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THE LIBERTARIAN NONAGGRESSION PRINCIPLE

By Matt Zwolinski

Abstract: *Libertarianism is a controversial political theory. But it is often presented as a resting upon a simple, indeed commonsense, moral principle. The libertarian "Nonaggression Principle" (NAP) prohibits aggression against the persons or property of others, and it is on this basis that the libertarian opposition to redistributive taxation, legal paternalism, and perhaps even the state itself is thought to rest. This essay critically examines the NAP and the extent to which it can provide support for libertarian political theory. It identifies two problems with existing libertarian appeals to the NAP. First, insofar as libertarians employ a moralized understanding of aggression, their principle is really about the protection of property rights rather than the prohibition of aggression. Second, the absolutist prohibition on aggression, which libertarians typically endorse and which is necessary to generate strongly libertarian conclusions, is grossly implausible. The essay concludes by setting forth a version of the NAP that does not suffer from these problems. It argues that this more moderate and defensible version of the NAP still has important libertarian implications, but that a full defense of libertarianism cannot rely upon appeals to nonaggression alone.*

I. Introduction

Libertarianism is a controversial political theory. But it is often presented as resting upon uncontroversial, indeed commonsense, moral foundations.[1] *Don't Hurt People and Don't Take Their Stuff* is the title of one recent and popular libertarian manifesto, the idea apparently being that once you have accepted this obvious moral principle, all that is standing between you and full-fledged libertarianism is a failure to think through the full set of its logical implications. What distinguishes libertarians from other people, on this view, is not the basic moral principles they accept, but the *consistency* with which they apply these principles across a wide range of cases, where others fear to follow.[2]

Indeed, many libertarians see the whole edifice of their political theory as resting almost entirely upon a *single* moral principle — the so-called

[1] For the most philosophically sophisticated such presentation, see Michael Huemer, *The Problem of Political Authority: An Examination of the Right to Coerce and the Duty to Obey* (New York: Palgrave Macmillan, 2012), 176–78.

[2] See Matt Kibbe, *Don't Hurt People and Don't Take Their Stuff: A Libertarian Manifesto* (New York: HarperCollins Publishers, 2014); Jacob H Huebert, *Libertarianism Today* (ABC-CLIO, 2010), 4.

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Nonaggression Principle (NAP).[3] This principle, in its canonical formulation by Murray Rothbard, holds that "no man or group of men may aggress against the person or property of anyone else."[4] Combine that principle with another principle legitimating property in external resources, Rothbard held, and "the right of free exchange and free contract . . . the right of bequest, and . . . the entire property rights structure of the market economy" follow as a matter of simple logic.[5]

How's that? Well, according to Rothbard, "aggression" can be defined as "the initiation or threat of physical violence against the person or property of anyone else."[6] On this definition, taking someone else's property by use or threat of force is a violation of the NAP, and hence impermissible. So, too, is forcefully preventing people from doing whatever (nonaggressive) things they might want to do with their own bodies or property. So far, none of this is terribly radical. Most of us think it would be wrong to threaten our neighbor with violence in order to get her to hand over her money, or to prevent her from wearing a particular shirt that you do not like. Libertarians, however, apply the principle not just to the personal behavior of private citizens, but to the *state* and its agents as well. And they hold that it establishes not merely a strong *presumption* against activities involving the initiation of physical force, but an absolute moral prohibition. Thus, if my taking your money without your consent is theft, so too is taxation. If my threatening to lock you away if you smoke something I think you shouldn't is impermissible aggression, then so too are drug prohibition laws. Follow this logic far enough, and pretty quickly almost all the activities of the modern regulatory/welfare

[3] Many, but not all. For a typology of various approaches to libertarianism, see Matt Zwolinski, "Libertarianism," The Internet Encyclopedia of Philosophy, http://www.iep.utm.edu/libertar/. See also Jason Brennan, *Libertarianism: What Everyone Needs to Know* (New York: Oxford University Press, 2012). For a historically based overview of the diversity of libertarian thought, see Matt Zwolinski and John Tomasi, *Libertarianism: A Progressive Intellectual History* (Princeton, NJ: Princeton University Press, forthcoming in 2017).

[4] Murray N. Rothbard, *For a New Liberty*, 2nd ed. (Auburn, AL: Ludwig von Mises Institute, 2006), 27. In this passage, Rothbard actually calls it the Nonaggression "Axiom," but a charitable interpretation seems to suggest that we not take that term too literally. Rothbard does, after all, just a few pages later discuss "three broad types of *foundation* for the libertarian axiom," which seems to suggest he was using the phrase in something other than its strict, mathematical sense (p. 30).

[5] *An Austrian Perspective on the History of Economic Thought: Economic Thought Before Adam Smith*, vol. 1 (Cheltenham, UK: Edward Elgar, 1995), 316–17. Rothbard is somewhat unclear regarding the relationship between the homesteading principle and the NAP. Sometimes, Rothbard writes as though the NAP is the *single* foundational axiom of libertarianism: "The libertarian creed rests upon one central axiom…" (*For a New Liberty* [New York: Collier, 1973], 23). Elsewhere, he writes as though the homesteading principle and the NAP are both logical implications of a more foundational principle of self-ownership (ibid., 31–37). As shall become clearer as the analysis of this essay proceeds, the latter position is the more internally consistent one. I will begin, however, by seeing how far libertarianism can go with the NAP alone, without recourse to a more foundational principle, or a supplemental one.

[6] Rothbard, *For a New Liberty*, 27.

state, if not the state *itself*, are seen as aggressive and hence, according to the NAP, absolutely impermissible.[7]

It would, to put it mildly, be philosophically impressive if this kind of argument turned out to work. Commit yourself to the idea that it is wrong to punch your neighbor in the nose and, voilà!, you are thereby committed to legalizing kidney sales and abolishing the welfare state. Philosophers have a special place in their heart for this kind of argument, proceeding as it does from obvious premises to seemingly absurd conclusions. And as someone with strong libertarian sympathies myself, I must admit to finding something deeply compelling in it.

Unfortunately, the argument simply does not work. At least, it does not work quite in the way some of its more strident proponents hope and think that it does. Libertarians are on to something in identifying aggression as a serious moral wrong. And they are most definitely on to something in their belief that a norm against aggression ought to apply to the institutions of government with the same stringency that it applies to individuals acting in their private capacity. But these claims are significantly more modest than those that libertarians try to build into or draw out of the NAP. And so, too, are the conclusions they warrant. Taking seriously a strong norm against aggression might move us in a broadly libertarian direction, but it will not be enough to justify the more radical conclusions that libertarians have drawn, such as that any state provision of public goods or a social safety net are necessarily illegitimate, or, at the extreme, that the state itself is a criminal enterprise that ought to be abolished.[8] Those conclusions might turn out to be justified on *other* grounds. But a norm against aggression cannot do the job by itself.

In this essay, I identify two broad categories of problem for the NAP and its role in libertarian theory. The first has to do with what libertarians *mean* when they talk about prohibiting aggression. In Section II, I note, following in the footsteps of many other critics of libertarianism, that libertarians who talk about "aggression" are using that term in a *moralized* way. In Section III, I contrast this moralized understanding of aggression with what I take to be the ordinary, nonmoralized understanding, embodied in what I call the "First Punch Theory of Aggression." So the first problem is that, in spite of its name, the NAP is less about the prohibition of aggression, as that phenomenon is normally understood, and more about the protection of property rights. The second problem has to do with the absolutist nature of the NAP as it is often understood by libertarians. Section IV

[7] Rothbard himself was an anarchist who thought that the state was best understood as "a criminal band," and who looked back upon his initial conversion to anarchism as "a simple exercise in logic" (ibid., 57); *The Betrayal of the American Right* (Ludwig von Mises Institute, 2007), 74.

[8] To be clear, I remain agnostic (at least for purposes of this paper) about whether these more radical claims might be justified all-things-considered. My point here is a more limited one. It is that the most defensible version of a NAP will not *by itself* be enough to justify them.

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explains what it is for a moral prohibition to be absolutist, and identifies three significant problems for an absolutist understanding of the NAP. Finally, in Section V, I try to rebuild a more defensible version of the NAP that does not suffer from these two problems, and to show how far such a principle might go in the direction of a robust libertarian political theory. Such a principle, I argue, takes us not quite as far as strict libertarians like Rothbard, Rand, and Nozick would like to go. But it does take us a good way in the direction of classical liberalism, and this itself is enough to constitute a significant challenge to the philosophical and practical *status quo*.

Before proceeding with this argument, however, I want to include a few words to clarify its target and its motivation. In particular, I want to emphasize, first, that I am not arguing against libertarianism *per se*, but against one particular kind of *argument* for libertarianism. Libertarianism is best understood as a family of political theories united by rough agreement on a set of normative beliefs, empirical generalizations, and methodological approaches.[9] But while there is considerable overlap among libertarians, there is also a great deal of pluralism — more, I suspect, than has generally been recognized. Thus, not only is it *possible* to defend libertarianism on grounds other than an appeal to the NAP, it is indeed quite *common* to do so. This is especially true of the most well-known academic libertarians. Neither Eric Mack nor Jan Narveson base their libertarianism on an appeal to the NAP, even though their versions of libertarianism come closest in terms of their conclusions to the sort of radical positions espoused by Rand and Rothbard.[10] And the same is even more obviously true of other libertarians (more properly classical liberals) like Friedrich Hayek, Loren Lomasky, Richard Epstein, and David Schmidtz.[11] All of these individuals no doubt think that there is a very strong moral presumption against initiating violence against innocent others. But, as we shall see later in this essay, there is a great deal of difference between this (obvious) principle, and the NAP understood as a foundational and absolute moral rule.

[9] See, for a more elaborate discussion, Norman P. Barry, *On Classical Liberalism and Libertarianiam* (London: Macmillan, 1986); Eric Mack and Gerald Gaus, "Classical Liberalism and Libertarianism: The Liberty Tradition," in *Handbook of Political Theory*, ed. Gerald Gaus and Chandran Kukathas (London: Sage, 2004); Zwolinski and Tomasi, *Libertarianism: A Progressive Intellectual History*, chap. 1.

[10] See Jan Narveson, *The Libertarian Idea* (Philadelphia: Temple University Press, 1988); Eric Mack, "Self-Ownership, Marxism, and Egalitarianism: Part 1: Challenges to Historical Entitlement," *Politics, Philosophy and Economics* 1, no. 1 (2002); "Self-Ownership, Marxism, and Egalitarianism: Part II: Challenges to the Self-Ownership Thesis" *Politics, Philosophy and Economics* 1, no. 2 (2002); "The Natural Right of Property," *Social Philosophy and Policy* 27, no. 1 (2010).

[11] See Friedrich A. Hayek, *The Constitution of Liberty*, ed. Bruce Caldwell, *The Collected Works of F. A. Hayek* (Chicago: University of Chicago Press, 2011); Loren E. Lomasky, *Persons, Rights, and the Moral Community* (Oxford: Oxford University Press, 1987); Richard A. Epstein, *Principles for a Free Society: Reconciling Individual Liberty with the Common Good* (New York: Basic Books, 1998); David Schmidtz, *Elements of Justice* (Cambridge: Cambridge University Press, 2006).

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So I do not want to claim *too much* for this essay. Even if my arguments are successful, they do not show that libertarianism is false. At best, they show that one particular way of arguing for it is unsound. And indeed, as someone who identifies as libertarian myself, my hope in knocking down this one unsound argument is that doing so will clear the field for *better* arguments for a position I think has considerable merit.

But I do not want to claim *too little* for this essay, either. Even if the NAP has not played a dominant role in academic philosophical defenses of libertarianism, it has played *some* role. Robert Nozick's libertarian theory, for instance, is largely an exploration of the implications of a theory of rights as side constraints, where the *content* of those side constraints is understood as a libertarian constraint "that prohibits aggression against another."[12] And Michael Huemer's recent book identifies a "nonaggression principle in interpersonal ethics" as one of the three foundations of his libertarian position.[13]

Moreover, outside of the academy, the NAP has played a *tremendous* role in shaping more popular understandings of libertarianism. Apart from Rothbard, few individuals played as significant a role in defining and popularizing libertarian ideas in the twentieth century (and beyond) as Ayn Rand.[14] And Rand, like Rothbard, believed that a prohibition on aggression was a core principle of interpersonal morality.[15]

It is therefore worth taking the NAP seriously. If academic libertarian philosophers have generally not gone the route of Rothbard and Rand, it is worth explaining why. And if the more popular understandings of libertarianism (held by both supporters and critics of the view alike) rest on a mistake, then that is certainly worth pointing out too, regardless of whether one is interested in burying libertarianism or rebuilding it.

II. Aggression and Property Rights

Consider the following hypothetical example:

> **Trespass:** George is walking across a field when David jumps out from behind a bush, grabs him, and gently but forcefully removes him from the area.

[12] Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 33.

[13] Huemer, *The Problem of Political Authority: An Examination of the Right to Coerce and the Duty to Obey*, 177.

[14] Because she considered her political views to be just one part of a complete philosophical system, and because she perceived many libertarians of her time to be hostile to the foundational elements of that system, Rand refused to identify herself as a "libertarian." See Ayn Rand, "Brief Summary," *The Objectivist* 10, no. 9 (1971). Nevertheless, Rand's ideas had a tremendous influence on the development of twentieth-century libertarianism, and "libertarian" is clearly a better categorization for her political theory than any alternative. See Brian Doherty, *Radicals for Capitalism: A Freewheeling History of the Modern American Libertarian Movement* (New York: Public Affairs, 2007), especially chapter 3.

[15] Ayn Rand, "The Objectivist Ethics," in *The Virtue of Selfishness* (New York: Signet, 1964), 32; "The Nature of Governement," in *The Virtue of Selfishness* (New York, NY: Signet, 1964), 108.

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In this example, it certainly *looks* as though David is the one committing an act of aggression against George. After all, George is simply walking along, minding his own business, when David comes from out of nowhere, physically lays hands on him, and drags him off the field.

But suppose that the field in this example is David's property, and that George is knowingly trespassing across it.[16] In that case it is clear that most libertarians would say that it is actually *George* who has committed aggression. David's violence, they would say, is simply an appropriate *response* to George's impermissible intrusion upon his land.

What this shows, I think, is that for libertarians the concept of "aggression" is not a morally neutral one. Which of two parties to a conflict can properly be said to have committed aggression against the other does not depend solely on natural, observable facts such as who touched whom first. Instead, what counts as aggression is a function of the underlying *property rights*. If David owns the field, then George was the one who committed aggression by violating David's property rights, regardless of the fact that David "threw the first punch," so to speak. If, in contrast, it is George who owns the field, then David was committing aggression by trespassing on George's property, and/or by physically assaulting George's person.

Whether an act counts as aggressive or not thus depends, for the libertarian, on who holds the relevant property rights. But we cannot know who holds the relevant property rights, on this view, without making a *moral* judgment. The fact that the *law* holds that somebody has a property right in some object is neither here nor there for the libertarian, for if the law merely asserts the existence of a property right that comports with the moral standard of natural justice, then it is superfluous, while if it asserts the existence of a right that conflicts with that standard, it is illegitimate and void.[17] Either way, the important question as far as determining what counts as aggression is concerned is not what the law says about who owns what, but who is *morally* entitled to claim ownership over what.

The libertarian concept of "aggression" is thus a *moralized* concept, insofar as we cannot determine what counts as aggression without making a moral judgment about who has legitimate property rights in what.[18]

[16] I stipulate that George is "knowingly" trespassing merely to strengthen the intuition. Most libertarians do not hold that a violation of property rights must be *intentional* in order for it to be justifiable for the property owner to use (some appropriate level of) violence to stop it.

[17] For one of the earliest and most influential examples of this argument in the libertarian literature, see Lysander Spooner, "A Letter to Grover Cleveland, on His False Inaugural Address, the Usurpations and Crimes of Lawmakers and Judges, and the Consequent Poverty, Ignorance, and Servitude of the People," in *The Collected Works of Lysander Spooner* (Indianapolis: Liberty Fund, 1886), 186–87.

[18] This point has been made by other critics of libertarianism, most notably by G. A. Cohen G. A. Cohen, *Self-Ownership, Freedom, and Equality* (New York: Cambridge University Press, 1995). See also Justin Weinberg, "Freedom, Self-Ownership, and Libertarian Philosophical Diaspora," *Critical Review* 11, no. 3 (1997).

Now, in and of itself, there is nothing necessarily objectionable about this. Moralized concepts are not problematic as such. But our use of them can *lead* to problems, if we are not careful.[19]

One potential problem has to do with the danger of logical circularity in the libertarian argument for strong rights of private property. It is tempting, and natural, for libertarians to argue that property rights are necessary to protect people from aggression, and that the legitimacy of property rights is thus something that *follows*, logically, from the NAP. But if what counts as "aggression" is, as we have seen, itself a function of the underlying property rights, then this sort of argument will not work. For it will amount to saying that property rights follow logically from the NAP, which itself logically follows from property rights! On a moralized understanding of aggression, the argument from the NAP to property rights presupposes the truth of the very conclusion it is purported to establish.[20]

That does not mean, of course, that libertarians cannot adhere to a moralized concept of aggression and still support strong rights of private property. It just means that this one particular *argument* for property rights won't work. Given the strong intuitive appeal of that argument, that's a cost. But it might be one that, all things considered, libertarians rightly judge to be worth bearing.

There are, however, two other potential problems with this particular way of talking about aggression. The first is that it turns the NAP into a principle that, in and of itself, is utterly devoid of substantive content. After all, the NAP simply tells us that aggression is impermissible. But on the moralized understanding of aggression, what that actually *means* is determined entirely by the underlying theory of property to which the NAP is attached. The underlying property rights tell us who is entitled to what, and presumably also what sorts of acts are to count as a violation of those entitlements. Moreover, because the relevant property rights for libertarians are *moral* rights, they already have their normativity built into them. In other words, part of what it *means* to say that Jones has a property right in a ham sandwich is that others are not morally permitted to take or use that sandwich without Jones's consent. But if all that is built in to the underlying theory of property rights already, then what does the NAP add? And what is to stop various *non*-libertarian theories from endorsing the NAP as well? Even a radical egalitarian could agree that people ought not to aggress against the legitimate property of others — he or she will just have a very different view about what legitimate property rights people actually have!

[19] See, for discussion, David Zimmerman, "Taking Liberties: The Perils of 'Moralizing' Freedom and Coercion in Social Theory and Practice," *Social Theory and Practice* (2002).

[20] See Cohen's similar point regarding "force" in Cohen, *Self-Ownership, Freedom, and Equality*, 39, 61.

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III. The First Punch Theory of Aggression

The above comments might be taken to suggest that the problem with the NAP is simply that "aggression" has no fixed meaning, and so depends entirely for its content on the underlying theory of property rights to which it is attached. And this is indeed a problem for libertarian approaches that insist upon a moralized definition of aggression where the meaning of the term is fixed almost entirely by the underlying theory of property rights. But another problem emerges when we recognize that "aggression" *does* have something of a fixed meaning in ordinary language, and that on this meaning, libertarians are not necessarily opposed to aggression at all.

In light of our discussion of the **Trespass** example, let's call the theory implicit in the ordinary use of the term "aggression" the "First Punch Theory of Aggression." On this theory, to aggress against another person is to commit something like the common law offense of battery, or perhaps assault, without the justification of self-defense.[21] So, my punching you in the nose is aggression, as is my grabbing your wallet out of your hand. And so, perhaps, is my *threatening* to punch you in the nose unless you hand over your wallet of your own accord.

Libertarians often talk about the NAP in a way that presupposes something like the First Punch Theory of Aggression. Recall, for instance, Rothbard's definition of aggression as "the initiation or threat of *physical violence* against the person or property of anyone else."[22] Similarly, Ayn Rand writes that "the basic principle of the Objectivist ethics is: no man may initiate the use of *physical force* against others," and that "man's rights can be violated only by the use of *physical force*."[23]

By linking the concept of aggression to direct, physical violence, libertarians make the NAP seem like an appealing, commonsense moral principle. After all, most of us think that initiating direct physical violence against others is wrong, at least in the vast majority of circumstances.[24] So if all the NAP is saying is that such initiations of violence are not permissible, then the NAP looks like a pretty plausible moral principle.

But, of course, that is *not* all the NAP is saying, at least as it is normally understood by the libertarians who endorse it. Understanding aggression as the initiation of direct, physical violence makes sense of the fact that libertarians want to prohibit various crimes against *persons* such as battery and rape. But it does not seem to make nearly as much sense of the

[21] Common law battery is generally defined as voluntarily and intentionally causing an unconsented harmful or offensive contact with another person's body or with something very closely associated with their body (for instance, a hat or a purse). Common law assault is defined as creating a reasonable fear of an imminent battery. See Joesph W. Glannon, *The Law of Torts: Examples and Explanations*, 4th ed. (Austin, TX: Wolters Kluwer, 2010).

[22] Rothbard, *For a New Liberty*, 27. Emphasis added.

[23] Rand, "The Objectivist Ethics," 32; "The Nature of Government," 108. Emphasis modified from original.

[24] But not always, as we will see in the next section.

libertarian desire to prohibit or punish crimes against *property* such as trespass, breach of contract, and fraud. In **Trespass**, George might be violating David's property rights by walking across his field without his consent, but it would be quite a stretch to describe him as initiating *physical violence* or *force* against either David or David's property. George is no doubt doing something wrong, but the libertarian analysis seems to misdiagnose the nature of the offense.

Similarly, consider the following case:

> **Fraud:** Sharon sells a painting to Tom, claiming that it is an original Monet, but knowing that it is not.

Most libertarians would claim that Sharon has violated Tom's property rights by defrauding him. And most non-libertarians would agree. But while Sharon's behavior is uncontroversially wrong, it would be grossly implausible to characterize it as involving *physical force* or *violence*.[25]

What this shows, together with **Trespass**, is that not all violations of property rights can be properly understood as involving the initiation of physical force. And so, in supporting property rights, libertarians are in a certain respect doing *more* than simply supporting a prohibition of aggression, as aggression is normally understood.

In another respect, however, libertarian defenders of property rights are supporting something *less* than a prohibition of aggression. For if property rights are *enforced* by direct, physical violence, but their violation does not (necessarily) involve the initiation of direct, physical violence, then libertarians who support the enforcement of property rights are actually *supporting* the initiation of physical violence.[26] Kicking George off of David's land, or seizing Tom's money out of Sharon's hands, involves the use of physical violence to redress a violation of property rights that did not itself involve the use of physical violence. In these cases, it is the defenders of property rights who are throwing the first punch.[27] Perhaps they are not wrong to do so. But even if that is true (as I suspect it is), that simply shows that throwing the first punch is, notwithstanding libertarian claims to the contrary, *not always wrong*.

It is this kind of concern, I think, that leads many of libertarianism's most influential critics to question the degree to which libertarians are

[25] Sharon might employ actual force to *retain possession* of Tom's money, should her fraud be discovered. But she might not. She might instead flee the country, or spend the money on consumption, etc.

[26] G. A. Cohen makes a similar argument regarding libertarian "freedom" in G. A. Cohen, "Freedom and Money," in *On the Currency of Egalitarian Justice and Other Essays in Political Philosophy*, ed. G. A. Cohen and Michael Otsuka (Princeton, NJ: Princeton University Press, 2011).

[27] At the risk of belaboring the point, this does not entail, nor is it meant to suggest, that they are wrong in doing so. The point is merely that one cannot argue that they are *not* wrong by appealing to aggression in the way that libertarians standardly do.

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genuinely committed to individual freedom and noninterference.[28] Critics like G. A. Cohen argue that libertarians *say* that they do not like people being bossed around by physical force and the threat of force. But they do not seem to mind force at all when it is used in the service of *property*. So powerful is this objection, in fact, that even some notable libertarians have occasionally found it compelling. Something very much like it, for instance, seems to have led the great libertarian theorist, Herbert Spencer, to question the compatibility of libertarian freedom with the institution of private property in land.[29]

All of this poses a problem for the libertarian. To be clear, however, the problem is *not* necessarily that libertarians are wrong to endorse property rights. It is not even that they are wrong to endorse property rights on the basis of considerations about freedom and aggression. The problem is that the nonstandard, moralized notion of "aggression" they use cannot bear the moral weight that libertarians seem to want to put on it.

Much of the NAP's appeal stems from the way it trades on the ordinary, nonmoralized, First Punch Theory of Aggression of aggression. But, in reality, the NAP is not actually about aggression in this ordinary sense at all. It is about property rights. What libertarians really mean when they say that aggression is impermissible is *not* that it is always impermissible to throw the first punch. It's that it is impermissible to throw the first punch *unless* you are doing so in order to defend property rights. Maybe that is a defensible moral claim. Maybe it's not. But the way libertarians talk about aggression and property obscures the fact that this is precisely the claim being made, and thus hinders our ability to subject the claim to the philosophical scrutiny it deserves.

[28] The most forceful and influential expression of this concern is still to be found in the work of G. A. Cohen, especially in Cohen, "Freedom and Money" and *Self-Ownership, Freedom, and Equality*. But see also Karl Widerquist, *Independence, Propertylessness, and Basic Income: A Theory of Freedom as the Power to Say No* (New York: Palgrave Macmillan, 2013).

[29] "[I]f one portion of the earth's surface may justly become the possession of an individual, and may be held by him for his sole use and benefit, as a thing to which he has an exclusive right, then other portions of the earth's surface may be so held; and eventually the whole of the earth's surface may be so held; and our planet may thus lapse altogether into private hands. Observe now the dilemma to which this leads. Supposing the entire habitable globe to be so enclosed, it follows that if the landowners have a valid right to its surface, all who are not landowners, have no right at all to its surface. Hence, such can exist on the earth by sufferance only. They are all trespassers. Save by the permission of the lords of the soil, they can have no room for the soles of their feet. Nay, should the others think fit to deny them a resting-place, these landless men might equitably be expelled from the earth altogether." Herbert Spencer, *Social Statics* (New York, NY: Robert Schalkenbach Foundation, 1995), 103–104. Spencer's argument here is similar, at least in its conclusions, to the position taken by Henry George, who argued that landowners had no valid claim to the economic rent generated by their land, and that such rent could legitimately be confiscated through the mechanism of a "Single Tax." I discuss Spencer and George's arguments in the context of a libertarian argument for a Basic Income Guarantee in Matt Zwolinski, "Property Rights, Coercion, and the Welfare State: The Libertarian Case for a Basic Income for All," *The Independent Review* 19, no. 4 (2015).

Where does that leave the NAP as a foundation for libertarian morality? Well, as we have seen, on the moralized understanding of aggression, the NAP *cannot* serve as a foundation, since it is necessarily parasitic on a prior theory of property rights that does all the real substantive philosophical work.

What about the nonmoralized conception of aggression? Could a libertarian theory be built off a NAP, where aggression is understood according to something like the First Punch Theory of Aggression? Since the First Punch Theory of Aggression is not parasitic on a prior theory of property, it does seem possible that it could serve the role of a bedrock moral principle. What is less clear, however, is whether it could play this role for *libertarianism*. Since, as we have seen, the enforcement of property rights at least sometimes involves the *initiation* of aggression in the First Punch sense, it is not obvious that a NAP based on this understanding of aggression will be consistent with the strong rights of property characteristic of the libertarian view. We will return to this question in Section V. For now, let us turn to a different problem with the NAP.

IV. Absolutism

Libertarians like Rand and Rothbard do not merely hold that aggression is *sometimes* wrong. Nor do they hold that the wrongness of aggression is merely one fact among others to be taken into account in determining the permissibility of an action. Both of these claims are quite plausible, and indeed, are almost certainly claims to which most non-libertarians would assent. But they are not the claims that libertarian defenders of the NAP make.

Instead, this type of libertarian claims that aggression is *always* wrong, and that its wrongness is so weighty as to override all, or almost all, competing moral considerations. Consider, by way of an example, the libertarian view of the welfare state. Libertarians who adhere to the NAP sometimes argue against the desirability of the welfare state by arguing that it is ineffective or counterproductive in its efforts to aid the poor.[30] But regardless of how much libertarians might believe in these arguments, and regardless of whether those arguments might actually be sound, there is nevertheless an important sense in which they are entirely beside the point. This is because for the libertarian who subscribes to the NAP, it simply *does not matter* whether the welfare state is effective, or whether the poor would be better off without it. Efficiency and the relief of poverty might be genuinely valuable moral goals. But aggression is a trump card. And because the welfare state relies on the threat of violence to obtain its

[30] See, for example, Rothbard, *For a New Liberty*, chap. 8.

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funding, it is by that very fact morally illegitimate irrespective of *how* attractive or unattractive it might be on other moral dimensions.[31]

In this respect, the libertarian prohibition of aggression is a relatively *absolutist* one. In the most basic sense, a prohibition is absolutist if it requires compliance in all circumstances, such that it can never be justifiably infringed and must be fulfilled without any exceptions.[32] Beyond this basic understanding, there are a variety of somewhat more technical ways in which the idea of absolutism might be understood.[33] Fortunately, for our purposes, the differences do not appear to matter. Most statements of the libertarian NAP seem to be absolutist in all of the relevant senses. Still, it is worth thinking carefully about the different ways in which a theory might be absolutist, if only so that we can better understand the different ways in which libertarianism might be modified to avoid some of absolutism's more unpalatable implications.

First, a theory can be absolutist if the rules that constitute the theory admit of relatively few, or relatively insignificant, exceptions. This kind of absolutism has to do with the *content* of the rules. Is lying wrong in every conceivable situation? Or is it okay if it is done in order to save someone's life? What about to spare someone's feelings?

Second, a theory can be absolutist if the moral *force* of its rules is sufficient to override all or most other competing moral considerations. Perhaps we have a duty not to lie but also a duty of beneficence. What happens if these duties come into conflict? To the extent that the rule against lying serves as a kind of "trump card" in such conflicts, it is an absolutist rule.

Third, and closely related to the first sense, a rule will be absolutist if it is relatively unlimited in *scope*. A rule might not apply in certain situations, not because those cases are *exceptions* to the rule, but because the rule applies only within a certain specified context, and this situation falls outside of that context. So, for instance, a group might hold that the prohibition on lying is meant to apply only to interactions *among* members of the group, and not to interactions between members and outsiders.

Fourth and finally, a theory can be absolutist in the sense that its deontic rules do not admit of *thresholds* at the lower end.[34] A rule that is not absolutist in this sense might incorporate certain *de minimis* principles, allowing that

[31] And just as it is irrelevant how great a benefit coercion can produce, it is likewise irrelevant how small a cost coercion imposes upon its victims. As Robert Nozick writes, libertarianism "holds that stealing a penny or a pin or anything else from someone violates his rights. [It] does *not* select a threshold measure of harm as a lower limit" (Nozick, *Anarchy, State, and Utopia*, 75).

[32] The language here is adapted from Alan Gewirth, "Are There Any Absolute Rights?" *The Philosophical Quarterly* (1981): 2.

[33] For discussion, see G. Rainbolt, *The Concept of Rights* (Dordrecht: Springer, 2006); Judith Jarvis Thomson, *The Realm of Rights* (Cambridge, MA: Harvard University Press, 2005); Russ Shafer-Landau, "Specifying Absolute Rights," *Arizona Law Review* 37 (1995).

[34] See Michael Moore, *Placing Blame: A General Theory of the Criminal Law* (Oxford: Oxford University Press, 1997), chap. 17.

my dropping a single unwanted hair onto your property does not meet the requisite threshold for trespass. Absolutist rules admit no such principles.

Moral prohibitions on aggression need not be absolutist. One could endorse a general moral *presumption* against aggression, for instance, while nevertheless (i) holding it to be a presumption that could be overridden in a wide range of important cases if there were sufficiently weighty moral reasons to do so, or (ii) holding it to be limited in scope or by a consequentially-specified threshold. There are even some libertarians who endorse precisely such a nonabsolutist view.[35]

Most libertarians who endorse the NAP, however, endorse a version of the principle that is relatively absolutist in nature. Rothbard, for instance, explicitly states that the right to be free from invasion is "absolute," and holds that even if one were to find oneself on a lifeboat with too many people and not enough seats, the NAP would still obtain in its full, rigid form.[36] Robert Nozick, who at one point describes himself as supporting a "libertarian side constraint that prohibits aggression against another," is explicitly agnostic on the question of absolutism, writing that "the question of whether side constraints are absolute, or whether they may be violated in order to avoid catastrophic moral horror . . . is one I hope largely to avoid."[37] He then proceeds to avoid the question not just largely but entirely; but what he *doesn't* say in the remainder of the book is at least as important as what he does say. Nowhere in the book is there any mention of aggression being justified in order to provide funding for interstate highways, or clean air, or other forms of economic public goods. And nowhere is there any suggestion that aggression might be justified in order to provide even the most minimal of social safety nets.[38]

A. There is always an exception

An absolutist prohibition on aggression seems problematic for at least three reasons. The first problem is common to all absolutist prohibitions — namely, for any action X that the prohibition says it would be wrong to do,

[35] Michael Huemer appears to endorse a presumptive version of the NAP in Huemer, *The Problem of Political Authority: An Examination of the Right to Coerce and the Duty to Obey*. Jan Narveson also defends a non-absolutist form of libertarianism, though his discussion is couched in terms of "liberty" rather than "aggression." See Narveson, *The Libertarian Idea*.

[36] On "absolutism," see Rothbard, *For a New Liberty*, 23, 29. On "lifeboat ethics," see *The Ethics of Liberty* (Atlantic Highlands, NJ: Humanities Press, 1982), chap. 20, where he dismisses the problem of lifeboat ethics in good libertarian fashion by noting that "The vital question here is: *who owns* the lifeboat?"

[37] Nozick, *Anarchy, State, and Utopia*, 30.

[38] Nozick does, at one point, seem to suggest that some sort of safety net — or, at least, some sort of patterned principle of justice that would likely give *support* to a safety net — might be justifiable. But the justification he suggests is rectification for past injustice. This, in turn, suggests that he might not think of the force employed in such a scheme as *aggression* at all, since the violence would depend entirely for its justification on its being the proper response to the *previous* unjust use of force. See ibid., 230–31.

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it is relatively easy to come up with cases in which X seems morally permissible, if not morally obligatory. Lying to others might well be morally impermissible, as a general rule, but lying to the Nazis to save the life of an innocent Jew is certainly *not* impermissible, and might very well be a moral *duty*.

Similarly, committing acts of aggression against others might be generally wrong. But do we really believe, on reflection, that it is *always* wrong, in all circumstances? Cases in which a relatively minor act of aggression can produce a very large individual or social benefit appear to pose a challenge for this thought. Consider these two famous philosophical thought experiments:

> **Jim and the Indians:** Jim finds himself in the central square of a small South American town, where a military officer is about to execute a random group of twenty Indians as a warning to antigovernment protestors. In honor of Jim's arrival, however, the captain offers Jim the opportunity to free nineteen of the Indians — but only by killing one of them himself.[39]
>
> **The Trolley Problem**: Five people are tied to a trolley track, and will be run over and killed by the speeding trolley heading their way if nothing is done. You can divert the trolley from its course by flipping a switch, but doing so will send the trolley down another track to which one person is tied, and he will be killed instead.[40]

Most people have a very strong intuition that it is at least *permissible* to kill one Indian in the first case, and to flip the switch in the second.[41] But killing an innocent person, whether with a gun or the flip of a switch, is an act of aggression if anything is. The believer in an absolutist version of the NAP must therefore hold that both of these acts of killing are impermissible, and indeed that they would remain impermissible no matter how many lives one might save by performing them.[42] As Murray Rothbard writes,

[39] Bernard Williams, "A Critique of Utilitarianism," in *Utilitarianism: For and Against*, ed. J. J. C. Smart and Bernard Williams (New York: Cambridge University Press, 1973), 98.

[40] Philippa Foot, "The Problem of Abortion and the Doctrine of Double Effect," *Oxford Review* 5 (1967).

[41] See David Edmonds, *Would You Kill the Fat Man?: The Trolley Problem and What Your Answer Tells Us About Right and Wrong* (Princeton, NJ: Princeton University Press, 2013), chap. 9.

[42] An absolutist libertarian could conceivably hold that pulling the switch in the trolley case was morally permissible in the same way that other rights-theorists sometimes do — by appealing to the Doctrine of Double Effect. For one does not *intend* the death of the single individual on the side-track, but only *foresees* it as a regrettable side effect of the action necessary to save the life of the five. Regardless of the substantive merits of this move, however, virtually no libertarians seem to make it. There is no discussion of the doctrine of Double Effect in Narveson, *The Libertarian Idea*, in John Hospers, *Libertarianism: A Political Philosophy for Tomorrow* (Los Angeles, CA: Nash Publishing, 1971), or in Nozick, *Anarchy, State, and Utopia*. Rothbard does note in passing that one aspect of his own doctrine "recalls"

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in the context of another example, "The *consequence* . . . would not influence such a libertarian, the 'absolutist' libertarian, in the slightest. Dedicated to justice and logical consistency, the natural-rights libertarian cheerfully admits to being 'doctrinaire,' to being, in short, an unabashed follower of his own doctrines."[43] If aggression is absolutely wrong, then it is wrong no matter how bad the consequences of nonaggression might be.

The examples of Jim and the Indians and the Trolley Problem are, of course, highly contrived.[44] But the libertarian commitment to an absolutist principle of nonaggression has counterintuitive implications in more realistic cases as well. Suppose, for example, that the government was considering a policy that would provide lifesaving vaccines to young children in the developing world, and that it would fund this policy by imposing a very small tax on the very wealthy. Those who are subject to the tax, it seems reasonable to suppose, will suffer only a very small setback to their personal and financial well-being as a result of the tax. Perhaps they won't even notice it. On the positive side, in contrast, many young children could be expected to avoid premature, painful death.

When presented with examples like this, libertarians' first instinct is often to rebel against the factual claims stipulated in the example. Well-intentioned policies, they point out, often produce unintended but disastrous consequences. And we can't even count on governmental policy to be all that well-intentioned, anyway, since public choice economics teaches us that government agents generally produce policies that serve their own self-interest and the interests of their most valuable political supporters. A new vaccination program is more likely to be a bit of political pork for the pharmaceutical industry than it is to do any real good for those in need.

In the context of a debate over public policy, these objections might have considerable merit. In the present context, however, they are irrelevant. For our purpose in discussing the vaccination example is not to determine

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the doctrine of double effect, but even here the reference is to the requirement of proportionality, and not the distinction between intended and merely foreseen effects. See Rothbard, *The Ethics of Liberty*, 80. For a sophisticated discussion, see Guido Pincione, "The Trolley Problem as a Problem for Libertarians," *Utilitas* 19, no. 4 (2007).

[43] Rothbard, *For a New Liberty*, 27. To be fair, Rothbard is discussing an example that involves *preventing* people from being murdered, despite the "psychic pleasure" that such murders might produce. But the point he makes in discussing that example — that the consequences of enforcing rights is irrelevant to the justification of those rights — is a perfectly general one, and one with implications that are not always as welcome as those generated in Rothbard's own chosen example.

[44] They are, needless to say, not the only contrived thought experiments that might pose a problem for the absolutist libertarian. Philippa Foot presents the case of a group of spelunkers stuck in a cave, the mouth of which is blocked by a fat man who has become stuck. Waters in the cave are rising, and the only method of saving yourself and the other members of the group from drowning is to blow the fat man up with the stick of dynamite you conveniently brought along. As Foot notes, this case does *not* appear to be one that can be avoided by means of the Doctrine of Double Effect. See Foot, "The Problem of Abortion and the Doctrine of Double Effect."

whether such a policy would be justifiable in an all-things-considered sense, but to gain a better understanding of the implications of the NAP as a *moral principle*. The relevant question, then, is what implications the NAP would have *if* the stipulated facts of the case were true. If, as I believe, the NAP would have the implausible implication that even an *effective* and virtually-costless vaccination program would be absolutely morally impermissible, then this tells against the plausibility of the NAP as a moral principle, *whether or not* any vaccination programs in the real world are effective or as cheaply provided in the way stipulated by the example.[45]

B. Is nonaggression all there is?

Libertarians generally view the NAP not merely as *one* source of rights among others, but as the *only* source of rights. And, from the position of an absolutist libertarian, this makes a certain kind of sense. After all, if there were other sources of rights *besides* the NAP, then it might be possible for those rights to conflict with the rights generated by the NAP. And within the context of an absolutist morality, there is simply no room for this sort of moral conflict.[46]

So, for example, libertarians believe that we have a right not to be subject to the initiation of physical violence. Suppose, however, they believed that *in addition* to this right, we also have a right that others rescue us, at least in so-called "easy rescue" situations. The more rights the better, right? Well, no. To have a right is, in the normal case, to have a certain kind of enforceable claim on others. Thus, if you have a right to be rescued, part of what this usually entails is that it is morally permissible for you (or an agent acting on your behalf) to *use force* to get others to rescue you. But someone who merely fails to rescue you has not, by that failure, initiated force against you. Therefore your use of force against him would constitute an *initiation* of force. But this, of course, is ruled out by the NAP. The two rights are thus logically incompossible.[47]

Regarding the NAP as the only source of rights (or, at least, the only source of *enforceable* rights) is, thus, necessary to maintaining the absolutist status of that principle. But it is also a second source of that principle's deep implausibility. For, consider just how *much* it rules out.

Libertarians almost always say, for instance, that they are opposed not merely to the initiation of force, but to the initiation of force *or* fraud.

[45] My point here is related to Jeffrey Friedman's discussion of the "libertarian straddle," in which libertarians rely on empirical arguments to cover up the weaknesses in their moral arguments, and rely on moral arguments to cover up the weaknesses in their empirical arguments. See Jeffrey Friedman, "What's Wrong with Libertarianism?" *Critical Review* 11, no. 3 (1997).

[46] See, for a discussion of this sort of argument, Roderick Long, "Why Libertarians Believe There Is Only One Right," (2014).

[47] See, for the classic discussion, Hillel Steiner, *An Essay on Rights* (New York: Blackwell, 1994).

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Sometimes, they base this claim on the belief that fraud is really a *kind* of force.[48] But this claim cannot stand up to philosophical scrutiny. In our earlier case, **Fraud,** Sharon is no doubt doing *something* wrong to Tom. But nothing she does in that example bears even the remotest resemblance to physical violence. If, however, fraud is *not* a kind of force, then a prohibition on fraud will itself involve the initiation of force, by precisely the same logic as that involved in our discussion of the right to an easy rescue above.[49] Intuitively, it seems obvious that fraudulent transfers ought to be prohibited. But the libertarian adherent of an absolutist version of the NAP cannot embrace this conclusion, and must, it seems, grant the permissibility of fraudulent transfers.

Of course, almost no libertarians actually *do* grant the permissibility of fraudulent transfers. But this fact, by itself, doesn't tell us anything about whether they are logically required to do so, by their own basic moral commitments. And, anyway, there are other cases in which libertarians *do* explicitly grant the permissibility of intuitively immoral actions, simply because the absolutist form of the NAP leaves no room for any additional and potentially competing rights.

Take, for example, the issue of children. Most of us believe that parents have a moral obligation to provide for the basic needs of their young children. Most of us believe, moreover, that these obligations are *enforceable* ones. A parent who allowed his or her one-year-old child to starve to death would be violating the *rights* of that child, and others would be acting justifiably if they were to force entry into the parent's property to provide the child with lifesaving food.[50]

Such an enforceable obligation, however, seems incompatible with the absolutist formulation of the NAP. And at least one prominent libertarian has recognized this, and decided to bite the rather sizeable bullet such recognition forced into his mouth.

> Applying our theory to parents and children, this means that a parent does not have the right to aggress against his children, *but also* that the parent should not have a *legal obligation* to feed, clothe, or educate

[48] Rothbard supports a prohibition of fraud on the grounds that fraud is a kind of "implicit theft." See Rothbard, *The Ethics of Liberty*, chap. 12. The view that fraud is really a "kind of" force and may thus be justly prohibited on libertarian grounds has a long pedigree in libertarian thought. Ayn Rand, for instance, famously described fraud as involving the "indirect use of force" (Rand, "The Nature of Government," 111). Auberon Herbert, writing at the dawn of the twentieth century, called fraud the "twin-brother of force . . . which by cunning sets aside the consent of the individual, as force sets it aside openly and violently." See Auberon Herbert, "Mr. Spencer and the Great Machine," in *The Right and Wrong of Compulsion by the State*, ed. Auberon Herbert and Eric Mack (Indianapolis: Liberty Fund, 1978), 313.

[49] See, for an extended version of this argument, James Child, "Can Libertarianism Sustain a Fraud Standard?" *Ethics* 104, no. 4 (1994).

[50] To forestall irrelevant objections, let us suppose that the child is being kept in her parent's home, but that the parent is in no way physically preventing the child from leaving. The child is, owing to its physical immaturity, simply *unable* to leave, and unable to find food for itself.

> his children, since such obligations would entail positive acts coerced upon the parent and depriving the parent of his rights. The parent therefore may not murder or mutilate his child, and the law properly outlaws a parent from doing so. But the parent should have the legal right *not* to feed the child, i.e., to allow it to die. The law, therefore, may not properly compel the parent to feed a child or to keep it alive.[51]

In making this point, Rothbard cites the late nineteenth-, early twentieth-century American libertarian, Benjamin Tucker, who wrote similarly that "under equal freedom, as it [the child] develops individuality and independence, it is entitled to immunity from assault or invasion, and that is all. If the parent neglects to support it, he does not thereby oblige anyone else to support it."[52] Libertarians like Rothbard and Tucker can grant — and Rothbard *does* grant — that parents might have a *moral* obligation to feed their children. But if they are to cling to the absolutism of the NAP, they must, and do, reject the claim that this moral obligation is a properly *enforceable* one. For if children's rights are enforceable, then force may properly be used against parents who have done nothing violent themselves. Rothbard's position on children, as deeply counterintuitive and repugnant as it may be, thus seems to be the correct logical implication of a commitment to an absolutist understanding of the NAP.

C. Aggression everywhere! All the time![53]

One way of thinking about the libertarian prohibition on aggression, suggested by Robert Nozick, is to imagine individual rights as a kind of "line (or hyper-plane) [that] circumscribes an area in moral space around an individual."[54] Actions that "transgress the boundary or encroach upon the circumscribed area" are to count as infringements of those rights.

[51] Rothbard, *The Ethics of Liberty*, 100.

[52] Benjamin Tucker, *Instead of a Book: By a Man Too Busy to Write One* (New York: Elibron Classics, 2005), 144. In at least one important respect, however, Rothbard's position is a good deal more moderate than Tucker's. For Tucker, at least at the late stage of his intellectual career when he had abandoned Spencerian natural rights theory for Stirnirite egoism, held that even physical aggression against a baby would be within a parent's rights. "I am asked by a correspondent if I would passively see a woman throw her baby into the fire as a man throws his newspaper. I expected that this question would be put to me; hence it finds me prepared. I answer that it is highly probable that I would personally interfere in such a case. But it is as probable, and perhaps more so, that I would personally interfere to prevent the owner of a masterpiece by Titian from applying the torch to the canvas. My interference in the former case no more invalidates the mother's property right in her child than my interference in the latter case would invalidate the property right of the owner of the painting. If I interfere in either case, I am an invader, acting in obedience to my injured feelings. As such I deserve to be punished." "On Picket Duty," *Liberty* XI, no. 9 (1895).

[53] The material in this section draws heavily on Matt Zwolinski, "Libertarianism and Pollution," in *The Routledge Companion to Environmental Ethics*, ed. Benjamin Hale and Andrew Light (New York: Routledge, 2015).

[54] Nozick, *Anarchy, State, and Utopia*, 57.

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And, in general, such infringements may be justly prohibited. Murder, theft, and assault all involve the crossing of an individual's moral boundaries without his or her consent, and are all therefore properly criminalized by the libertarian minimal state.

On its face, a view such as this would seem to provide a very strong basis for opposing environmental pollution. And indeed, several prominent libertarians have drawn precisely this conclusion. So, according to former Reagan White House official Martin Anderson,

> Just as one does not have the right to drop a bag of garbage on his neighbor's lawn, so does one not have the right to place any garbage in the air or the water or the earth, if it in any way violates the property rights of others.[55]

Similarly, Murray Rothbard writes that the "vital fact" regarding air pollution is that

> the polluter sends unwanted and unbidden pollutants — from smoke to nuclear fallout to sulfur oxides — *through* the air and into the lungs of innocent victims, as well as onto their material property. All such emanations which injure person or property constitute aggression against the private property of the victims. Air pollution, after all, is just as much aggression as committing arson against another's property or injuring him physically. Air pollution that injures others is aggression pure and simple.[56]

So far, so good. In fact, it might seem as though libertarianism's strong stance against aggression serves, in this case, to render the theory more morally *attractive* by providing much stronger grounds for opposing pollution than alternative political ideologies, such as Rawlsian liberalism, are capable of providing.[57] Insofar as industrial pollution violates the property rights of landowners downriver, nearby foresters whose trees are damaged by acid rain,[58] or individual persons whose lungs are intruded upon by airborne pollutants, that pollution constitutes aggression and should be prohibited. Indeed, as long as we make the not unreasonable assumption that some of the harms associated with global climate change

[55] Martin Anderson, "George Bush Environmentalist," *The Christian Science Monitor*, January 4 1989, 19. Cited in Walter Block, *Economics and the Environment: A Reconciliation* (Fraser Institute, 1990), ix–x.

[56] Rothbard, *For a New Liberty*, 256.

[57] On the environmental implications of Rawlsianism compared with libertarianism, see Roger Taylor, "The Environmental Implications of Liberalism," *Critical Review* 6, no. 2–3 (1992).

[58] See Edwin G. Dolan, "Controlling Acid Rain," in *Economics and the Environment: A Reconciliation*, ed. Walter E. Block (The Fraser Institute, 1990).

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constitute a violation of property rights, there is no reason why the libertarian framework could not be extended to address even this most difficult and challenging of environmental problems.[59]

Here again, though, the absolutism of the NAP proves to be its undoing. For if *all* aggression is to be regarded as a violation of rights, no matter how trivial, then the same must be true of all pollution that infringes upon the property rights of others. David Friedman, himself a libertarian but a critic of the kind of natural-rights position espoused by Locke, Nozick, and Rothbard, was the first to point out the problem:

> [C]arbon dioxide is a pollutant. It is also an end product of human metabolism. If I have no right to impose a single molecule of pollution on anyone else's property, then I must get the permission of all my neighbors to breathe. Unless I promise not to exhale.[60]

Light pollution, too, constitutes a physical, nonconsensual invasion of one's neighbor's property. This is obvious enough if we consider, as Friedman goes on to ask us to do, a case in which you fire a thousand megawatt laser beam at your neighbor's front door. But is shining a flashlight at your house any less a violation of your right against nonconsensual boundary crossings? Is lighting a match within eyesight of your property?[61]

If any unwanted "boundary crossing" against one's person or property constitutes aggression, and if all aggression, no matter how trivial, constitutes a violation of rights, then it is difficult to avoid the conclusion that almost *everything we do* in a modern, civilized society involves the violation of rights. Every time you drive your car to work, you are contributing to air pollution that will invade others' property in their bodies and their land; every time you talk within earshot of another person's property, you are creating air pollution that causes physical vibrations in people's eardrums without their consent; every time you turn the lights on in your house, you launch an assault of photons into your neighbors' property. The only way to avoid aggressing against others, it seems, is to avoid social coexistence altogether.

[59] For a friendly reflection on the implications of libertarianism for climate change by a critic of libertarianism, see Peter Singer, *One World: The Ethics of Globalization* (New Haven, CT: Yale University Press, 2004), chap. 2. For two attempts by scholars sympathetic to libertarianism to tackle the issue themselves, see Edwin G. Dolan, "Science, Public Policy, and Global Warming: Rethinking the Market-Liberal Position," *Cato Journal* 26 (2006); Dan C. Shahar, "Justice and Climate Change: Toward a Libertarian Analysis," *The Independent Review* 14, no. 2 (2009).

[60] David Friedman, *The Machinery of Freedom: Guide to Radical Capitalism*, 2nd ed. (La Salle, IL: Open Court, 1989), 168.

[61] For similar critiques, see Jeffrey Friedman, "Politics or Scholarship?" *Critical Review* 6, no. 2–3 (1992): 430–32; Peter Railton, "Locke, Stock, and Peril: Natural Property Rights, Pollution, and Risk," in *To Breathe Freely*, ed. Mary Gibson (Trenton, NJ: Rowman and Littlefield, 1985); David Sobel, "Backing Away from Libertarian Self-Ownership," *Ethics* 123, no. 1 (2012), and Mark Sagoff, "Free-Market Versus Libertarian Environmentalism," *Critical Review* 6, nos. 2–3 (1992): 226–29.

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Libertarians have sought to avoid the troubling implications of their view on questions of pollution in various ways. Nozick did so by apparently giving up on the traditional libertarian idea of individual rights being protected by a strict property rule and adopting instead the position that they are protected by a weaker liability rule — one that allows boundary crossings in a certain range of cases so long as compensation is paid, and which therefore holds that pollution should be permitted whenever the [social] benefits are greater than the costs."[62] Rothbard, in turn, argued that pollution should be understood as a nuisance (rather than a trespass) that should be prohibited only if objective harm could be demonstrated, and only if a strict causal connection between the source of pollution and its victim could be demonstrated beyond a reasonable doubt.[63]

Both of these approaches, however, are problematic in several important respects. Regarding Nozick's proposed solution, we might ask in what sense do you *own* your property if others can use it as they wish so long as they compensate you for it afterwards? Would slavery cease to be wrong "if only we could be sure that the slave is receiving at least as much compensation as would have induced him to agree to enslavement"?[64] And regarding Rothbard, why should the demonstration of harm be required for a legal cause of action when it comes to the kinds of "invisible" and "insensible" boundary crossings that constitute nuisance, but not when it comes to the visible, sensible boundary crossings involved in trespass? If only harmful boundary crossings are to be prohibited, then why shouldn't we hold my harmlessly walking across your property without your consent to be permissible? And if harmless but unwanted trespass is to be prohibited, why not harmless but unwanted nuisances too?[65]

The problem here is a deep one. An absolutist prohibition on aggression understood as the physical invasion of other people's bodies or property seems most at home in the kind of "micro-level" examples so often employed by libertarians, involving discrete interactions between one person and another.[66] It is not clear that such a prohibition can function in the sort of world revealed to us by environmental philosophers — one

[62] Nozick, *Anarchy, State, and Utopia*, 79. The property versus liability rule terminology as applied to Nozick comes from Eric Mack, "Nozickian Arguments for the More-Than-Minimal State," in *The Cambridge Companion to Nozick's Anarchy, State, and Utopia*, ed. Ralf M. Bader and John Meadowcroft (New York: Cambridge University Press, 2011), 108.

[63] Murray N. Rothbard, "Law, Property Rights, and Air Pollution," *Cato Journal* 2, no. 1 (1982).

[64] Mack, "Nozickian Arguments for the More-Than-Minimal State," 108–109.

[65] For more on the problems with Nozick's approach, see Railton, "Locke, Stock, and Peril: Natural Property Rights, Pollution, and Risk."; Sobel, "Backing Away from Libertarian Self-Ownership." For more on Rothbard, see Friedman, "Politics or Scholarship?"

[66] Libertarians standardly argue against the morality of various kinds of governmental actions, for instance, by claiming that those same actions would clearly be wrong if done by one private individual against another. See, for examples of this sort of argument, Rothbard, *For a New Liberty*, chap. 3; Huemer, *The Problem of Political Authority: An Examination of the Right to Coerce and the Duty to Obey*, chap. 1.

marked by the complex interaction of large numbers of dispersed individuals, in which the long-term and long-range effects of any one person's actions are marked by the kind of non-linearities and threshold effects that characterize the problem of environmental pollution. In a populous and complexly interrelated world in which almost all of our actions produce physical effects on others without their consent, an absolutist prohibition on aggression seems an impossibly high standard to meet.

V. What's Left for Nonaggression?

I have been arguing in this essay that there are good reasons to reject the Nonaggression Principle as it is usually understood by libertarians. But the problem with the libertarian NAP is *not* its identification of aggression as a serious moral wrong. The problems are, first, that it really has more to do with *property rights* than it does with aggression on the ordinary meaning of that term, and second, that it takes the wrongness of aggression to be an absolute moral *rule*, rather than a serious, but potentially overridable, moral *principle*.[67] A version of the NAP *could* be identified that avoids both of these problems. Such a principle would be quite different from the principle that Rothbard articulated, and that has come to dominate both popular and academic understandings of libertarianism since then. But it would be a more philosophically defensible principle, and one that would retain a significantly libertarian edge. In this section, I will sketch what such a principle might look like, and what some of its implications might be.

A. Distinguishing aggression from the violation of property rights

Such a nonaggression principle would, in the first instance, be about aggression in the *ordinary* sense of that term, described in Section III as the "First Punch Theory of Aggression" of aggression. It would, in other words, be a norm that has as its immediate object the use of direct physical force against other human beings. It is wrong to physically attack innocent persons; it is wrong to rape them; it is wrong to murder them; it is wrong to kidnap them. And a NAP based on the First Punch Theory of Aggression would prohibit the initiatory use of force in these cases, among others.

A norm against aggression understood in this sense would seem to have a strong basis in the traditional libertarian commitment to self-ownership.[68]

[67] On the distinction between moral rules and moral principles, see David Schmidtz, "The Language of Ethics," in *Ethical Dilemmas in the Water Industry*, ed. Cheryl Davis (Washington, DC: American Water Works Association, 2001).

[68] See Will Kymlicka, *Contemporary Political Philosophy: An Introduction*, 2nd ed. (Oxford: Oxford University Press, 2002), chap. 4; John Locke, *The Second Treatise of Government* [1690], ed. Thomas P. Peardon (New York: MacMillan, 1952); Nozick, *Anarchy, State, and Utopia*. But see Eric Mack, "Robert Nozick's Political Philosophy," http://plato.stanford.edu/archives/sum2015/entries/nozick-political/, for an argument that the role of self-ownership in Nozick's thought has been largely overstated.

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Each individual owns his own body, and therefore has the right to exclude others from using it without his consent. And this is precisely what a norm against aggression does.[69]

There is a sense, then, in which the sort of NAP I am proposing is, like the more common libertarian NAP, based upon a *moralized* understanding of aggression. After all, whether a given act counts as aggression will depend on whether it violates a person's ownership rights over his or her body. And that, of course, is a moral question. Consider the following case:

> **Labor Theft:** Jerry tells Mike that if Mike does some physical labor on Jerry's car, Jerry will pay him $100 at the end of the day. Mike does the work, but at the end of the day Jerry refuses to pay him.

Suppose Mike were to use a reasonable amount of physical force to prevent Jerry from driving away without paying him. Should we classify this as "aggression"? I think not. And the reason is that such physical force would not violate Jerry's *rights* over his body. In committing an act of fraud, Jerry has forfeited the right not to have a certain amount of physical force used against him. Of course, Mike is *using* physical force. And, indeed, if we limit our focus to physical force alone, then Mike is the one who *initiates* force. But he is not the *aggressor* in this case, because the force he uses is in response to Jerry's nonviolent violation of his rights.

The real problem with the libertarian NAP, then, is not merely that it involves a *moralized* conception of aggression. The problem is that it runs together different *parts* of morality, conflating physical force against a person's body with the violation of a person's property rights in external goods, and thereby conveying the misleading impression that they are both wrong to the same degree, in the same way, and for the same reasons.

The truth is that physical violence against persons is one thing, and the violation of property rights in external resources is something else. "Everything is what it is."[70] A (nonabsolute) norm prohibiting the initiation of physical violence against persons is relatively uncontroversial. But the justification of property rights is a more difficult and contentious business. We cannot avoid this difficulty by pretending the task is easier than it actually is, by pretending that a support for property is just *the same thing* as an opposition to physical violence.

So where does that leave the case for property rights in external resources? If we take self-ownership and an opposition to physical force against people's bodies as a starting point, how far can those principles take us in the direction of a theory of property in nonbodily resources?

[69] Strictly speaking, the norm against aggression rules out unwanted touching. Perhaps there are other forms of "using" a person's body without his consent that do not involve unwanted touching. If so, these would not be ruled out by a norm against aggression.

[70] Isaiah Berlin, "Two Concepts of Liberty," in *Four Essays on Liberty*, ed. Isaiah Berlin (Oxford: Oxford University Press, 1969), 172.

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It can probably take us at least *part* of the way. As mentioned above,[71] the common-law prohibition of battery covers not merely the use of force against persons, but also the use of force against certain properties very closely connected with persons, such as a hat or a purse. And this seems sensible. There is good reason to regard property that is intimately connected with a person as an extension of the person himself. Someone who slowly and deliberately walks up and knocks your hat off your head is committing an act of aggression against *you*, as is someone who attempts to snatch your purse from your arm, or the acorn from your mouth. We ought to categorize these acts not merely as wrongs, but as wrongs of roughly the same sort as a punch or a shove.

What about property that is less directly connected with one's body? Here, the implications of a nonmoralized NAP are less clear. The libertarian who wants to get a theory of nonpersonal property from the NAP faces two problems: the first is that some violations of property rights don't seem to violate the NAP at all; the second is that (in at least some cases) the *establishment* of property rights does.

To take the first point first, the **Fraud** case that we saw earlier can reasonably be construed as involving the violation of property rights, but not the initiation of physical force. And there are many cases of this sort. Here is another.

> **Embezzlement**: Samir writes a program to embezzle money from his office's computer, moving money from the business's account into his own personal account.

In this example, Samir is not using physical force against anybody. Nor is he *threatening* to use physical force. He is, to redescribe the example with a nontechnological analogy, simply picking up money that has not been sufficiently locked-up by its owner. In doing so, he almost certainly acts immorally, and in a way that both is and ought to be illegal. But he does not violate the NAP, at least if we understand "aggression" in the ordinary sense.

Of course, other cases involving the violation of nonpersonal property *will* involve aggression. Consider:

> **Extortion:** The local mob boss tells a business owner that unless she voluntarily pays him a large amount of "protection" money, he is going to start taking money out of her cash register himself. If she resists his attempts to do so, he tells her, she is likely to meet with an "unfortunate accident."

In this case, the mob boss's request for money is backed by the threat that if the store owner says no, he is just going to take it anyway. And if she

[71] *Supra*, n. 14.

tries to stop him from doing *that*, he is going to physically injure her. So the request for money is ultimately backed up by a threat of physical violence against her person. And this, according to even the nonmoralized version of the NAP, is impermissible.

Before we become too optimistic about the prospects for this strategy, however, we should consider the second problem for the attempt to derive property rights from the NAP: namely, that the establishment of such rights is *itself* a violation of the NAP. Consider the following scenario.

> **Appropriation**: John puts a fence around a piece of land that had previously been open to use by all, builds a hut, and plants some crops. John tells Henry, who had sometimes used the land for foraging in the past, that if he crosses the fence without John's permission, John will use whatever physical force is necessary and appropriate to remove him.

In this case, it looks like it is the act of establishing a property right itself that is aggressive, in the ordinary sense of that term. John's claim to a property right in his land is backed by the threat of physical violence. And the same, of course, is true of other property rights as well, whether they were acquired by acts of original appropriation, trade, or gift. So at the same time that a commitment to nonaggression tells against attempts to acquire the property of others by threats of violence, it also seems to tell against the establishment and maintenance of property rights themselves.

How serious are these problems for libertarianism? To my mind, they only constitute a worrisome objection if we insist *a priori* that the NAP ought to be enough all by itself to resolve all questions concerning the morality of property and theft. And I see no reason to think such insistence is warranted. Nonviolent theft is wrong. But there is no reason to think that the *explanation* of its wrongness ought to be the same explanation we would give for the wrongness of direct violent assaults on a person's body. Why assume that vastly different kinds of moral questions need to be addressed by a *single* moral principle?

Similarly, there seems to be no reason to assume from the outset that the wrongness of aggression ought to *settle* the question of property rights, all by itself. To claim a property right is, to be sure, to claim the right to threaten or use physical force against others to defend that right. And, all else being equal, initiating force against others in that way is a bad thing to do. But all else isn't necessarily equal. It would, for instance, be very strange indeed if the justification of a system of property rights had nothing whatsoever to do with the sorts of lives such a system allowed people subject to it to live, or the kinds of social problems it helped them to avoid.[72]

[72] For a thoughtful and important libertarian discussion of these issues, see David Schmidtz, "The Institution of Property," *Social Philosophy and Policy* 11, no. 2 (1994).

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We might assume that the NAP ought to settle these questions all by itself if we wanted to guarantee right at the outset that there would never be any possibility of *conflict* between the principle of nonaggression and some other moral principle. Like a small, Western town, we might say, we've only got room for *one* sheriff 'round here. But once we drop the assumption that the NAP ought to be understood as an *absolute* moral rule, the possibility of conflict becomes much less troubling. And, as we saw in Section IV, there is very good reason to drop that assumption.

B. Nonabsolutism

A principle prohibiting aggression should neither hold in all cases, nor have infinite moral weight. A defensible version of the NAP will therefore be nonabsolutist. And because it is nonabsolutist, it will therefore only be one *element* of a pluralistic moral theory. After all, once we have accepted that a prohibition on aggression is going to have exceptions, it just doesn't make any sense to insist that we limit the size of our moral universe to a single moral rule. In fact, we arguably *need* the other principles to see just where the exceptions to the NAP lie.

A defensible NAP will therefore issue a moral *presumption* against aggression, and indeed perhaps a very *strong* presumption. But it is a presumption that can be overridden given sufficiently weighty moral considerations on the other side. The cases discussed in Section IV of this essay constitute an illustrative but non-exhaustive list of situations in which the presumption might be overridden in just this way. Yes, aggression is bad, but if it is necessary to save the life of a toddler from a neglectful (but nonaggressive) parent, then it is justifiable. Yes, aggression is bad, but if the aggression at issue takes the form of a relatively harmless form of pollution that is the byproduct of some personally or socially valuable activity, then again, it is justifiable.

This sort of moral balancing will cause discomfort in those who expect clear, unambiguous guidance from their moral principles. But here, as elsewhere, the problem is with the expectation, not with the principle's inability to satisfy it. Our principles don't always provide us with clear, unambiguous guidance in cases of *intra*personal morality, either — about how to balance the sometimes conflicting values of work and family, independence and loyalty, courage and prudence. Why should we expect the business of *inter*personal morality to be any easier?

C. How libertarian is it?

The sort of NAP I have defended here makes no pretense of being a complete moral theory. Nor does it pretend to be a complete *political* theory, or even a completely sufficient ground for deriving a theory of political rights. We should not expect, then, that we will be able to *derive*

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libertarianism from it, in the way that Rothbard thinks he can derive libertarianism from the "twin axioms" of nonaggression and homesteading. Whether libertarianism turns out to be defensible will turn not just on the correct understanding of the NAP, but on the way in which the NAP is integrated with the numerous other principles that mark our moral landscape.

One of the major tensions that any libertarian theory based on the NAP will have to resolve is the tension between "right-libertarian" theories that allow for strong rights of property in external resources such as land, and "left-libertarian" theories that do not.[73] Since, as we have seen, rights of private property themselves can be seen as involving violations of the NAP, there is at least a relatively strong presumption *against* those rights for anyone who professes allegiance to that principle. Whether or not that presumption can be overridden by considerations internal to the NAP, or external to it, is an issue of the utmost importance.[74]

Supposing, however, that *some* case can be made for rights of private property, the NAP will push in a strongly libertarian direction regarding the protection of those rights. After all, we have seen above that the NAP condemns the sort of action taken in **Extortion**. But compare **Extortion** with this strikingly similar case:

> **Taxation**: An agent of the Internal Revenue Service approaches a local business owner and demands that she pay a large amount of money in taxes. If she refuses, the agent will place an order to have the money seized from her bank account. And if she tries to avoid *that*, the agent will call the police to seize her, arrest her, and lock her away in jail.

If the mob boss in **Extortion** acts wrongly, then there is at least a very strong presumption that the IRS agent in **Taxation** does too. Perhaps this presumption can be overridden. After all, the IRS agent works for a democratically elected government that purports to serve the common good. Whether that is enough to render the coercion she employs justifiable is too large a question to be answered here. But the libertarian view that actions that are wrong when done by private individuals are wrong when

[73] For an overview of recent literature on left-libertarianism, see Peter Vallentyne, "Left–Libertarianism: A Primer," in *Left-Libertarianism and Its Critics: The Contemporary Debate*, ed. Peter Vallentyne and Hillel Steiner (Basingstoke, UK; New York: Palgrave, 2000). The intralibertarian debate on this topic, however, is not new. The fascinating debate between Herbert Spencer and Henry George in the late nineteenth century anticipates contemporary debates in many important respects. See Spencer, *Social Statics*; *The Principles of Ethics*, vol. 2 (Liberty Fund, 1978); Herbert Spencer and Frederick Verinder, *Mr. Herbert Spencer and the Land Restoration League* (London: Page and Pratt, 1895); Henry George, *A Perpelexed Philosopher: An Examination of Mr. Herbert Spencer's Various Utterances on the Land Question, with Some Incidental Reference to His Synthetic Philosophy* (New York: Charles L. Webster & Company, 1892).

[74] I believe that it can, and I make the argument in Zwolinski, "Property Rights, Coercion, and the Welfare State: The Libertarian Case for a Basic Income for All."

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they are done by democratic governments too is a powerful one, and one that puts a very heavy justificatory burden on defenders of the state. Michael Huemer's recent book makes a strong argument that this burden has not yet been met.[75] I suspect he may be correct.

Still, one might doubt whether a theory can really be *libertarian* if it takes such an ambivalent stance on the justification of property rights, and the consequent illegitimacy of taxation and redistribution. This concern is understandable. It is, nevertheless, based on two misunderstandings of libertarian thought.

First, it is important to remember that despite the emphasis placed on it by thinkers like Murray Rothbard, the NAP is not, and never has been, the only resource in the libertarian intellectual toolkit. A close study of the libertarian intellectual tradition reveals a theory that is far more *pluralistic* than is commonly supposed.[76] In addition to an opposition to aggression, libertarian thought is characterized by (1) an emphasis on the importance of spontaneous order as a source of social organization,[77] (2) a deep skepticism of authority, especially as manifested in political power,[78] (3) an appreciation for the mutually-beneficial, wealth-creating, and information-conveying power of voluntary market exchange,[79] and (4) a commitment to individualism and personal responsibility.[80] If the libertarian case for private property, and against government redistribution, had to rely on the NAP alone, then it would indeed be on shaky ground. Fortunately for the libertarian, it does not.

Second, it is important to remember that while support for rights to nonpersonal property is an important and distinctive element of the

[75] Huemer, *The Problem of Political Authority: An Examination of the Right to Coerce and the Duty to Obey*.

[76] See Zwolinski and Tomasi, *Libertarianism: A Progressive Intellectual History*.

[77] For an overview of this idea, see Norman P. Barry, "The Tradition of Spontaneous Order," *Literature of Liberty* 2 (1982). While the idea has its roots in the Scottish Enlightenment and especially in the ideas of Adam Smith and David Hume, the most important contributions to the concept in the twentieth century were undoubtedly made by Friedrich Hayek. See Friedrich A. Hayek, "Kinds of Order in Society," *New Individualist Review* 3, no. 2 (1964).

[78] This skepticism manifests itself both in philosophical doubts about the legitimacy of claims to authority (see Spooner, "A Letter to Grover Cleveland, on His False Inaugural Address, the Usurpations and Crimes of Lawmakers and Judges, and the Consequent Poverty, Ignorance, and Servitude of the People" and Huemer, *The Problem of Political Authority: An Examination of the Right to Coerce and the Duty to Obey*), and in more empirically based doubts about the wisdom and benevolence of purported authorities, and their assumed ability to effectively achieve desirable social goals (see James Buchanan and Gordon Tullock, *The Calculus of Consent* [Ann Arbor: University of Michigan Press, 1962]; Gordon Tullock, R. D. Tollison, and C. K. Rowley, *The Political Economy of Rent Seeking* [Boston: Kluwer, 1988]; Herbert, "Mr. Spencer and the Great Machine.")

[79] Adam Smith, *The Wealth of Nations* (Indianpolis: Liberty Fund, 1982); Friedrich A. Hayek, "The Use of Knowledge in Society," *American Economic Review* 35, no. 4 (1945); Milton Friedman and Rose Friedman, *Free to Choose: A Personal Statement* (Boston: Houghton Mifflin Harcourt, 1990).

[80] David Schmidtz and Robert E. Goodin, *Social Welfare and Individual Responsibility: For and Against* (Cambridge: Cambridge University Press, 1998); Spencer, *Social Statics*.

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libertarian position, it is not the sole distinctive element. Even if it has no implications for the legitimacy of nonpersonal property, the libertarian commitment to self-ownership still has considerable practical bite, and tells strongly against the legitimacy of paternalism and physical aggression. This, by itself, is enough to render the libertarian position radically distinct from most mainstream political ideologies, and this radicalism is made clear in libertarians' principled opposition to the war on drugs, to the criminalization of prostitution and other victimless crimes, and to nondefensive military action.

Suitably understood, the NAP is a defensible moral principle. And it is a defensible *libertarian* moral principle. Its implications for property rights in nonpersonal resources might be less than perfectly clear. But the libertarian case for property rights is about more than just the NAP. And libertarianism as a political theory is about more than just property rights.

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