

THE ETHICS OF LIBERTY

By Murray N. Rothbard

**with a new introduction
by Hans-Hermann Hoppe**

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INTRODUCTION

By Hans-Hermann Hoppe

In an age of intellectual hyperspecialization, Murray N. Rothbard was a grand system builder. An economist by profession, Rothbard was the creator of a system of social and political philosophy based on economics and ethics as its cornerstones. For centuries, economics and ethics (political philosophy) had diverged from their common origin into seemingly unrelated intellectual enterprises. Economics was a value-free "positive" science, and ethics (if it was a science at all) was a "normative" science. As a result of this separation, the concept of property had increasingly disappeared from both disciplines. For economists, property sounded too normative, and for political philosophers property smacked of mundane economics. Rothbard's unique contribution is the rediscovery of and philosophy, and the systematic reconstruction and conceptual integration of modern, marginalist economics and natural-law political philosophy into a unified moral science: libertarianism.

Following his revered teacher and mentor, Ludwig von Mises, teachers Eugen von Böhm-Bawerk and Carl Menger, and an intellectual tradition reaching back to the Spanish late-Scholastics and beyond, Rothbardian economics sets out from a simple and undeniable fact and experience (a single indisputable axiom):

that man acts, that humans always and invariably pursue their most highly valued ends (goals) with scarce means (goods). Combined with a few empirical assumptions (such as that labor implies disutility), all of economic theory can be deduced from this incontestable starting point, thereby elevating its propositions to the status of apodictic, exact, or *a priori* true empirical laws and establishing economics as a logic of action (*praxeology*). Rothbard modeled his first magnum opus, *Man, Economy, and State*¹ on Mises's monumental *Human Action*.² In it, Rothbard developed the entire body of economic theory—from utility theory and the law of marginal utility to monetary theory and the theory of the business cycle—along praxeological lines, subjecting all variants of quantitative-empirical and mathematical economics to critique and logical refutation, and repairing the few remaining inconsistencies in the Misesian system (such as his theory of monopoly prices and of government and governmental security production). Rothbard was the first to present the complete case for a pure-market economy or private-property anarchism as always and necessarily optimizing social utility. In the sequel, *Power and Market*³, Rothbard further developed a typology and analyzed the economic effects of every conceivable form of government interference in markets. In the meantime, *Man, Economy, and State* (including *Power and Market* as its third volume) has become a modern classic and ranks with *Human Action* as one of the towering achievements of the Austrian School of economics.

Ethics, or more specifically political philosophy, is the second pillar of the Rothbardian system, strictly separated from economics, but equally grounded in the nature of man and complementing it to form a unified system of rationalist social philosophy. *The Ethics Liberty*, originally published in 1982, is Rothbard's second *magnum opus*. In it, he explains the integration of economics and ethics via the joint concept of property; and based on the concept of property, and in conjunction with a few general empirical (biological and physical) observations or assumptions, Rothbard deduces the corpus of libertarian law, from the law of appropriation to that of contracts and punishment.

Even in the finest works of economics, including *Human Action*, the concept of property had attracted little attention before Rothbard burst onto the intellectual scene with *Man, Economy, and State*. Yet, as Rothbard pointed out, such common economic terms as direct and indirect exchange, markets and market prices, as well as aggression, invasion, crime, and fraud, cannot be defined

¹ Murray N. Rothbard, *Man, Economy, and State* (Princeton, N.J.: D. Van Nostrand, 1962).

² Ludwig von Mises, *Human Action* (New Haven, Conn.: Yale University Press, 1949).

³ Murray N. Rothbard, *Power and Market*, 2nd ed. (Kansas City: Sheed Andrews and McMeel, 1977).

or understood without a prior theory of property. Nor is it possible to establish the familiar economic theorems relating to these phenomena without an implied notion of property and property rights. A definition and theory of property must precede the definition and establishment of all other economic terms and theorems.⁴

At the time when Rothbard had restored the concept of property to its central position within economics, other economists—most notably Ronald Coase, Harold Demsetz, and Alchian—also began to redirect professional attention to the subject of property and property rights. However, the response and the lessons drawn from the simultaneous rediscovery of the centrality of the idea of property by Rothbard on the one hand, and Coase, and Alchian on the other, were categorically different.

The latter, as well as other members of the influential Chicago School of law and economics, were generally uninterested and unfamiliar with philosophy in general and political philosophy in particular. They unswervingly accepted the reigning positivistic dogma that no such thing as rational ethics is possible. Ethics was not and could not be a science, and economics was and could be a science only if and insofar as it was "positive" economics. Accordingly the rediscovery of the indispensable role of the idea of property for economic analysis could mean only that the term property had to be stripped of all normative connotations attached to it in everyday "non-scientific" discourse. As long as scarcity and hence potential interpersonal conflict exists, every society requires a well-defined set of property rights assignments. But no absolute—universally and eternally—correct and proper or false and improper way of defining or designing a set of property rights exists; and there exists no such thing as absolute rights or absolute crimes, but only alternative systems of property rights assignments describing different activities as right and wrong. Lacking any absolute ethical standards, the choice between alternative systems of property rights assignments *will* be made—and in cases of interpersonal conflicts *should* be made by government judges—based on utilitarian considerations and calculations; that is, property rights *will* be so assigned or reassigned that the monetary value of the output produced is thereby maximized, and in all cases of conflicting claims government judges *should* so assign them.

Profoundly interested in and familiar with philosophy and the history of ideas, Rothbard recognized this response from the outset as just another variant of age-old self-contradictory ethical relativism. For in claiming ethical questions to be outside the realm of science and then predicting that property rights will be

⁴ See Rothbard, *Man, Economy, and State*, ch. 2, esp. pp. 78–80.

assigned in accordance with utilitarian benefit considerations or should be so assigned by government judges, one is likewise proposing an ethic. It is the ethic of statism, in one or both of two forms: either it amounts to a defense of the status quo, whatever it is, on the grounds that lastingly existing rules, norms, laws, institutions, etc., must be efficient as otherwise they would already have been abandoned; or it amounts to the proposal that conflicts be resolved and property rights be assigned by state judges according to such utilitarian calculations.

Rothbard did not dispute the fact that property rights are and historically have been assigned in various ways, of course, or that the different ways in which they are assigned and reassigned have distinctly different economic consequences. In fact, his *Power and Market* is probably the most comprehensive economic analysis of alternative property rights arrangements to be found. Nor did he dispute the possibility or importance of monetary calculation and of evaluating alternative property rights arrangements in terms of money. Indeed, as an outspoken critic of socialism and as a monetary theorist, how could he? What Rothbard objected to was the argumentatively unsubstantiated acceptance, on the part of Coase and the Chicago law-and-economics tradition, of the positivistic dogma concerning the impossibility of a rational ethic (and by implication, their statism) and their unwillingness to even consider the possibility that the concept of property might in fact be an ineradicably normative concept which could provide the conceptual basis for a systematic reintegration of value-free economics and normative ethics.

There was little to be found in modern, contemporary political philosophy that Rothbard could lean on in support of such a contention. Owing to the dominance of the positivistic creed, ethics and political philosophy had long disappeared as a "science" or else degenerated into an analysis of the semantics of normative concepts and discourse. And when political philosophy finally made a comeback in the early in the wake of John Rawls and his *Theory of Justice*⁵, the recognition of scarcity as a fundamental human condition and of private property and private property rights as a device for coordinating the actions of individuals constrained by scarcity was conspicuously absent. Neither "property" nor "scarcity" appeared in Rawls's elaborate index, for instance, while "equality" had several dozen entries.

In fact, Rawls, to whom the philosophy profession has in the meantime accorded the rank of the premier ethicist of our age, was the prime example of someone completely uninterested in what a human ethic must accomplish: that is, to answer the question of what I am permitted to do right now and here, given that

⁵ John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971).

I cannot not act as long as I am alive and awake and the means or goods which I must employ in order to do so are always scarce, such that there may be interpersonal conflicts regarding their use. Instead of answering this question, Rawls addressed an altogether different one: what rules would be agreed upon as "just" or "fair" by "parties situated behind a veil of ignorance"? Obviously, the answer to this question depends crucially on the description of the "original position" of "parties behind a veil of ignorance." How, then, was this situation defined? According to Rawls, behind the veil of ignorance "no one knows his place in society, his class position or social status; nor does he know his fortune in the distribution of natural assets and abilities, his intelligence and strength, and the like. . . . It is taken for granted, however, that they know the general facts about human society. They understand political affairs and the principles of economic theory; they know the basis of social organization and the laws of human psychology."⁶

While one would think that scarcity ranks among the general facts of society and economic theory, Rawls's parties, who supposedly knew *about* scarcity, were themselves strangely unaffected by this condition. In Rawls's construction of the "original position," there was no recognition of the fact that scarcity must be assumed to exist even here. Even in deliberating behind a veil of ignorance, one must still make use of scarce means—at least one's physical body and its standing room, i.e., labor and land. Even before beginning any ethical deliberation then, in order to make them possible, private or exclusive property in bodies and a principle regarding the private or exclusive appropriation of standing room must already be presupposed. In distinct contrast to this general fact of human nature, Rawls's moral "parties" were unconstrained by scarcities of any kind and hence did not qualify as actual humans but as free-floating wraiths or disembodied somnambulists. Such beings, Rawls concluded, cannot but "acknowledge as the first principle of justice one requiring an equal distribution (of all resources). Indeed, this principle is so obvious that we would expect it to occur to anyone immediately."⁷ True; for if it is assumed that "moral parties" are not human actors but disembodied entities, the notion of private property must indeed appear strange. As Rawls admitted with captivating frankness, he had simply "define[d] the original position so that we get the desired result."⁸ Rawls's imaginary parties had no resemblance whatsoever with human beings but were epistemological somnambulists; accordingly, his socialist-egalitarian theory of justice does not qualify as a human ethic, but something else entirely.

⁶ Ibid. p. 137.

⁷ Ibid. pp. 150–51.

⁸ Ibid., p. 141.

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

Rothbard sought and found support for his contention regarding the possibility of a rational ethic and the reintegration of ethics and economics based on the notion of private property in the works of the late Scholastics and, in their footsteps, such "modern" natural-rights theorists as Grotius, Pufendorf, and Locke. Building upon their work, in *The Ethics of Liberty* Rothbard gives the following answer to the question of what I am justified doing here and now: every person owns his own physical body as well as all nature-given goods which he puts to use with the help of his body before anyone else does; this ownership implies his right to employ these resources as one sees fit so long as one does not thereby change the physical integrity of another's property or delimit another's control over it without his consent. In particular, once a good has been first appropriated or homesteaded by "mixing one's labor" with it (Locke's phase), then ownership of it can only be acquired by means of a voluntary (contractual) transfer of its property title from a previous to a later owner. These rights are absolute. Any infringement on them is subject to lawful prosecution by the victim of this infringement or his agent, and is actionable in accordance with the principles of strict liability and the proportionality of punishment.

Taking his cues from the very same sources, Rothbard then offered this ultimate proof for these rules as just rules: if a person A were not the owner of his physical body and all goods originally appropriated, produced or voluntarily acquired by him, there would only exist two alternatives. Either another person, B, must then be regarded as the owner of A and the goods appropriated, produced, or contractually acquired by A, or both parties, A and B, must be regarded as equal co-owners of both bodies and goods.

In the first case, A would be B's slave and subject to exploitation. B would own A and the goods originally appropriated, produced, or acquired by A, but A would not own B and the goods homesteaded, produced, or acquired by B. With this rule, two distinct classes of people would be created—exploiters (B) and exploited (A)—to whom different "law" would apply. Hence, this rule fails the "universalization test" and is from the outset disqualified as even a potential human ethic, for in order to be able to claim a rule to be a "law" (just), it is necessary that such a rule be universally—equally—valid for everyone.

In the second case of universal co-ownership, the requirement of equal rights for everyone is obviously fulfilled. Yet this alternative suffers from another fatal flaw, for each activity of a person requires the employment of scarce goods (at least his body and its standing room). Yet if all goods were the collective property of everyone, then no one, at any time and in any place, could ever do anything with anything unless he had every other co-owner's prior permission to do what he wanted to do. And how can one give such a permission if one is not even the sole owner of one's very own body (and vocal chords)? If one were to follow the rule of total collective ownership, mankind would die out instantly. Whatever this is, it is not a human either.

Thus, one is left with the initial principles of self-ownership and original appropriation, homesteading. They pass the universalization test—they hold for everyone equally—and they can at the same time assure the survival of mankind. They and only they are therefore non-hypothetically or absolutely true ethical rules and human rights.

Rothbard did not claim that these fundamental principles of just conduct or proper action were new or his own discovery, of course. Equipped with near encyclopedic knowledge ranging over the entire field of the sciences of man, he knew that—at least as far as the social sciences are concerned—there is little new under the sun. In the fields of ethics and economics in particular, which form the cornerstones of the Rothbardian system and which are concerned with non-hypothetical truths, it must be expected that most of our knowledge consists of "old," long ago discovered insights. Newly discovered non-hypothetical truths, even if not impossible, should be expected to be rare intellectual events, and the newer they are, the more suspect they are. It must be expected that most non-hypothetical truths already have been discovered and learned long ago and merely need to be rediscovered and relearned by every successive generation. And it also should be expected that scientific progress in ethics and economics, in other disciplines concerned with non-hypothetical propositions and relations such as philosophy, logic, and mathematics, will usually be extremely slow and painstaking. The danger is not that a new generation of intellectuals cannot add anything new or better to the stock of knowledge inherited from the past, but rather that it will not, or only incompletely, relearn whatever knowledge already exists, and will fall into old errors instead.

Accordingly, Rothbard saw himself in the role of a political philosopher as well as an economist essentially as a preserver and defender of old, inherited truths, and his claim to originality, like that of Mises, was one of utmost modesty. Like Mises, his achievement was to hold onto and restate long-ago established insights and repair a few errors within a fundamentally complete intellectual

edifice. Yet this, as Rothbard knew well, was in fact the rarest and highest possible intellectual achievement. For, as Mises once remarked about economics which holds equally true for ethics, "there never lived at the same time more than a score of men whose work contributed anything essential to economics."⁹ Rothbard was one of those rare individuals who did contribute to ethics as well as economics.

This is illustrated in *The Ethics of Liberty*. All elements and principles—every concept, analytical tool, and logical procedure—of Rothbard's private-property ethic are admittedly old and familiar. Even primitives and children intuitively understand the moral validity of the principle of self-ownership and original appropriation. And indeed, the list of Rothbard's acknowledged intellectual predecessors goes back to antiquity. Yet, it is difficult to find anyone who has stated a theory with greater ease and clarity than Rothbard. More importantly, due to the sharpened methodological awareness derived from his intimate familiarity with the logical, axiomatic-deductive method, Rothbard was able to provide more rigorous proof of the moral intuitions of self-ownership and original appropriation as ultimate ethical principles or "axioms," and develop a more systematic, comprehensive, and consistent ethical doctrine or law code than anyone before him. Hence, *The Ethics of Liberty* represents a close realization of the age-old *desideratum* of rationalist philosophy of providing mankind with an ethic which, as Hugo Grotius demanded more than 300 years ago, "even the will of an omnipotent being cannot change or abrogate" and which "would maintain its objective validity even if we should assume—*per impossibile*—that there is no God or that he does not care for human affairs."

When *The Ethics of Liberty* appeared in 1982, it initially attracted only a little attention in academia. Two factors were responsible for this neglect. First, there were the anarchistic implications of theory, and his argument that the institution of government—the state—is incompatible with the fundamental principles of justice. As defined by Rothbard, a state is an organization

which possesses either or both (in actual fact, almost always both) of the following characteristics: (a) it acquires its revenue by physical coercion (taxation); and (b) it achieves a compulsory monopoly of force and of ultimate decision-making power over a given territorial area. Both of these essential activities of the State necessarily constitute criminal aggression and depredation of the just rights of private property of its subjects (including self-ownership). For the first constitutes and establishes theft on a grand scale; while the second prohibits the free competition of defense

⁹ Mises, *Human Action*, p. 873.

and decision-making agencies within a given territorial area—prohibiting the voluntary purchase and sale of defense and judicial services (pp. 172–73).

"Without justice," Rothbard concluded as St. Augustine had before him, "the state was nothing but a band of robbers."

Rothbard's anarchism was not the sort of anarchism that his teacher and mentor Mises had rejected as hopelessly naive, of course. "The anarchists," Mises had written,

contend that a social order in which nobody enjoys privileges at the expense of his fellow-citizens could exist without any compulsion and coercion for the prevention of action detrimental to society. . . . The anarchists overlook the undeniable fact that some people are either too narrow-minded or too weak to adjust themselves spontaneously to the conditions of social life. . . . An anarchistic society would be exposed to the mercy of every individual. Society cannot exist if the majority is not ready to hinder, by the application or threat of violent action, minorities from destroying the social order.¹⁰

Indeed, Rothbard wholeheartedly agreed with Mises that without resort to compulsion, the existence of society would be endangered and that behind the rules of conduct whose observance is necessary to assure peaceful human cooperation must stand the threat to force if the whole edifice of society is not to be continually at the mercy of any one of its members. One must be in a position to compel a person who will not respect the lives, health, personal freedom, or private property of others to acquiesce in the rules of life in society.¹¹

Inspired in particular by the nineteenth-century American anarchist political theorists Lysander Spooner and Benjamin Tucker and the Belgian economist Gustave de Molinari, from the outset Rothbard's anarchism took it for granted that there will always be murderers, thieves, thugs, con artists, etc., and that life in society would be impossible if they were not punished by physical force. As a reflection of this fundamental realism—anti-utopianism—of his private-property anarchism, Rothbard, unlike most contemporary political philosophers, accorded central importance to the subject of punishment. For him, private property and the right to physical defense were inseparable. No one can be said to be the owner of something if he is not permitted to defend his property by

¹⁰ Ibid., p. 149.

¹¹ Ludwig von Mises, *Liberalism* (Kansas City: Sheed Andrews and 1978) p. 37.

physical violence against possible invaders and invasions. "Would," Rothbard asked, "somebody be allowed to 'take the law into his own hands'? Would the victim, or a friend of the victim, be allowed to exact justice personally on the criminal?" and he answered, "of course, Yes, since all rights of punishment derive from the victim's right of self-defense" (p. 90). Hence, the question is not whether or not evil and aggression exist, but how to deal with its existence justly and efficiently, and it is only in the answer to this question that Rothbard reaches conclusions which qualify him as an anarchist.

The classical-liberal answer, from the *American Declaration of Independence* to Mises, was to assign the indispensable task of protecting life, liberty, and property to government as its sole function. Rothbard rejected this conclusion as a *non sequitur* (if government was defined by its power to tax and ultimate decision-making [territorial monopoly of jurisdiction]). Private-property ownership, as the result of acts of original appropriation, production, or exchange from prior to later owner, implies the owner's right to exclusive jurisdiction regarding his property. In fact, it is the very purpose of private property to establish physically separate domains of exclusive jurisdiction (so as to avoid possible conflicts concerning the use of scarce resources). No private-property owner can possibly surrender his right to ultimate jurisdiction over and physical defense of his property to someone else—unless he sold or otherwise transferred his property (in which case someone else would have exclusive jurisdiction over it). That is, so long as something has not been abandoned, its owner must be presumed to retain these rights. As far as his relations to others are concerned, every property owner may further partake of the advantages of the division of seek better and improved protection of his unalterable rights through cooperation with other owners and their property. Every property owner may buy from, sell to, or otherwise contract with anyone else concerning supplemental property protection and security products and services. Yet every property owner may also at any time unilaterally discontinue any such cooperation with others or change his respective affiliations. Hence, in order to satisfy the demand for protection and security among private property owners, it is permissible and possible that there will be specialized or agencies providing protection, insurance, and arbitration services for a fee to voluntarily buying or not buying clients. It is impermissible, however, for any such firm or agency to compel anyone to come exclusively to it for protection or to bar any other agency from likewise offering protection services; that is, no protection agency may be funded by taxes or exempted from competition ("free entry").

In distinct contrast, a territorial monopoly of protection and jurisdiction—a state—from the outset on an impermissible act of expropriation, and it provides the monopolist and his agents with a license to from discontinuing his cooperation

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

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

Naturally, Rothbard's anarchism appeared threatening to all statist, and his right-wing—that is, private-property—anarchism in particular could not but offend socialists of all stripes. However, his anarchistic conclusions were not sufficient to explain the neglect of *The Ethics of Liberty* by academia. Rothbard's first handicap was compounded by an even weightier one. Not only had he come to unorthodox conclusions, worse, he had reached them by pre-modern intellectual means. Instead of suggesting, hypothesizing, pondering, or puzzling, Rothbard had offered axiomatic arguments and proofs. In the age of democratic egalitarianism and ethical relativism, this constituted the ultimate academic sin: intellectual absolutism, extremism, and intolerance.

The importance of this second methodological factor can be illustrated by contrasting the reception accorded to Rothbard's *The Ethics of Liberty* on the one hand and Robert Nozick's *Anarchy, State, and Utopia*¹² and on the other. Nozick's book appeared in 1974, three years after the publication of Rawls's *A Theory of Justice*. Almost overnight Nozick was internationally famous, and to this day, in the field of political philosophy *Anarchy, State, and Utopia* ranks probably second only to Rawls's book in terms of academic recognition. Yet, while Rawls was a socialist, Nozick was a libertarian. In fact, Nozick was heavily influenced by Rothbard. He had read Rothbard's earlier *Man, Economy, and State, Power and Market*, and *For A New Liberty*,¹³ and in the acknowledgments to his book he noted that "it was a long conversation about six years ago with Murray Rothbard that stimulated my interest in individualist anarchist theory." To be sure, the conclusions arrived at by Nozick were less radical than those proposed by Rothbard. Rather than reaching anarchistic conclusions, Nozick's

main conclusions about the state are that the minimal state, limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on, is justified; that any more extensive state will violate persons' rights not to be forced to do certain things, and is unjustified; and that the minimal state is inspiring as well as right.¹⁴

Nonetheless, in claiming "that the state may not use its coercive apparatus for the purpose of getting some citizens to aid others, or in order to prohibit activities to people for their *own* good or protection",¹⁵ even Nozick's conclusions placed him far outside the political-philosophical mainstream. Why, then, in distinct contrast to the long-lasting neglect of Rothbard's libertarian the *Ethics of Liberty*, the stupendous academic success of libertarian *Anarchy, State, and Utopia*? The answer is method and style.

Rothbard was above all a systematic thinker. He set out from the most elementary human situation and problem—Crusoe-ethics—and then proceeded painstakingly, justifying and proving each step and argument along the way to increasingly more complex and complicated situations and problems. Moreover, his prose was characterized by unrivaled clarity. In distinct contrast, Nozick was a modern unsystematic, associationist, or even impressionistic thinker, and his prose was difficult and unclear. Nozick was explicit about his own method. His writing, he stated, was

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

¹³ Murray N. Rothbard, *For A New Liberty*, rev. ed. (New York: Macmillan, 1978).

¹⁴ Nozick, *Anarchy, State, and Utopia*, p. ix.

¹⁵ *Ibid.*

in the mode of much contemporary philosophical work in epistemology and metaphysics: there are elaborate arguments, claims rebutted by unlikely counterexamples, surprising theses, puzzles, abstract structural conditions, challenges to find another theory which fits a specified range of cases, startling conclusions, and so on. . . . One view about how to write a philosophy book holds that an author should think through all of the details of the view he presents, and its problems, polishing and refining his view to present to the world a finished, complete, and elegant whole. *This is not my view*. At any rate, I believe that there also is a place and a function in our ongoing intellectual life for a less complete work, containing unfinished presentations, conjectures, open questions and problems, leads, side connections, as well as a main line of argument. There is room for words on subjects other than last words.¹⁶

Methodologically then, Nozick and Rothbard were poles apart. But *why* would Nozick's unsystematic ethical "explorations" find so much more resonance in academia than Rothbard's systematic ethical treatise, especially when their conclusions appeared to be largely congruent? Nozick touched upon the answer when he expressed the hope that his method "makes for intellectual interest and excitement."¹⁷ But this was at best half of the answer, for *The Ethics of Liberty*, too, was an eminently interesting and exciting book, full of examples, cases, and scenarios from the full range of everyday experiences to extreme—life-boat—situations, spiced with many surprising conclusions, and above all solutions instead of merely suggestions to problems and puzzles.

Nozick's method rather made for interest and excitement of a particular kind. Rothbard's *The Ethics of Liberty* consisted essentially of one successively and systematically drawn out and elaborated argument, and thus required the long sustained attention of its reader. However, a reader of Rothbard's book could possibly get so excited that he would not want to put it down until he had finished it. The excitement caused by *Anarchy, State, and Utopia* was of a very different kind. The book was a series of dozens of disparate or loosely jointed arguments, conjectures, puzzles, counterexamples, experiments, paradoxes, surprising turns, startling twists, intellectual flashes, and razzle-dazzle, and thus required only short and intermittent attention of its reader. At the same time, few if any readers of book likely will have felt the urge to read it straight through. Instead, reading Nozick was characteristically done unsystematically and intermittently, in bits and pieces. The excitement stirred by Nozick was intense, short, and fleeting; and the

¹⁶ *Ibid.*, pp. xx–xii, emphasis added.

¹⁷ *Ibid.*, p. x.

success of *Anarchy, State, and Utopia* was due to the fact that at all times, and especially under democratic conditions, there are far more high time-preference intellectuals—intellectual thrill seekers—than patient and disciplined thinkers.¹⁸

Despite his politically incorrect conclusions, Nozick's libertarianism was deemed respectable by the academic masses and elicited countless comments and replies, because it was methodologically non-committal; that is, Nozick did not claim that his libertarian conclusions *proved* anything. Even though one would think that ethics is—and must be—an eminently practical intellectual subject, Nozick did not claim that his ethical "explorations" had any practical implications. They were meant to be nothing more than fascinating, entertaining, or suggestive intellectual play. As such, libertarianism posed no threat to the predominantly social-democratic intellectual class. On account of his unsystematic method—his philosophical pluralism—Nozick was "tolerant" *vis-à-vis* the intellectual establishment (his anti-establishment conclusions notwithstanding). He did not insist that his libertarian conclusions were correct and, for instance, socialist conclusions were false and accordingly demand their instant practical implementation (that is, the immediate abolition of the democratic welfare state, including all of public tax-funded education and

¹⁸ In his subsequent book, *Philosophical Explanations* (Oxford: Oxford University Press, 1981), Nozick further confirmed this judgment. There he wrote,

I, too, seek an unreadable book: urgent thoughts to grapple with in agitation and excitement, revelations to be transformed by or to transform, a book incapable of being read straight through, a book, even, to bring reading to stop. I have not found that book, or attempted it. Still, I wrote and thought in awareness of it, in the hope that this book would bask in its light. . . . At no point is [the reader] forced to accept anything. He moves along gently, exploring his own and the author's thoughts. He explores together with the author, moving only where he is ready to; then he stops. Perhaps, at a later time mulling it over or in a second reading, he will move further. . . . I place no extreme obligation of attentiveness on my readers; I hope instead for those who read as I do, seeking what they can learn from, make use of, transform for their own purposes. . . . This book puts forward its explanations in a very tentative spirit; not only do I not ask you to believe they are correct, I do not think it important for me to believe them correct, either. Still, I do believe, and hope you will find it so, that these proposed explanations are illuminating and worth considering, that they are worth surpassing; also, that the process of seeking and elaborating explanations, being open to new possibilities, the new wonderings and wanderings, the free exploration, is itself a delight. Can any pleasure compare to that of a new idea, a new question? There is sexual experience, of course, not dissimilar, with its own playfulness and possibilities, its focused freedom, its depth, its sharp pleasures and its gentle ones, its ecstasies. What is the mind's excitement and sensuality? What is orgasm? Whatever, it unfortunately will frighten and offend the puritans of the mind (do the two share a common root?) even as it expands others and brings them joy" (pp. 1, 7, 8, 24).

research). Rather, libertarianism was, and claimed to be, no more than just an interesting thought. He did not mean to do any real harm to the ideas of his socialist opponents. He only wanted to throw an interesting idea into the democratic open-ended intellectual debate, while everything real, tangible, and physical could remain unchanged and everyone could go on with his life and thoughts as before.

Following the publication of *Anarchy, State, and Utopia*, Nozick took even further steps to establish his reputation as "tolerant." He never replied to the countless comments and criticisms of his book, including Rothbard's, which forms chapter 29 of this book. This confirmed that he took his non-committal method seriously, for why indeed, should anyone reply to his critics, if he were not committed to the correctness of his own views in the first place? Moreover, in his subsequent book, *Philosophical Explanations*, Nozick removed all remaining doubts as to his supposed non-extremist tolerance. He went further than merely restating his commitment to the methodological non-committal:

So don't look here for a knockdown argument that there is something wrong with knockdown arguments, for the knockdown argument to end all knockdown arguing. It will not do to argue you into the conclusion, even in order to reduce the total amount of presentation of argument. Nor may I hint that I possess the knockdown argument yet will not present it.¹⁹

Further, in a truly startling twist, Nozick went on to say that the use of knockdown arguments even constituted coercion and was hence morally offensive:

The terminology of philosophical art is coercive: arguments are powerful and best when they are knockdown, arguments force you to a conclusion, if you believe the premises you have to or must believe the conclusion, some arguments do not carry much punch, and so forth. A philosophical argument is an attempt to get someone to believe something, whether he wants to believe it or not. A successful philosophical argument, a strong argument, forces someone to a belief. . . . Why are philosophers intent on forcing others to believe things? Is that a nice way to behave toward someone? I think we cannot improve people that way. . . . Philosophical argument, trying to get someone to believe something whether he wants to believe it or not, is not, I have held, a nice way to behave toward someone; also, it does not fit the original motivation for studying or entering philosophy. That motivation is puzzlement, curiosity, a desire to

¹⁹ Ibid., p. 5.

understand, not a desire to produce uniformity of belief. Most people do not want to become thought-police. The philosophical goal of explanation rather than proof not only is morally better, it is more in accord with one's philosophical motivation. Also it changes how one proceeds philosophically; at the macro-level . . . it leads away from constructing the philosophical tower; at the micro-level, it alters which philosophical "moves" are legitimate at various points.²⁰

With this surprising redefinition of systematic axiomatic-deductive reasoning as "coercion," Nozick had pulled the last tooth from his libertarianism. If even the attempt of *proving* (or *demonstrating*) the ethical impermissibility and injustice of democratic socialism constituted "bad" behavior, libertarianism had been essentially disarmed and the existing order and its academic bodyguards rendered intellectually invincible. How could one not be nice to someone as nice as Nozick? It is no wonder that the anti-libertarian intellectual establishment took kindly to a libertarianism as gentle and kind as his, and elevated Nozick to the rank of the premier philosopher of libertarianism.²¹

The interest stimulated and the influence exerted by Rothbard's libertarianism *The Ethics of Liberty* was significantly different: slow, intensively growing, and lasting, and reaching and affecting academia from outside (rather than being picked up by it and from the ivory tower communicated "down" to the non-academic public).

Rothbard, as every reader of the following treatise will quickly recognize, was the prototype of a "coercive philosopher" (in the startling Nozickian definition of coercion). He demanded and presented proofs and exact and complete answers rather than tentative explanations, open questions. Regarding *Anarchy, State, and*

²⁰ Ibid., p. 4, 5, 13.

²¹ In accordance with this non-methodical philosophical interests continued to drift from one subject to another. Already in his *Philosophical Explanations*, he had confessed "I have found (and not only in sequence) many different philosophies alluring and appealing, cogent and impressive, tempting and wonderful." (p. 20). Libertarianism—ethics—carried no particular or even unique weight within Nozick's philosophy. It was one exciting subject among unnumbered others, to be taken up for "exploration" or dropped as one's curiosity demanded. It was not entirely surprising then when, only a few years after the publication of the very book that had made him famous, it became increasingly obvious that Nozick had all but abandoned even his kind and gentle libertarianism. And when he at last acknowledged openly (in *The Examined Life*, a book of neo-Buddhist on the meaning of life) that he was no longer a libertarian and had converted to communitarian social democracy, he still felt under no obligation to give reasons for his change of mind and explain why his previous ethical views had been false. Interestingly, this development seems to have had little effect on the status of *Anarchy, State, and Utopia* as prime libertarian philosophizing.

Utopia, Nozick had written that "some may feel that the truth about ethics and political philosophy is too serious and important to be obtained by such 'flashy' tools."²² This was certainly Rothbard's conviction. Because man cannot *not act* as long as he is alive, and he must use scarce means to do so, he must also permanently choose between right and wrong conduct. The fundamental question of ethics—what am I here and now rightfully allowed to do and what not—is thus the most permanent, important, and pressing intellectual concern confronting man. Whenever and wherever one acts, an actor must be able to determine and distinguish unambiguously and instantly right from wrong. Thus, any ethic worth its salt *must*—praxeologically—be a "coercive" one, because only proofs and knockdown arguments can provide such definite answers as are necessary. Man cannot temporarily suspend acting; hence, tentative conjectures and open questions simply are not up to the task of a human ethic.

Rothbard's "coercive" philosophizing—his insistence that ethics must be an axiomatic-deductive system, an ethic *more geometrico*—was nothing new or unusual, of course. As already noted, Rothbard shared this view concerning the nature of ethics with the entire tradition of rationalist philosophy. His had been the dominant view of Christian rationalism and of the Enlightenment. Nor did Rothbard claim infallibility regarding his ethics. In accordance with the tradition of rationalist philosophy he merely insisted that axiomatic-deductive arguments can be attacked, and possibly refuted, exclusively by other of the same logical status (just as one would insist, without thereby claiming infallibility for logicians and mathematicians, that logical or mathematical proofs can be attacked only by other logical or mathematical arguments).

In the age of democratic socialism, however, such old-fashioned claims—certainly if made in conjunction with ethics and especially if this ethic turned out to be a libertarian one—were generally rejected and dismissed out of hand by academia. Unlike the modern Nozick, Rothbard was convinced that he had *proved* libertarianism—private-property anarchism—to be morally justified and correct, and that all statists and socialists were plain wrong. Accordingly he advocated immediate and ongoing action. "Libertarianism," wrote Rothbard,

is a philosophy seeking a policy. . . . The libertarian must be possessed of a passion for justice, an emotion derived from and channeled by his rational insight into what natural justice requires. Justice, not the weak reed of mere utility, must be the motivating force if liberty is to be attained; . . . (and) this means that the libertarian must be an "abolitionist," i.e., he must wish to achieve the goal of liberty as rapidly as possible

²² Ibid., p. x.

[He] should be an abolitionist who would, if he could, abolish instantaneously all invasions of liberty (pp. 258–59).

To the tax-subsidized intellectual class and especially the academic establishment, Rothbard could not but appear to be an extremist, best to be ignored and excluded from mainstream academic discourse.²³

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

What proved to be unacceptable to academia—Rothbard's pre-modern method of axiomatic-deductive reasoning and system building—still found resonance among many people. Even if modern academics, freed of the obligation of having to provide a practical justification for their activities, can engage in unsystematic and open-ended "conversation," real men, and especially successful

²³ An interesting parallel exists between the treatment of Rothbard vs. Nozick by the philosophy establishment, and that of Mises vs. Hayek by the economic establishment. Even if Mises's conclusions were significantly more radical than both came to largely similar—politically "incorrect"—free-market conclusions. Based on the similarity of their conclusions, both Mises and Hayek were considered Austrian School economists. Yet the method by which they derived their conclusions fundamentally differed. Mises was a philosophical rationalist: systematic, rigorous, proving and demonstrating, and lucid as a writer. In comparison, Hayek was a philosophical skeptic: unsystematic, methodologically eclectic, tentative and probing, and a less than lucid writer. Consequently, treatment by academia was significantly more friendly than that accorded to Mises. But also: it was the pre-modern "extremist Austrian" Mises, not the modern "moderate Austrian" Hayek, whose influence proved more intense and enduring, and whose work led to the formation of an ideological movement.

men, have to act and think systematically and methodically and such planning and future-oriented low-time preference people also will not likely be satisfied with but systematic and methodical answers to their own practical moral concerns.

Nor did Rothbard's explicit political radicalism constitute a serious acceptance problem among such successful and independently minded men. Even if increasingly marginalized, significant remnants of the original American tradition of radical libertarianism still existed among the educated public. In fact, the American Revolution had been largely inspired by libertarian, radical Lockean ideas. And the *Declaration of Independence*, and in particular its author Thomas Jefferson, reflected and expressed the same rationalist spirit of the Enlightenment and the even older natural-law tradition that also characterized Rothbard and his political philosophy:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly all experience has shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security.

Rothbard, apart from his theoretical work as an economist and a political philosopher, was also an eminent historian. In his four-volume history of colonial America, *Conceived in Liberty*,²⁴ he gives a detailed narrative account of the predominance of libertarian thought in early America, and in many essays on critical episodes in U.S. history, he notes again and again the continuing importance of the original libertarian American spirit. To be sure, the original radical-libertarian impetus, which had led to the American Revolution and the

²⁴ Murray N. Rothbard, *Conceived in Liberty* (New York: Arlington House, 1975).

Declaration of Independence, had subsequently suffered one setback after another: with the victory of the Federalists over the anti-Federalists and the transition from the original Confederacy to the Union, with the *de facto* abolition of the Union constitution by Abraham Lincoln in the course and as the result of the destruction of the secessionist Southern Confederacy, with the onset of Progressivism, with Franklin D. Roosevelt's New Deal, with Lyndon B. Johnson's Great Society, and so on with presidents Carter, Reagan, Bush, and Clinton. Even if again and again defeated, however, the tradition of radical individualist libertarianism could not be eradicated from the American public consciousness. In harking back explicitly to Jefferson and the Jeffersonian tradition, Rothbard tapped into a still widespread if dormant pool of activists and lay intellectuals; and owing to the clarity, the logical rigor, the systematic and comprehensive character, and the passion of his writings, he succeeded almost single-handedly in reinvigorating, radicalizing, and channeling their sentiments into a unified political-philosophical movement.

It was only in light of "external" events—the emergence and advancement of a libertarian movement and the central role played by Rothbard in this movement—and with a considerable delay, that Rothbard and *The Ethics of Liberty* no longer could be overlooked by academia. Not surprisingly, even then the general reaction was cool. To be sure, there were also a fair and steadily growing number of highly respectful and appreciative academic treatments of political philosophy,²⁵ and around *The Journal of Libertarian Studies*, an interdisciplinary scholarly review Rothbard had founded in 1977 and for which he had served until his death as editor, he had assembled a formidable number of disciples. But in general, the academic reaction to Rothbard and his libertarianism was one of non- or miscomprehension, indignant rejection, or even downright hostility.

In part, this was certainly due to Rothbard's unapologetic use of the language of natural rights. This had been the language of the *Declaration of Independence*; the same natural-rights language had been preserved to the present within the Christian and in particular the Catholic Church, and it had also been adopted by a handful of contemporary philosophers.²⁶ However, to most contemporary academics talk of "natural rights" was, in Jeremy Bentham's words, no more than "nonsense on stilts." In fact and more to the point, natural rights were incompatible with absolute state power, and they did not sit well with either

²⁵ See, Norman Barry, *On Classical Liberalism and Libertarianism* (London: Macmillan, 1986).

²⁶ See, e.g., Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1970); also Henry Veatch, *Human Rights: Fact or Fancy?* (Baton Rouge: Louisiana State University Press, 1985).

democracy or socialism. Hence, in the course of the transformation of the Western world from an aristocratic or monarchical system to a modern mass democracy within the last 100 years, natural-rights teachings had been successively removed from the officially approved philosophical curriculum and replaced with modern positivistic doctrines. Confronted with a largely unfamiliar language, even many well-intentioned philosophers were simply befuddled or irritated by Rothbard's work. Moreover, Rothbard may even have over-stated his own agreement with classical natural-rights theory, and not sufficiently emphasized his own distinct contribution of importing and applying the Misesian method of praxeology to ethics, and thus unintentionally have aggravated an already existing problem.

Typical and at the same time instructive were reactions like those of Peter D. McClelland, for instance, in a chapter in a book on economic justice entitled "The Market Defended: Confusions of the Right." "Murray Rothbard," McClelland noted:

is one of the intellectual leaders among contemporary libertarians, a group which, by American standards, is located on the far right. His views are interesting for purposes of this discussion for two reasons. First he provides a carefully reasoned defense of the income distribution generated by the market that makes no reference to the merits of recipients. Secondly, that defense proceeds from a handful of premises to a conclusion presumed to be universally applicable in any situation where the justice of the economic system is at stake. As such, it provides a classic example of how not to reason about economic justice. To put the second point a second way, Rothbard's approach flies in the face of key points made in earlier chapters: that to problems of economic justice we bring a multitude of values to be honored; these values can and do conflict; when conflicts arise, tradeoffs among competing values must be made; general rules for making such tradeoffs are difficult to formulate; and thus judgments about economic justice are difficult to make independent of the context of the situation in which such judgments must be made. Or, more simply put, in reaching decisions about economic justice in a concrete situation, we do not generally rely upon universal rules to determine the "right" or "just" or choice.²⁷

In all, McClelland finds that Rothbard's arguments are "somewhat strange"—"Aquinas viewpoint minus the theology"—and he then summarily dismisses them on the ground that:

²⁷ Peter D. McClelland, *The American Search for Economic Justice* (Oxford: Basil Blackwell, 1990, p. 74.)

for most Americans, many of [Rothbard's] points are extreme or simplistic or both, and the argument in its entirety is more curious than compelling. The best evidence of that is the negligible importance of the Libertarian Party in American politics. . . . [Rothbard's] "reduction" of moral dilemmas to one or few basic principles] is itself objectionable, precisely because it is achieved by ignoring much that is important—or at least much that is important to the vast majority of Americans.²⁸

Several objections and questions arise immediately upon reading this, not least of which is the *truly* strange fact that our author apparently believes that empirical facts, such as that not many people believe *p*, have any bearing on the question whether or not *p* is true, valid, or justified. Would he also object to mathematical or logical proofs on the ground that most people are incapable of grasping them? Moreover, granting that "when conflicts arise, tradeoffs among competing values must be made," the decisive question is, who is to decide what these tradeoffs should be? Conflicting values invariably involve incompatible—mutually exclusive—views of at least two actors concerning the use of some scarce resources. Obviously then, not *both* of these parties can decide what these tradeoffs should be (after all, their respective values are incompatible), but only one or the other. But how can one party be selected, and not the other, unless one possesses a theory of property? And if one cannot "rely upon universal rules to determine the 'right' or 'just' choice" and everything depends on the "context of the situation," how then does our critic think it possible for anyone to ever know *ex ante*, before taking it, whether or not some action qualifies as just? Or does he believe that justice is to be determined only *ex post*? How could such a theory of justice qualify as a human ethic?

All of these concerns may be left aside, however, because the ultimate error in McClelland's criticism—and by contrast the unique Rothbardian contribution to ethics—occurs at a logically prior stage, when McClelland claims that Rothbard's reductionist, that is, axiomatic-deductive method, "flies in the face" of the existence of a "multitude of values to be honored."

McClelland does not explain why this should be so. Nor could he have succeeded, even if he had tried. First off, surely Rothbard could not have been unaware of the fact of a multitude of conflicting values. Indeed, it is difficult to imagine anyone unaware of this fact. Yet this observation is no more than the starting point of ethics and moral reasoning. If no conflicting values existed, then, by definition, all actions would be in perfect harmony with each other. Everyone

²⁸ Ibid., pp. 75, 76, 80–81.

would always act in such a way as everyone else thought he should act. In this case of a pre-stabilized harmony of all interests, there is no need for an ethic and none would ever come into existence. The existence of conflicting values thus poses no problem whatsoever for Rothbard's ethic (or any other ethic, for that matter). Rather, it is from the outset taken for granted, and ethics is the very response to this universal and eternal human dilemma. Furthermore, if conflicts exist and if these can be resolved at all, then such a solution cannot possibly be found except by means of a "reductionist" method, i.e., the subsumption of specific cases or conflict-situations under general and abstract rules or principles. Rothbard's view in this regard is not essentially different from that of most other political and moral philosophers: ethics, if it is possible at all, must and can never be anything else but "reductionist."

Assuming for the sake of argument that no disagreement exists up to this point, McClelland's charge can only mean this: even if one were to follow such a reductionist strategy, it will not yield a single principle (or a single set of internally consistent principles) covering and resolving all cases of conflict. In other words, even if some disagreements may be resolved by reference to increasingly more general and abstract rules and principles, (many) other disagreements will remain unresolvable because, as a matter of empirical fact, even on the level of abstract rules and principles, disagreement persists and inescapably results in inconsistencies and incompatibilities (and leads to moral skepticism of some sort). This line of reasoning is indeed characteristic of a wide-ranging group of political philosophers (including Rawls) who, while they may disagree among themselves on how much conflict can or cannot be resolved in this way, all conceive of ethical principles as the *result* (outcome) of agreement or contract.

It is here that the fundamental error lies and Rothbard's unique contribution to ethics comes into play. Ethics—the validity of the principle of self-ownership and original appropriation—is demonstrably not dependent and contingent upon agreement or contract; and the universality claim connected with Rothbard's libertarianism is not affected in the slightest by the circumstance that moral discussants may or may not always come to an agreement or contract. Ethics is the logical-praxeological *presupposition*—in Kantian terminology: *die Bedingung der Moeglichkeit*—rather than the result of agreement or contract. The principles of self-ownership and original appropriation make agreement and contract—including that of not agreeing and contracting—possible. Set in motion and stimulated by the universal experience of conflict, moral discussion and argument can discover, reconstruct, explicate, and formulate the principles of self-ownership and original appropriation, but their validity in no way depends on

whether or not this is the case, and if so whether or not these formulations then find universal assent.

Rothbard's distinct contribution to the natural-rights tradition is his reconstruction of the principles of self-ownership and original appropriation as the praxeological precondition—*Bedingung der Moeglichkeit*—of argumentation, and his recognition that whatever must be presupposed as valid in order to make argumentation possible in the first place cannot in turn be argumentatively disputed without thereby falling into a practical self-contradiction.²⁹

As Rothbard explains in an unfortunately brief but centrally important passage of *The Ethics of Liberty*:

a proposition rises to the status of an axiom when he who denies it may be shown to be using it in the very course of the supposed refutation. Now, *any* person participating in any sort of discussion, including one on values, is, by virtue of so participating, alive and affirming life. For if he were *really* opposed to life, he would have no business in such a discussion, indeed he would have no business continuing to be alive. Hence, the supposed opponent of life really affirming it in the very process of his discussion, and hence the preservation and furtherance of one's life takes on the stature of an incontestable axiom (pp. 32–33).

As an immediate implication of this insight into the status of the principles of self-ownership and original appropriation as ethical *axioms*, Rothbard rejected as nonsense all notions of "animal rights." Animals are incapable of engaging in propositional exchange with humans. Indeed, it is this inability which defines them as non-rational and distinguishes them categorically from men as rational animals. Unable to communicate, and without rationality, animals are by their very nature incapable of recognizing or possessing any rights. Rothbard noted,

There is rough justice in the common quip that "we will recognize the rights of animals whenever they petition for them." The fact that animals can obviously not petition for their "rights" is part of their nature, and part of the reason why they are clearly not equivalent to, and do not possess the rights of, human beings (p. 156).

²⁹ On this, and further-reaching philosophical investigations into the logic of axiomatic-deductive proofs and reasoning in ethics (and economics) as championed by Rothbard, see in particular Hoppe, *The Economics and Ethics of Private Property* (Boston: Kluwer Academic Publishers, 1993); also N. Stephan Kinsella, "New Rationalist Directions in Libertarian Rights Theory," *Journal of Libertarian Studies* 12, no. 2 (1996).

Rather than rightful moral agents, animals are objects of possible human control and appropriation. Thus Rothbard confirmed the biblical pronouncement that man had been given dominion over every living thing, in the sea, on earth, and in the sky.

As academia had little to do with Rothbard's success in creating and shaping a political-philosophical mass movement in the first place, its belated mostly negative reactions did little to change Rothbard's growing status as a public philosopher. To the contrary. The course of historical events—the spectacular collapse of the "great socialist experiment" in the Soviet Union and Eastern Europe from 1989–91, and the increasingly obvious crisis of the Western welfare states—provided ever-more support for fundamental libertarian insights. No one but his teacher Mises had given a more accurate account of the economic inefficiencies of socialism and social democracy than Rothbard, and no one had explained more clearly the moral hazards and perversions created by socialism and social democracy. Whereas the events in Eastern Europe and the economic and moral crisis of the Western states—of stagnating or falling real incomes, staggering public debt, imminently bankrupt social security systems, family and social disintegration, rising moral degeneration, and crime—were an obvious embarrassment and intellectual debacle for the social-democratic academic establishment³⁰, they provided dramatic empirical confirmation for Rothbard and his theoretical work. In this situation, libertarianism and Rothbard's influence in particular could only grow and gain prominence. By the Rothbard's role as the *spiritus rector* of a steadily growing and increasingly "threatening" revolutionary libertarian movement was even acknowledged by the mainstream media.³¹

Nor did the academic rejection make any noticeable impression on Rothbard or the further development of libertarian theory. *The Ethics of Liberty* had been published at a low point in Rothbard's career. Though one of the founders of the Cato Institute, Rothbard had been forced out by the chief financial backer as too "extreme" and "intransigent." Despite such unfavorable external circumstances and without any institutional promotion, the book established itself quickly as the single most authoritative and comprehensive work in libertarian theory. Long after the book had gone out of print in the U.S., it was being

³⁰ Paul Samuelson, left-liberal Keynesian Nobel-prize economist, and author of the world's all-time bestselling textbook, *Economics*, had characterized the Soviet Union as a largely noble and successful experiment all the way up to the 1989 edition!

³¹ Thus, following the right-wing "Republican revolution" during the 1994 congressional elections, the *Washington Post* identified Rothbard as the central intellectual figure behind this event. In what is probably his last publication, Rothbard took this opportunity to denounce the newly elected Republican House Speaker Newt Gingrich as a libertarian welfare-statist sellout.

translated into French, Spanish, Italian, and German, further securing its status as an enduring classic of political philosophy. Ironically, 1982 was also the year of the founding of the Ludwig von Mises Institute, of which he served as academic head until his death. Together with a new academic position at the University of Nevada, Las Vegas, these would prove to be the years of Rothbard's greatest professional success.

After the original publication of and until his death in 1995, Rothbard was working on a comprehensive and encompassing history of economic and political thought. Two massive volumes of the unfinished three-volume project were published posthumously, in under the titles *Economic Thought Before Adam Smith* and *Classical Economics*.³² Based on his prior theoretical work—with Austrian free-market economics and libertarian political philosophy providing the conceptual framework—Rothbard in these volumes gave a sweeping narrative account of the history of economic and political-philosophical ideas, from the ancient Greeks to near the end of the nineteenth century, and the interplay of ideas and economic and political reality. Pure and abstract Austrian and libertarian theory was illustrated with historical examples and illustrations, and at the same time intellectual and political history was presented as a systematically comprehensible subject, methodically and thematically unified and integrated. Rothbard here opened a panoramic view of the entire history of Western civilization, with new vistas and many surprising or even startling reinterpretations and reevaluations. History was unfolded as a permanent struggle between truth and falsehood and good (justice) and evil—of intellectual and political heroes great and small, and of economic and political progress, as well as of blunderers and villains, and of errors, perversions, and decline—and the civilizational ups and downs of human history were explained as the results of true and false ideas and the distribution and strength of ideologies in public consciousness. By complementing economic and political theory with history Rothbard provided the Austro-libertarian movement with a grand historical perspective, sociological understanding, and strategic vision, and thus deepened and broadened libertarianism's popular anchoring and sociological base.

Besides his main work on the history of economic and political thought, however, Rothbard also returned repeatedly to political theory. In reaction to a growing environmentalist movement and its transformation into an anti-human and pro-animal movement, Rothbard wrote "Law, Property Rights, and Air Pollution,"³³ further elucidating the concepts of physical invasion, tort, causation, risk, burden of proof, and liability. In response to the rise of nationalism and

³² (Brookfield, Vt.: Edward Elgar, 1995).

³³ *Cato Journal* (Spring 1982): 55–99.

separatism in the wake of the collapse of the Soviet Empire and U.S. multiculturalism and compulsory "non-discrimination," a decade later in an article on "Nations by Consent: Decomposing the Nation State,"³⁴ he further elaborated on the libertarian answers to the questions of nations, borders, immigration, separation, and secession. In the preface to the French edition of *The Ethics of Liberty*, he summarily reviewed several current contributions to libertarian theory—apart from utilitarian and contractarian libertarianisms, and natural-rights minarchisms—and rejected all of them as ultimately confused or inconsistent. In the monthly *Free Market* published by the Mises Institute, he provided political and economic analysis of current events, beginning in 1982 and continuing until 1995. In addition, in 1989 he founded the monthly *Rothbard-Rockwell Report*, which served as the main outlet of Rothbard's political, sociological, cultural and religious commentary; he contributed dozens of articles in which he applied libertarian principles to the full range of human events and experiences—from war and criminal punishment to the appropriation of air space and waves, affirmative action, and adoption, etc.—and thus constantly illustrated and reiterated the universal applicability and versatility of libertarian theory.

None of these later writings, however, brought any systematic changes as compared to *The Ethics of Liberty*, whether on principle or remote conclusions. Different and new problem aspects were analyzed and emphasized, but the essentials were already contained in his earlier treatise. In distinct contrast to Nozick, Rothbard did not change his mind on essential questions. Indeed, looking back over his entire career, it can be said that from the late 1950s, when he had first arrived at what would later become the Rothbardian system, until the end of his life, Rothbard did not waver on fundamental matters of economic or political theory. Yet owing to his long and intensive work in the history of economic and political thought, a different thematic emphasis became apparent in his later writings, most noticeably in the several hundred articles contributed during the last years of his life. Apart from economic and political concerns, Rothbard increasingly focused his attention on and stressed the importance of culture as a sociological prerequisite of libertarianism.

Libertarianism as developed in *The Ethics of Liberty* was no more and no less than a political philosophy. It provided an answer to the question of which

³⁴ *Journal of Libertarian Studies* 11, no. 1 (Fall 1994). Additional scholarly political articles published in his last year include "Bureaucracy and the Civil Service in the United States," *Journal of Libertarian Studies* 11, no. 2 (Summer 1995): 3–75; "Origin of the Welfare State in America," *Journal of Libertarian Studies* 12, no. 2 (Fall 1996): 193–230; "Egalitarianism and the Elites," *Review of Austrian Economics* 8, no. 2: 39–60; "The End of Socialism and the Calculation Debate Revisited," *Review of Austrian Economics* 2: 51–76.

actions are lawful and hence may not be legitimately threatened with physical violence, and which actions are unlawful and may be so punished. It did not say anything with respect to the further question whether or not all lawful actions should be equally tolerated or possibly punished by means other than—and below the threshold of—a threat of physical violence, such as public disapprobation, ostracism, exclusion, and expulsion.

Even given its explicitly limited scope, *The Ethics of Liberty* had a distinctly old-fashioned flavor and revealed libertarianism as a fundamentally conservative doctrine. The most obvious indicator of this was the already noted emphasis placed on punishment as the necessary complement to property. More specifically, Rothbard presented a rigorous modern defense of the traditional proportionality principle of punishment as contained in the *lex talionis*—of an eye for an eye, or rather, as he would correctively explain, two eyes for an eye. He rejected the deterrence and rehabilitation theories of punishment as incompatible with private property rights and championed instead the idea of victims' rights and of restitution (compensation) and/or retribution as essential to justice; he argued in favor of such old-fashioned institutions as compulsory labor and indentured servitude for convicted criminals, and for debtor's prisons; and his analyses of causation and liability, burden of proof, and proper assumption of risk invariably displayed a basic and staunch moral conservatism of strict individual responsibility and accountability.

This and Rothbard's own life-long cultural conservatism notwithstanding, however, from its beginnings in the late 1960s and the founding of a libertarian party in 1971, the libertarian movement had great appeal to many of the counter-cultural left that had then grown up in the U.S. in opposition to the war in Vietnam. Did not the illegitimacy of the state and the non-aggression axiom imply that everyone was at liberty to choose his very own non-aggressive lifestyle, no matter what it was?

Much of Rothbard's later writings, with their increased emphasis on cultural matters, were designed to correct this development and to explain the error in the idea of a leftist multi-counter-cultural libertarianism, of libertarianism as a variant of libertinism. It was false—empirically as well as normatively—that libertarianism could or should be combined with egalitarian multiculturalism. Both were in fact sociologically incompatible, and libertarianism could and should be combined exclusively with traditional Western bourgeois culture; that is, the old-fashioned ideal of a family-based and hierarchically structured society of voluntarily acknowledged rank orders of social authority.

Empirically, Rothbard did not tire to explain, the left-libertarians failed to recognize that the restoration of private-property rights and laissez-faire economics implied a sharp and drastic increase in social "discrimination." Private property means the right to exclude. The modern social-democratic welfare state has increasingly stripped private-property owners of their right to exclude.

In distinct contrast, a libertarian society where the right to exclude was fully restored to owners of private property would be profoundly unegalitarian. To be sure, private property also implies the owner's right to include and to open and facilitate access to one's property, and every private-property owner also faces an economic incentive of including (rather than excluding) so long as he expects this to increase the value of his property.

The Ethics of Liberty's chapter most difficult to accept for conservatives, on "Children and Rights," comes thus to appear in a different light. In this chapter Rothbard argued in favor of a mother's "absolute right to her own body and therefore to perform an abortion." He rejected the "right to life" argument not on the ground that a fetus was not life (in fact, from the moment of conception, he agreed with the Catholic position, it was human life), but rather on the fundamental ground that no such thing as a universal "right to life," but exclusively a universal "right to live an independent and separate life," can properly and possibly exist (and that a fetus, while certainly human life, is just as certainly up to the moment of birth not an independent but, biologically speaking, a "parasitic" life, and thus has no rightful claim against the mother). Further, upon child birth, a mother (and with her consent parents jointly),

would have the trustee-ownership of her children, an ownership limited only by the illegality of aggressing against their persons and by their absolute right to run away or to leave home at any time. Parents would be able to sell their trustee-rights in children to anyone who wished to buy them at any mutually-agreed price (p. 104).

So long as children have not left home, a parent:

does not have the right to aggress against his children, but also the parent should not have a legal obligation to feed, clothe, or educate 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 . . . but the parent should have the legal right not to feed his child, i.e., to allow it to die (p. 100).

So as to avoid any misunderstanding, in the next sentence Rothbard reminded his reader of the strictly delineated scope of his treatise on political philosophy and noted that "whether or not a parent has a *moral* rather than a legally enforceable obligation to keep his child alive is a completely separate question." However, this explicit qualification and the general thrust of *The Ethics of Liberty* notwithstanding, these pronouncements were used in conservative circles in the attempt to prevent a libertarian infiltration and radicalization of contemporary American conservatism. Of course, conservative political theory was a contradiction in terms. Conservatism essentially meant not to have, and even reject, any abstract theory and rigorous logical argument. Not surprisingly, Rothbard was singularly unimpressed by conservative critics such as Russell Kirk, whose "theoretical" work he considered devoid of analytical and argumentative rigor. Consequently Rothbard did not see any reason to abandon his original conclusions. Until the end of his life, he would not budge on the problem of abortion and child neglect and insisted on a mother's absolute legal (lawful) right to an abortion and of letting her children die. In fact, if women did not have such rights and had committed instead a punishable crime, it would seem that their crime then must be equivalent to murder. Should abortion accordingly be threatened with capital punishment and convicted abortionist mothers be executed? But who, except its mother, can possibly claim a right to her fetus and child and thus be considered as the rightful victim of her actions? Who could bring a wrongful death suit against her? Surely not the state. For a conservative in particular, any state interference in the autonomy of families should be anathema. But who else, if indeed anyone?

Yet while Rothbard unchangingly held to his conclusions concerning the rights of children and parents, his later writings with an increased emphasis on moral-cultural matters and the exclusionary aspect of private property rights placed these conclusions in a wider—and characteristically conservative-social context. Thus, while in favor of a woman's right to have an abortion, Rothbard was nonetheless strictly opposed to the U.S. Supreme Court's decision in *Roe v. Wade*, which recognized such a right. This was not because he believed the court's finding concerning the legality of abortion wrong, but on the more fundamental ground that the US. Supreme Court had no jurisdiction in the matter and that, by assuming it, the court had engendered a systematic centralization of state power.

The right to have an abortion does not imply that one may have an abortion anywhere. In fact, there is nothing impermissible about private owners and associations discriminating against and punishing abortionists by every means other than physical punishment. Every household and property owner is free to prohibit an abortion on his own territory and may enter into a restrictive covenant with other owners for the same purpose. Moreover, every owner and every

association of owners is free to fire or not to hire and to refuse to engage in any transaction whatsoever with an abortionist. It may indeed be the case that no civilized place can be found anywhere and that one must retire to the infamous "back alley" to have an abortion. Not only would there be nothing wrong with such a situation, it would be positively moral in raising the cost of irresponsible sexual conduct and helping to reduce the number of abortions. In distinct contrast, the Supreme Court's decision was not only unlawful by expanding its, i.e., the central state's, jurisdiction at the expense of state and local governments, but ultimately of every private-property owner's rightful jurisdiction regarding his own property, it was also positively immoral in facilitating the availability and accessibility of abortion.

Libertarians, Rothbard stressed in this connection, must be opposed, as are traditional conservatives (but unlike social democrats, neo-conservatives, and left-libertarians), on principled grounds to any and all centralization of state power, even and especially if such centralization involves a correct judgment (such as that abortion should be legal, or that taxes should be abolished). It would be anti-libertarian, for instance, to appeal to the United Nations to order the breakup of a taxi-monopoly in Houston, or to the U.S. government to order Utah to abolish its state-certification requirement for teachers, because in doing so one would have illegitimately granted these state agencies jurisdiction over property that they plainly do not own (but others do): not only Houston or Utah, but every city in the world and every state in the U.S. And while every state, small or large, violates the rights of private-property owners and must be feared and combated, large central states violate more people's rights and must be feared even more. They do not come into existence *ab ooa*, but are the outgrowth of a process of eliminative competition among originally numerous independent small local states. Central states, and ultimately a single world state, represent the successful expansion and concentration of state power, i.e., of evil, and must accordingly be regarded as especially dangerous.

Hence, a libertarian, as his second-best solution, must always discriminate in favor of local and against central government, and he must always try to correct injustices at the level and location where they occur rather than empowering some higher (more centralized) level of government to rectify a local injustice.

In fact, as a result of his increasing emphasis on cultural conservatism as a sociological presupposition of libertarianism, Rothbard succeeded in bringing about a fundamental reorientation of the libertarian movement during the last decade of his life. Symbolic of this change in direction was Rothbard's dissociation, in 1989, from the Libertarian Party. Rothbard's action did not, as some prominent left-libertarians vainly proclaimed at the time, mark the end of

his association with libertarianism or his role as the libertarian movement's guiding star. Rather, it marked the beginning of a systematic ideological realignment to open libertarian access to the American "heartland" and foment there a rapidly growing and increasingly radicalized populist movement among "Middle Americans" disgusted with the welfare-warfare statism, and social disintegration produced and promoted by federal policies. The anti-central-state shift in American politics at the decisive end of the cold war was the first unmistakable sign of the burgeoning strength of the conservative-libertarian grassroots movement envisioned and shaped by Rothbard.³⁵

At the academic level, Rothbard's lifelong work for the scholarship of liberty has at long last come to serve as the foundational theoretical edifice for the modern successors of the old classical-liberal movement—the movement that originally influenced the development of the basic libertarian position. Today, this movement is truly international in scope, and includes thousands of lay intellectuals and professional scholars the world over, many of whom view Rothbard's voluminous writings over the entire course of his lifetime as the model and ideal of principled political and economic thinking.³⁶ After his death, his reputation as leader in libertarian political theory and Austrian School economics is increasingly obvious, even undeniable, to enthusiasts and critics alike. For his seminal *Ethics of Liberty* to be available once again should further solidify this status.

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³⁵ The historical moment for Rothbardian scholarly tradition may at last have arrived, and his political movement is surely not too far in the distance. Rothbard had always been an optimist, grounded in the fact of human rationality and further strengthened by the Misesian-Rothbardian insight that one cannot violate moral and economic laws without having to pay a price and that one violation will, according to the "logic" of state action, lead to more violations until the price that must be paid becomes intolerable. Thus, the ethical and economic depredations of socialism finally ended in a spectacular collapse. Likewise, in the U.S. and the Western world, after nearly 100 years of social-democratic welfare statism, the moral and economic "reserve fund" inherited from the past has become visibly exhausted and has led to a manifest economic and moral crisis of stagnating or falling standards of living and societal breakdown, as well as a widespread loss of faith and trust in the central state as the organizing agent of society. In this situation of the obvious moral and economic bankruptcy of socialism and social democracy and an ever more strongly felt need for an explanation and a principle alternative, it can be safely predicted that Rothbard's *Ethics of Liberty* not only will endure as a classic but steadily gain in prominence.

³⁶ *Journal des Economistes et des Etudes Humaines* 6, no. 2 (March 1995); Murray N. Rothbard: *In Memoriam* (Auburn, Ala.: Ludwig von Mises Institute, 1995).