

Rothbard's *The Ethics of Liberty*:  
What It Is and What It Is Not<sup>1</sup>

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## What It Is

In his Introduction to Murray N. Rothbard's *The Ethics of Liberty*, Hans-Hermann Hoppe correctly observed that this work synthesized the Rothbardian social philosophy and "restored the concept of property to its rightful position within economics" and political philosophy.<sup>2</sup> In fact, Rothbard not only restored the concept of property; he significantly improved it. *The Ethics of Liberty*, Rothbard's treatise on political ethics, complements *Man, Economy, and State*, Rothbard's economic treatise, thus forming a "unified system of rationalist social philosophy".<sup>3</sup> In this work, Rothbard did what the great philosophers and economists before him failed to do: he seamlessly integrated economic science with rationalist ethics, answering the "universal and eternal human dilemma", as Dr. Hoppe puts it, "[W]hat am I permitted to do right now and here, given that 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."<sup>4</sup>

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<sup>1</sup> In this paper, all italicized words within quotations appear the same in the original unless otherwise noted.

<sup>2</sup> Murray N. Rothbard, *The Ethics of Liberty* (New York University Press, 1998) p. xii.

<sup>3</sup> *Ibid*, p. xii.

<sup>4</sup> *Ibid*, pp. xxxiii, xiv.

The chain of reasoning that forms Rothbard's synthesis of economics and ethics into a complete social philosophy of liberty begins with natural law and places a carefully defined concept of property rights at the center. Rothbard first defends the theory of natural law as developed by the Scholastics, Grotius, Pufendorf, Burlamaqui, Vattel and others. He goes on to define property in Lockean terms, but he builds upon the improvements made to Locke by Spencer and Spooner. Rothbard arrives at a theory of property rights that synthesizes the long history of natural-rights philosophy and removes the internal inconsistencies that had previously prevented the emergence of a complete libertarian social philosophy.

Rothbard first explains that the justification for "natural law" is no more complicated than noting that the world "consists of a myriad number of observable *things*, or *entities*...Since the world does not consist of one homogeneous thing or entity alone, it follows that each one of these different things possesses different attributes, otherwise they would be the same thing...[I]t follows immediately that they have different *natures*...If all things have natures, then surely man's nature is open to inspection."<sup>5</sup> The appropriate method of inspection, Rothbard expounds, is man's reason. "Man's reason is *objective*, i.e., it can be employed by all men to yield truths about the world."<sup>6</sup> Citing Strauss, Rothbard presents the argument that natural law, not positivism, is the rational doctrine on which to base a political philosophy. For, as Strauss says, "If rational conduct consists in choosing the right means for the right end, relativism [and positivism] teaches in effect that rational conduct is impossible."<sup>7</sup>

The validity of natural law thus established, Rothbard goes on to explain the purpose of natural-law ethics: "The natural law, then, elucidates what is best for man—what ends man

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<sup>5</sup> Ibid, pp. 9, 10.

<sup>6</sup> Ibid, p. 10.

<sup>7</sup> Quoted in Ibid, p. 8.

should pursue that are most harmonious with...his nature.”<sup>8</sup> In contradistinction to economic science and utilitarianism, which treat the ends man pursues as purely subjective valuations, Rothbard notes that “in natural-law ethics, ends are demonstrated to be good or bad for man in varying degrees; value here is *objective*—determined by the natural law of man’s being.”<sup>9</sup> An important feature of ethics, Rothbard insists, is that the rules thus objectively derived are just, in the sense of being universally applicable for all men, in all places, at all times.

To derive a social philosophy from natural law, Rothbard starts by analyzing a “Crusoe philosophy”. Imagining that Crusoe has landed on a deserted island and has contracted amnesia, Rothbard deduces the primary “inescapable facts” that confront Crusoe, namely, his own consciousness and body, and the secondary fact of his environment, the natural world. Faced with these inescapable facts, Crusoe learns that “he must (a) choose his goals; (b) learn how to achieve them by using nature-given resources; and then (c) exert his labor energy to transform these resources into more useful shapes and places.”<sup>10</sup>

Moving from a Crusoe island to a world of social interaction, Rothbard deduces the logical possibility of a society in which each person is as free as the shipwrecked Crusoe, yet each person is better off because of the opportunity to participate in specialization and voluntary exchange with others. In a particularly eloquent passage, Rothbard says, “Absolute freedom, then, need *not* be lost as the price we must pay for the advent of civilization; men *are* born free, and need *never* be in chains. Man may achieve liberty *and* abundance, freedom *and* civilization. This truth will be obscured if we persist in confusing ‘freedom’ with ‘power’”.<sup>11</sup>

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<sup>8</sup> Ibid, p. 12.

<sup>9</sup> Ibid, p. 12.

<sup>10</sup> Ibid, p. 30.

<sup>11</sup> Ibid, pp. 41-42.

In an unfortunately brief passage, Rothbard clarifies the difference between freedom and power, thus annihilating the claims of some modern philosophers who argue that freedom is illusory. This distinction is a powerful response to those who would have us abandon the pursuit of liberty because, they claim, man can never truly be free due to the constraints of natural laws. This misunderstanding of freedom leads to the spurious idea that a truly free society is utopian. Rothbard demolishes this charge by pointing out that these modern critics confuse freedom with power, implying that restraints on man's freedom imposed by *other people* are of the same quality as restraints imposed by *natural laws*. Rothbard explains, "[W]hen we say that 'man is not 'free' to leap the ocean', we are really discussing not his lack of freedom but his lack of *power* to cross the ocean, given the laws of his nature and the laws of the world." Rothbard says, "Crusoe is "*absolutely* free...in the sense of *social* freedom—of freedom as *absence of molestation by other persons*"<sup>12</sup> and shows how this same degree of freedom<sup>13</sup> is entirely possible even in a complex society.

Crucial to a free society is Rothbard's definition of *ownership* as control over resources, and *legitimate ownership* as control over resources that are either (a) *inalienable*, that is, inseparable from one's person, such as one's body and mind, or (b) *homesteaded*, that is, acquired from a state of nature and transformed by one's own labor. Ownership of a thing thus acquired can only be transferred by a voluntary transfer of its property title from a previous to a later owner (the title-transfer theory of contracts). These deceptively simple deductions from the axiom of self-ownership make possible the systematic derivation of the "rights of man"; that is, the entire libertarian system of law and justice.

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<sup>12</sup> Ibid, p. 33.

<sup>13</sup> Rothbard prefers the term "liberty" to "freedom", precisely because of the common confusion of freedom with power.

Although his definitions of legitimate property and the homesteading principle are heavily influenced by Locke, Rothbard improved Locke's theory of property rights by invalidating Locke's "proviso", which has lead political philosophers such as Nozick to conclude that no one may appropriate unused land if the remaining population who desire access to land would be made worse off. Rothbard demonstrates that Locke's proviso "may lead to the outlawry of *all* private ownership of land, since one can always say the reduction of available land leaves everyone else, who could have appropriated the land, worse off." Rothbard concludes, "[E]ven if they are [worse off], I submit that this, too, is their proper assumption of risk...in this free and uncertain world...Even Locke could nod once in a while."<sup>14</sup>

Perhaps the original contribution by Rothbard to the theory of property rights that is most monumental is his insistence that property rights, as such, are not the central question of the ethics of liberty. He explains, "In short, we cannot simply talk of defense of 'property rights' or of 'private property' *per se*. For if we do so, we are in grave danger of defending the 'property right' of a criminal aggressor—in fact, we logically must do so. We may therefore only speak of just property or legitimate property..."<sup>15</sup> It is this crucial clarification of the concept of property as an issue of "legitimate" (or "just") versus "illegitimate" (or "criminal") that leads directly to Rothbard's classification of the state as illegitimate and criminal by its very nature, as well as his defense of the free market that is free from the inconsistencies of utilitarian economics.

Rothbard identifies the state by its most important characteristic: "*All other* persons and groups in society...obtain their income voluntarily: either by selling goods and services to the consuming public, or by voluntary gift. *Only* the State obtains its revenue by coercion...That

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<sup>14</sup> Ibid, pp. 244-245.

<sup>15</sup> Ibid, p. 52.

coercion is known as 'taxation'...Taxation is theft, purely and simply."<sup>16</sup> The implication is as follows: "If, then, taxation is compulsory, and is therefore indistinguishable from theft, it follows that the State, which subsists on taxation, is a vast criminal organization far more formidable and successful than any 'private' Mafia in history."<sup>17</sup>

As for the concept of the state as a "necessary evil", Rothbard trenchantly argues that while the state is indeed evil, it is by no means necessary. "If, in fact, we cast a cold and logical eye on the theory of 'limited government', we can see it for the chimera that it really is, for the unrealistic and inconsistent 'Utopia' that it holds forth."<sup>18</sup> Rothbard points out that the state has many incentives to extend its power and influence, but no incentive to remain "limited" or "minimal". Furthermore, Rothbard quotes Barnett on why "the State, qua state, therefore, is an illegal system"; by its nature (taxation and monopoly of defense services) the state violates its own laws that it sets down for its subjects. An additional contradiction inherent in the concept of limited government is the question of "how much" taxation should be levied and "how much" protection to provide. Rothbard points out that there is no logical stopping point; such governmental decisions can only be purely arbitrary. Thus, Rothbard's anarchism follows directly from his definition of legitimate property rights, combined with a successful critique of the logic of limited government.

## What It Is Not

By Rothbard's admission, his system does not attempt to answer the other universal and eternal human dilemma: "What *should* I do right now and here, given that I have certain

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<sup>16</sup> Ibid, p. 162.

<sup>17</sup> Ibid, p. 166.

<sup>18</sup> Ibid, p. 175.

inalienable natural rights?" For example, while Rothbardian ethics positively identifies man's right to dispose of his own property as he wishes, it says nothing of the morality or immorality of, e.g., suicide. Or, while Rothbardian ethics insists on a woman's right to rid her body of an unwanted fetus, it is silent on the morality of abortion.

Rothbard's rationalist ethics denote the "rights of man", but conspicuously defer any and all discussion of the "oughts of man". In short, the Rothbardian social philosophy is a synthesis of economic science and *political* ethics, but it consciously ignores *personal* ethics. Rothbard says explicitly, "It is not the intention of this book to...elaborate a natural-law ethic for the personal morality of man. The intention is to set forth a social ethic of liberty."<sup>19</sup>

The significance of what *The Ethics of Liberty* accomplishes is difficult to overstate. With its tightly-reasoned derivation from natural law theory, Rothbard deals a blow to ethical relativists on the one hand, and to ethical revelationists on the other hand. For utilitarians and other ethical relativists, Rothbard's axiomatic-deductive proofs of the right to self-ownership and the homesteading principle are devastating to their attempt to keep ethics outside the realm of science. For traditionalists and other ethical revelationists, Rothbard's explicit reliance on natural law is devastating to their attempts to link all ethical propositions to supernatural revelation. In short, Rothbard successfully refutes Dostoyevsky's claim, If God is dead, everything is permissible. What becomes relevant for a defense of Rothbard's system of ethics, however, is not so much what *The Ethics of Liberty* does, but what it does not do.

Time and again throughout the text, Rothbard draws the distinction between what the ethics of liberty says a man *can* do, and what a moral code might say a man *should* do. When he illustrates the principle of double punishment, Rothbard is careful to emphasize that this is an

“upper bound to punishment—since it tells us how much punishment a victim may *rightfully* impose...If he [the victim] were a Tolstoyan, and was opposed to punishment altogether, he could simply forgive the criminal, and that would be that.”<sup>20</sup>

Similarly, he states, “The right to blackmail is deducible from the general property right in one’s person and knowledge and the right to disseminate or not disseminate that knowledge. How can the right to blackmail be denied?” Then, in a footnote Rothbard adds, “When I first briefly adumbrated the right to blackmail...I was met with a storm of abuse by critics who apparently believed that I was advocating the morality of blackmail. Again—a failure to make the crucial distinction between the legitimacy of a right and the morality or esthetics of exercising that right.”<sup>21</sup> When countering the libertarian “contextualist” argument involving so-called “lifeboat situations”, Rothbard acidly repeats the same disclaimer, “For we are not...concerned with all *personal* moral principles. We are not herewith concerned whether it is moral or immoral for someone to lie, to be a good person...or be kind or mean to his neighbors. We are concerned...solely with such ‘political ethic’ questions as the proper role of violence, the sphere of rights, or the definitions of criminality and aggression.”<sup>22</sup>

There are many inferences from Rothbard’s ethics of liberty that cause people to instinctively recoil in horror. I suggest that failure to distinguish between political ethics and personal ethics is the root of most disputes with Rothbardian ethics by people who favor liberty yet fear its moral implications. When analyzed within a framework of political, as opposed to

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<sup>19</sup> Ibid, p. 25. Interestingly, Rothbard gives no indication as to why he defers discussion of personal ethics; e.g., is it because it is of no import for a philosophy to integrate both realms of ethics, or that personal ethics cannot be rationally derived at all, or for some other reason?

<sup>20</sup> Ibid, p. 86.

<sup>21</sup> Ibid, p. 124.

<sup>22</sup> Ibid, p. 152.



personal, ethics, even Rothbard's seemingly stringent or harsh implications become much less abrasive.

One aspect of *The Ethics of Liberty* at which even the staunchest libertarians often flinch is its treatment of fetal and children's rights. Yet an important footnote near the beginning of this chapter lucidly explains the importance of distinguishing the difference between political ethics and personal ethics in the ensuing discussion:

What we are trying to establish here is not the *morality* of abortion (which may or may not be moral on other grounds), but its *legality*, i.e., the absolute right of the mother to have an abortion. What we are concerned with in this book is people's *rights* to do or not to do various things, not whether they should or should not *exercise* such rights. Thus, we would argue that every person has the *right* to purchase and consume Coca-Cola from a willing seller, not that any person *should* or *should not* make such a purchase.<sup>23</sup>

Rothbard here reminds his readers to be aware of the terms of debate on such controversial issues. It matters greatly whether one is trying to establish the *permissibility* of a behavior or the *goodness* of it, and *The Ethics of Liberty* is concerned solely with establishing what is permissible within the framework of political ethics.

With this in mind, Rothbard's ostensibly bloodless identification of an unborn child as a "parasitic 'invader' of [the mother's] body" and his conclusion that "should the mother decide that she does not want the fetus there any longer, then...the mother has the perfect right to expel this invader from her domain"<sup>24</sup> becomes less shocking to the sensibilities. Rothbard argues that the term "right to life" is ambiguous and empty, since any proper rights implied by so-called pro-life advocates are included in the concept of the right to self-ownership. Rothbard concludes, "In short, it is impermissible to interpret the term "right to life" to give one an enforceable claim to

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<sup>23</sup> Ibid, p. 98n.

the action of someone else to sustain that life.”<sup>25</sup> The legality of abortion turns on the definitions of aggression and property; any appeals to the horror or immorality of abortion must be deferred to a separate discussion.

Likewise, Rothbard's seemingly blithe assertion of the right of a parent to neglect his child is much more palatable: “[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...The parent therefore may not murder or mutilate his child...But the parent should have the legal right *not* to feed the child, i.e., to allow it to die.”<sup>26</sup> In a parenthetical statement Rothbard repeats, “Again, whether or not a parent has a *moral* rather than a legally enforceable obligation to keep his child alive is a completely separate question.”

Are these propositions difficult to accept when viewed as extensions of the definition of “rights”? In light of the following elucidation of the concept of rights, its application to abortion and children's rights seems merely straightforward and logically consistent. Rothbard explains, “[T]he very concept of ‘rights’ is a ‘negative’ one, demarcating the areas of a person's action that no man may properly interfere with. No man can therefore have a ‘right’ to compel someone to do a positive act, for in that case the compulsion violates the right of person or property of the individual being coerced.”<sup>27</sup>

As Rothbard points out, the political ethics of liberty, defined and applied in this manner, actually enhances the opportunity for morality and goodness to flourish. For example, instead of seeing a desperate “shortage” of babies going to adoptive homes as we do in today's society, libertarian laws would allow a “free market in children” that would “eliminate this imbalance,

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<sup>24</sup> Ibid, p. 99.

<sup>25</sup> Ibid, p. 99.

<sup>26</sup> Ibid, pp. 100-101.

<sup>27</sup> Ibid, p. 100.

and would allow for an allocation of babies and children away from parents who dislike or do not care for their children, and toward foster parents who deeply desire such children. Everyone involved...would be better off in this sort of society.”<sup>28</sup> Along similar lines Rothbard makes the case for the *legality* of many other actions that most people’s *personal* ethics deem reprehensible or immoral.

It is his rigorous logic and consistency that allows Rothbard to “solve” what seem like paradoxes in the realm of political ethics, such as “lifeboat situations” and the famous “fire in a crowded theater”, often used as justifications for the mitigation of absolute rights.

As for lifeboat situations, Rothbard first emphasizes that such situations, by definition, are not central to a system of ethics, since the goal is to form an ethic for the way men generally behave in this world. However, Rothbard successfully refutes the implication that since lifeboat situations (i.e., extreme circumstances that force a man to choose among perceived absolute ethical rules) exist, they prove that ethical rules cannot be absolute at all. The lifeboat situation paints the picture of a sinking ship with more passengers than the lifeboat can hold. But Rothbard shows that the theory of self-ownership and property rights is easily applied even to this dramatic “war of all against all” by asking insightfully, “*Who owns the lifeboat?*” From there, the rules of legitimate ownership (or the principle of homesteading, if indeed the lifeboat is unowned) apply in a straightforward manner.

With similar ease and consistency, Rothbard dismisses the argument that the “fire in a crowded theater” illustration somehow places a “check” on the absolute right to free speech. Rothbard explains cogently, “[C]ouching the analysis in terms of a ‘right to free speech’ instead of property rights leads to confusion and a weakening of the very concept of rights. The most famous example is Justice Holmes’s contention that no one has the right to shout ‘Fire’ falsely in

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<sup>28</sup> Ibid, p. 104.

a crowded theater, and therefore that the right to freedom of speech must be tempered by considerations of 'public policy'. And yet, if we analyze the problem in terms of property rights we will see that no weakening of the absoluteness of rights is necessary."<sup>29</sup> In this line of reasoning Rothbard follows Justice Hugo Black, whom he quotes as saying, "We have a system of property, which means that a man does not have the right to do anything he wants anywhere he wants to do it...That is a wonderful aphorism about shouting 'fire' in a crowded theater," but as Justice Black continues, the point is not "what he shouted but [that] he shouted."<sup>30</sup> For as Rothbard points out, either the shouting is being done on someone else's property (if the shouter is a patron) and thus violates the condition of his being there; or, the shouting is being done by the theater owner, and thus violates the terms of quiet enjoyment of the show for which the owner took his patrons' money. Seen in this framework, no mitigation of the concept of rights is necessary or justified.

This kind of consistent application of the theory of self-ownership and property rights, derived from natural law, is what gives Rothbard's exposition a clear advantage over prior attempts to defend liberty. As Hans-Hermann Hoppe points out, Rothbard never claimed infallibility for his system of political 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 arguments of the same logical status."<sup>31</sup> Yet this "logical status" is precisely what political ethics had previously been lacking. Given its axiomatic base, attacks on Rothbard's ethics of liberty are logically confined to addressing the deductions and processes of reasoning therein; charges against the personal morality of his system are invalid because it applies (and aims to apply) solely to political ethics.

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<sup>29</sup> Ibid, p. 114.

<sup>30</sup> Ibid, p. 115.

In addition to the sensitivity of the issues to which Rothbard explicitly applies his political ethics, one other factor may contribute to the confusion between political and personal ethics by those who take issue with *The Ethics of Liberty*; namely, the chapter entitled “The Moral Status of Relations to the State.” Here and here alone, Rothbard uses the phrases “morally licit” and “morally legitimate” to describe certain actions that fall within the bounds of what political ethics deems permissible for man. For example: “Lying to the State, then, also becomes...*morally legitimate*.”<sup>32</sup> (Emphasis added.) And: “[I]t would be *morally licit* to leave the State’s army at any time, regardless of the terms of enlistment.”<sup>33</sup> (Emphasis added.) The change in phrasing may open the door to confusion. It could be that Rothbard is making an exception to his refusal hitherto to pronounce judgment on the *personal* morality of an action, since until now he has reserved the term “morality” to denote the *personal* ethicalness of the action involved (see above for examples). It seems that either (a) Rothbard is making no judgment of personal morality but simply using “morally legitimate” as a synonym for “legally permissible”; or (b) Rothbard uses the phrase “morally legitimate” to confer a judgment about the personal morality *as well as* the legal permissibility of the action. Either explanation leads to ambiguities that may confuse the crucial distinction he has elsewhere worked to establish between political and personal ethics. For if explanation (a) is correct, why the switch in terminology? Or if explanation (b) is correct, why does Rothbard concede to judge the personal morality of, say, lying to the State while overtly refusing to judge the personal morality of abortion or child neglect? This instance of possible ambiguity notwithstanding, Rothbard elsewhere expressly seeks to defend his system of political ethics from attack by those who would level personal ethical judgments against its implications.

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<sup>31</sup> Ibid, p. xxvii.

<sup>32</sup> Ibid, p. 183.

Seen for what it *is not*, *The Ethics of Liberty* leaves the arena of personal ethics open for elaboration by libertarian philosophers. Seen for what it *is*, *The Ethics of Liberty* shines as a monumental achievement, meeting Rothbard's goal of setting forth "a positive ethical system...to establish the case for individual liberty."<sup>34</sup>

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<sup>33</sup> Ibid, p. 184.

<sup>34</sup> Ibid, p. xlvii.