellectual shadow of Rawls, necessarily would involve contending with the expansion of state power that their opponent ideologies advocated. These two avenues provide compelling frameworks for thinking about the moral libertarians going forward, both as heuristics for separating out liberal ideas being played with and ‘genuinely new’ libertarian ideas, and a methodology of understanding how the disparities of libertarian thought still hold a commons, which might be revealed in exploring them in relation to their ancestor ideology.

The exploration of these avenues requires two principal developments which the study of the moral libertarians necessitates: the creation of a composite picture of the common ideological material of the moral libertarians, and the analysis of that composite pictures on an integrated conceptual and historical level. The creation of the composite picture will attend honestly to the primary authors and their materials, and attempt to present them as a composite without denying their heterogeneity, while also drawing out their concerns and relationships to other ideologies, particularly liberalism. The composite picture will be explored in the first three sections of the project, going over the core texts and understanding their ideas through close reading and integration with the secondary literature. Each of the first three sections will be devoted to a specific author of the moral libertarians. The fourth section will be reserved for a presentation of how the three ideologies are being composited and then a general conceptual analysis. The conceptual analysis will then take the findings of the composite picture and attempt to interrogate them critically, and without cynicism, to try and expose how and why certain paradoxes or

problems of the moral libertarianism ideology might be arising and addressable. The purpose is not to either redeem or condemn the moral libertarians, but to perhaps more deeply understand how their conceptual problems might be either misconstrued, appropriate in the historical context, or actually revealing of an unspoken or under-acknowledged component of their thought.

There is an immediate importance to understanding these dimensions in regards to this specific generation of libertarian thinkers, as the modern Libertarian Party and its small-government ilk are party to the general ideology these thinkers developed. The moral libertarian ideology is taking further hold of an increasingly less furtive, and increasingly more influential, corner of the American political landscape. Anecdotally, the Libertarian Party of the United States' membership has almost doubled in the last decade, and Gary Johnson polled at a record 11% at one high point of his campaign as the Libertarian candidate. As libertarianism waxes, it is imperative to understand the ideas of its most recent iteration without mischaracterization and in regards to their context, so that it can be understood as libertarianism writ large moves towards real decision-making power. By re-visiting the great thinkers of moral libertarianism, there is a collective gain in comprehending precisely what sort of phenomena is being represented in the modern face of libertarianism. This is not only important within the sphere of political academics to comprehending an ascendent political tendency on a conceptual level, but also to engaging with the vulgar libertarianism which has processed the ideas of these great thinkers, and is attempting to carry them out in practical politics.

Rand

The ‘birth’ of moral libertarianism as a distinct strain of libertarian thought can be traced back to the lurching ideological shift that began with Ayn Rand. The ‘lurching’ motion of the birth of moral libertarianism refers to a marked break from the arguments of the libertarian forefathers, which characterizes Rand’s foray into serious political writing, her *For The New Intellectual*, calls attention to where precisely Rand finds herself in the flow of history. Rand’s heterodox approach to the same question, how to advocate liberalism, is new in that Rand’s emotive biases, her fundamental love for capitalism, shades the project with the moralist’s furor, and passion. It is precisely that literary affect, Rand’s moralizing energy, which is transformed by Rand into a system of political thought, meant to lionize the economic elite by giving them a morality, to ‘defend’ the elite by arming them with a moral system.

Crucial to understanding the phenomena of Ayn Rand is understanding how Rand breaks from the proto-libertarian thought exemplified in F. A. Hayek. Hayek must be understood in turn as advocating for the free market and personal liberties not on lines of a morality, but almost as a comparative study between top-down political structures, and bottom-up structures. The central antagonist of Hayek’s political thought is planning, and how planning, particularly in terms of an economic program but also in terms of the repercussions in legal and social systems. However, the nuance of Hayek lies precisely in that Hayek’s analysis does not proceed from first principles, allowing for intellectual space within Hayek’s arguments to make certain:

“It is important not to confuse opposition against [top-down] planning with a dogmatic laissez faire attitude. The liberal argument does not advocate leaving things just as they

are; it favours making the best possible use of the forces of competition as a means of coordinating human efforts. It is based on the conviction that, where effective competition can be created, it is a better way of guiding individual efforts than any other. It emphasizes that in order to make competition work beneficially a carefully thought-out legal framework is required, and that neither the past nor the existing legal rules are free from grave defects.”³

Hayek, perhaps precisely due to not grounding an argument for liberal capitalism in a moral framework finds that ‘common-sense’ regulations, including labor laws and environmental regulations, are not at odds with a liberal order.⁴ Of course there are claims to a certain morality within Hayek’s writing, per an interjection on the origins of individualism: “Individualism [...] is based on the respect of Christianity for the individual man and the belief that it is desirable that men should be free to develop their own individual gifts and bents.”⁵ What might have been a moral deferral to Christianity instead takes place as a referral to politics as originated in, and perhaps justified by, Christianity. Of course in that referral there is of a moral injunction, towards individualism. But the moral component comes into contact with Hayek’s general argument only as a descriptive account of how this morality came to be. Indeed, Hayek argues for liberalism and against authoritarianism along the lines of how the emergent orders of free-market economies make for better societies along the lines of efficiency, wealth, productivity, options, etc.

³ Friedrich Hayek, *Road to Serfdom*, London: Institute of Economic Affairs, 1949 pg. 45, emphasis mine

⁴ Ibid, *Road to Serfdom*, pg. 46

⁵ Ibid, *Road to Serfdom*, pg. 42

For The New Intellectual is Ayn Rand's rallying cry for a sort of 'revolution' within intellectualism. Ayn Rand's revolution ends in 'integration,' but this 'integration' is only comprehensible within the historical architecture which Rand is using as her personal heuristic for understanding history leading up to the establishment of the United States. The United States is the end term of Rand's history in that it was "the first society in history [...] led, created, and dominated by the *Producers*." The 'Producer' is a sort of synthetic (Rand uses the term 'integrative') historical archetype, representing a "type of man" who positively 'integrates' the materialism and abstraction of the two negative archetypes. Rand uses the terms 'Attila' and 'Witch Doctor' to describe respectively both ends of a "soul-body dichotomy," characterized socially as "mindless, power-seeking looters" and "passive, death-worshipping mystics" respectively. These archetypes are used by Rand to explain how America has entered into a stage of "cultural bankruptcy," that the 'new men' of America, the businessman and intellectual, have been forced to provisionally hold the positions of Attila and Witch Doctor, but that both might experience an integration of soul and body, into the intellect as it were. For Rand, the businessman as "producer of wealth" and the intellectual as "purveyor of knowledge," were meant to .⁶ Rand epitomizes the social archetype of the producer in the form of the Founding Fathers, "they were *thinkers* who were also men of action." Critically for Rand's attempt to tie together her own political claims with the general claims about human 'psycho-epistemology' (Rand also offers the simpler synonym, 'awareness' and so both terms might be understood as cognition) and philosophy, "[the Founding Fathers] proclaimed man's right to the pursuit of happiness and were determined to establish on earth the conditions required for man's proper

⁶ Ayn Rand, *For The New Intellectual*, New York: Random House, 1963, pg. 24

existence, by the ‘unaided’ power of the intellect.”⁷ Rand presents happiness as a ‘feeling,’ but notes that for capitalism to be saved by a new intellectualism, American culture in general must accept that “the emotions are not tools of cognition.” This pronouncement is only a splinter of Rand’s overall critique of the established methods of thought.

Generally, Rand is dismissive of the philosophical tradition of the West, taking special care to criticize the influence of Kant, “some monstrous spider hanging in midair” accepted by the “major line of philosophers.”⁸ The quintessence of Rand’s rejection of Kant is that Kant teaches that “reality, as perceived by man’s mind is a distortion.”⁹ The integration of reality with conceptual thinking is precisely what enables the achievement of happiness, and for Rand, capitalist society as originally prescribed by the United States. For Rand, the ultimate rule of the integrative mentality is a ‘certainty’ which is assured by the un-restricted application of rationality. The problem of philosophy, especially of Kant, but also of Hegel, Marx, and the philosophers and philosophies of modernity. Rand isolates, oddly, existentialism and Zen Buddhism as two examples of philosophies which are ‘against’ or have ‘betrayed’ capitalism as an innovation towards human happiness via the liberation of human rationality. Another way of interpreting the ‘failings’ of these philosophies is that they provide no means of justifying the capitalist to himself, they only question and undermine the businessmen so as to push him into the position of the historical Attila.

These terms, Attila and Witch Doctor, together form a mutually-constituted antipode of the capitalist enterprise (America, namely) primarily by the fact that they cooperatively stifle the circumstances necessary for the formation and maintenance of capitalist society. For Rand, the

⁷ Rand, *For The New Intellectual*, pg. 25

⁸ *Ibid*, pg. 34

⁹ *Ibid*, pg. 32

businessmen and “intellectuals” of America have become subject to the need for a reintegration into a synthetic ‘thinker.’ The confusion of terms is Rand’s own, many terms are given without clarifying where differentiations or overlaps are occurring. Essentially, Rand can be read in such a way that ‘thinkers’ is the name for the way of applying of one’s intellect both to one’s physicality (engagement with the material) and one’s intellectuality (engagement with the conceptual). That application of the intellect can be taken as definitional for Rand’s ‘rational man,’ and thus the Founding Father’s are America’s “first and only intellectuals” in that they apparently thought in this integrated sense. Implicitly in Rand’s account of America, the Founding Father’s were able to be intellectuals in this sense due to their social role as Producers, an account which to some extent is validated by the historical record, all of the Founding Fathers being capitalists. Rand must be understood not trying to construct a causal account, but rather trying to construct a framework by which a third party could understand Rand’s perception of capitalism’s socio-cultural battle with “collectivism.” Collectivism for Rand is almost a positive name for the negative phenomenon of the mortification of the individual. Even the apparent ‘greed’ of the Attila archetype is taken as an actual degeneration of the concept of capitalist individualism, in that the destruction of property makes the actualization of the individual impossible. Thus to be a ‘thinker’ is to apply rationality to empirical problems from the position of an integrated “soul-body,” and thus to become a Producer, and Rand’s assertion is that that process has been blocked by the established philosophy. The notion of the disagreement is that men have been taught they cannot trust their senses, but to do capitalist business, to be concerned with one’s own interests, there must be an empirical reality which is trusted enough to be labored on by the cognition. At the back of it all, the interest of the capitalist entrepreneurs must be

sustained so that human good (examples include New York City, decreasing infant mortality, and the reduction of labor hours after the Industrial Revolution) might be bettered by the creative elites. The entire argument is essentially about a ruling class at all points, that world history is a battle grounds between the alliance of the Attila and Witch Doctor *against* the Producers, at least in world history post-America.

Despite Rand's messianic disposition towards the American project, Rand proclaims that "[various] degrees of government interference and control still [remain], even in America, as deadly cracks in the system's foundations."¹⁰ However 'government interference and control' as 'deadly' is fraught within Rand's own argument. The precise nature of what constitutes interference must necessarily be cross-referenced against the outlines of "Attila-ism" and "Witch Doctery." What is clear from Rand's account is that these archetypes are not outside of the apparatus of state, despite what the characterizing name 'Attila' might connote. Instead, these archetypes, especially in Rand's account of the medieval era, are compositional of the medieval state, of kings and the priesthood. The problem of Rand is that to have a society which protects the capacity of the Producer to be a entity within society but for himself actually mandates precisely government interference. The government must interfere to protect property rights by providing courts, law enforcement, and a military for the national defense to establish the sovereignty of the Producer. For Rand then, interference *per se* is not the issue. The Producer, far from being an emergent figure in human history, is for Rand the end of human teleology at the level of a universal. Therefore, Rand's notion of interference can be found to only implicate forms of interference which undermine the movement of people towards this teleological end.

¹⁰ Rand, *For The New Intellectual*, pg. 24

Reading Rand in this way explains Rand's insistence on a hygienic notion of social reformation which the 'new intellectuals' are being urged to bring about. In this reformation, the only *a priori* measure of what governmental actions might be 'rational,' that is, supportive of the Producer teleology. And rationality is the only metric of the 'true,' rationality arbitrates the 'true' but fails to actually do anything as an enforcement measure.

In the greater framework of the emergence of moral libertarianism, Rand is not creating a reliable framework of conceptual thought, but is instead generating narratives of social and intellectual history which presents capitalism and its bannermen, the businesspeople, as maximally rational, and thus maximally human, ways of social being. This hyper-individualism is actually, and bizarrely, integrative with society-wide vision, in which the unrestrained 'entrepreneur' figures who make up the Producers better society from the top-down. The question for Rand is not actually of the individual against society, it is about the happiness and well-being of people writ large being overseen by an elite that is revealed by the rational competition of business. It is notable that Rand's *The Fountainhead* is featured prominently, and whose protagonist actually forgoes financial gain and business success so that the O'Rourke's architectural vision will not be ignored. It presumes an almost Nietzschean read of the entrepreneur figure, a tendency which has been noted repeatedly by commentators on Rand. The 'Übermensch' of the entrepreneur is of course, being appropriated for a work urging a political-intellectual rejuvenation at the beginning of the 1960s. From the historical vantage point of 1961, the Nazi regime and fascism generally had been defeated soundly by the forces of capitalist liberalism. Soviet and Chinese communism had expanded, but the open conflict between major liberal and totalitarian powers was over. This breathing room meant that the

hyper-individualistic ‘rationality’ of Rand might go from a critique of totalitarian statism into a manifesto of liberal capitalist heroism. The difficulty of addressing the United States as a subject of critical discussion was that distinguishing ‘the Producers’ from the economic elite is not an easy task along the lines of Rand’s critique. For Rand, some unknown percentage of the rich were not Producers despite their economic output, instead being cast by Rand as beneficiaries of government contracts, legal machinations, and other illegitimate benefits derived from their symbiotic relationship with the state.

The problem of the crony capitalist, although Rand may not have been equipped with that language, is the problem of Rand attempting to define morality from a sort of first principles, survival in the world. Ignoring the biological claims of Rand, that the human being possesses no instincts which animals benefit from, the overdetermination of rationality poses problems generally for Rand’s attempt to inherit from Aristotle. Virtue ethics, which are posited intermittently in Rand create problems in that Rand is attempting to define a ‘good’ while also grounding that good in rationality. Rationality must be submitted to a good for Rand’s virtue ethics to function, but that claim ignores certain problems of defining what rationality is and what constitutes a rational decision. If performing the rational determines the good, but the rational must be constrained by a ‘good,’ then good must be pre-rational. Even taking Rand at face, the rational as means of determining survival does not account for the moral status of wealth, nor does it account for how, circumstantially, it might not be rational to act ‘immorally.’ Rand’s thoughts on these conflicts do not necessarily offer up satisfying philosophical answers. To that extent, the virtue ethics of Rand must be considered as not being about rationality *per se*,

but rather separated out and examined differently. The open comparison between Rand and Nietzsche seemingly offers some insight into the problem of Randian rationality.

Rand reinscribes the Nietzschean will to power within capitalist rationality. Rand synonymizes rationality and morality after establishing rationality not only as volitional,¹¹ but also as the condition of survival, i.e. where an animal has survival instincts, the human being has survival rationality. The tripartite structure of rationality-morality-survival, from whichever 'edge' of the trinity it is approached by Rand or a would-be acolyte, results in the same ultimate consequence. The man who seeks to be moral must apply their rationality so that they might survive. To survive, man must apply their rationality, and thus acts morally. These definitions aren't strictly circular, but are obviously deeply inter-involved. Rand describes an emergent hierarchy out of rationality -which ties the moral element to it- along the lines of an implied limit of ability. Rand denies that this could be related to biology, circumstance, or other influences outside of one's control by predefining rationality as a choice. That could be axiomatically written as 'the moral option is to seek the highest position within one's ability.' Thus corporate ambition is actually transformed into a virtue of the moral actor, to not practice that virtue is be less moral. By creating a moral system which pursues virtues, Rand is able to avoid being in the position of telling someone else what to do. Rand's advice is to not take advice, to rely on one's own rationality as guidance. The problem is that Rand addresses rationality but presents rationality in such a way as to create a confusing space in which rationality, the ability to act, and intelligence are somewhat confused together. Seemingly, intelligence and rationality are not synonymous for Rand, but if they are not, it must be asked whether or not Rand correlates the

¹¹ Rand, *For the New Intellectual*, pg. 149

two. If intelligence *is* rationality, or there is an effective relationship between the two, then the implication is that there are natural and emergent hierarchies. Rand argues for these hierarchies bi-directionally: it is good for the able to occupy the best jobs, and it is bad for the less able to live above their rational capacity.¹² The softly-defined topography of Rand's hierarchicalism is somewhere between the intonations of 'caste' and 'niche,' but both evoke Rand's moral imperative to embody one's kinetic economic stature. It is precisely at this point that Rand's re-inscription of the will to power begins to explore new and fertile ground, namely in that the 'to power' might be taken in Rand as 'to capability.' The Producers are harassed from above and below by the state and the masses, two appendages of jealousy which are then justified in their condemnation of the wealth and status of the productive ones by 'the intellectuals.' For Rand, the appropriate modifications to this system would be involved with the process of giving the now beleaguered businessmen the moral system to retaliate to the claims of the state and masses to their wealth. But Rand drives moral dividers between the wealthy *as such*, and the Producers who *have* wealth as a consequence of *generating* wealth and *making* good products. The Nietzschean *Wille zur Macht* is situated in an anti-morality, in the exposure of the servile genealogy of Judeo-Christian morality. Yet Nietzsche's victorious archetype the 'blonde beast,' is distinguished from the Randian capitalist hero in that the naturalization of conquest is replaced with the moralization of emergently determined capitalist hierarchies.

Close reading Rand, it is easy to see how the professed free-market spirit of Rand maps fittingly with an aristocratic tendency:

¹² Rand, *For The New Intellectual*, pg. 159

“Capitalism demands the best of every man—his rationality—and rewards him accordingly.”

The element of ‘demanding the best’ and the ‘accordance’ of the rewards indicates already that the ends of capitalist life are tied explicitly to means, the two are almost inseparable. This not only assumes categories of people based on capitalist ‘rewards’, but also implicitly favors the born-wealthy and the prodigal genius. Thus the most successful category of person are already aligned in Rand with aristocratic archetypes through the implicit description of capitalism, although this is not yet fully fleshed out.

“[Capitalism] leaves every man free to choose the work he likes, to specialize in it, to trade his product for the products of others, and to go as far on the road of achievement as his ability and ambition will carry him. His success depends on the objective value of his work and on the rationality of those who recognize that value. When men are free to trade, with reason and reality as their only arbiter, when no man may use physical force to extort the consent of another, it is the best product and the best judgment that win in every field of human endeavor, and raise the standard of living—and of thought—ever higher for all those who take part in mankind’s productive activity.”

Ability and ambition are mentioned in Rand as two variables of capitalist success, but must be understood as actually interoperating on a level at which the two inform one another. Ability is only manifested into success through ambition, but the extent of ambition is informed via ability, or as Rand proclaims the synthesis: “to cheat your way into a job bigger than your mind can handle is to become a fear-corroded ape on borrowed motions and borrowed time, and to settle down into a job that requires less than your mind’s full capacity is to cut your motor and

sentence yourself to another kind of motion: decay.” But the language of universalism is misleading, in that it would seem to be a philosophy for universal man, it is actually in celebration of the beleaguered upper class. If this is not evident enough in that a sub-section is titled “The Martyrdom of the Industrialists,” then it can become evident in the consideration of the next passage. Rand also here intonates the ‘best product,’ and the meaning of ‘best’ can be contended with in either an aristocratic or Darwinian sense, as the best in the sense of an ideal, or the best in terms of the situation it finds itself in, of a ‘best’ of the marketplace. Rand favors the former contention, in her assertion that “the man who holds high standards of craftsmanship, but devotes his effort to the production of trash—these are the men who have renounced matter, the men who believe that the values of their spirit cannot be brought into material reality.” Yet ‘trash’ might refer to the the cheapest product, made shoddily but affordably, and in that meaning conforms to certain expectation of the market to provide for demands at all levels of capacity to buy. The layman’s jacket is not the same as the rich man’s jacket, but to provide a jacket to every man requires some production of ‘trash’. The problem is the ambiguity of ‘trash’ as a turn of phrase, but seated within the larger aristocratic tendency of Rand, it seems clear that trash is to some extent tied up in craftsmanship.

“By creating a mass market, [the businessman] makes these products available to every income level of society. By using machines, he increases the productivity of human labor, thus raising labor’s economic rewards. By organizing human effort into productive enterprises, he creates employment for men of countless professions. He is the great liberator who, in the short span of a century and a half, has released men from bondage to their physical needs, has released them from the terrible drudgery of an eighteen-hour workday of manual labor for their barest

subsistence, has released them from famines, from pestilences, from the stagnant hopelessness and terror in which most of mankind had lived in all the pre-capitalist centuries—and in which most of it still lives, in non-capitalist countries.”

Here, the aristocrat-businessman becomes a romantic ‘great liberator,’ the organizers of the Industrial Revolution which saved (released perhaps) humanity from an array of miseries. The figureship of the “the great liberator” is the clarion moment of Rand’s aristocracy, it places the ambiguous businessman not only as figure of excellence, but also as a figure of deference. The less capable owe gratitude to the businessman, who have become their betters through the diffuse benefaction of capitalism-fueled development, as Rand lists in the selected quotation. The mass market also becomes the product of the businessmen as much as the goods which are rolled off Fordist factory belts. In that way, the businessman actually manifests the actual social space of capitalism. It becomes difficult in Rand to actually distinguish capitalism as a system apart from the businessmen because this dynamic pervades Rand’s discourse capitalism. Capitalism is always for Rand the system which rewards the best, but also, as in aristocracy, it is a system which emanates from the capacity of the best to govern it.

Despite that, capitalism remains a system of government which in the American context, towards which Rand is posturing her writings, is tied up with democracy (or at least republicanism) and is thus tied to the rule of the masses. Rand calls for a political movement which will see the arrival of ‘conservative’ intellectuals and politicians (the cronies of the intellectuals in Rand’s eyes) not afraid to defend the rights of the Producers to the rewards of their creative efforts. But, as anyone can ultimately succeed in Rand’s framework, and in contention with the actual state of the American political apparatus, Rand’s aristocracy is faced

with the question of how it is meant to survive amongst a non-benefitting mass. Furthermore, Rand does not offer exact prescriptions to the problem of reforming the political situation, this text is meant partially as a display of the ideals of Randian capitalism. Precisely the difference between Rand and the other authors of this generational milieu, especially Rothbard and Nozick, is that with the arrival of Rothbard, the upwards-facing (aristocratic) moralization has been replaced by a moral attitude towards specific actors which can only be described as Darwinian. The difference between these two moral attitudes is accompanied also by a revisitation of how the moral is meant to function to ground and shape a libertarian society. By the publishing of Rothbard's *For A New Liberty*, the morality of libertarianism has been transformed, and started to become more and more entangled with the tradition of political philosophy as its prescriptive capability disappeared. In Rothbard, we find a libertarian morality which demands only a single principle to define every aspect of political life, and thus more applicable, and harder to contest.

Rothbard

“Since men can think, feel, evaluate, and act only as individuals, it becomes vitally necessary for each man’s survival and prosperity that he be free to learn, choose, develop his faculties, and act upon his knowledge and values. This is the necessary path of human nature; to interfere with and cripple this process by using violence goes profoundly against what is necessary by man’s nature for his life and prosperity. Violent interference with a man’s learning and choices is therefore profoundly “antihuman”; it violates the natural law of man’s needs”¹³

Those words reverberate with the clinical fury with which Rand took to trying to dismantle a society which had begun to build for itself an ethos of sharing, embodied in the New Deal. But this claim to the rights of the producer class against “[v]iolent interference,” was an expression of a ‘new intellectual,’ and of a widening in the intellectual landscape of the nascent moral libertarianism. Murray Rothbard, Austrian economist amongst other titles, took up the mantle of moral libertarianism in the work *For A New Liberty: The Libertarian Manifesto*, whose publishing marked a substantial development in the approach to a moral theory of libertarianism. Rand’s work was marked by an inability to restrain itself to the limitations of its initial claims, not helped by the idiosyncratic language and intentional ignorance of the philosophical canon, leading to ungrounded moral pronouncements. Rothbard, a member of the academy and a more disciplined thinker, rather than attempting to build on Rand’s auteur philosophy, developed a more rigid and systematic ethics. The moral arguments of Rand are developed by Rothbard’s capacity to interface moral libertarianism consistently with logical frameworks, often drawn from academic sources which Rand either disregarded or was unaware of. Rothbard bases his

¹³ Murray Rothbard, *For A New Liberty*, New York: The Macmillan Company, 1973, pg. 33

own political theory in the philosophy of Locke, Weber, and other confirmed members of the liberal political canon whose ideas have faced public trial through generations of intellectuals. Standing on the shoulder of giants, and

In the refinement that the moral argument for libertarianism undergoes in Rothbard, many of Rand's core contentions from *For The New Intellectual* are represented with new arguments to support them, in a more systematic philosophical format which is more congruent with the intellectual history of liberalism and libertarianism. Rand's ultimate project, of creating a morality for the 'Producer' class, is validated in Rothbard, who describes the 'state' as "a legal, orderly, systematic channel for predation on the property of the producers."¹⁴ However, exactly in the way that Rothbard here attributes the 'predation' of the producers to the state, Rothbard's general understanding of the state and its role in the politics of libertarianism differ remarkably from Rand. In Rand, the ideal political situation is in many ways informed by the early American republic, and maintains a fixation on restoring and reforming the current American state back to the glory of the Founding Fathers. Rothbard also breaks from Locke by rejecting the conception of a social contract as it were,¹⁵ which in turn rejects any narrative of the state as an entity which was formed or which is based on democratic and consensual participation.¹⁶

For A New Liberty as an intellectual project might be understood primarily as an extended critique of statism through the application of a moral philosophy with libertarian characteristics to the problems of the contemporary state. The form a 'moral philosophy with libertarian characteristics' takes is a deontological system of thought in which the governing

¹⁴ Rothbard, *For A New Liberty*, pg. 61

¹⁵ *Ibid*, pg. 77

¹⁶ *Ibid*, pg. 52

assumptions are self-ownership as the fundamental and conditional fact of property rights, with those property rights being a morally inviolable and metaphysically inherent fact of each person. The moral philosophy which Rothbard presents is built on the natural-rights account from Locke, and the Rothbard is a son of liberalism only to the extent that the free-market, and the property rights which gives mandate to the free-market, are also tied up with liberalism. As Rand might shame crony capitalism as a sort of falsehood, Rothbard denounces it as an institution of the state, urging towards the capacity of a repressed competition to take place and unseat monopolies, corporate giants, and other monsters of the regulated marketplace. It is insurgent in that way, it fixates itself on a majority, but lays claim to that majority by condemning the artificial successes which are bred at the intersection of government and big business. It's Darwinism, that asserts that the evolutionary dead ends posed by wasteful and bloated companies will be unseated by the fitter, the more maneuverable, the underdogs, is also somewhat egalitarian.¹⁷ It poses a vision of the future in which every man becomes a capitalist. That shift between Rand and Rothbard happens precisely because Rothbard is not interested in the texture of behavior, but only in a binary of interaction. Freedom does not, for Rothbard, intersect with virtue. The N.A.A. is a moral idea, but it's morality is almost programmatic, an algorithm by which a 'good' and 'bad' can be posited but with none of the emotive elements of Rand, nor assigning heroism to the moral agents. The N.A.A. is also conceptually blind to what its moral agents look like, and cannot make claims about how society should be shaped. In that way, Rothbard is also writing a morality which is more market-like, it orders human moral interactions in the same emergent manner as a pure theory of the market sees economic

¹⁷ Rothbard, *For A New Liberty*, pg. 387-388

interactions as emergently ordered. In that sense, Rothbard might even be read as a synthetic figure between Rand and Hayek, binding together the economic and moral arguments in a way which gives moral right to the legacy of Hayek, but which burns off the impurities of Rand's virtuousism. These impurities might be listed as Rand's hero-worship, her behavioral dictates, and inability to ground private property except negatively, demanding the gratitude of the working class.

“[The libertarian] insists that whatever services the government actually performs could be supplied far more efficiently and far more morally by private and cooperative enterprise.”¹⁸ From Rothbard's own axiomatic logic, ‘society,’ or any other organization in the ‘public,’ does not exist *per se*, and is only a nomenclature for a set of real individuals in the same way as a company refers to many people working to create a product or service. However, the state is not only another form of social organization, Rothbard has distinguished the state a ‘criminal band,’ which is to say that the state, unlike other modes of social formation, is an abstraction which shapes individual behavior which *always* infringes on the rights of those it proposes to govern. This criticism of the state generates certain problems, but also provides an effective limit of the logic of the moral libertarian position, the goal of complete replacement of the state by private operators and organizations.¹⁹ The main problem of this criticism of the state is the way in which it compromises the social theory Rothbard constructs. Rothbard attempts to establish the ‘state’ as an abstraction which bears no meaningful differentiations from any other abstract social formation. The state is also, however, defined by the function of maintaining a ‘monopoly’ on

¹⁸ Rothbard, *For A New Liberty*, pg. 11

¹⁹ The usefulness of this outer limit for understanding the ideological ties which make this group of authors a ‘generation’ of thinkers is explored further in the upcoming chapter on Nozick, but is mentioned here to clarify where the idea originates in the argument of Rothbard.

violence within its jurisdiction. The tension which exists in the way that the state is characterized by Rothbard must both be an abstraction which does. The state defends the rights of its citizens through law enforcement, via the collective action of the legislators, police, and the courts, as per the Lockean historical movement from nature to political society. Law, and its enforcement, as Rothbard describes its hypothetical anarcho-capitalist form, takes on a striking similarity to exactly the structures which Rothbard is attempting to subvert.

The problem presented by law is that law and its enforcement, which is considered necessary by Rothbard, creates situations in an anarcho-capitalist thought experiment which blur the lines between statism and solutions provided by the market. Rothbard's position on the subject of enforcement in regards to anarcho-capitalist law is that "[o]n the free market, what would be enforced is whatever [laws] the customers are willing to pay for."²⁰ However, Rothbard also declares, "there will have to be a legal code in a libertarian society," meaning a legal code which is universally understood and accepted, and which conforms to libertarian moral principles.²¹ Rothbard immediately qualifies such a legal code, adding the caveat that any legal code which includes law that violate the non-aggression axiom, or courts which uphold any such laws "would be *illegal* in terms of libertarian principle, and could not be upheld by the rest of society"²² What Rothbard does not and perhaps cannot provide, is a mechanism which would cause the formation of an anarchist situation in which society "would insist on the libertarian principle of no aggression against person or property, define property rights in accordance with libertarian principle, set up rules of evidence [...] in deciding who are the wrongdoers in any

²⁰ Rothbard, *For A New Liberty*, pg. 221

²¹ *Ibid*, pg. 234

²² *Ibid*, pg. 235

dispute, and set up a code of maximum punishment for any particular crime.”²³ Even providing for the acceptance of a libertarian legal code universally, the problem arise of how enforcement and punishment is to be resolved in a way which is firstly, not in violation of the rights of the perpetrator, and secondly, allows for the enforcement agencies to be also restrained by the rule of the legal code. The second clause encompasses the first, as without any mechanisms in place to somehow bind the actions of private law enforcement agencies to the libertarian legal code, there is no ability to guarantee that those agencies will actually respect either the legal code, or the non-aggression axiom in their actions.

Working through these conditions of a libertarian law in reverse, Rothbard notably does not produce at all a justification for why the network of private courts and police forces would agree upon on a universal libertarian code, or why, even if they would, why it would be a legal code based on libertarian principles. The looming element, although it is unaddressed by Rothbard beyond mentioning it as a possible arbitrator, is “the rest of society.” Society, as Rothbard has already established, is an abstract set which includes all individuals within an ambiguous network of social and economic interactions, it is “non-existent” as an entity in its own right. Therefore there is no ‘higher good’ to appeal to, but instead for the “rest of society” to refuse to uphold a legal code would require individuals, en masse, to refuse the authority of a legal code. The narrative underlying this assertion is a variant of the Lockean doctrine of revolution, substituting tyrannical rule for law which infringes on the non-aggression axiom, and revolution with a refusal to “uphold” the legal code. What is meant by “uphold” is not laid out in Rothbard explicitly, but it can be taken from the following passages that Rothbard sees most

²³ Ibid, pg. 235

problems within a private market legal system as being solvable by the power of consumer patronage. However, patronage works within a multiplicity system for patronage to even be considered as a solution to social problems, there must always be alternatives which can be favored so as to shift the system. But Rothbard's legal code is singular, there are not competing codes, but one code developed by the 'competition' of many judges and courts. To not be 'upheld' would mean that courts which enforce an illegitimate variant of the legal code would have to be rejected by consumers to such a degree as to nullify those aberrant courts, police departments, etc. The problem then is precisely what if the "rest of society," in which Rothbard lodges the entire possibility of salvation, were not a 'Libertarian Society?' For as much as Rothbard rejects the need for the transformed man, without the transformed society what is to stop the emergence of any other political ideology in the 'vacuum' of anarchic libertarianism? The problem for Rothbard is not whether or not the account of an emergent libertarianism is viable in the private market system, but why other political ideologies are less viable as possibilities.

The argument must render the liberal state ultimately indistinguishable on a moral level from the governments of totalitarianism, and their forms of violence and control. However, in staking that claim, Rothbard also demonstrates the power of thinking from moral first principles to dissolve the political identities of liberalism, fascism, communism, and so on into one textureless entity, the state. Liberalism, and by extension all other ideologies and forms of government based in either direct or representative democracy, problematizes Rothbard's model of a universal state. Taking liberalism as the paramount example—on account of the fact that American liberalism is the central object of Rothbard's criticism—Rothbard makes two claims

which are meant to undermine liberalism's claim to a consensual relationship with the governed. The first is in fact a set of claims which generally challenge the ability of the American state, as matter of historical fact, to defend the rights of its citizens. This set of claims can be ignored for the purpose of evaluating Rothbard's argument, as they are essentially supplementary to the main theory, but must be noted so the reason. The second claim is that the theory of the social contract is untenable on the basis that the historical origins of any given state "generally began in violence and conquest [and] never by general consensus or contract."²⁴ This critique of the social contract essentially alleges that there is no historical point at which any state was operationally 'just' (according to Rothbard's natural-rights ethics) as there was no point at which the state was actually in voluntary accord with all of its members. The idea of the Lockean consensus, by which a group of individuals escapes from the state of nature, and collectively defers their powers of self-defense to the state, is thereby invalidated. The precarity of the argument is that the extent to which Rothbard is able to separate the natural-rights argument of Locke from the Lockean consensus is also the extent to which central ideas to Rothbard's hypothetical anarcho-capitalism can also be questioned. The Lockean consensus is premised on the idea that by the consent of any number of individuals, the right to punish is submitted up to government. The presumption is not that the government lays special privilege to the authority of violence, "legitimacy" would be Rothbard's term, but rather that the right to punishment are somehow transferable if one consents. Taking as given the situation Rothbard describes, in which there is a system of courts which all subscribe to a basic libertarian legal code, and there are many protection agencies that work alongside these courts, it must be considered what occurs

²⁴ Rothbard, *For A New Liberty*, pg. 84

when two citizens who are both members of one protection agency are to do when one violates the rights of the other. The protection agency, which is obligated by contract to both parties to protect their rights, cannot allow either party to maintain their individual right to punish the other, and so are at the very least incentivized by their contractual relationships to restrain the aggrieved party from punishing the other without ‘due process.’ The problem that is created is that the protection agency, in order to fulfill its contractual obligation to both parties, is morally required to actually infringe on the right to punish in the case of both parties in order to guarantee the protection of its clients.²⁵ Whether or not this narrative is convincing is irrelevant to the point, as the initial argument Rothbard makes is made on exactly the same lines, rationalizing what behaviors protection agencies would take on in an anarchist situation. The essential conclusion is that the behavior of these protection agencies cannot be regulated, but also that if their benevolence is assumed, it could as easily take the form of the social contract which Rothbard sought to avoid. Performing the service of law enforcement, at some point, requires the deferral of some rights so as to be able to prevent wanton violence, exactly as explained in Locke’s state of nature. Thus the ultimate critique of liberalism, although it does not fail, actually reveals that there are circumstantial conditions in which the anarchist law enforcement mechanisms begin to take on an uncanny resemblance to the liberal state. In that way, the foundational claim, that the state is always different from the

The framework for anarchic law which Rothbard proposes comes already accompanied by an implicit theory of justice, based upon understanding the exchange of actions which the non-aggression axiom gives description to. The non-aggression axiom bifurcates all human

²⁵ This is assuming that the interest to protect the clients by the agency overrides the moral interest in allowing the clients to maintain their state of war, which is only as plausible as any other conjecture as to the possible conditions of an anarcho-capitalist society.

action into the category of aggressive or non-aggressive action, either violating the property rights of others or not. From this, it follows that just circumstances are such wherein no individual's property rights are being violated by the aggression others. To establish the initial circumstances by which possessions are acquired and transformed into the property of an individual as just, Rothbard affirms Locke's labor theory of property.²⁶ However, upon the violation of an individual rights, or the attempt at violation, individuals are entitled to certain forms of response. The implicit Rothbardian theory of justice which follows from those premises is that there is a system for determining just and unjust actors in a given interaction, which can be ascertained by tracking how exchanges of aggression occur and resolve, so as to determine who in a given exchange is or was entitled to self-defense, retribution, or restitution. Retribution and restitution are owed particular attention, as Rothbard later devised a method of determining the theoretical "maximum limit" on the right to punishment of either type through a "proportionate principle." The proportionate principle is defined as entailing that "the criminal loses rights to the extent that he deprives the victim."²⁷ For Rothbard, proportionality amounts to the functional doubling of the punishment in proportion to the crime, which means that an assault might be responded to with a more vicious assault, and a theft might demand restitution of the original stolen amount, and also compensation of the same amount. However, the theory of proportionate punishment exposes pragmatic problems which the anarchic state of law and its enforcement create. Firstly, unless proportionality is intended strictly as a theoretical exercise, who is meant is to enforce the rule of proportionality? As Rothbard considers it, "if Hatfield, merely beat up McCoy, and then McCoy kills him in return, this too would put McCoy up for

²⁶ Rothbard, *For A New Liberty*, pg. 43-44

²⁷ Murray Rothbard, *The Ethics of Liberty*, New York University Press, 1998, pg. 85

punishment as a murderer.”²⁸ However, in an anarchic system, as Locke recognized and described, precisely the problem is that there is no *de facto* authority which will either enforce the rule of proportionality, nor defend the rights of the victim—it is a state of war. Self-defense is unlimited in this system to precisely the extent that Locke described the ignorance of the victim: until a crime has been committed, the victim might always assume the possibility of a murderous threat, and therefore exact any form of self-defense they deem necessary.²⁹ Rothbard is able to justify the argument of proportionality only on the assumption that in an anarchic system, all security agencies and all private courts would be generally cooperative, and a reasonable majority would have access to both resources. If justice then is based on a general respect for the non-aggression axiom amongst the masses, and proportionality in all forms of response to aggression except self-defense, then there must be some means by which both standards can be maintained. Rothbard addresses murder as posing a problem in that the success of a murder necessarily means the responsibility for punishment must either be transferred or dissipate. Assuming, as Locke does, that the relationship between an individual and a protection agency is such that The problem is not that Rothbard is necessarily incorrect, but only that insofar as Rothbard is making claims that are contingent on certain necessary circumstances, counter-claims might be lodged by reasonably modifying the circumstances. Furthermore, Rothbard, throughout all discussions of punishment, always asserts that the primary purpose of punishment is always, and should always be restitution. As will be explored in the upcoming discussion of Nozick, the implications of always holding out compensation as a means of achieving justice is that compensation might become a tool for creating systems in which

²⁸ Rothbard, *The Ethics of Liberty*, pg. 91

²⁹ John Locke, *Second Treatise on Government*, Bowen Island, Canada: Early Modern Texts, 1689, pg. 7-8

substantial infringement upon the property rights of individuals can be morally negated. And this only compounds the problem of the lack of structural or implicit regulations upon the agencies which are meant to be doing the work to maintain the N.A.A.

There are no guarantees to the maintenance of the N.A.A. without an overarching body with an interest or a mandate in enforcing the N.A.A. Although Rothbard would assert that there are principles of emergent order which would shift the market of legal practice towards the N.A.A., the claim is inherently unprovable. Moreover, within the larger claim by free-market political agents to the privileging of emergence, why wouldn't there be a multiplicity of ethico-legal systems on offer? The answers are unclear, and should be taken as the anarcho-capitalist system running up against the limitations of its own capacity to address the state rather than liberalism. The difference is crucial: a critique of liberalism refines a model, a critique of the state attempts to radically redefine what it means to be in a society. The latter project is fine, but in Rothbard's account there is not enough consideration given to how markets and the state interact with one another.

Rothbard's deontological approach to moral libertarianism remains a powerful and consistent critique of the state, but that critique is itself largely a rearticulation of previous thinkers.³⁰ The problematic element of the anarcho-capitalist argument are the circumstantial arrangements which were required to maintain a cohesive and functional model of an anarchist society accommodating capitalism and property rights. Although these claims are neither provable nor disprovable given the absence of an attempted anarcho-capitalist society, the ambiguities which are generated leave Rothbard's system of thought exposed to replacement by

³⁰ Locke, Rand, Weber, and Nock are all examples authors whose ideas are either directly inserted into *For A New Liberty* or whose ideas are represented synthetically in Rothbard.

a system with a more powerful explanatory power. The inability to account for possibility of a state re-forming out of anarchy, the moral problem of compensation and restitution, and being able to assume the appropriate behavior of the private protection agencies all remain open for critique.

Nozick

Anarchy, State, and Utopia, by Robert Nozick's own attribution, was the tangential result of a conversation between Nozick and Murray Rothbard.³¹ Rothbard created a substantial and robust system of thought for defending libertarianism and critiquing the State deontologically. However, at the fringes of Rothbard's system, there were substantial unresolved ambiguities, which did not necessarily problematize the anarcho-capitalism, but which left key parts of the argument in states of conjecture. The legacy which Rothbard passed on to Nozick was a legacy of conjecture open to solutions. Nozick, a technician of morality, developed Rothbard's system of thought by providing substantive, plausible responses and solutions to some of the major ambiguities from Rothbard. The conclusions are a surprising severe turn back into the minarchist position, which roughly corresponded to Rand's preferred government. The difference between minarchist and anarchist position is probably the most substantive difference between the two thinkers, although it does not take place along a regression to Randian logic, but rather an advancement along lines of thought which Rothbard paved. Nozick returns the state to moral libertarianism, as part of a corrective measure of ambiguities which were playing out in Rothbard.

Nozick complicates the idea of a state by examining area where the ambiguous metrics which define statehood create "statelike entities," or entities which operate somewhere between the definitions of "dominant protective agencies" and "states." Nozick negatively defines the

³¹ Nozick, *Anarchy, State, and Utopia*, pg. xvi

“statelike entity” against the dominant protective association, claiming that the protective agency “makes no such claim [to be the sole authorizer of violence.]”³² The “statelike entity,” by the same negative definition, is also a historical stage in the progression from anarchy to statehood in which the protective agency finally does make a claim to being the authorizer of violence.

Nozick explicitly presents that historical transition as inevitable due to the emergent pressures such as the demand for protection and for consistent and persistent means for protecting property rights.³³ Presenting the appearance of the minimal state as an emergent phenomenon of the state is another manner in which Nozick affirms certain dogmas of liberalism. Social contract theory is one such dogma enmeshed with liberalism, and particularly with strains of liberalism with libertarian bents, not only due to the foundational proximity of social contractarianism to Locke, but also, as Neidleman renders it, “[social contract theory] presupposes the fundamental freedom and equality of all those entering into a political arrangement and the associated rights that follow from the principles of basic freedom and equality.”³⁴ Rothbard contested social contract theory by claiming that origin of most states was in the violent conquest of one group by another group, a claim which positions the state as originating in, and thus inextricable from, violence.³⁵ Nozick’s return to social contract theory indicates that within the intellectual movement of the moral libertarianism, the relative radicalism of Rothbard neither prevailed, nor, by accounts of the modern libertarian party and its platform, has the anarchist tendency succeeded there. Rothbard’s account, regardless of being more or less historically plausible as an account of state origins, leads to inevitable tensions when Rothbard attempts to claim a stateless future as the

³² Nozick, *Anarchy, State, and Utopia*, pg. 117

³³ *Ibid*, pg. 16-17

³⁴ Neidleman, Jason, *The Social Contract Theory in a Global Context*, E-International Relations, Oct. 9th, 2012

³⁵ Rothbard, *For A New Liberty*, pg. 77-78

method by which to achieve a reality in which natural rights are more strongly upheld. The social contract theory essentially, although not absolutely, is defined as the emergence of a state out of anarchism. Rothbard's suggestion that states are born out of conquest, and warring tribes, asserts a vision of the pre-state existence, which is at least superficially anarchism, as a situation in which conquest and violence overturned the freedom and independence of certain groups by other certain groups. Rothbard does not distinguish whether and how a new, capitalist anarchism would differ from this primordial anarchism, which leaves open the question of whether or not the reemergence of the state also threatens the capitalist anarchism Rothbard advocates.

The stark definition of the state, which Rothbard adapts from Weber, strips the concept of the state of its nuance, and reduces the state to a single concept despite the obvious multiplicity of the state's forms and historical stages, as well as the function it provides at those different stages. Nozick begins to undo Rothbard's reductionism by creating new conceptual categories for understanding the historical stages of the state, how those different stages have separate functions and attend to different moral considerations. The "ultraminimal state" is one of those conceptual categories, invented by Nozick for use in adding gradation to the conceptual distance between capitalist anarchy (protection and 'state-like' services provided by corporate or private entities) and a 'state.' The ultraminimal state is meant to distinguish as both are providing "protection and enforcement services," but the services of the ultraminimal state are paid only to the members of society who voluntarily pay into its protection scheme.³⁶ The ultraminimal state for Nozick must, on the terms of a moral progression, develop into a minimal state. The relationship of moral progression that Nozick outlines implies the moral inferiority of the

³⁶ Nozick, *Anarchy, State, and Utopia*, pg. 26

ultraminimal state by the fact of its operators being considered “morally obligated” to proceed into the minimal state.³⁷

The ultraminimal state, in Nozick’s historical framework, is the first ‘statelike entity’ for which legal rights—that is to say pragmatic rights which are decided upon, described, and enforced through the mechanisms of a state—can be observed within the functioning of that entity. Nozick defines rights, legal or otherwise, as side constraints to establish a claim to how rights direct the traffic of moral relationships. As side constraint, it is not that people move towards the ideals which rights represent and codify, but rather that rights prevent actions in the direction of other people, rights *repulse*.³⁸ The idea of side constraints is both a marker and a product of Nozick’s relationship to the larger generation of moral libertarian thought. The side constraint develops the ideology’s throughline theory of the sacrosanct individual, and is in many ways a more completely developed theory of right. Nozick expresses and validates Rothbard’s configuration of the non-aggression axiom as a right, amongst other rights which Nozick considers human beings to possess inherently.³⁹ Nozick offers this explanation of how the non-aggression axiom would result from the philosophical circumstances as Nozick sees them: “This root idea, namely, that there are different individuals with separate lives and so no one may be sacrificed for others, underlies the existence of moral side constraints, but it also, I believe, leads to a libertarian side constraint that prohibits aggression against another.”⁴⁰ The ‘root idea,’ the separateness of persons, is intellectual baggage from Rawls, and which Nozick is also applying (possibly appropriating) for the purpose of arguing against utilitarian concerns.

³⁷ Nozick, *Anarchy, State, and Utopia*, pg. 52-53

³⁸ *Ibid*, pg. 32

³⁹ *Ibid*, pg. 33 & iix

⁴⁰ *Ibid*, pg. 33

Nozick's essential moral perspective, in terms of the separateness of persons, "[treating] individual lives as morally important units," in distinction to the strict utilitarian account.⁴¹ These individuals are the basic moral unit, are morally important, and in conjunction with the claim that Nozick has asserted that each individual has intrinsic rights, rights which must be respected due to their moral importance, the non-aggression principle can be logically concluded, and in some sense 'falls out' of those two claims interacting. Maintaining the non-aggression axiom keeps with the tradition of moral libertarianism, but Nozick makes a crucial distinction between a non-aggression *principle* and a non-aggression *axiom*, favoring the former.

Rothbard justifies the axiom (with due notice given to the continuing distinction between principle and axiom) as the result of deriving from self-ownership. The derivation, modeled on Locke's own account of property, defines axiom as the "the absolute right to be "free" from aggression," and the "central axiom of the libertarian creed."⁴² and therefore the non-aggression principle is not only the first right, but also the only possible right . There is only that single right and its violations when considering morality. Rothbard also to someone degree offers a primitive description of separateness of persons, but Nozick uses the idea of the separateness of persons to further complete the logic of self-ownership and, operating under this summary of separateness, clarifies its libertarian implications in the expression: "[by virtue of reflecting] the fact of our separate existences ... [...] [that] there is no moral outweighing of one of our lives by others so as to lead to a greater overall *social* good."⁴³ As McKerlie notes, Nozick is not grounding the argument here, but is presenting a different interpretation of the moral ontology of the world,

⁴¹ McKerlie, *Egalitarianism and the Separateness of Persons*, Canadian Journal of Philosophy, Vol. 18, No. 2, June 1988, pg. 205

⁴² Rothbard, *For A New Liberty*, pg. 2, 31

⁴³ Nozick, *Anarchy, State, and Utopia*, pg. 33;

with the individual being the base unit. This configuration is not a grounding, but rather is a sort of matching; rights are understood as matching an intuition about morality which is constituted by certain large moral frameworks. As Nozick applies it, the separateness of persons becomes a means of justifying libertarian individualism, bolstering Rothbard's claim that the individual is the only 'real' unit deserving moral protections by attempting to refute the utilitarian claim to what Nozick calls "a greater overall *social* good." The model of the individual which Nozick establishes, on the terms of general libertarian argument, is more robustly defended as the principle moral agent by having a counter-argument to utilitarianism, and also abandons the axiomatic logic of Rothbard. In that sense, Nozick could actually be seen as putting forward a weaker assertion of the Abandoning axiomatic logic does leave the philosophy more imprecise, as Nozick's account of the principle is suggested, but not defined, by the separateness of persons and is left without a defined ground as Nozick proceeds. But, at the cost of that imprecision, Nozick reframes the principle as a right which exists, but which is not in the position of serving as the axiomatic core of the ideology (which, as axiomatic, is inherently unprovable) and instead substitutes axiom for what might be considered a general a general intuition of rights. Using the intuition of rights offers some benefits, as it allows for rights to be conceived and presented on a rolling basis, and justified on the basis of observations about the conditions of human existence, a strong if not infallible method of justification, and often equally proficient as a means of justification to axioms within the more than enough when applied to the realm of real politics. Moreover, American citizens have rights, which are legally defined, inviolable and protected as a matter of fact. Nozick's assumption of the (minimal) state as an answer to the moral problem of protecting rights clarifies that Nozick is offering in one sense a philosophy of rights with which

to define moral limits to what rights a liberal state such as America might enforce, and how. However, the morality which Nozick advances becomes fraught when it actually comes into contact with legalized rights, and therefore the formulation of a theoretical defense is not a necessary approach.

In a morality that is so intertwined with rights, the principle ambiguities of that moral system rapidly escalate to legalistic problems: if the immoral is defined by the violation of rights, and seeing as Nozick only references articulates the non-aggression principle along the lines of property rights and their violation, whether or not there is a system for weighing different moral violations remains an outstanding problem for a world in which the right to self-defense is deferred to a state. The problem of this ambiguity is twofold, the moral weight of different violations is uncertain. Nozick himself fluctuates between several apparent metrics for measuring moral violations different systems assigning moral weight, sometimes measuring violations per instance, and sometimes by the severity of the violation, and sometimes just by whether or not violations have occurred at all. The problem is that an ambiguous definition of violations leaves the problem of legal justice unaddressed, as the capacity of the state to protect its citizens from moral violations entails punishments which may, if left unexamined, violate moral rights in turn. The difference between murder and theft serves as the ultimate expression of this problem. Nozick makes allowances for two responses to moral violations, namely punishment and the exaction of compensation. To reasonably derive appropriate punishments for murder and theft respectively requires that there be a morality which distinguishes between those two things at a moral level for the purposes of punishment, or is able to make a declaration of worth for purposes of compensation. The moral weight is important, and the ambiguity relevant, due to the

fact that Nozick is both declaring the importance of these violations to morality, and also trying to assert the moral inviolability of each individual. Nozick avoids specifying the specific rights which belong to the individual except to say that “[side] constraints are set . . . in our theory, by the Lockean rights people possess.”⁴⁴ The deference to Locke on the issue of the individual rights presumes that, at least for the purpose of evaluating Nozick’s moral system, the rights can be provisionally assumed to be property rights as outlined in Locke. The ‘Lockean rights,’ assumed to be all rights which Locke explicitly defines as such, include the right to “life, liberty, and possession” under the moral-conceptual category of “property,” with the right to “judge and punish breaches of the law of nature — punishing in the manner he thinks the crime deserves” appended.⁴⁵ However, Nozick leaves unspecified whether these rights arrive within the same conceptual framework as Locke, or whether they are being parsed into a set of conceptually separate rights. Assuming the former, as Nozick makes no distinction and also invokes Locke, the basis of property rights can still be considered to be the initial and intrinsic ownership of the self, as Locke specifies. Therefore, it might be taken that property is also the primary medium through which Nozick’s morality can be applied and understood. The extent of the moral status of the individual, and their inviolability, is bound up with the violation of the property of another person. Property, which is presumably understood in the Lockean sense to encompass to include the proprietor’s body and what they claim as their possessions and liberty, delimits exactly where the moral ‘domain’ of the individual begins and ends. How Nozick addresses this moral ‘domain’ has important consequences for how the Lockean system of rights can be understood as a moral system, and by extension how the libertarian morality is involved in re-interpreting and

⁴⁴ Nozick, *Anarchy, State, and Utopia*, pg. 171

⁴⁵ Locke, *Second Treatise on Government*, pg. 28

applying Lockean ideas. “A line (or hyper-plane) circumscribes an area in moral space around an individual.”

The idea of a moral ‘domain’ is addressed by Nozick in the form of an idea of moral space, in which is to describe the way in which every object which belongs to an individual becomes part of the moral violation of the individual, not just in Nozick but in any property-based moral system. “[a] line (or hyper-plane) circumscribes an area in moral space around an individual.”⁴⁶ If the property was not somehow morally rooted in an individual, stealing it, or any other form of more indirect violation of property, it would not be possible to trace how theft was in fact a violation. On the basis that all property violations are violations of the individual, extended to their property, then it would follow that all moral violations would essentially ‘count’ the same when trying to calculate damage. Intuitively however, the difference between a crime such as murder and a crime such as theft should be clearly delineated and somehow accounted for, despite both being reducible to property violations. Nozick often defers the development of the intricacies of his own philosophy, but the absence of an answer still leaves a sizable gap in the structure of Nozick’s logic, which, as noted earlier, is a substantial problem for a philosophy which is dependent on the sustained non-violation of key rights, an inviolability which may well be unraveled by problems concerning punishment and compensation. Developing both lines of critique, if compensation is admitted as a means by which moral violations might be remedied, then the problem becomes whether or not murder is to be admitted amongst those violations which may be compensated, and if so how a precise compensation is to be generated for the death of a person. Nozick’s philosophy, because it is

⁴⁶ Nozick, *Anarchy, State, and Utopia*, pg. 57

unable to morally distinguish. That Nozick refuses to connect the concept of moral violation to a system for weighing those violations appropriately may or may not be deliberate; their context is not deliberate, but rather reflects an oversight in Nozick. What that ambiguity does allow for, however, is that is for the conception of rights which that Nozick devises to be applied throughout *Anarchy, State, & Utopia* essentially in whatever format straightens out whatever mechanics Nozick is attempting to reckon with.

The work which produces the minimal state, is however, not only ambiguous, but deeply mundane in the sense of its conceptual proximity to the American liberal state. Nozick introduces the concept of utopia, and attempts to elucidate not only how the most basic model of the liberal state is actually itself a utopia, but also performs interesting semantic maneuvers to actually maintain the inspirational character of utopia. Nozick's investigations into the concept of utopia are finalized with the conclusion that the concept of utopia has been demonstrated to be functionally the same as identical to the minimal state.⁴⁷ The question of utopia generally is framed by Nozick as a world out of a set of all possible worlds in which all actors would rather remain in that world than travel to another possible world.⁴⁸ Overlooking some granularities in the thought-experiment (personal values, the scope of 'possible worlds', etc.) the basic premise of utopia for Nozick is essentially established upon choice. Thus Nozick's utopia is measured not by standards of perfection or perfectability, but rather optimization. The radical difference between Nozick's 'utopia' and traditional notions of utopia reveal the implicit bias in any conception of utopia, but Nozick attempts to leverage that bias in the same moment. Nozick's utopia is functional in its definition, which is to say that in the same way a price is determined in

⁴⁷ Nozick, *Anarchy, State, and Utopia*, pg. 333

⁴⁸ *Ibid*, pg. 299

the emergent order of market forces, so might a utopia be determined in the emergent order of desires interacting en masse.

The idea of these massed desires manifests as the concept of the ‘meta-utopia’: “Utopia is a framework for utopias, a place where people are at liberty to join together voluntarily to pursue and attempt to realize their own vision of the good life in the ideal community but where no one can impose his own utopian vision upon others.”⁴⁹ This movement away from a ‘common sense’ definition of utopia is neither inert, nor necessarily coherent with the rest of Nozick’s intellectual project in *Anarchy, State, and Utopia*. From Wolff, there are two characterizations of Nozick which might frame how Nozick’s definition of utopia might be subversively presented.

“[Nozick’s deontological libertarianism] is based on a strict doctrine of natural rights, violation of which is never permitted, whatever the consequences.”⁵⁰ Wolff here describes Nozick’s project and how Nozick perceives his own project. Secondly, Wolff asserts the failure of deontological libertarianism to philosophically defend free-market capitalism successfully: “unless they dishonestly smuggle consequentialist considerations into the definition of rights of self-ownership.”⁵¹ The unmentioned subject of that accusation of ‘dishonest smuggling’ is not Nozick, but the notion of ‘dishonest smuggling’ is an appropriate moniker of how Nozick approaches his construction of a definition of a ‘utopia.’ Nozick constructs a notion of utopia ‘dishonestly’ in that Nozick’s general premise is to document the process of working up from first principles. However, Nozick’s ‘utopia,’ on the basis of the testing principle it uses to determine a ‘utopia,’ defines utopia in such a way as to encourage the equation of utopia with moral state.

⁴⁹ Nozick, *Anarchy, State, and Utopia*, pg. 312

⁵⁰ Wolff, *Libertarianism, Utility, and Economic Competition*, pg. 1605

⁵¹ *Ibid*, pg. 1623

For Nozick, the apparent purpose project of exploring the concept of utopia is to justify an initial premise, that “that the minimal state is inspiring as well as right.”⁵² Whether or not the Nozickian utopia is inspirational within the larger framework of the deontological approach is entirely superfluous to the argument. But the ‘rigor’ of Nozick’s analytic approach, which Wolff describes as part of the psychological appeal of deontological argumentation, is an unemotional and sterile way of conceiving a politics. Moreover, deontological arguments still require some sort of Kantian consensus, in which the rational audience will acknowledge the rationality of the argument and carry it out solely on the basis of their own rationality. The pragmatic issue is that appeals to the sort of abstract rationality which Nozick works with rarely, if ever, are able to engendered political movements. As Nozick asks, “Can it thrill the heart or inspire people to struggle or sacrifice? Would anyone man barricades under its banner?”⁵³ Utopia, in the commonplace sense of that term, carries an emotive drive because of how the idea of imagining or being converted to a vision of the value and possibly the innate beauty of the concept as it is presented. The rhetoric of utopia compels the completion of the political task of building utopia *intrinsically*. One of the offerings of a consequentialist theory of politics is that the proposed rewards drive political action by appealing to self-interest. In the absence of such consequentialist appeals. Nozick actually sins doubly. The first is made on the position that Nozick is being disingenuous, and actually is writing utopia as a concept which supports the minimal state automatically. From the position, it is eminently clear that Nozick is attempting to leverage the traditional emotional drive of the intonation of other ideas of utopia to both evoke in designate the minimal state as an ‘inspiring,’ feeling, and, as a utopia, the object of some

⁵² Nozick, *Anarchy, State, and Utopia*, pg. ix

⁵³ *Ibid*, pg. 297

instinctual desire usually associated with those things. The second is that, as Wolff diagnosed, Nozick smuggles consequentialist arguments in the form of his conceptualization of utopia as a meta-utopia. The problems of the meta-utopia in general are an important touchstone in understanding the horizons of Nozick's thought, and the situation it leaves moral libertarianism in.

Nozick's notion of the minimal state as a 'meta-utopia' (and after all, more utopias are greater than fewer utopias) is a significant indicator of how Nozick the argument for moral libertarianism as Nozick conveys imagines itself as somehow higher than an appeal to a specific way or form of life. undermines the general notion of utopia. There is a basic problematic premise in the claim to the minimal state as the necessary condition for enabling utopia sub-communities within the community of the minimal state. By the same essential open conditions that define the testing principle of utopia which Nozick proposes, certain notions of utopia would entail the desire to construct a utopia which contradicts the notions of Nozickian utopia. The presiding question would be: why does Nozick allow for say a socialist utopia within the minimal state (as a framework) when the two are postured to eventually contradict each other? Nozick's configuration is that every utopia within the meta-utopia must be formulated with the caveat of not violating the principles of the meta-utopia, of accepting its place within a substrate of society. The limitations upon the possible realizations of the utopia(s) within this meta-utopia framework suggests that when faced with reality, the meta-utopia can be assumed to actually fail to ensure a flourishing of pluralistic utopias. In either case, verifying this is impossible. But Nozick's premise of utopia is tested by the thought experiment of keeping everyone in one possible world voluntarily.

The utopia of Nozick is still haunted by the ideas of Rawls. The conversation between the work of Nozick and Rawls charts to some extent a larger political battle that libertarianism emerged into. The Vietnam era compromised the perception of American liberal democracy. In the aftermath, political claims that extended out of the conceptual schemes of liberalism arose out of the exposed flaws in liberalism. Articulating the exact objects of criticism is unimportant, the fact remains that the two predominant movements of reaction were split between social democracy and libertarianism. In that sense, Nozick was actually indebted to Rawls as the articulator of the exact sense of liberalism which Nozick's libertarian political impulses were forming against. Nozick's utopia is the weird byproduct of the attempt to establish a libertarian future for liberalism, and to portray the libertarian vision of striped down liberalism as a vision to be inspired by. How moral libertarianism at large interfaces with the general social liberalism however, produces much more interesting lines of thought.

Theoretical Analysis

Nozick's *Anarchy, State and Utopia*, ended the inaugural era of moral libertarianism by bridging the divide that Rothbard had built between the philosophical base of moral libertarianism and its parent ideology, liberalism, which was coming into full bloom in America. The neo-liberal regime in America, that began within the year of the publishing of *Anarchy, State, and Utopia* with the hiring of Paul Volcker as Federal Reserve head marked the beginning of a new opportunity for libertarian politics. The age of neoliberalism fused together formerly disparate political elements, creating a political environment in which both laissez-faire economics (traditionally conservative in America) and social welfare (traditionally progressive) were gravitating together under one ideology. The neoliberal paradigm re-affirmed the economic vision of Hayek and other liberal economists and put them into practice. The neoliberal shift largely ended debate over best economic practices in the final third of the 20th century, allowing social questions to be explored further. The moral libertarians were uniquely positioned to provide an ideology by which to address these social questions, and also to address state power in the age of the internationalist, neoliberal America.

A novel understanding moral libertarianism might be achieved by considering both how moral libertarianism conforms, or does not conform, to established frameworks of liberalism, and how moral libertarianism relates to its sibling ideology, social liberalism. The concept of positive & negative liberty, as proposed by Isaiah Berlin, serves as the framework which will be considered on this basis: it is a prominent description of the inner conflicts of liberalism, has been used by other scholars to describe libertarianism, and the definitions of negative liberty are

often represented by effective proxies in moral libertarian thought. The other relationship which there is to be an attempt to analyze, being the relationship between moral libertarianism and social liberalism, is eminently applicable, as historically the two have been contrasted intellectually, per the portrayal of the Rawls vs. Nozick ‘debate.’ The contrast is far from arbitrary however; social liberalism and moral libertarianism in conversation creates a fruitful binary which not only informs the positive / negative liberty framework, but also provides the necessary juxtaposition to gain insight into how the ideas of liberalism are being handled by moral libertarianism.

Isaiah Berlin’s concepts of ‘positive’ and ‘negative’ liberty has been perhaps the most influential description of the concept of liberty produced in the recent history of liberalism. Positive liberty is defined by Berlin as “freedom of ... self-direction” while negative liberty is defined as “freedom of the individual not to be interfered with within a defined area.”⁵⁴ The difference might be simplified as the freedom *to* vs. the freedom *from* respectively. Libertarians in general have been often described or characterized as exclusive proponents of negative liberty, and at times as opponents of positive liberty, as with Friedman’s account.⁵⁵ This characterization is largely correct for libertarianism in general, and is completely true within the moral libertarians.⁵⁶ However, the claim to a strict division between positive and negative liberties, when tested vigorously against both the moral libertarians and the social liberals, are undermined in ways which suggest that the difference may in fact be rhetorical. The social liberals might be considered to be positive liberty analogs to the moral libertarians. The theoretical frameworks of

⁵⁴ Isaiah Berlin, “Two Concepts of Liberty”, *Four Essays on Liberty* pg. 25

⁵⁵ Jeffrey Friedman, “What’s Wrong With Libertarianism?”, *Critical Review*, Vol. 11, Issue 3, 1997, pg. 431

⁵⁶ Rand, *For The New Intellectual*, pg. 231; Rothbard, *For A New Liberty*, pg. 26; Nozick, *Anarchy State & Utopia*, pg. 33, 176 all serve as examples of the moral libertarians advocating negative liberty.

Rawls often appeal to positive liberty, such as the original position and its premises, that “those who engage in social cooperation choose together ... the principles which are to assign basic rights and duties and to determine the division of social benefits.”⁵⁷ Rawls’ principles of justice⁵⁸ as do the programs of the New Deal and other proposals from Pres. Roosevelt. The social liberals generally might be taken as representing a platform of freedoms *to*, although in the same way as the moral libertarians, these categories fall apart. Positive liberty, and therefore the social liberals, offer a particularly compelling avenue to investigate how the categories of positive and negative liberty fail due to Berlin’s admission that: “No doubt every interpretation of the word liberty, however unusual, must include a minimum of what I have called ‘negative’ liberty. There must be an area within which I am not frustrated. No society literally suppresses all the liberties of its members; a being who is prevented by others from doing anything at all on his own is not a moral agent at all, and could not either legally or morally be regarded as a human being.”⁵⁹ The admission that negative liberty is always part of any conception of liberty belies the possibility that in the same way a positive liberty is always present in any conception of liberty, or appeal to liberty. Certain political claims from Roosevelt, and the way in which these claim are structured, demonstrate how both categories of liberty are present in any conception of liberty.

The Roosevelt presidency produced a dramatic proposal of guiding principles to guide the crafting of legislation to increase the scope of American citizenship and its entitlements, in what is known as the “Four Freedoms” speech. The rhetorical moves which are contained in the speech expose faults in the dichotomous relationship of positive and negative liberty. Of particular note is the third freedom, “the freedom from want—which, translated into world terms,

⁵⁷ John Rawls, *A Theory of Justice*, Cambridge: Harvard University Press, pg. 10

⁵⁸ Rawls, *A Theory of Justice*, pg. 53

⁵⁹ Berlin, “Two Concepts of Liberty”, pg. 24-25

means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants-everywhere in the world.”⁶⁰ Freedom from want as “economic understandings which will secure ... a healthy peacetime life,” has many of the trappings of a claim to positive liberty, but is expressed as negative liberty, the freedom not to be interfered with by want. Although the example may appear spurious, the claim is also verifiable in terms of the reverse, through a negative claim that is ventured through a rhetoric of positive liberty. Ayn Rand writes, “men are free to trade, with reason and reality as their only arbiter, when no man may use physical force to extort the consent of another.”⁶¹ Here not only is a positive claim ventured that is seemingly caused by negative, “men are free to trade” is actually the direct corollary of “when no man may use physical force,” but also the interchangeability and interdependence of both are placed next to one another in natural juxtaposition. “Men are free to trade” is only another way of expressing the negative version, that ‘men are free from forces which might threaten their trade.’ The negative expression, “no man may use physical force,” is synonymous with the positive form, “every man may expect to live a life free of violence. In the end, the difference between the two forms of expression, despite appealing to different liberties, convey the same meaning and achieve the same end. Also, to the same degree that the rhetoric of liberty is interchangeable, the theory of positive and negative liberty also implies interdependence. Assuming that negative and positive liberty were discrete categories, what is the rationale of liberty required to justify self-defense? As Locke configures it, the positive liberty to self-defense and punishment of criminals is derived from the negative liberty to his property, one cannot protect one’s negative

⁶⁰ Franklin D. Roosevelt, “State of the Union Address ‘The Four Freedoms’” (speech, Washington, DC, January 6, 1941) Voices of Democracy: The U.S. Oratory Project, <https://voicesofdemocracy.umd.edu/fdr-the-four-freedoms-speech-text/>

⁶¹ Rand, *For The New Intellectual*, pg. 24

liberty without the ability to practice the positive liberty. Of course, by the interchangeability of these categories, that relationship may be inverted. The collapse of negative liberty as discrete category does however open up for discussion how the libertarians are articulating a purist, coherent idea of property rights and the non-aggression principle. And Locke, gets around the problem of the semantics of negativity and positivity, explaining the reliance of the better half of the moral libertarian thinkers on the framework Locke provides.⁶²

The prevailing explanation of property amongst the moral libertarians is the Lockean account: “every man has a property in his own person.”⁶³ For Locke, due to the ownership of labor through self-ownership, and the ownership of possessions through the admixture of labor, all possessions are, by logical extension, of the same moral status as the individual. For Locke, labor is a sort of metaphysical process which creates a bond between the individual and anything which the individual labors upon that is either the person’s possession, or still out in the world of commons.⁶⁴ Disregarding the question of how or why it is labor which accomplishes the process of transforming common resources into own property, the relationship is clearly the movement between domains of ownership. The origin of all property is the ownership of the self, and therefore, everything that is owned is owned by extension of how labor instills a part of that original self-ownership in everything it labors upon. MacPhearson describes this doctrine in Locke as part of a larger historical idea of ‘possessive individualism,’ manifested in Locke by the condition of the individual, that “[t]he individual is proprietor of his own person, for which he

⁶² As a reminder, Rand attempts to ground property in rationality, and Nozick (to some extent) in the separateness of persons, although both author’s arguments eventually take on the form of the Lockean framework.

⁶³ Locke, *Second Treatise on Government*, pg. 11

⁶⁴ *Ibid*, pg. 11

owes nothing to society.”⁶⁵ The doctrine of possessive individualism is essentially the governing logic of the moral libertarians, and also creates a method by which to get around the problem of the negative-positive liberty confusion. The right of self-ownership is intrinsic in such a way that it relies neither on positive nor negative liberty precisely to define how it operates, it merely is the condition of being human. From that proprietorship, one can integrate possessions into your domain by “mixing” them with your labor. In summary, the every item of property is only property in relationship to an individual. From that relationship, it might be inferred, as noted in the discussion of Nozick, that all property violations might also be understood as a violation of the individual, seeing as all property is metaphysically invested with the ‘essence’ of individual ownership by labor. The individual is also understood as being the property of itself, and as property, the individual exists within the same moral category as possessions. The present danger of equating human beings to property at the level of moral categories is that attempts to create a framework for thinking about how to evaluate moral violations already presumes some equivalency between individuals and their property. This summation of the problems of the Lockean system has already been examined in the study of Nozick, focusing on the problem of moral weight. But the outstanding question is why the philosophy of the moral libertarians cannot discard Locke and the accompanying problems.

The Lockean labor theory of property inadvertently renders both person and possession into the category of property, and the equivalency that is created when both of those things enter into the same category is actually useful for the moral libertarian ideology. The morality of the politics of redistribution are fundamentally premised on a moral difference between person and

⁶⁵ C.B. MacPhearson, *The Political Theory of Possessive Individualism*, New York: Oxford University Press, 1962, pg. 269

property, in the sense that person has a moral priority over property. Welfare programs, land reforms, and other projects of redistribution rely on the ability to tax citizens or otherwise appropriate varying degrees of their property for the sake of bettering the conditions of other people. To be able to stake a claim against that sort of redistribution, an equivalency between person and property creates a logic in which social welfare cannot be asserted as a greater concern than the right of property. By incorporating the individual into property as a moral category, the Lockean model of property argues the inviolacy of possessions by rendering them indistinguishable from the value of a human life. The moral libertarians require exactly what the self-ownership schema of Locke offers: the intertwining of intrinsic rights, and a concept of property which has moral importance, in this case by elevating possessions to the moral stakes of the human body, and life. Property, as the primary right of Locke and his moral libertarian grandchildren, both ambiguates the lines between person and possession morally, while also elevating possession to the level of personhood, granting possessions moral importance, and also implying through the totalizing category that personhood is at stake in possession. The consequences of Locke's argument are not apparent until the point at which laws must be arranged so as to account for moral violations. The groundwork of Lockeanism, that seems to render the individual indistinguishable from their property, leaves no meaningful guideline for devising laws, except by providing some sort of exceptional quality to that first self-ownership. However, even in the case of an exception for the "first ownership" of the person, separating the owner from the property, such an argument would undermine the framework of Lockean property, as it would remove the source for property acquisition. There the Hegelian iteration of the argument returns, separating the individual from property, but also creating the basic notion

that the individual cannot be evaluated or generated on the sole basis of property or of self-ownership. That problem is not necessarily some absolute metaphysical concern, but that in the course of creating a liberal society, the methods and systems by which liberalism produces legal systems or how liberal citizens conceive their own rights are going to be inevitably rooted in how the generally accepted moral status of people, possession, and property which have been established.

Thoughts on Moral Libertarianism & Ideology

Moral libertarianism has always been established in a binary between itself and social liberalism, as matter of historical proximity, and of disagreement in theory and policy. However, the binary relationship between moral libertarianism and social liberalism is not a relationship of pure opposition. As evidenced by the inadequacy of the negative liberty / positive liberty schema in describing the divide between moral libertarianism and social liberalism, the relationship is defined largely by shared principles. Broadly, the ideologies⁶⁶ share the fundamental principles of liberalism, namely equal rights, freedom of the individual, and (to differing extents) competitive markets. Rothbard appears to be a problematic edge case, but deeper consideration of the project of Rothbard reveals that Rothbard is not so far ideologically removed from liberalism. Firstly, the stateless society that Rothbard describes performs essentially the same functions as a liberal society with a state. Secondly, anarcho-capitalism, also advocates essentially the same political principles (rights, freedom, markets) as the general liberalism, but

⁶⁶ Ideology is here used to loosely refer to an organized system of political thought.

differs strongly in considerations of implementation. The general ideology of liberalism bridges the two poles of the binary.

Understanding the poles of the binary as being connected in this way outlines an intimate network of relationship which can be described as a single parent ideology which is related to two sub-ideologies, which are in turn related to each other by their shared heritage. The intimacy of these ideologies might be described as an intimacy in the sense that they largely share basic political principles in such a way that there are premises which can be taken as universal within the whole network. However, liberalism, as the parent ideology, passes down these universal principles to the two sub-ideologies, or at least defines what makes up ‘universal’ principles within the network. Therefore the relationships are actually defined by the hierarchy of theory in which liberalism is the dominant ideology. By virtue of the hierarchy governing the whole network of relationships, what the sub-ideologies are doing in relationship to the parent ideology might be reframed.

In relationship to the dominant parent ideology, the question arises whether or not the sub-ideologies constitute legitimately independent ideologies, or if these sub-ideologies are too dependent on the parent ideology for determining their principles to be considered anything other than ‘extensions’ of the parent ideology. The ambiguity of the idea of an extension clears the way to think about these ‘ideologies’ as relating to or interfacing with ‘proper’ ideologies (such as liberalism) in ways which ask important questions about the definition of ideology and their formation. The possibility which will be argued for here is the possibility of moral libertarianism and social liberalisms as ‘ethics’ of liberalism.⁶⁷ Ethics here is not equivalent to deontology, the

⁶⁷ The use of ‘ethics’ here is specifically not related to ethics in the sense of moral theory, but rather ethics is being used loosely to refer to how these ‘ideologies’ attempt to make claims about *how* and *why* the political practices of some other ideology should be established and carried out in a certain way.

signature argumentative method of the moral libertarians. Ethics here would refer to the way in which moral libertarianism and social liberalism lodge claims to how liberalism *ought* to be practiced, while still essentially agreeing on the basic principles which define liberalism. There are some indications in the moral libertarian literature that the authors considered themselves to be, in certain ways, relating to liberalism according to this model. Rand appeals to a return, then a surpassing of the political vision of the liberal Founding Fathers,⁶⁸ and Rothbard actually refers to the liberalism of Locke as “libertarian classical liberalism,” and early liberalism as a “radical libertarian” doctrine.⁶⁹ In both cases, the author establishes a relationship to liberalism as a predecessor, or a parent ideology, to their own.

However, describing moral libertarianism as an ethics of liberalism only generates further questions, and the idea of an ethics of an ideology in general demand the establishment of conditions so as to define and clarify the difference between an ethics and an ideology. The idea of an ethics is fundamentally premised on the idea of an extension of a certain ideology, which is to say that its own claims are based in another ideology, but what original contributions are made by the ethics do not constitute a new ideology. The problem may be that there cannot be a quantitative point at which an ideology has sufficiently developed itself so as to become independent of any sort of parent ideology, or other existing ideology. In such a case, the point of distinction may instead be qualitative. Plausibly, an ethics could be defined as any system of thought which makes claims to how a separate ideology is practiced or thought about without modifying the basic principles or pretensions of that ideology. The point at which it becomes an

⁶⁸ Rand, *For The New Intellectual*, pg. 23-24

⁶⁹ Rothbard, *For A New Liberty*, pg. 3

independent ideology could then be defined as the point at which a system of thought, say moral libertarianism, actually modifies the majority of basic principles or pretensions.

The applications of such an idea might hold repercussions in the area of studying culture, hegemony, or the development of politics. The claim, that moral libertarianism is not itself an independent ideology from liberalism, casts the entire project of libertarianism in a new light, as it both binds the ideology more closely to liberalism, and also denies the ability of libertarianism, as it stands, to transcend liberalism, it will always be replicating the paradigm of liberalism. The difference between an ethics and an ideology, if valid, might imply other potentially worthwhile lines of study, but until that point only provides the function of demonstrating one form of the relationship of libertarianism and liberalism.

Conclusion

The moral libertarians, simply, represent the sect of deontological libertarians who sought to argue the case of libertarianism from the point of the individual. The philosophical distrust of the state which is shared between the whole of the movement is tied closely to the dependency of the whole group upon the model of rights and freedom which Locke espoused, and similarly to Locke, the moral libertarians only ever concede to the state as source of protection from aggression. In a sense, the moral libertarians were merely re-articulators of Locke for a situation which seemed to demand it. Such is the extent of the relationship between the libertarians and the godfather of liberalism. However, Nozick, Rothbard, and Rand all equally pushed at the boundaries of libertarian tradition, and sought to introduce new ways of thinking in the logic of property and non-aggression.

The moral libertarians, although they achieved neither the sort of mass support required to transform political society in America, nor some titanic party to challenge the American regime (and perhaps that is by their nature) still produced an ideology whose repercussions continue to ricochet throughout American politics. Contemporary politics, from the question of gay marriage to marijuana legalization to the wars in the Middle East have all incorporated the argumentative forms of the moral libertarians. Regardless of the precision of the ideological correspondence between the libertarians and the political agents mimicking their ideas and methods, there has been some successful transfer to the sphere of mainstream ideas those ideals that were championed by the moral libertarians. Even Rand's relatively unformed ideology of selfishness continues to influence modern capitalists, entrepreneurs, and politicians, a formidable

and influential social reach for the goddess of the market. The Koch Brothers have spent millions of dollars lobbying on behalf of libertarian changes in the structure not only of the Republican party but of institutions and individuals all across America. Those brothers, who are nothing more than two millionaires interested in smaller government have still wrought more change than the most organized efforts of the malevolent State. They have wielded the State against itself, and still have done more to demonstrate the evils of the private realm than Rothbard could ever have imagined. Perhaps, in the most idyllic libertarian imagination, their machinations would mark the coming of some more free world, but their money passes through too many dark passages to maintain any false optimism. The libertarianism which has contorted itself fill the gaps in the ideology of modern liberalism does not fit the lofty profile of its founders.

And yet, libertarians are seemingly the only ideology of the modern right which maintain a progressive notion of human freedom. Consideration of the other ideologies of the American right-wing yields an array of truly conservative political movements : the neoconservatives, the nationalist-populists, and the Evangelical Christian block. The neoconservatives offer strong-arm foreign interventionism which is fundamentally based on the willingness to commit to extraordinary brash endeavors of violence and *Realpolitik*, in the name of ensuring continued American hegemony. The nationalist-populists clamor for the strengthening of the state, so as to be able to halt immigration, solidify the borders, and return the country to a glorious past in which it was mighty and triumphant. The Christian right is defined by an urgent desire for regulation of the social sphere by the state, seeking control of abortion, marriage, and education, while also advocating interventionism for the purpose of economically and militaristically supporting Israel. The moral libertarian position, from whichever point it is approached,

renounces global hegemony, borders, regulation of any free exchange between adults, wars overseas (or at home) and, most of all, the expansion of state powers which is meant to enact it all. The libertarians, as noxious as their ideology might appear to critics of capitalism, fundamentally believe in the possibility of human freedom to be extended, and the reform of society along lines of evidently true critiques. The American State does sacrifice the lives of thousand of faceless foreigners to the machine of global hegemony. The American State does, inadvertently or otherwise, create regulations which protect large business interests, stabilizing the economic status quo and preventing the disruption of a political-economic order in which the lines between politician and businessman are permeable. The American State does subject its citizens to humiliation, obstruction, and violence, often without recognition, recompensation, or even an expressed will to change. The liberal right at large blinds itself to these critiques, while the libertarian faction refuses to look away.

The libertarian movement at large has charted progress in diverse ways, but the moral libertarians provided a framework for libertarian principles to be directed towards the specific end of reforming targeted social ills. There is no attempt here to create a non-rhetorical or absolute definition of progress. But at the very minimum, moral libertarianism is progressive in comparison to the other right wing ideologies which it shares political space with, who consistently demonstrate a politics of open hierarchy, casual violence, exclusion of minorities, and otherwise solidifying the power of traditional institutions. The moral libertarians at the very least appear progressive by contrast, offering a right wing ideology opposed to state violence, opposed to state control over individual lives, in favor of the expansion of the rights of the individual and the abundance of freedom. The moral libertarians, as critics of the state, are

wholly progressive in the context of any ethical violations by the state, although notably failing to meet standards of progressive discourse when redistributive economic justice is concerned. In the more rarefied strains of Rothbard's economic analysis however, a trend towards a more even economic redistribution is even assumed once the support structures which have been erected between big business and government have been removed.⁷⁰ Perhaps with the exception of Rand, the moral libertarians do not offer a vision of an economically stratified society, only one in which the government does not regulate free economic exchange. However, the circumstantial accounts cannot be treated as more than conjecture, at least until an organized libertarian movement is able to grab ahold of political power.

The Libertarian Party of the United States, perhaps the largest attempt at organizing on behalf of the libertarian ideology, is dominated by the ideology of moral libertarianism, building a platform which is a sort of synthesis of the thinkers of the moral libertarian generation. The party offers a series of platform positions on its website which might be dissected so as to reveal their heritage. From the section 'Personal Liberty': "Individuals are inherently free to make choices for themselves and must accept responsibility for the consequences of the choices they make. [...] No individual, group, or government may rightly initiate force against any other individual, group, or government. Libertarians reject the notion that groups have inherent rights. We support the rights of the smallest minority, the individual." The non-aggression axiom, what Rothbard considered to be the central idea of libertarianism, is unequivocally stated, not as belief, but as fact, as axiom, as ethical truth. Rights are reserved for the individual, denying the collective any rights at all, referencing not only Rothbard's abstract societies, but more generally

⁷⁰ Rothbard, *For A New Liberty*, pg. 387-388

the invectives of Rand against the ungrateful masses. Taking ‘responsibility for consequences’ is a moral behavior which Rand directly endorses,⁷¹ and which Rothbard asserts as a matter of course. Another quotation delves further into the relationship between individual and government: “The protection of individual rights is the only proper purpose of government. Government is constitutionally limited so as to prevent the infringement of individual rights by the government itself. The principle of non-initiation force should guide the relationships between governments.” The retention of the government diverges from the anarchist tendencies of Rothbard and directs the political ambitions of the party towards the modified liberalism which defined the philosophies of Rand and Nozick. The framework of constitutional limitations grounds the party in the American context, and also provides a coherent, pragmatic grounds upon which to maintain the stability of the political vision which Nozick outlined in depth.

The Libertarian Party in many ways may be a sign of changing tides for the modern libertarian movement. The party has almost doubled in size since 2008, the aforementioned presidential candidate Gary Johnson was involved in a record presidential campaign for the libertarians, and if growth trends continue, automatic debate access could be triggered. The party stands, bound up in the systems of thought which the moral libertarianism created, and woefully understudied even as they emerge more and more visibly onto the American political scene. The future, past, and present of the libertarian movement must continue to be studied, and the moral libertarians understood, not as outsiders, but as the children of liberalism. Further interrogation of the relationships of parentage between what are thought of as distinct ideologies, and the history of development in the thought of as-yet unstudied moral libertarians, would serve greatly

⁷¹ Rand, *For The New Intellectual*, pg. 112-113

to benefit the general understanding of how libertarianism emerges at a conceptual level, and thus how to understand libertarianism as it unfolds, and ideology generally.

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