An Austro-Libertarian
Theory of Voluntariness:
A Critique

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PREFACE

Although the book takes as its starting point the various papers I wrote (whether co-authored or not and whether already published or not), its spirit is purely *polemical*, or *critical* if you will. The present book is by no means a collection of essays published elsewhere. Quite the contrary, apart from the appendix, which is a proofed copy of the paper I published with Łukasz Dominiak (its senior author), the chapters constituting the book take my prior publications as their respective targets. But because doubting (and let alone repudiating) one's former beliefs is apparently a rare thing, a word of explanation is due to the reader at this point. In fact, what I have to offer is both an explanation (citing a motivating reason) and a justification (citing a normative reason). So, as to the former, I can never psychologically afford to be complacent about whatever I produce. This translates into a desire to ceaselessly refer back to my works with an intention to improve upon them. On the other hand, it seems to be a happy coincidence that what motivates me (i.e. the fact of permanent dissatisfaction with whatever I commit to writing coupled with the desire to improve it) is probably also well *justified*. After all, the vast majority of scholarly works (natural science inclusive) is rightly presumed to be false. And it is this very fact that gives us a *normative epistemic reason* to criticize and try to correct the currently held views. So, *given* my natural dissatisfaction with the quality of my output, one can readily *explain* why I embarked on writing this book in the first place. But additionally, whether I desired to pursue truth or

not, I am *objectively justified* in critically scrutinizing my prior publications. For I might still *do* the right thing (*epistemically*) without being (*psychologically*) motivated to do it; that is, in the case under scrutiny, I may *only* want to correct my papers only because I desire to appear diligent in the eyes of my friends or whatever. However, I can imagine that the reader might at this point grow suspicious of whether I properly respond to the standards of *epistemic rationality*. So, it is high time to assure the reader that not only am I motivated by maniacally striving for perfection but also by *truth itself*. That is, I do *believe* that truth matters and it is also to the callings of truth that I respond by trying to critically assess my intellectual corpus.

Given the above points, one can easily grasp why it took me so little time to grow sufficiently disillusioned with my works to subject them to critical scrutiny. This in turn explains a well-deserved paucity of quotes from my works. And if I do quote myself (my former self), this mainly serves to set this former self as a target for my present self. Having said that, it is high time for me to touch upon the order of the book.

As mentioned, the successive chapters of the present book track the inaccuracies of my papers written thus far. Chapter 1 further analyzes "Freedom and Property Rights – Avoiding Circularity" published in *Political Dialogues* in 2018. Perhaps, my main intuition to the effect that the concept of *freedom as property* ought to be rejected has survived over time; however, this chapter makes a whole bunch of new arguments and is clearly much sharper than the original publication. Additionally, I start arguing positively that (thin) libertarians, given their suspension of judgements concerning what constitutes a good life, *should* be interested in freedom *neutrally* (viz., non-morally) conceived. Chapter 2 scrutinizes my paper "Problems with the Notion of Freedom and Voluntariness in Right Libertarianism" published in *Studia Humana* in 2020, while taking the thought included therein much further and with much greater analytical clarity. Chapter 3 *critically* assesses the paper I wrote with Block and Dominiak; that is, "Rothbard's Welfare Theory: Some Support", published in 2019 by *New Perspectives in Political Economy*. This chapter actually disowns my former standpoint on that issue and starts appreciating the criticism made by Kvasnička – our former target. Chapter 4 investigates the paper I wrote in 2019 with Dawid Megger, viz. "Austrian Economics: A Critical Approach" published by *Ekonomia – Wroclaw Economic Review*. The concession I make therein is that our denial of Rothbard's welfare economics was too quick and not sufficiently grounded, the shortcoming I both try to rationalize and finally remedy. Even-

tually, this paper constitutes a point of departure for chapter 5, which in turn critically evaluates another publication I co-authored with Dawid Megger; that is, "Rejoinder to Wiśniewski on the Austrian Welfare Economics", published in 2020 by the very same journal. Chapter 5 might make the reader dizzy: not only is there polemics with then Wiśniewski (his self from 2019) but also with our then selves, with everything being spiced up with general considerations on the fallacy of begging the question. Chapter 6 evaluates my yet (as of 2021) unpublished manuscript "Justice vis-à-vis Welfare: How Austrian Welfare Economics Should Fit in the Austro-Libertarian Framework", wherein I attempted to put forward – *contra* Rothbard – a descriptive criterion that would distinguish between Pareto-superior and inferior moves within the universe of all voluntary exchanges. The chapter concludes with rather forlorn skepticism – as opposed to my original enthusiasm and optimism – as to hitting upon the *relevant baseline* against which proposals could be classified as either offers or threats, and the exchanges stemming therefrom as either Pareto-superior or Pareto-inferior moves, respectively. The appendix, as mentioned, is a direct copy of the paper Łukasz Dominiak co-authored with me in 2016; that is, "A Libertarian Theory of Threat", published by *Studia Polityczne*. I am ineffably grateful to *Studia Polityczne* for granting me the permission to reprint the said paper here.

Still, I am most grateful to Łukasz Dominiak for his ceaseless friendship and intellectual guidance. Our seemingly casual peripatetic conversations actually brim with razor-sharp philosophy and I owe to them very much indeed. I cannot but mention my other co-authors. Walter Block has been my mentor since I learned about libertarianism and Austrian economics. Whenever I asked him for some assistance, he delivered. This reminds me of capitalism: the consumer demands, and the system delivers. I am also indebted to Dawid Megger, my co-author and a rising star in Austrian economics. We literally spend hours discussing the problem of a (the?) relevant baseline on which Pareto-superior or inferior moves *should* rest. Moreover, I would like to thank Jeffrey Herbener who took his time to instruct me via e-mails on the relation between property rights and efficiency, the e-mails which made me think harder on the problem than ever. It is also Stanisław Wójtowicz that deserves a mention. He kindly reviewed chapter 3 without even being asked to do so. Finally, I would like to thank my wife for her patience and for setting right conditions for book-writing. There are also innumerable people outside academia that I would like to thank but for the lack of space I cannot mention them all here. I promise to remedy this shortcoming in person.

CONTENTS

INTRODUCTION

Chess aficionados are well aware of the famous *dictum* by Siegbert Tarrash[1]: "Before the endgame, the Gods have placed the middlegame". I suppose a similar remark applies to books: before chapter 1, the Gods invented an introduction. But if an intro is here to stay, I might as well capitalize on having additional space by clarifying my overall agenda.

First of all, let me clear up some potential misconceptions. Granted, the book is on Austro-libertarianism at large but at first glance, it might seem to amount to no more than a motley crew: something on freedom, demonstrated preference here and there, quite a lot on welfare economics and a concluding paper on threats. However, there is an underlying leitmotif to the book, which gives it a *substantive* unity. What I believe unifies the book *content-wise* is the concept of *voluntariness*. In fact, whether explicitly or not, it figures in each and every chapter of the present book. This is due to the fact that many crucial concepts libertarians employ are *moralized*. For instance, the insightful reader will quickly realize the similarity of the arguments made in chapter 1 and 2.

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[1] Tarrash was not only a witty aphorist but also a brilliant chess player and theoretician who even *memorably* challenged Emanuel Lasker for the world title in 1908. On the other hand, I do realize *memorability* of an event is relative to one's emotional involvement therein, which reminds of me of a joke circulating in philosophical circles: it is easy to remember the year in which Adam Smith published his *Wealth of Nations* because this is the same year in which David Hume died.

And upon reflection, he will admit that it is no coincidence at all. So let me at this point dissect the concept of libertarian freedom (chapter 1) and voluntariness (chapter 2) just to illustrate how the two are necessarily entangled. First of all, libertarians *explicitly* avail themselves of the notion of *freedom as property*, one of the sub-species of justice-based concepts of freedom, which has it that the pre-condition of being *free* to perform some action is to have *a right* to perform it and that to be rendered unfree to perform some other action, there must be someone who prevents us from doing what we have *a right* to do and what we would otherwise be able to do. But given this understanding of freedom, there cannot be any clash between property rights and freedom on the part of non-owners. That is, it is via *conceptual necessity* that my property right in a house does not diminish anybody else's freedom. Additionally, it must be noted that for libertarians *voluntariness* (chapter 2) of our actions depends on whether there was someone who violated our rights by some prior action or by making a proposal previewing an inevitable right violation (which already counts as a right violation for libertarians). Specifically, if some other person constraints our options *legitimately* (i.e. while respecting rights), then *we* act *voluntarily* in reaction thereto. If, on the other hand, somebody constraints our opportunity set *illegitimately* (i.e. while violating our rights), then we act *involuntarily* in reaction. This construal of voluntariness is oftentimes labelled as *rights-definition of voluntariness.* Moreover, libertarians famously claim that all rights are property rights (see: e.g. Rothbard [1982] 2002). Given all this, we can see that freedom is related to (property) rights in a pretty much the same way as voluntariness is. That is, first, the moralized *definitions* of freedom as well as of voluntariness *guarantee* that there no unfreedoms on the free market and no involuntary actions thereupon, respectively. Second, given rights-based definition of both freedom and voluntariness, it seems that both freedom (especially its non-specific value or overall freedom as such, if you will) and voluntariness lose their *distinct* appeal. Once rights are distributed according to the libertarian principles of justice, the fact that people now act *freely* and *voluntarily* does not even matter much over and above the fact that their conduct respects rights already distributed, which in turn raises another problem: if *free* or *voluntary* actions are *conservative* in the sense that they merely comply with rights as already established, how to account for the generation of new rights (and correlatively: new duties). In other words, how to make sense of newly emerging contractual relations? Wouldn't we like to say that it is by giving one's *free* or *voluntary* consent, with "free" and "voluntary" being at least partly de-

scriptively conceived, that one can transfer rights (i.e. the act of bequeathing, analyzed in chapter 2)? Clearly then, it is no accident that I tackle the libertarian idea of freedom and voluntariness in the first two chapters, respectively, for one rests on property rights just as solidly as the other. Moreover, it seems that the relation holding between the two is that of equivalence; viz., whenever one acts *freely*, one acts *voluntarily* and vice versa. This may in turn raise the suspicion that the two are in fact identical, the problem that is unaddressed in the book but definitely merits further investigations. However, the point is that *freedom* is definitely much more *intimately* related to *voluntariness* than might be presumed and that is why, I believe, first two chapters are *deeply* interrelated.

Moreover, chapters 3–6 do not form any discontinuity either. In all of them, *voluntariness* figures as the most critical concept. But this time *rights definition of voluntariness* lurks in the category of *demonstrated preference* (chapter 3) as well as in the one of Pareto-superior moves or benefiting *ex ante* (chapters 4–5). *Rights-based voluntariness* is also explicitly presupposed in chapter 6, in which I deliberately operate within the universe of voluntary (i.e. rights-respecting) exchanges. But let us proceed step by step. Chapter 3 uncovers the fact that in my paper co-authored with Block and Dominiak (2019), we, interestingly enough, subconsciously slipped into a rights-entangled notion of demonstrated preference, thus begging the question against Kvasnička's (2008) original objection to the Rothbardian welfare economics. To put it briefly, Kvasnička argued that Rothbard's two welfare theorems depend for their plausibility on two separate interpretations of *Pareto-rule*. This critic contends that when Rothbard makes a case for the free market always increasing social utility, he employs the idea of demonstrated preference, which abstracts from *psychologizing*, whereas when he argues for no governmental actions ever increasing social utility, he – allegedly unjustifiably – resorts to *psychologizing*. Our (2019) paper was designed to defend Rothbard vis-à-vis Kvasnička's formidable criticism. In particular, we tried to argue that demonstrated preference *alone* suffices to distinguish between Pareto-superior and inferior moves. In other words, we do not need to resort to *psychologizing* to determine that all market exchanges translate into Pareto-superior moves and no governmental actions do so. Most ironically, our interpretation of demonstrated preference is ambiguous. As I try to show in chapter 3, on one understanding thereof, we seem to beg the question in favor of the free market, whereas on the other (what we labelled as "the negative side of the demonstrated preference doctrine"), the conclusions apparently stemming therefrom are simply *non-sequiturs*. But the impatient reader might ask

at this point: what does demonstrated preference have to do with *voluntariness*? As I try to show, *voluntariness* is *defined into* demonstrated preference. Less technically, the economic agent's *rational* choice is not indicative of that person's preference unless that person chooses *voluntarily*. Incidentally, what I take to be a rational choice is such that maximizes the person's well-being, given the constraint under which the person is choosing. That is, regardless of whether the person is under duress (e.g. at a gun point) or not, a rational choice will maximize welfare within constraints imposed. On the other hand, rationality of a choice is only a necessary condition of its voluntariness and it is in this sense that voluntary choices constitute a *proper subset* of rational choices. What it takes for a *merely rational* choice to become a *voluntary* choice is the compliance with rights. For example, if I am not coerced and I choose what I believe is best for me, then not only do I choose *rationally* but also *voluntarily*. But now, the problem with our (2019) understanding of demonstrated preference is that it is only market choices (as they are by definition rights-respecting) that can demonstrate our preferences. And conversely, if a choice is not a market choice, it is not evidential of the chooser's preferences. But this raises an obvious suspicion: doesn't such an account of demonstrated preference beg the question in favor of free market? After all, if only voluntary exchanges demonstrate people's preferences and voluntary exchanges are by definition rights-respecting and the free market is the emanation of libertarian (natural) rights, then the circle is closed. After unravelling all these relations, it transpires that *demonstrably* benefitting is *conceptually* confined to the free market. That is, take any other regime which does not recognize libertarian rights and the doctrine of demonstrated preferences will stay mute on whether people benefit by the choices they make or not. And the reason would be that, when thrown to non-market regimes, people would no longer choose voluntarily. So then again, even if not the most salient feature of the above reasoning, *rights-based voluntariness* critically figures in the reasoning relating demonstrated preference to the free market.

Furthermore, the very same motif recurs in chapter 4, wherein I no longer try to defend the Rothbardian apparently economic argument for the free market but instead subject it to critical scrutiny. As mentioned earlier, chapter 4 draws on my paper with Dawid Megger (2019). However, it also takes issue with what we wrote back then. Still, this chapter tries to first illuminate the plausibility of concluding – *contra* Rothbard – that not all voluntary exchanges are mutually beneficial. To this end, I employ the original (2019) thought experiment in which I juxtapose the scenario of paying a tax

collector to avoid going to prison with the one in which the proposee pays the blackmailer so that the former's secret should not be revealed. Additionally, and most importantly, in those two scenarios I allow the *legitimacy* of the proposals to vary, while trying to keep everything else (i.e. economics) equal. In particular, it is *the same* sum of money that both proposees in the end pay to avoid what they *believe* to be the sub-optimal outcome. That is why, both scenarios seem identical in *ex ante* sense. Moreover, both scenarios seem indistinguishable in terms of their respective *ex post* results: both victims pay only to make their oppressors leave without any further consequences. So, in the end, the intuition this thought experiment is designed to evoke is that at least *some* (e.g. blackmail) voluntary exchanges are as bad as involuntary ones. This chapter obviously considers some objections levelled at this very thought experiment, which makes me in turn make some considerable concessions. However, I find the said thought experiment central to this chapter (if not to the whole section on Austrian welfare economics: chapters 3–6) as it allows me to move smoothly to chapter 5, in which I consider whether the Rothbardian argument for the free market begs the question. The sense in which chapter 4 sets the stage for chapter 5 is that the former provides us with at least a *pro tanto* reason to doubt the Rothbardian proposition to the effect that all voluntary exchanges are beneficial, with the Rothbardian argument being syllogistically reconstructed in chapter 5. So, because in chapter 5 I claim that one of the premises in Rothbard's reasoning is propositionally identical with his conclusion and because I independently established (chapter 4) that this very proposition (i.e. that all voluntary exchanges are mutually beneficial) is open to doubt, I can *prima facie* plausibly claim that Rothbard's argument is viciously circular. But then again, this is not the claim that concludes chapter 5. Instead, still within its confines, I try to read Rothbard as charitably as possible, while granting the possibility that the Rothbardian argument begs the question only under my (apparently) uncharitable interpretation.

Chapter 6, on the other hand, simply presupposes voluntary exchanges instead of analyzing them any further. Granted, this very presupposition might render the whole agenda of the chapter anemic it the sense that it seems then that the only possibility I allow for is the existence of Pareto-inferior but *voluntary* exchanges, which, in turn, makes it the case that the possibility of identifying *involuntary* but Pareto-superior exchanges is beyond the scope of my investigations. The chapter is concluded by forlorn skepticism as to what should count as the relevant baseline on which (in)efficiency of exchanges should rest.

The appendix, a proofed copy of the paper Łukasz Dominiak wrote with me, might at first seem to be an odd add-on but in fact, in the eyes of libertarians, acting under threats (as threats inherently coerce) is the very opposite of acting voluntarily, one is the absolute complement of the other. So, if libertarians managed to establish which proposals count as threats, they would automatically determine in reaction to which proposals one acts *voluntarily*. So, a lot is at stake when one studies threats, especially from a libertarian point of view, when threats inherently coerce and thus render the threatened party's behavior involuntary. Having, I believe, conclusively demonstrated the subject-matter unity of the book, it is high time to elucidate the purported unity in the methodology I employ herein. So, it is now that I beg permission to express my methodological creed.

First and foremost, I cannot overstate the importance of the fact that I renounce Austro-libertarian-style *foundationalism*. That is, I do not take the non-aggression principle to be an indubitable axiom from which true consequences logically follow. By the same token, I do not regard the action axiom as a synthetic *a priori* truth, from which, coupled with some auxiliary empirical claims (e.g. the contingent fact of the scarcity of resources relative to human needs), further true implications can be deduced. Instead, I for one believe that probably the best we can make of the action axiom (i.e. man acts) is to treat it as an implicit definition; that is, for all x's, if x does not act, x is not man. However, this would ensure its truth merely by definition: a far cry from the avowed *synthetic* nature of this particular claim. So perhaps we should treat the action "axiom" on a par with scientific hypotheses? But construed in this manner, the scrutinized axiom would no longer be rock-solid. On the contrary, then we could in principle refute it by confronting the implications it yields with our well-considered judgements. That I proceed in this way is most clearly evinced in chapter 4, wherein I present a thought experiment which is designed to evoke *an intuition* to the effect that not all voluntary (in a rights-respecting sense) exchanges are mutually beneficial, the claim flying in the face of the whole Rothbardian welfare economics.

Moreover, I believe that just as much as the action axiom is *open* to criticism, so is the libertarian non-aggression principle (NAP[2]). Consider Good Samaritan law, which has it that we owe some positive duties of assistance to people in peril *even if* their peril was not caused by us and even if we are com-

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[2] As Walter Block put it, it is especially *baby* libertarians (as opposed to other libertarians) that need NAP.

plete strangers to them. Some people hold that the very intuitive appeal of Good Samaritan law constitutes a *presumptive* case against the libertarian first principles. After all, positive duties in the absence of a prior contract between the parties involved is an anathema to libertarians. So, they would have it that if I am to assist complete strangers that happen to be in peril and whose peril cannot be attributable to my agency, it is *the enforcement* of the said assistance that would amount to the use of aggressive violence. In other words, given the libertarian rejection of positive duties, physically forcing me to assist people in peril would count as an initiation of violence, and would therefore be prohibited under NAP. But then again, my position is not to stick to libertarian principles of justice *dogmatically*. Instead, I suggest reasoning in *reflective equilibrium*. The method is also visible in chapter 1, in which I claim that one of the reasons to drop the definition of 'freedom as property' is that such a concept of freedom renders the measures of overall freedom impossible. But then again, we do find some comparisons of overall freedom intuitively obvious. But it is one of the great advantages of the method of *reflective equilibrium* that it also allows for arguing *modus tollens*: if the conclusions are implausible, then revise the premises. So, *mutatis mutandis*, if the conclusions following from NAP are implausible, the worse for NAP. Under *reflective equilibrium*, we are not obligated to bite the bullet as we do not necessarily – *contra* foundationalism – treat first premises as sound and secure.

Having said that, it is high time to do justice to other methods employed herein. I cannot but mention that *practical logic* permeates my investigations and it crucially figures in chapter 5, wherein I consider whether Rothbard's economic argument for the free market begs the question or not. Moreover, the very presentation of the Rothbardian argument depends for its clarity, I believe, on a syllogistic form, which in turn implies that I avail myself of *categorical logic*. In fact, logical reasoning and conceptual analysis are – somewhat metaphorically – the guiding spirit of the present work. What I primarily care about is *consistency* as I believe that within an *inconsistent* set of beliefs, it is *logically* impossible for all its members to be true. Dialetheists may recoil at this thought but at the end of the day we have to start somewhere and classical logic with its firm adherence to the Law of Non-Contradiction seems to be a reasonable point of departure. What also deserves a mention is my frequent use of thought experiments. In fact, it is the very thought experiment employed in chapter 4 that constitutes a point of departure for considering the *logical* status of Rothbard's argument from efficiency. Moreover, thought experiments (espe-

cially chapter 1) serves to evoke some intuitions about comparisons of overall freedoms, which in turn casts doubt on the definition of specific freedoms (i.e. the libertarian definition of freedom as property). Note that the employment of thought experiments works in tandem with (or as a part of) *reflective equilibrium*. In general, I share analytic philosophers' sentiment that purely imaginary scenarios allow us to abstract from allegedly irrelevant properties of the phenomena under scrutiny and to isolate the ones that are of major interest to us. Finally, every now and then I make use of the hermeneutic method. This method also figures prominently in chapter 5, in which I try to make best sense of Rothbard's case for the free market. Still, even this *interpretive* work is guided by conceptual analysis, the standard of coherence, while being also informed by general philosophical apparatus (e.g. the consideration over whether Rothbard's *definitional* premise is real or nominal or stipulative). So, the reader who expects a methodological *anything-goes* attitude would be well-advised to put down this book at this moment. To recapitulate, if I were to account for the unity of my method, I would say that it is the prominence of the application of the method *reflective equilibrium* that does the job. And if the reader is pushy and wants to make me decide on the epistemology I advocate after I have just renounced *foundationalism*, then I would opt for *coherentism*.

I would like to conclude with a word of concession. This work does not pretend to be constructive. It does not attempt to develop an alternative libertarian theory of voluntariness. Instead, it calls into question the current state of art. In particular, the present work is designed to illuminate the suspicion that the links between many phenomena libertarians take interest in is too intimate so that it might reasonably be presumed that the said links are purely conceptual rather than real. Certainly, there is nothing wrong about conceptual truths as such. However, if concept A is *simply defined* in terms of concept B (e.g. freedom defined in terms of property), then A *cannot serve to justify* B (viz., it is impossible to *meaningfully* justify the regime of property rights by resorting to property-bound freedom). By the same token, if we simply define fraudulent agreements as such that one, conceptually or logically speaking, *cannot* enter them *voluntarily*, then obviously we cannot make sense of frauds by resorting to the thus modelled concept of *voluntariness*. It is mainly this sort of problems that this book strives to draw the reader's attention to. Moreover, I strongly believe that libertarians cannot do better than try to overcome those problems, while sharpening their own conceptual framework. If this book manages to get libertarians to make a required effort, its main mission will be accomplished.

Chapter 1

FREEDOM AND PROPERTY RIGHTS –
CIRCULARITY PROBLEM[1]

What sparked my interest in libertarianism in the first place, over and above my personal free market inclinations, was the highly arcane problem of measuring freedom[2]. Any thinkers of liberal persuasion would have it that liberty (or freedom for that matter) is a core value. Hence, it was to be expected that under any sort of *liberalism* (let alone *libertarianism*) overall freedom (both societal and individual one) is maximized. However, save rather dogmatic pronouncements to the effect that a libertarian society is a *free* society[3], I could not find any rigorous treatment of the problem in question[4]. More specifically,

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[1] This chapter is inspired and draws upon my (Wysocki, 2018) paper on the relation between freedom and property rights published by *Political Dialogues*. However, since I now find this paper lacking in precision, albeit generally correct, the present chapter sharpens the thoughts included therein.

[2] On the problem of measuring freedom, see: e.g. Steiner 1983; Dowding1992; Arrow 1995; Carter 1999; Rosenbaum 2000; van Hees 2000; Kramer 2003. Relatively *recently* (especially for me who studies Rothbard's writings from the seventies), the problem of measuring freedom was tackled in e.g. Bavetta 2004; Braham 2006; Bavetta and Navarra 2012.

[3] See: e.g. Rothbard [1982] 2002.

[4] It was pointed to me by Walter Block that there are annual reports issued by Fraser Institute (e.g. Gwartney, Lawson, Hall and Murphy 2018) purporting to measure *economic* freedom of the world. Obviously, I am very grateful to Block for drawing my attention to this fact, and thus minimizing my ignorance. However, I do not think it affects my point, for my point is that there is little right libertarians have to offer by way of elucidating what it means to have a *specific* freedom to perform *any* action, which is, I believe, a broader phenomenon than *economic* freedom.

I thought that my intellectual appetite would be satiated *only* if I could some-how make comparative judgements across political regimes in regard to their respective overall freedoms. Cardinal measures aside, it would be indeed de-sirable to elaborate on a quantifiable idea of freedom such that it would at least allow us to *ordinally* compare two political arrangements freedom-wise.

Having the above end in mind, I embarked on the investigations of liber-tarian accounts of freedom. After all, if anything, it is *libertarian* society that may reasonably be presumed to be free (or to maximize freedom, assuming that freedom is indeed measurable). However, to my disappointment, I could not find any *elaborate* theory of freedom in right libertarianism. However, Rothbard's *Ethics of Liberty* ([1982] 2002, p. 41) at least contains an account of the *free market* and *free* society. Since the Rothbardian understanding of the *freedom* of the market and of society is characteristically (and *most interesting-ly* for our present purposes) *normatively loaded*, his ruminations deserve to be quoted extensively at this point:

> [...] the free market is exchanges of titles to property, and that therefore the free market is necessarily embedded in a larger free society – with a certain pattern of property rights and ownership titles. We have been describing the free society as one where property titles are founded on the basic natural facts of man: each individual's ownership by his ego over his own person and his own labor, and his ownership over the land resources which he finds and transforms. The natural alienability of tangible property as well as man's labor service makes possible the network of free exchanges of ownership titles.

As can be clearly inferred from the above citation, the *freedom* of the mar-ket is all about exchanges of property titles. And a pretty much similar re-mark applies to the free society; it seems that the *freedom* of society reduces to *the specific way of distributing rights*; that is, in accordance with the axiom of self-ownership and the Lockean ([1689] 1952) labor theory of appropriation[5]. As we are about to see, with *freedom* and *property rights* so inextricably inter-twined, there is always the danger that *freedom* (of the market or of society) and *property rights* are tied together via *a merely conceptual link*; that is, it is (a part of) *the meaning* of freedom that certain[6] property rights are first

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[5] On the libertarian principles of justice in acquisition and transfer, see: e.g. Nozick (1974). For an accessible (albeit illuminating) overview of the said principles, see: Dominiak 2017a.

[6] And it is the Lockean ([1689] 1952) labor theory of appropriation that accounts for this *initial* distribution of rights.

distributed and then exchanged. But if so – as I shall elaborate in the forth-coming part of this chapter – the case for the complete freedom of a society founded upon natural rights is established *by definition*. In fact, that Rothbard ([1982] 2002, p. 42) conceives of *freedom* in terms of *respecting property rights* is evinced by the following quote:

> This truth will be obscured if we persist in confusing "freedom" or "liberty" with *power*. We have seen the absurdity of saying that man does not have free will be-cause he has not the *power* to violate the laws of his nature […]. It is similarly ab-surd to say that a man is not "truly" free in the free society because, in that society, no man is "free" to aggress against another man or to invade his property.

It is evident then that for Rothbard man's freedom *presupposes* property rights not being invaded. And that is why, if there are actions man has *no right to perform*, the freedom talk does not even apply. Hence, necessarily, if there are actions that man is *not entitled* to perform, his freedom is not thereby lim-ited. But given this reasoning, it is somehow ironic that Rothbard speaks of confusing freedom with power. Granted, given his *property-bound definition* of freedom, freedom is *truly distinct* from power as it is *only* the former that applies within the universe of property rights-respecting actions. But if so, as will be illuminated later, the irony is that *freedom* stops mattering (as freedom is not on this understanding any ideal *separate from* property rights), whereas *power* does. For it is *power*, as used by Rothbard, that coincides with *the notion of freedom in a descriptive sense*. And it is this very notion of freedom, as we are about to argue, that should, ironically enough, be of interest to (thin) libertar-ians. However, let us not precipitate things. Instead, let me confess that I was not dissuaded by a paucity of information pertaining to freedom in *Ethics of Liberty* and I simply kept searching.

What I ultimately managed to find is some other (more straightforward) pronouncements by Rothbard. Yet, quite disappointingly, they not only left the problem of purely ordinal comparative freedom-related judgements un-answered but also further reinforced my contention that the relation between property and freedom, as conceived of by Rothbard, is *purely conceptual*. But if so, this is no small thing since libertarians would like it to be the case that the regime of property rights *happens to be* (and not just *definitionally* is) free-dom-enhancing[7]. Still, these are far-reaching consequences to be probed yet;

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[7] That libertarians indeed resort to the concept of *overall freedom* (the one that admits of at least ordinal comparisons and thus allows us to speak of freedom-enhancement in the first

hence, before we do so, let us cite at length what Rothbard ([1973] 2006, p. 50) had to say on freedom directly:

> We are now in a position to see how the libertarian defines the concept of "freedom" or "liberty." Freedom is a condition in which a person's ownership rights in his own body and his legitimate material property are not invaded, are not aggressed against. A man who steals another man's property is invading and restricting the victim's freedom, as does the man who beats another over the head. Freedom and unrestricted property right go hand in hand.

First of all, it is to be noted that the above quote is not the most illuminating, euphemistically speaking. For instance, what does it mean that "freedom is a condition"? What is the term *freedom* predicated of? Normally, we would like to attribute freedom to people or some larger gatherings (societies, countries etc.). On the other hand, Rothbard continues by saying that the condition relates to "a person's ownership rights" not being "invaded" or "aggressed against". So, perhaps *freedom* is *a state of affairs* such that a given person's rights are fully respected. But then again, how is a person's freedom assessed *quantitatively*? And there is already a problem looming large. Suppose person A enjoys relatively few rights compared to person B, and both persons' rights are fully respected. Are we then committed to saying that the "condition" of freedom is *equally* satisfied for both of them? After all, *ex hypothesi*, their rights are fully respected. Given this bizarre conclusion, we would do better by tying our *freedoms* to actions that we have *a right* to do. Under this interpretation, a person's freedoms would range over actions he or she has a right to perform. And so, most probably, we should also conclude that person A renders person B unfree to perform action x only when A prevents B from doing x *illegitimately*. Actually, this natural understanding is in line with Cohen's construal of the libertarian notion of freedom. Cohen (1995, p. 59) labels it as *rights definition of freedom* and gives the following account thereof:

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place) is evidenced by the following quite telling citation from Rothbard ([1956] 2011, p. 602): "The freer the society, of course, the less has been the interference with individual actions, and the greater the scope of the development of each individual. The freer the society, then, the greater will be the variety and the diversity among men, for the more fully developed will be every man's uniquely individual personality". Without doubt, Rothbard appeals here to the so-called *overall freedom*, or the sheer number of options open, for it is only *this* concept of freedom that *coherently* allows for comparisons (i.e. freer or less free).

[…], I supposed that to prevent someone from doing something that he wants to do is to make him, in that respect, unfree: I am *pro tanto* unfree *whenever* someone interferes with my actions, *whether or not I have a right to perform them, and whether or not my obstructor has a right to interfere with me.* But there is a definition of freedom which informs much libertarian writing and which entails that interference is not a sufficient condition of unfreedom. On that definition, which may be called *the rights definition of freedom*, I am unfree only when someone prevents me from doing what I have a right to do, so that he, consequently, has no right to prevent me from doing it.

So, according to the rights definition of freedom, preventing a person from what he or she would be otherwise *able* to do is only a necessary condition of rendering person A *unfree* to do it. It is the following two necessary conditions which are *only jointly sufficient* to render a person unfree:

1) A person must be prevented from φ-ing and
2) The person must have a right to φ.

To put it less technically, any person is *rendered unfree* to perform a given action only if that person is prevented from performing it *and* he or she enjoys a *right* to perform it in the first place. Still in other words, *preventings* do not matter alone. It is *right-violating preventings* that make their victims *unfree*. After all, as noted by Cohen, if it was assumed that "someone prevents me from doing what I have a right to do", it does indeed follow that, in consequence, a perpetrator "has no right to prevent me from doing it". Fair enough, but what are the assets (if any) of the said definition and what is its price?

First, at least *prima facie*, it seems that this rights-based notion of freedom is in keeping with the typically libertarian centrality of property rights. In other words, as established above, freedoms and unfreedoms are *a function* of property rights. Specifically, the *rights definition of freedom* would not regard any person *free* to φ unless that person has a right to φ in the first place. And a similar remark applies to unfreedoms: no person is rendered unfree to φ unless that person enjoys a right[8] to φ, with the latter being a necessary condition of the former.

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[8] Unfortunately, in most libertarian contexts, the word "right" is not used univocally; that is, its use wavers between Hohfeldian (1919) *claim* and Hohfeldian *liberty*. The reason we invoke this distinction at all is that some pedantic Hohfeldians might object at this point that a right to φ is some curiosity transcending the tried and trusted Hohfeldian framework. However, the feeling of uneasiness should disappear once they realize that a right to φ is an elliptical expression standing for a combination of two legal positions: 1) a liberty to φ *and* 2) a right against other people's interference with the right holder's φ-ing

Second of all, and probably most importantly, it seems that the rights definition of freedom would allow libertarians to guarantee that the *free* market, as defined as a totality of voluntary (viz., *rights*-respecting[9]) exchanges, is indeed *free*. Moreover, as noted by van Dun (2009), the libertarian moralized notion of "freedom as property […] serves them so well in their critiques of interventionism and collectivism". Granted, we would indeed like to be able to say that both interventionism and collectivism are freedom-diminishing. And libertarians *appear* to provide us with a deeper explanation of why it is so: freedom is inextricably intertwined with property rights, and interventionism is, *first and foremost*, about (property) rights violation. After all, most libertarians believe in *natural rights* as opposed to *merely legal* rights[10]; and against this backdrop, state's interventionism inevitably counts as right violation. And as we already know from *the rights definition of freedom*, right-violating preventings account for unfreedoms. The combination of the above two statements allows us to infer that state's interventionism diminishes the freedom of the parties affected. So far, so good. But what is the price of the adoption of the libertarian moralized definition of freedom?

To answer that question, let us pretend that we have *no prior beliefs* about how freedom relates to (property) rights. In particular, *first* suppose that we have never heard of the libertarian moralized definition of freedom and *then* unbiasedly consider the following relevant excerpt from van Dun (2009):

> Which judge is closer to the libertarian spirit and more likely to contribute to conditions of peaceful coexistence? One who dismisses the complaint because the neighbors do not trespass on the property of the complainant, or one who is willing to hear the complaint and, if it turns out to be justified, willing to decide that the neighbors are under an obligation to grant a right of way to the complainant? One who merely looks at observable movements across property boundaries, or one who considers that the protection of property, however vital to the preservation of freedom it may be, is nevertheless only a means to freedom and not its fulfillment? Which argument is more likely to be universalizable? That property rights are sacrosanct, or that freedom is sacrosanct?

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[9] For this definition, see: Rothbard [1956] 2011. This Rothbardian definition of the free market will actually permeate chapters 3–6.

[10] This is most evident in Nozick's (1974) construal of *the state of nature*, which is already *partly moralized*; that is, individuals therein already enjoy their *(natural) rights*. For other examples of libertarianism(s) founded upon natural rights, see: e.g. Rothbard [1982] 2002; Barnett 1998; Hoppe 2006. Hoppe's natural-rightism is manifested in his rationalistic and highly sophisticated *argumentation ethics*, which is in turn adhered to by e.g. Kinsella (1992, 1996) and Block (2012).

Before we closely scrutinize the above citation, there is one doubt to dispel. The libertarians subscribing to the rights definition of freedom may always retort that any finding to the effect that freedom is only contingently related to (property) rights begs the question against their favorite *moralized* conception of freedom. But that does not have to be so. If our intuitive but considered judgement prompts us to conceive of freedoms and unfreedoms *independently of property rights*, then we would have at least a *pro tanto* reason against the rights definition of freedom. Then, it would not need to be the case that *the only reason* we should believe our considered judgment is *the denial* of the definition of freedom in terms of (property) rights. Moreover, if – upon scrutiny – the rights definition of freedom proved to be *stipulative*, we would have no reason at all to defer to it. After all, what a stipulative definition achieves is to introduce some terminological regulation. With this caveat in mind, let us *impartially* reflect on the above passages by van Dun.

What strikes us immediately is that van Dun clearly regards claims for freedom on the part of non-owners as competing with complaints on the part of owners. Furthermore, and most interestingly, van Dun seems to model his libertarian judge in such a manner that the latter is to adjudicate between two *instrumental values*, with both of them contributing (whether *causally* or *constitutively*) "to conditions of peaceful coexistence". In other words, what is at stake in this imaginary scenario is apparently the *specific freedom* to pass through some owned premises. And van Dun finds the following a meaningful question: can the complainant legitimately claim "a right of way" or should the libertarian judge dismiss his claim? If we indeed find it a well-formed[11] question, then we are committed to view the libertarian judge's job as a *meaningful* adjudication between *competing claims for freedom*. After all, what the libertarian might do, according to van Dun, is to "grant a right of way to a complainant".

Our aim here is *not to* actually put ourselves in the imaginary libertarian judge's shoes and adjudicate between the neighbors' and the complainant's claims but rather to make a *conceptual* point. To reiterate, if van Dun's imaginary case *just makes sense*, then we are equipped with at least a *pro tanto* reason *not to* construe freedoms or unfreedoms as property-bound. For van Dun's scenario assumes that neighbors are indeed property owners and the complainant is not. And still (despite the fact that the former are owner and the latter is not), the libertarian judge is facing the dilemma whether "prop-

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[11] Not grammatically, of course, but conceptually.

erty rights are sacrosanct, or that freedom is sacrosanct". But then again, if freedoms and unfreedoms were fully parasitic on rights, then the libertarian judge would have literally nothing to do since according to the rights definition of freedom, the complainant's being prevented from crossing the neighbors' premises would not be thus rendered unfree since he had no right of way (no easement) in the first place.

In fact, there is a well-established tradition of conceiving of principles of justice as distributing freedoms, the point van Dun (2009) also makes[12]. If we take libertarianism, its principles of justice in acquisition first distribute property rights[13] and then it is property rights that serve to distribute freedoms. More technically, *property rights* ensure some *perimeter* of freedom; that is the former simply safeguard the latter. After all, on this understanding *freedom* is not a normative concept[14] but the interest therein has a normative justification for, without a doubt, people *care about* freedom in a descriptive sense (i.e. an ability to perform actions). Actually, the general distinction between *moral facts* and *morally relevant facts* will be a recurrent motif once we shall tackle the problems of Austrian welfare economics. For now, let us just briefly illustrate the difference between a *non-normative fact* and *its normative justification*. In my paper on freedom and property rights (Wysocki, 2018, p. 46), I illustrated the distinction, while resorting to the following example from the realm of sport:

> Let us consider weight-lifting. Having, say, ten contestants, we can arrange them in a descending (or ascending) order of physical strength based solely on how many kilograms each of them can lift. Needless to say this is due to a neutral *measure of the mass* each contestant was able to lift. Obviously, to conclude that the one who lifted more weight is a *better sportsman* takes an evaluative premise in the form of 'the more, the better'. Yet, it does not imply that our criterion is evaluative. Quite to the contrary (sic!), it is only its employment that is normative; or rather, *the justification* of a purely nonevaluative criterion is normative but *the content* thereof is still purely descriptive. The same applies to the notion of freedom adopted here. Its content is purely descriptive but the justification of its use is normative. After all, we are interested in our respective overall levels of freedom; freedom matters to us. And, last but not least, rather analogously to our weight-lifting case, it can hardly be contested that the more freedom, the better.

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[12] For various principles of justice as distributing freedom, see: e.g. Hayek 1960; Rawls 1971; Miller 1983; Narveson 1985; Steiner 1994; Van Parijs 1995; Carter 1999.

[13] See: e.g. Nozick 1974; Dominiak 2017a.

[14] As opposed to Hohfeldian liberty, which is an absence of duty of the opposite tenor.

However, do not let this aside distract us from a further point we were about to make. If principles of justice are supposed to distribute freedoms two consequences of utmost importance follow. First and foremost, it might well be the case, as envisaged by Carter (1999, chapter 4), that it is overall societal freedom that exerts pressure on principles of justice to distribute it. But if so, then we can at least *make sense* of *freedom being logically prior* to property rights. Second, if property rights distribute freedoms, then they must also distribute unfreedoms as these two are simply two sides of the same coin[15]. In other words, once we grant that rights serve to distribute freedoms (viz. they ensure a perimeter of freedom), then *the same rights* must necessarily prevent other people from doing what the said rights enable right-holders to do. As we can see then, we do indeed have at least a *pro tanto* independent reason (i.e. the one that does not assume the denial of the rights definition of freedom) to doubt the libertarian moralized definition of freedom in terms of rights.

However, we can also cast doubt on the rights-based definition of freedom by spelling out its logical consequences. Let us first recall that Rothbard's viewed freedom as a "a condition in which a person's ownership rights in his own body and his legitimate material property are not invaded, are not aggressed against". But this has the following most unfortunate implication. Suppose there are two societies: X and Y. X is in the Hobbesian state of nature; that is, *any pair* of members of X are *at liberty* towards one another to perform *any action whatsoever*. Still more technically, for all x, with x ranging over agents and for all y, with y ranging over performable actions, x is at liberty towards everybody else to perform y. And less technically and more intuitively, members of X do not owe to each other any actions or abstentions. For literally all the members of X, every action or omission is permissible. Of course, this pervasiveness of liberties implies the complete absence of duties, and – correlatively – of rights. But here comes the crux of our argument: since there are *no rights* held by anybody in X, there can be, trivially, no rights violations. There may indeed be violence (and the Hobbesian state of nature was designed to invoke the images of violence in the first place) but it would not be *aggressive* violence; viz., violence exercised in the Hobbesian state of nature would not add up to right violation for a simple reason that there are no rights in the first place. However, since freedom is a condition under which rights are not violat-

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[15] As Cohen (1981, p. 227) put it: "[…] private property is a distribution of freedom *and* unfreedom".

ed, the Hobbesian state of nature must – logically speaking – be deemed *free* and most likely to the highest possible degree. By way of contrast, let us now look how freedom fares in society Y, which is a plain society with its ebbs and flows: there are multiple rights conferred upon its residents, with *some* of them being violated and *some* of them being respected. Since the Rothbardian formula predicts the occurrence of unfreedoms *to the same extent* to which rights are violated and because in society Y, there are indeed, *ex hypothesi*, some rights violations, there are also at least *some unfreedoms* in Y. But this shows that the Rothbardian conception of "freedom as property" yields the most counterintuitive judgement: that society X is by all means freer than society Y. But remember, society X is the brutish Hobbesian state of nature, whereas Y is a pretty ordinary society (granted, not a libertarian ideal) with the majority of rights being respected. We leave it to the reader to judge whether the above argument is a successful *reductio* of Rothbard's position.

Still, Rothbard's advocates may argue that Rothbard's definition *presupposes* the existence of rights, which would make the Rothbardian freedom/unfreedom talk simply *inapplicable* to the Hobbesian state of nature: in a society in which there are no rights, it is not the case that there is *freedom*; rather, the categories of freedom and unfreedom simply *do not apply* to it. This is a possible line of defense but it is of little help when confronted with the following imaginary scenario.

Imagine a dictatorial society Z in which *the only right-holder* is the dictator himself. Moreover, let us stipulate U: the universe of all possible actions (and omissions) performable by all the other members of Z. Now, let A be those actions (and omissions) that each member owes to the dictator as a duty and A' be this proper subset of U that constitutes actions (or omissions) every member of Z is at liberty to perform towards everybody else except towards the dictator. By stipulation, A and A' are disjoint and jointly exhaustive of U. Suppose also that no rights violations occur in Z; viz., all the members of Z defer to the dictator and discharge their duties diligently. Now that we have obviated the trivial possibility of no rights being violated due to the very absence of rights, we may more interestingly ask: is society Z *fully free*? After all, society Z was so designed that there should be *some* rights in the first place *and* that they be not violated. So, the Rothbardian "condition of freedom" obtains. But this is plainly absurd. Moreover, we can strengthen our intuition even further by imagining the dictator in Z shackling all its members. Since all the members of Z apart from the dictator himself do not enjoy any rights, should we conclude,

following Rothbard, that upon shackling *no unfreedoms* occurred? If the reader finds this conclusion absurd, he or she has an adequate reason to disbelieve the rights definition of freedom.

Now, Rothbard's adherents might retort that our stipulated society Z contains *merely legal rights* (i.e. the ones held by the dictator) as opposed to rationally justified natural rights, with *merely posited legal rights* not being recognized by the libertarian moral code. But this remark ultimately *reduces* to the above-considered possible rejoinder that Rothbard's formula presupposes the existence of *rights* and since *merely legal rights* have no moral significance for libertarians, Rothbard and his followers might again find the freedom talk *inapplicable* to society Z. But this runs into two objections. First, if the concept of freedom is *getting modelled* in such a way that it is a function of *only libertarian* (deontological) *rights*, then it *trivially* follows that we can talk of freedom (or unfreedom for that matter) *only in a libertarian society*. Shouldn't this conclusion give libertarians pause? Wouldn't they like to say that there is *more* freedom in a libertarian society, as compared to, say, a socialist one[16]. But if the notion of freedom is *libertarianism-bound*, the above comparison would be impossible in principle. Second, we can easily turn society Z into a libertarian society Z' by stipulating that society Z's members *voluntarily* gave up their respective liberties towards the dictator[17]. Since a valid consent is morally transformative[18], then *even libertarians* would recognize the rights of "the dictator" in Z' and, correlatively, the duties of other members therein. But then again, suppose that "the dictator" whimsically shackles his subjects. They can barely move. Since the dictator's subjects may not *legitimately* complain, Rothbard would deny that upon shackling them, some unfreedoms occurred. But this is the most implausible conclusion.

But if the reader is still unconvinced, I propose to consider the following scenario. Imagine that person A commits a crime and the libertarian judge sentenced life imprisonment. Because *from now on*, no right violation occurs (the criminal forfeited some of his rights by committing a crime in the first

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[16] And they in fact do so. The comparisons between capitalism and socialism (also in terms of freedom) permeate Hoppe (1989). Therefore, it is indeed a big deal for libertarians to bolster their contention that a libertarian society is free (if not the freest).

[17] With an apology to "the dictator" in society Z' as the person to whom all the others voluntarily gave up their respective liberties is not a real dictator. We keep using the term 'dictator' in Z' to highlight (or to pretend?) that *ceteris paribus* is satisfied. Of course, not much turns on whether the person to whom all the duties are owed is a 'real' dictator or not.

[18] On consent as "morally transformative", see: e.g. Wertheimer 2003, 2012.

place), Rothbard should conclude that a criminal is going to prison *freely*. But if going to prison is not a *paradigm case* of doing something *unfreely*, we do not know what is[19].

Finally, my last charge against the Rothbardian *rights definition of freedom* is that if occurrences of freedoms or unfreedoms were to be *fully* parasitic on prior rights, then there would be indeed *little of interest* about freedom itself. If a complainant A accuses person B of rendering him *unfree* to φ, the moral significance of this complaint reduces to a *right-violating* character of the preventing in question. Remember, on the *moralized* account of freedom, B renders A unfree to φ iff B *illegitimately* prevents A from φ-ing. But then again, if preventings do not matter *per se*, then A *in effect* complains that B violated A's right (i.e. the right of not being interfered with held against B). If our analysis is correct, this makes the concept of moralized freedom theoretically redundant. If the complaint of being rendered *unfree* to φ does not add up to anything over and above having one's right (the one of non-interference) violated, then unfreedoms at worst complicate the picture and at best serve as a terminological shorthand. This reminds me of Zimmerman's brilliant (1981, pp. 122–123) treatment of a moralized notion of coercion, which merits being quoted in full:

> To be sure, defenders of capitalism are perfectly prepared to argue that this economic system is morally acceptable and apologists to argue that it is not, but they have generally been under the impression that the dispute over the coerciveness of capitalist relations of production is a dispute about freedom, not justice or utility. But if coercion were an essentially moral concept, then this would be mere appearance: the only real issue would be over those prior rights and wrongs. Once the battle is over, one would be in a position to say whether or not capitalist relations of production are coercive, but at that point who would care? The only real issue would already have been decided.

The above remarks by Zimmerman apply *mutatis mutandis* to the moralized concept of freedom. Indeed, if unfreedom and freedom were to be a moralized concept, then the only point at issue would be whether *prior rights* were violated or respected, respectively.

Moreover, we can perhaps additionally *strengthen* our previous point to the effect that justice-based definition of freedom leaves *little of interest* about freedom itself. In my (Wysocki, 2018) paper, I produced a series of thought exper-

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[19] I am indebted to Łukasz Dominiak for this comment.

iments designed to bring to light the intuition that *freedom as such* matters, or that freedom is *an independent ideal*, if you will. First, I (2018, p. 41) invited my readers to image larger-than-life *perfectionist* principles of justice:

> […] let us suppose, *arguendo,* that there is only one value worth striving for and therefore conducive to a person's self-fulfillment, and that is, surprisingly enough, writing books. With such a narrowly defined idea of good life, bizarre consequences follow. […]. we would have to conclude that the only way to limit our freedom in such a possible world is to prevent us from writing books. Any other preclusions do have no bearing whatsoever on freedom-diminishing. It must be conceded that when we are prevented from doing any action that is necessary to write a book, then we are also effectively precluded from the latter, say, our hands are cut, our ink stolen etc. However, any other prevention not related to the action of book-writing does not have a bearing on the level of our freedom at all. So as long as a person can write a book, him being leg-bound cannot constitute a restriction of his freedom, the most unwelcome conclusion.

But we can easily generalize the above point. Once *any* justice-based definition of freedom is adopted, one willy-nilly (albeit *covertly*) gives up the idea of an independent *non-specific* value of freedom. Therefore, it is *no surprise* that libertarians subscribing to the rights definition of freedom are indeed able to *logically* conclude that there is *no conflict* between private property rights and freedom. However, it is a Pyrrhic victory since it implies the resolution of the said conflict by a *methodological fiat* (i.e. by simply *defining freedom* as an ability to do what one *has a right to do* in the first place) (Wysocki, 2018, p. 44). But then again, this move *not only leaves little of interest about freedom*; worse, it makes *freedom* actually drop out of the picture. Given this, it is somehow *ironic* that Nozick argued against Dworkin's thesis of the compatibility of equality with freedom by saying that "a Muslim fundamentalist could just as easily show liberty to be compatible with Muslim fundamentalism by defining liberty as 'the power to do what one is able to do in an ideally Muslim fundamentalist society'" (Carter, 1999, p. 72, footnote 8). Nozick's reply – albeit witty – is *ironic* taking into account his own idea of rights-based freedom and rights-based voluntariness (Nozick, 1974). In other words, it is *equally easy* for Nozick to show the compatibility of private property rights and freedom by employing the rights definition of freedom. But just to reiterate, this *definitional move* in fact makes the freedom talk redundant and at the same time disposes of *freedom as such* as an independent ideal. Actually, given the fact that Rothbard and Nozick subscribe to the rights definition of freedom, it is

all the more surprising that they do not expressly admit that the focal point of their libertarianism is *property rights alone*[20].

In light of all of the above arguments, my original (Wysocki, 2018) contention to the effect that libertarians *should feel*[21] the dilemma between the adoption of a moralized concept of freedom and its descriptive counterpart got further solidified. Just to reiterate, on the one hand, (1): libertarians would like it to be the case that the free market (defined in terms of uncompromisingly respecting *property rights*) somehow *guarantees* than no unfreedoms occur thereupon. On the other hand, (2): they *would like* to *non-question-beggingly* establish that a libertarian society *maximizes* freedom; that is, they would like to say that the sort of society they advocate is at the very least *freer* than, say, a socialist one (if not *any other* society imaginable)[22]. The problem is that making these two statements is incompatible with employing the notion of freedom *univocally*. Note that (1) presupposes *some* moralized notion of freedom since (1) strives *to establish* that there are *necessarily* no unfreedoms on the free market. Conversely, if freedom were to be defined in purely descriptive – and hence, market-independent – terms, it would be *only contingently true* (and hence, there would be no guarantee) that there are no unfreedoms on the free market. By contrast, (2) depends for its comprehensibility on a *descriptive concept of freedom*. After all, we want to measure freedom under (2). Specifically, we want to make comparative assessments as to *overall freedom* under given political regimes. It is no wonder then that (2) relies on a political-regime-independent idea of freedom, which in turn implies, most interestingly for libertarians, a *free-market-independent concept of freedom*.

In Wysocki (2018), I suggested that to break the bind libertarians should bite the bullet and embrace a descriptive notion of freedom. What I, unfortunately, left underdeveloped is the possibility that the employment of a moralized notion of freedom simply *prejudges* that it is a libertarian society that is maximally free. Note that, we already subjected the moralized notion of freedom to some independent tests. As established above, "freedom as property" does not allow us to capture well-considered judgements of ours. For example, the moralized concept of freedom clashes with our linguistic intuition; in par-

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[20] As Łukasz Dominiak suggested to me in one of our private conversations, perhaps a more fitting label capturing the real ideal libertarians subscribe to (i.e. property rights) would be *propertarianism*.

[21] Since my point is purely normative, I could not care less whether they in fact do.

[22] And in fact, they do say so. For some evidence, see: e.g. Rothbard 1982; Hoppe 1989.

ticular, it predicts that once justice is given its due, a criminal goes to prison *freely*. Additionally, as Carter claims (1999, p. 71), "[a]ccording to most people's linguistic intuitions, there are just restrictions of liberty and unjust restrictions of liberty". By contrast, on the rights-based understanding of freedom, the phrase "unjust restrictions of liberty" would be *pleonastic*, whereas "just restrictions of liberty" would be *oxymoronic*. We may, of course, happily concede that linguistic intuitions do not equip us with a knock-down argument against the rights of definition of freedom, while simultaneously claiming that they *do* count for something. Given the above analysis of the Rothbardian idea of freedom, it seems that Rothbard's formula of "freedom as property" might be *at best* interpreted as an *implicit definition*. Technically, "[f]reedom [as] a condition in which a person's ownership rights in his own body and his legitimate material property are not invaded, are not aggressed against" would not then be interpreted as *synthetically* stating *some relation* between *freedom* and *property*. Quite the contrary, the Rothbardian formula conceived of as an *implicit definition* would rather *define* freedom *in terms of* property and thus it would be *impossible by definition* to observe instances of freedom *independent of* the idea of property or to observe instances of unfreedom *independent of* property rights violations. But then again, given our intuitions (be it moral or linguistic), there is indeed *little merit* (if any) in speaking of "freedom as property".

So, finally, having presented major demerits of the moralized notion of freedom, it is high time to delve into a descriptive notion thereof. Yet, before I argue what *sort* of idea of freedom libertarians would do best to adopt, some general account of *non-moralized* freedom is due at this point.

First of all, as I am going to argue that libertarians *should* have a stake[23] in personal or societal *overall freedom*, we would be well-advised to take heed of the debate (e.g. Carter 1999, pp. 31–67) on whether freedom matters *non-specifically*; that is, *over and above* the value of actions one is *free* to perform. For example, Hayek (1982, p. 40) claims that *freedom as such* (i.e. the sheer number of opened doors) *matters* for human progress and it is our *ignorance* of where progress will take us that makes *freedom as such* valuable. As Hayek (1982, p. 31) put it himself: "If we knew how freedom would be used, the case for it would largely disappear". The Hayekian case for increasing overall freedom

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[23] This especially applies to so-called 'thin' libertarians. Bear with me. The difference between 'thick' and 'thin' libertarians is going to be elucidated shortly.

seems to also apply at the level of individuals. A little argument to that effect might assume the following *modus ponens* form:

P1:   If we are *ignorant* of our future plans, needs or desires, it is better for us to have *greater* overall freedom, *ceteris paribus*.
P2:   We are *ignorant* of our future plans, needs and desires.
C: It is better for us to have *greater* overall freedom, *ceteris paribus*.

On the other hand, Ian Carter (1999, p. 32) – another proponent of the non-specific value of freedom – powerfully appeals to the ineradicable (albeit extreme) phenomenological experience of *non-specific value of freedom*. Consider the following:

> That the love of liberty can be something more than just the love of being free to do certain specific things is initially best made clear by means of an extreme example: think of how a prisoner feels on suddenly being released, or of the sentiment of a people on overthrowing an oppressor.

Indeed, it is difficult to deny that a prisoner who has just been released does not value *freedom as such*. After all, the very situation adduced by Carter assumes that the prisoner has "suddenly" got released; so, it is *the very fact* of the sheer number of options increased that the prisoner finds so exhilarating.

Furthermore, the Enlightenment tradition (e.g. Mill) was rather mute – *contra* Aristotle – on man's *telos*. Namely, whereas in Aristotle, one could find *substantive* considerations on what makes one's life go best, Enlightenment thinkers as well as contemporary liberals evade debates over what good life consists in (see: MacIntyre 1981; Leoni 1991; Barnett 1998). Given the latter's *uncertainty* as to what constitutes good life, it is *precisely freedom as such* that contemporary liberals (let alone libertarians) mostly are and *should* be interested in. In fact, there is the strand of thought within libertarianism labelled as *thin libertarianism*[24], which *explicitly* repudiates any *specific* idea of good life. And if so, wouldn't that be *especially* in the spirit of non-judgemental *thin libertarianism* to take *utmost* interest in *freedom as such*; that is, to prioritize the *non-specific value* of freedom? Block (2015, p. 11) puts the creed of *thin*

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[24]   The person that I take to be one of the most (if not the most) prominent proponents of thin libertarianism is Walter Block (2015). Another outstanding figure in this field is – among others – Gordon (2011).

libertarianism very succinctly, albeit very informatively: "[…] the sole concern of the thin libertarian is explaining and understanding the permissible use of force: only in defense, period". By contrast, as Block (p. 11) has it that thick libertarians[25]

> […] add much more to this perspective: views on music (rock and roll is good), on tolerance (this is a key element of libertarianism for them), on inter-racial marriages (something to be celebrated), many career changes (to be welcomed), large corporations (eschewing them).

Most certainly, thickists do not have to bother with having views on music but the contrast between thinists and thickists is clear enough[26]. It is the latter camp that *asserts* some values over and above the characteristically libertarian non-aggression principle. But then again, given the fact that *the sole* moral problem being of interest to thinists is the permissible use of violence, wouldn't (and shouldn't) thinists find the idea of *overall freedom* appealing? After all, they *programmatically* take no stance over *proper*, or right or praiseworthy uses of one's freedom. Thinists might indeed say that the only thing they care about is *freedom*. But remember, the libertarian freedom is property-bound. That is, one is free to do what one has a right to do. Therefore, with thinists' uncompromising commitment to property rights and *their programmatic indifference towards other values* (e.g. tolerance, affirmative action), what it takes to convince thinists of the validity; nay, of great moral relevance of *freedom as such* (i.e. of the *non-specific value of freedom*) is to make them recognize the futility of the idea of "freedom as property". Only then would thinists recognize that property rights *distribute* freedom[27] and it is the latter that allows people to pursue their *differentially* understood self-fulfillment. And it is in this sense that freedom has *a non-specific instrumental value.*

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[25] Thick libertarians include – among others – Tucker 2014; Zwolinski 2011.

[26] Incidentally, Block (private correspondence) expressed the distinction between thin and thick libertarianism in an unforgettably picturesque and amusing style: "Thin libertarians are those who think libertarianism consists of the non-aggression principle and private property rights, and that's it! Thick libertarians also agree to this, but then add other criterion. For example, left wing thicksters add on the requirement that you support homosexuals, black lives matter, inter-racial marriages, charity, helping the poor, not being hateful, etc. Right wing thick libertarians also add on these requirements, but in the very opposite directions: you have to oppose all of these things. Thinists like myself say that we libertarians, qua libertarians, have absolutely no views on any of these issues, nor on chess, nor on swimming, nor on music nor on anything else".

[27] And to admit that property rights *distribute* freedom is to give up the rights definition of freedom.

Having said that, we should now take a closer look at what this much desired descriptive idea of freedom *should* look like. Note that we would welcome such an idea of descriptive freedom that would make sense (at least *conceptually*, if not *in practice*) of measuring overall freedom. At the very least, we would like to make sense of ordinal comparisons of overall freedom across political regimes. After all, as already mentioned, libertarians make claims to the effect that a libertarian society *maximizes* freedom. So then again, if a *cardinal expression* of overall freedom is off-limits, what is left at stake is to somehow show what it would be, conceptually speaking, for a libertarian society to be freer than any other political arrangement. And, as established above, thus delineated ends can be served only by the *descriptive* concept of overall freedom. Most certainly, to be able to measure freedom across different political regimes, we must, first and foremost, *divorce* freedom from *justice*. More specifically, freedom should not presuppose any particular principles of justice for *any* justice-based conception of freedom immediately begs the question in favor of *some particular* principles of justice, depending on which principles of justice freedom is based on. Second of all, we should have at our disposal such a concept of overall freedom that does not predict that any overall freedom (whether societal or personal) is *the same*.

Fortunately, in subject-matter literature on freedom, there is an idea of overall freedom that serves our purposes perfectly. This conception was elaborated by Matthew Kramer (2003). Kramer primarily avoids the possibility that overall freedom could ever prove to be the same (that is equaling 1) by introducing a subtle trichotomous division into a) freedom; b) unfreedom and c) mere disability. It is the introduction of the category (c) that allows Kramer to avoid an absurd conclusion that overall freedom can be identical across different individuals (or societies for that matter). Note that if overall freedom is always a share of freedoms in freedoms plus unfreedoms[28] (e.g., Steiner 1983; Carter 1999, Kramer 2003), then if freedoms are ever infinite (viz. the numerator of the formula is infinite) and unfreedoms are finite, then the overall freedom is 1 *whatever the number of unfreedoms*. And this is exactly where the Kramerian remedy kicks in. Basically, the point is to avoid the possibility that the numerator of the formula equals infinity. And Kramer's (2003, p. 15) idea is that it is not just *any* unprevented action that makes an action that a person is free to do. In other words, not being prevented from ϕ-ing is not a sufficient condition for

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[28] Steiner's (1983) formula for overall freedom is $F_o = F/F+U$

making us free to φ. Therefore, if the lack of prevention from A's φ-ing would automatically render A free to φ, then A's freedoms would be infinite, and then A's overall freedom would be **1** – just as anybody else's. After all, it seems at least *prima facie* true that there are infinitely many actions that *nobody* prevents us from performing. For example, *nobody* prevents me from travelling round the galaxy now. Nor does anybody prevent me from smoking ten cigarettes at the same time etc. However fine- or coarse-grained the descriptions of our actions are to be, there is always a possibility of specifying an infinity of such examples. And that is the reason why Kramer demands from freedom the satisfaction of another condition: being able to φ in the first place. So, it is for that reason that not being prevented from travelling round the galaxy does not automatically translate into being free to do so for one does not have *the ability* to travel round the galaxy in the first place. Additionally, Kramer's way of conceiving of freedoms tallies well with our usual use of the term 'prevention'. It would be indeed strange sort of *prevention* that would prevent people from what they would be otherwise unable to do anyway. So, most naturally, on Kramer's account, it is also unfreedoms to perform certain actions that presuppose *prior ability* to perform them. Says Kramer (2003, p. 15):

> **U Postulate**: A person is unfree to φ if and only if both of the following conditions obtain: (1) he would be able to φ in the absence of the second condition; and (2) irrespective of whether he actually endeavours to φ, he is directly or indirectly prevented from φ-ing by some action(s) or some disposition(s)-to-perform-some-action(s) on the part of some other person(s)

We should pause now and consider the merits of the Kramerian idea. What strikes us first is that it also *correctly* predicts that nobody's *freedoms* are infinite *in absolute terms*. Note, if the lack of prevention were *the sufficient condition* for freedoms, then everybody's *freedoms* would be infinite – the most counter-intuitive result. By contrast, according to Kramer, *nobody's* preventing a given person from φ-ing constitutes *only a necessary* condition for that person's being free to φ. The other necessary condition for the person's being free to φ is his or her ability to φ in the first place. And as I (Wysocki, 2018, p. 46) originally put it: […] because our abilities are far from infinite, our freedoms *a fortiori* cannot be infinite"[29]. And since Kramer's view predicts that for every

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[29] A hair-splitting critic might at this point retort that whether our abilities are finite or infinite ultimately depends on *the level of specificity* of describing our actions. Granted, even if the person's only ability was to walk, we could claim that he or she can walk at many various

x, x a person, x' freedoms *and* unfreedoms are *finite*, everybody's *overall freedom* is *normally* a *proper fraction*. Of course, it is conceivable that a person's overall freedom is 1 – the extreme case in which the person is unprevented from exercising *all* of his or her abilities. However, the overall freedom being 1 does not complicate the picture at all[30]. This still *seems* to allow for, at least *conceptually*, comparing overall freedom across individuals or societies.

However, even at the conceptual level, the prospects of measuring overall freedom are not so rosy. As conceded above, there is no *principled* way of individuating abilities. We would like to be *primarily* able to preclude the possibility that our abilities are infinite without resorting to *ad hoc* moves. Additionally, the reason why we should be equipped with some *normatively neutral* way of counting abilities (and hence, freedoms) is that we would not like to beg any questions in favor of some *perfectionist* principles of justice. After all, as we argued, political philosophers of liberal (let alone libertarian) persuasion are interested (or at least should be) in *non-specific value of freedom*. By contrast, if we *count only particular abilities* people of a certain society have (such as, say, paying pious respect to a diving emperor, praying etc.) and they happen to be *unprevented* from exercising *these abilities*, it would turn out that it is *theocracy* that maximizes freedom. The only way to avoid such an absurd conclusion is to stick firmly to a *neutral* (i.e. normatively "unloaded") way of counting abilities. Only this sort of counting can guarantee capturing the *non-specific* value of freedom – something liberals and libertarians should (and do) have a stake in.

Another *theoretical* problem is Steiner's (1994, p. 52–54) Law of Conservation of Liberty. Basically, Steiner claims that there is no point in speaking of *maximizing* societal freedom since overall societal freedom is a zero-sum game; that is, *increasing* one person's overall freedom implies *decreasing* somebody else's. Although the claim is contentious (e.g. Carter, 1999, chapter 9), Steiner's law has some intuitive appeal. Consider two agents (A and B) compet-

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places: $\{X_1, X_2, X_3… X_n\}$ in the company of various people: $\{P_1, P_2, P_3… P_n\}$ wearing various sorts of shoes: $\{S_1, S_2, S_3 …S_n\}$ etc. And although *n* is finite, the aspects (e.g. destinations, ways of walking, pace of walking etc.) under which we consider the person's walking are *infinite*. In other words, what we lack is some *principled* way of individuating the person's abilities. Although the issue seems important, for our present purposes we shall adopt a commonsensical view that *strutting* or *mooching* are merely two instances of the very same *one* ability (i.e. to walk).

[30] Since – whatever the way of *individuating* both freedoms and unfreedoms – the number of both freedoms and unfreedoms would be expressed by a natural number – the overall freedom (F/F+U) will be always expressed by a rational number.

ing for the appropriation of some particular distant parcel of land. For the sake of argument, also assume that their competition is legitimate, to wit: while competing, they do not violate each other's rights. Now, suppose it is A that came to the spot *first*[31]. In retrospect, we can safely say that A was indeed free to come to the sport first and thus to appropriate the land. But given the fact that it was A who came to the spot first, was B also free to come to the said spot *first*? If we tend to think that the answer is 'no', then we would probably agree with Steiner's Law of Conservation of Liberty. Then we would be probably also ready to say that since, necessarily, either A or B exclusively can come to the spot *first,* only one of them is *free* to come to the spot first – we just do not know which one before the race begins. As it is clear to see, Steiner's Law weakens the case for the maximization of overall freedom: it would be only due to our *ignorance* of the ultimate outcome that we would be prone to assign freedom to come to the spot first to *both* competitors. However, ontologically speaking, freedom to appropriate the said parcel of land would be then assigned to only *one* of them[32]. But if so, then *whoever* would ultimately happen to appropriate the said parcel of land, whether A is prevented by B or B is prevented by A does not seem to have any bearing on overall *societal* freedom. Therefore, making a case for the *maximization* of overall societal freedom would probably require some rebuttal of the Steinerian Law.

Finally, measurement of overall freedom involves the problem of *operationalization* of the concept of prevention. The problem is: what counts as prevention? Coming back to our example with coming to the parcel of land *first*, is A *preventing* B when A *only makes it harder* for B to come to the spot first? Or does A prevent B from ϕ-ing when A merely lowers the probability of B's ϕ-ing?[33] Such questions are definitely numerous and not easily answerable.

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[31] Let us simply take the first-possession theory of appropriation for granted. The first-possession theory is elaborated by e.g. Epstein 1979; Kinsella 2008; Hoppe 2015.

[32] This debate has an interesting parallel in the debate over logical fatalism, metaphysical libertarian freedom, future contingents etc. For some fascinating literature on the subject, see: e.g. Fischer and Ravizza 2000; Fischer and Todd 2011; McKenna 2011.

[33] Note, that A's making B's ϕ-ing harder or less probable can be logically distinct, however identical they might appear to be at first sight. Most certainly, it is possible that A lowers the probability of B's ϕ-ing although ϕ-ing might be rendered even objectively easier than it would otherwise be. The obvious scenario is when A relocates some physical object necessary for B's ϕ-ing and puts it even closer to B. But despite the fact that this object is almost at hand, B does not expect it to be so close to him. I shall leave to the reader the construction of the scenario in which A makes it *objectively* harder for B to ϕ at the same time making it more probable.

Finally, the idea of overall societal freedom presupposes some way of *aggregating* freedoms not only *within* but also *across* individuals; with the latter being perhaps *at least as unworkable* as interpersonal comparisons of utility. However, despite all those *conceptual* and *practical* difficulties, there are undeniable advantages of the Kramerian descriptive concept of freedom over its justice-based (esp. Rothbardian) rival. First of all, it is only *descriptively* understood freedom that enables us to make sense of one society being *freer* than the other. And, as we saw, libertarians often make claims to the effect that their society is indeed free (or freer than a socialist society). Second of all, *any* justice-based idea of freedom cannot really argue *for* any particular principles of justice *from* the concept of freedom as the latter simply presupposes the former. In case of the Rothbardian idea of "freedom as property", it is only *trivially true* that property rights do not conflict with freedom: simply because freedom *was defined* as compatible with property rights; that is, freedom to φ simply means a right to φ. Or in other words, nothing can count as freedom to φ unless one has a prior right to φ. But this effectively renders the freedom talk superfluous[34]. Finally, the concept of overall freedom implies the non-specific value thereof, with this sort of value being part and parcel of liberal doctrines as such. It is especially *thin libertarianism* with its non-commitment to any substantive concept of good life that should recognize the non-specific *instrumental* value of freedom. After all, it seems that the greater the number of open doors, the better, *ceteris paribus*, given our ever-changing preferences and our ignorance of our *future* projects and goals.

In our next chapter, we will tackle a structurally analogous problem. It transpires that the relation between *voluntariness* and *property rights,* as conceived of by libertarians, runs into a similar sort of criticism to the one levelled at the relation between *freedom* and *property rights*.

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[34] And it seems that the Rothbardian freedom can be identified with Hohfeldian *liberty*, which is most definitely not what freedom means *literally*. But on top of that, *liberties* are just one type of normative positions *in the bundle of entitlements* normally referred to as a *property right*. So, what does Rothbard's "freedom as property" formula really achieve? It seems that Rothbard at most *analytically infers* the existence of some liberties from the existence of some property rights, which is not much.

Chapter 2

PROPERTY RIGHTS
AND VOLUNTARINESS

As alluded to in the previous chapter, libertarianism is not only haunted by the problems arising from the conception of 'freedom as property' but is also caught in a very similar predicament as far as the relation between property rights and voluntariness is concerned. Most certainly, *voluntariness* of one's actions seems to be a very important property thereof. After all, the *validity* of contracts or the assignment of responsibility depend on whether some relevant actions are performed *voluntarily* or *involuntarily*. Specifically, a *seemingly* concluded contract may be declared null and void upon finding that (at least) one party thereto acted *involuntarily*. Moreover, we can imagine *prima facie* evidence that person A wronged person B, with this evidence being then *rebuttable* via person's B showing some counter-evidence to the effect that B was acting *involuntarily*. And what is at stake with the said rebuttal is no petty thing: if B manages to somehow demonstrate that he was indeed acting involuntarily, B's *prima facie* wrong can be *justified*; in which case A will be no longer regarded as having been wronged in the first place, or B's action can be *excused*, in which case the presumed wrong will stay in place but the excuse will serve at least as an extenuating factor[1]. So, as we can see, practically speaking, much depends on whether one's actions are *voluntary*

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[1] On the distinction between justification and excuse, see: e.g. Hart 1968; Wertheimer 1989; Moore 1997; Cane 2002; Husak 2005; Baron 2007; Dennis 2009; Haksar 2011.

or *involuntary*. Actually, the difference between the two translate into colossal *legal* differences.

But then the question arises: what does it take for an action to be voluntary or not? First of all, when I embarked on reflecting on this issue seriously, it somehow seemed to me that it would be most desirable to identify (*in*)*voluntariness* of one's actions with some *natural property* thereof. After all, this would square nicely with the widely shared view that moral properties *supervene* on natural properties. Technically speaking, the relation of *supervenience* (see: e.g., Blackburn [1973] 1993, Hare 1984, Miller 2003, Kramer 2009, Moore 2009;) is that of *asymmetric co-variance*. Generally speaking, when S (whatever S ranges over) is said to supervene on S_1, it means that there *cannot be* a change in S without a corresponding change in S_1 but not necessarily vice versa; that is, S_1 can vary without S's co-varying. Just to illustrate the scrutinized relation, many philosophers of mind (see: Kim 1993, Bennett 2004, Shoemaker 2007) believe that the relation between the brain and mind is that of supervenience; viz., there is no change in the mental without a corresponding change in the brain but the converse does not hold. We can state this relation also in other words; that is, a given mental state is *multiply realizable*; that is, physical properties of the brain do vary to a certain extent but this variation does not correspond to any co-variation in the mental. Quite analogously then, the relation between the moral and the natural may be also that of supervenience. And this makes perfect sense. Note that we intuitively feel the need to account for a change in a moral assessment in terms of the natural. For the sake of illustration, let us take our actual world (A) and consider an act of some group of people torturing a cat just for pleasure[2]. Apart from moral nihilists with their wholesale denial of *anything* having a property of being morally wrong, everybody would agree that the very act of torturing a cat *for no other reason* but to have fun is morally wrong. But now *try* to imagine a close possible world (P1) in which the very act is morally permissible, *everything else equal*. That is, the very same group of people torture the very same cat for the very same reason but a moral assessment in P1 differs from the one obtaining in A. Specifically, to strengthen our intuition, suppose that in P1 the act under scrutiny is considered not only morally permissible but *morally obligatory*. We would indeed have a hard time even trying to imagine P1 in the light of the moral assessment

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[2] Certainly, such acts are not *merely possible* acts. Every now and then, we hear about similar sadists; so, we are quite warranted in believing that such acts are also *actual*.

of the considered act in A. But *the only explanation* of our being puzzled by the world P1 is that we intuit that moral properties ultimately supervene on natural properties. And if so, it cannot be the case that there is *no change* in the natural world but there is a change in a moral assessment. If we were to bite the bullet and tentatively agree that torturing cats is morally obligatory, this radical change in moral evaluation would have to be accompanied by some corresponding change in the natural. Perhaps, in P1 *only* the sounds emitted by tortured cats would cure otherwise incurable diseases; and so, torturing cats would be thus *consequentialistically* justified, with this consequentialist justification being unavailable in A – after all, the sounds emitted by tortured cats do not *actually* cure diseases, let alone incurable ones. In short, we intuit that one and the very same act cannot be impermissible in one world and morally obligatory in another world, *everything else equal.* There must be *some difference* in the act itself or in its consequences that can account for the above-cited difference in its moral assessment. Incidentally, note that our intuition about the relation between moral properties and natural ones does *not* rest on the moral assessment of the scrutinized act in A. To invoke an intuition that moral properties supervene on natural properties we might as well start from P1, wherein an act of torturing cats is morally obligatory. If we take P1 for granted, we would have an *equally* hard time trying to imagine the very same act being morally impermissible in A. From the position of P1, we would demand *an explanation* of how the considered act became morally impermissible without any accompanying changes in the act itself or in its consequences.

In the light of the above general point, it might as well be the case that *certain* moral properties (e.g. blameworthiness, owing somebody a duty) might supervene on some *descriptive* idea of voluntariness. What is more, if thus conceived *voluntariness* turned out to be a *fundamental natural property* on which some moral properties supervene, the gravity of such a discovery could not then be overstated. With all the above in mind, I (Wysocki, 2020) turned to right libertarianism to check how the philosophers of this camp relate *voluntariness* to (property) *rights*. After having done some reading, I got *a feeling* that libertarians get the relation between property rights and voluntariness *backwards* since they perceive *voluntariness* or *involuntariness* of one's actions as *dependent on* the considerations whether some prior rights were respected or violated, respectively. That is, *at first glance*, it somehow occurred to me that, if anything, it is (*in*)*voluntariness* that ought to be logically prior to the concept of (property) rights. But then again, my feeling that libertarians fall

prey to a *strange inversion of reasoning* could be easily accountable by my original fixation on construing voluntariness *purely descriptively*. However, *voluntariness* of one's action does not have to be a *purely descriptive* aspect thereof (e.g. Hyman, 2015). Given this, it does *not* need to be erroneous *by itself* to model the notion of *voluntariness* around property rights. After all, if *voluntariness* is to be already *normatively loaded*, there is no fallacy in *voluntariness* being predicated upon respecting property rights. Still, as we noted in chapter 1, libertarians construe *freedom* in such a way (i.e. 'freedom as property') that the whole freedom talk is effectively rendered superfluous. And it is with *this* suspicion in mind that I started investigating whether – in a similar way – the libertarian theory of voluntariness is not illusory too; that is, whether it does not in effect render the whole *concept* of *voluntariness* theoretically redundant.

However, before we spell out *even further* problems with the relation between voluntariness and property rights, as conceived by libertarians, it would be most advisable to start out with some representative quote. In his *Anarchy, State, and Utopia*, says Nozick (1974, p. 262): "Other people's actions may place limits on one's available opportunities. Whether this makes one's resulting action non-voluntary depends upon whether these others had the right to act as they did". First of all, the reason why Nozick should care about *voluntariness* of people's actions at all is that he employs the notion of *voluntary transfer* to justify oftentimes *unequal* distributions of resources arising from *free-market* exchanges. To this end, Nozick launches his famous *Wilt Chamberlain thought experiment* (1974, p. 161). This imaginary case was indeed a brilliant attempt to refute *any patterned* theories of *distributive justice*. What Nozick meant by a **patterned** theory of *distributive justice* was that a person's share in *overall* holdings was a function of his position *along* some spectrum[3]. For example, once we subscribe to some *desert-based principle of justice* and if we allow desert to vary to different extents, we might as well assign resources to peo-

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[3] O' Neill (1982, p. 306) captures the idea of a patterned distribution very sharply indeed: "When a distribution is patterned there is some dimension such that each individual's ranking on that dimension corresponds to the ranking of his share of resources. Patterned principles of distribution are historical if they distribute on a dimension which summarizes past actions (e.g. moral merit or hours worked); they are unhistorical if they distribute on a dimension which does not refer to past actions (e.g. I.Q. or race)." Singer (1982, p. 40), on the other hand, puts the very same point less technically: "A patterned distribution is one which […] can be summed up in some simple formula of the type: "To all according to his –." The blank can be filled in by "need," "labor," "moral desert," "IQ," "noble blood." Or whatever – the result will always be a patterned distribution".

ple *differentially* based on their corresponding and *variable* respective desert. Alternatively, we may recognize people's *equal* autonomy, which could justify a *strictly egalitarian* distribution of resources. Having clarified what a patterned theory of distributive justice consists in, we cannot do better than quote Nozick's celebrated thought experiment in full:

> […] suppose that Wilt Chamberlain is greatly in demand by basketball teams, being a great gate attraction. […] He signs the following sort of contract with a team: In each home game, twenty-five cents from the price of each ticket of admission goes to him. […] The season starts, and people cheerfully attend his team's games; they buy their tickets, each time dropping a separate twenty-five cents of their admission price into a special box with Chamberlain's name on it. They are excited about seeing him play; it is worth the total admission price to them. Let us suppose that in one season one million persons attend his home games, and Wilt Chamberlain winds up with $250,000, a much larger sum than the average income […]. Is he entitled to this income? Is this new distribution, D2, unjust? If so, why? There is *no* question about whether each of the people was entitled to the control over the resources they held in D1; because that was the distribution (your favorite), that (for the purposes of argument) we assumed was acceptable. Each of these persons *chose* to give twenty-five cents of their money to Chamberlain. They could have spent it on going to the movies, or on candy bars, or on copies of *Dissent* magazine, or of *Monthly Review.* But they all, at least one million of them, converged on giving it to Wilt Chamberlain in exchange for watching him play basketball. If D1 was a just distribution, and people voluntarily moved from it to D2, transferring parts of their shares they were given under D1 (what was it for if not to do something with?), isn't D2 also just? If the people were entitled to dispose of the resources to which they were entitled (under D1), didn't this include their being entitled to give it to, or exchange it with, Wilt Chamberlain? Can anyone else complain on grounds of justice? Each other person already has his legitimate share under D1. Under D1, there is nothing that anyone has that anyone else has a claim of justice against. After someone transfers something to Wilt Chamberlain, third parties *still* have their legitimate shares; *their* shares are not changed. By what process could such a transfer among two persons give rise to a legitimate claim of distributive justice on a portion of what was transferred, by a third party who had no claim of justice on any holding of the others *before* the transfer?

The reason why Nozick's thought experiment is so formidable is that the starting point thereof can be literally *any* patterned distribution conceivable. In this manner Nozick does *not* beg the question against any patterned theory of justice. He grants to his dialectical adversaries the choice of any initial distribution of wealth according to their favorite theory of distributive justice. But then

comes the crux of the matter. It is only when an initial and *just* (or considered *just* for the sake of argument) distribution of wealth was picked up that Nozick asks to imagine Wilt Chamberlain being heavily rewarded with *voluntary* payments made by his enthusiasts, which effectively disturbs the initial *patterned* distribution. For instance, suppose that the initial distribution was strictly egalitarian and Chamberlain's fans were so numerous and so willing to pay that the resultant distribution is far from egalitarian: now Wilt towers *financially* over the remaining members of the imagined society. But Nozick's point is that *the emergent distribution* is a result of a) an apparently just initial distribution and b) voluntary exchanges (i.e. baseball fans *unforced* financial rewards given to Chamberlain); so, *the resultant distributions* seems also just. Cohen (1995, p. 23) tries to capture[4] the Nozickian idea of *voluntariness* as being *justice-preserving* in the following way: "Whatever arises from a just situation as a result of fully voluntary transactions which all transacting agents would still have agreed to if they had known what the results of so transacting were to be is itself just."

At first glance, the Nozickian intuition is indeed pretty powerful. However, aren't we *already* in a position to indicate a slight conceptual problem with Nozick's reasoning? For it seems that Nozick's explanatory scheme runs in a circle. So let us now carefully take stock of all those conceptual interdependencies. As we noted first, Nozick conceded that other people's actions may indeed constrain our opportunities. However, the other people's imposing constraints as such is *not a sufficient condition* to make our actions *involuntary*. As Nozick saw it, the crucial question is whether other people constrained our options *legitimately* or not. If they did so *legitimately*, then our actions under the said constraints are still *voluntary*. By contrast, if the constraint was *illegitimately* imposed on us, then our induced actions would count as *involuntary*. In short, the *voluntariness* or *involuntariness* of one person's action, according to Nozick, is a *sole function* of the *moral nature* of the constraint imposed by another person. Let us briefly illustrate both possibilities. Suppose some businessman is given a proposal by a few representatives of slightly larger companies to join the cartel formed by them. However, there is a caveat there. The representatives make it explicit that if the proposee refuses to join them,

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[4]   However elegant Cohen's formula is, it must be borne in mind that Cohen's interpretation of *voluntariness* (or *liberty*) as justice-preserving differs from Nozick's in that the former's criterion is *more stringent* than the latter's; viz., Nozick – *contra* Cohen – would approve of the results of fully voluntary transactions even if the transacting parties had not known the results thereof. As a result, there are many market outcomes that would be deemed *just* by Nozick but not by Cohen.

they will resort to predatory pricing and will effectively outcompete him. In the light of the characteristically libertarian rights theory Nozick adheres to, the above proposal is by all means *legitimate*. First, voluntary cartels – albeit unstable[5] – would be fully compatible with the free-market regime. Second, and more interestingly, a cartel would be *at liberty* to implement predatory pricing. And, as we will learn in the later chapters of the book, if the threat element of the proposal ("… or we will resort to predatory pricing") is *legitimate*, then so is the overall proposal. But now suppose that the proposee was not intent upon joining the cartel in the first place. Still, now his remaining out of the cartel *comes at a price*: not joining the cartel would bring about his being ousted from the market. We can elucidate the point that the proposee's opportunities were indeed constrained by appealing to his overall freedom. What the proposee lost after the proposal has been made is *a conjunction* of being free not to join the cartel *and* being free to operate on the market relatively undisturbed. However, Nozick would regard this freedom-diminishing proposal as *legitimate*. But if so, then *whatever* the proposee does, he does it *voluntarily*.

By contrast, let us consider now an *illegitimate* proposal. Suppose the very same businessman is approached by a racketeer, with the latter's proposal being: "Pay me $2000 or your company's residence might burn down". Since the implied *action* of the proposer's burning *the owner's* residence (i.e. the threat element of the proposal) is clearly *illegitimate*, so is the whole proposal. Now, given the *illegitimacy* of thus imposed constraint (i.e. the proposee loses *a conjunction* of the freedom to keep $2000 and to operate in his company's residence remaining intact, with *both* of those freedoms being such that the proposee is *entitled* to them), *whatever* the proposee does as a reaction to the said constraint, he does it *involuntarily*.

Fair enough, let us concede this *rights-based definition of voluntariness* to Nozick for the sake of argument. But then again, how to make sense of the Nozickian intuition that voluntary transfers are justice-preserving, the intuition he wants to invoke by dint of his ingenious *Wilt Chamberlain thought experiment*? It is libertarian principles of justice that are designed to capture *just distributions of rights*. And according to Nozick (1974, pp. 150–153), a just distribution of rights is accounted for by what is normally referred to as *enti-*

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5   The members of the cartel are in fact caught in a prisoner's dilemma. It holds true for *each of them* that the *dominating strategy* is to leave the cartel and charge a competitive price. That is, it is always better for each member to leave the cartel and charge a competitive price, whatever the other members decide to do.

tlement theory[6]. There are two principles of the said theory that are of utmost interest to us: a) justice in original appropriation and b) justice in transfer. The principles of justice in original appropriation specify which sorts of investitive facts must first obtain for a person to acquire ownership over a hitherto un-owned resource. In this respect, libertarianism has two competing theories to offer although neither of them is explicitly embraced by Nozick: 1) the labor theory (e.g. Rothbard 1969, Block 2008) and 2) the first possession theory[7]. The theory under (1) recognizes *investitive facts* in mixing one's labor with the thereby appropriated resource, while the theory under (2) takes the first possession to be a *morally relevant fact*; which is in the case the fact that vests a person with a property title. As far as *justice in transfer* is concerned, Nozick has it that "there are legitimate ways of transferring things you own, especial-ly voluntary exchange or gift" (Singer 1982, p. 41). In other words, assuming that person A and person B are *entitled* to the resources they hold; that is to resource *a*, and resource *b*, respectively (i.e. they acquired them in compliance with the principles of justice in original appropriation), if the exchange be-tween them is of *voluntary* character, after the exchange it will be person A that will be entitled to resource *b* and person B that will be entitled to resource *a*. Additionally, since, by assumption, A and B originally acquired their holdings *justly* and then exchanged them *voluntarily*, the thus arising distribution of holdings is also just, according to Nozick.

But this is *precisely* at this point that *conceptual* problems start looming large. First, remember that Nozick perceived *voluntariness* or *involuntariness* of one person's actions as a sole function of *rights-respecting* or *rights-violating* imposition of the constraint on that person by another, respectively. In this sense, the concept of *voluntariness* is *fully parasitic* on a *prior* rights distribu-tion. But when it comes to the principle of justice in transfer, *voluntariness* ap-parently has a different job to do. It looks as though now *voluntariness* of an ex-change or of a transfer is supposed to count as an *investitive fact* that validates a *novel* rights distribution (i.e. the one that obtains after the transfer). We do not even have to determine in what sense *voluntariness* figures in the principle of justice in transfer; that is, whether *this* (as opposed to rights-based) *volun-tariness* refers to some purely natural property predicated of both transacting parties (be it their mental states or whatever else) or is it still – however min-

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[6] There is enormous literature on Nozick's entitlement theory. For some *exemplars* thereof, see: e.g. Scanlon 1976; Kirzner 1982; Davis 1982; O' Neill 1982; Mack 2010; Bryan 2017;

[7] For some exponents of the first possession theory, see footnote 31 in chapter 1.

imally – normatively loaded. At this point, it is worth adding that normally *voluntariness* in a descriptive sense refers to a type of *quality* of the actor's *will*[8]. Alternatively, one may model a *descriptive* sense of *voluntariness* around people's preferences. Whatever (if any) the merits of the adoption of such a concept of voluntariness in law, it definitely tallies with the original Paretian ([1927] 1971) intuition to the effect that voluntary exchanges benefit parties thereto. At this point, an uncompromising critic might object that if *voluntariness* of a choice (or of an exchange for that matter) is all about preference-satisfaction, then it *is trivially true* that *voluntary* exchanges benefit parties thereto. After all, what does *preference satisfaction* achieve if not benefitting the parties whose preferences are satisfied?

However, we do not need to settle that issue at all for our point is much more modest. We claim that there is a problematic *conceptual tension* between the Nozickian *rights-based notion of voluntariness* and his *voluntariness-based principle of justice in transfer*. There is indeed something puzzling about voluntariness of one person's actions depending on prior rights and a redistribution of rights depending on voluntariness. In the light of this, either the Nozickian reasoning is circular and hence groundless or this author equivocates on the meaning of *voluntariness*.

As already hinted at, this shortcoming is not a minor thing since Nozick would like to make a case for unbridled markets. Superficially, it seems that Nozick reasons correctly; that is, he wants to establish the justice of the *market* distribution of income by appealing to *voluntariness* of exchanges. And this *direction* of reasoning would do if only Nozick had at his disposal a market independent notion of *voluntariness*. Alas, as we observed, Nozick's *explicit* account of voluntariness is *rights-colored*. And, as we know, the free market as advocated by libertarians is the emanation of principles of justice they subscribe to. But if so, then the Nozickian *apparent* argument from a *voluntary* character of exchanges *for* unbridled markets is simply *trivial*. As I put it in my paper (Wysocki, 2020, p. 134, note 5):

> […] the only transactions that would count as voluntary would be the ones compatible with free-market by definition. Then, the resort to voluntary transactions in making a case for free market is just an illusion. Free market remains groundless since it appeals to voluntary transactions, which are not independent of free market but are definitionally bound to it.

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[8]   On overborne will, see: e.g. Fried 1981; Wertheimer 1989.

Having said that, let us again underline the bind Nozick appears to be caught in. If he *defines* voluntariness of one's actions *only* in terms of *rights-respecting* imposition of constraints, then thus conceived *voluntariness* cannot serve to make a case for unbridled free markets with its pattern-upsetting distributions for to account for *the disruption* of the pattern (i.e. for a novel distribution of rights), he would have to have at his disposal such a concept of *voluntariness* that could possibly *explain* the *generation* of *new* rights. After all, as Nozick has it, it is *voluntary* exchanges (exercising one's liberty) that bring about a redistribution of resources. But this in turn would effectively render voluntariness *prior to rights*. As hinted at before, it does not take much to conceive of voluntariness as indeed logically prior to rights. For instance, *voluntariness* might be construed as a (part of) *investitive fact* just as much as mixing one's labor with a resource counts as an *investitive fact* explaining why the very resource gets thus appropriated. By the same token, *voluntariness* of an exchange (or a transfer for that matter) might be a *natural investitive fact* explaining why rights got redistributed. However, if Nozick were to adopt a *rights-independent* notion of voluntariness, it might as well turn out (at least it would be at least an open question) that person B reacts *voluntarily* to a *right-violating* proposal, the possibility most unwelcome to Nozick's overall agenda. Furthermore, this would most bizarrely predict that right-violating exchanges can be mutually beneficial.

However, the above clumsy possibility of having (mutually beneficial – albeit rights-violating – exchanges) seems to be a fair price to pay in the light of Nozick's *merely trivially* arguing for unbridled free markets. After all, Nozick's account of *voluntariness* (just as his account of freedom, as we saw in the previous chapter) is *market-bound*. That is, whatever action counts as *voluntary* (or as *free* for that matter) is compatible with the free-market arrangement *by definition*. But in that case, logically speaking, one cannot argue *for* unbridled free markets *from* the concept of voluntariness, as the latter assumes the former. So, at most, *rights-based voluntariness* can *definitionally* cement the market *status quo*; that is, person A reacts voluntarily *only* (which is established by definition) as a reaction to *market-conforming* proposals. Incidentally, it is hard to see why one should subscribe to rights-based voluntariness at all if person's A *involuntary* action simply reduces to the fact that there is another person who imposed an illegitimate (i.e. right-violating) constraint on A. But if so, then *involuntariness* cannot matter over and above right violations. For instance, if we want to free A of blame because A acted *involuntarily*, then it is *ultimately* the fact that there was some other person who violated A's right(s)

that does all the moral work. Presumably then, *rights-based* voluntariness is theoretically redundant.

Given the above-stated shortcoming of rights-based voluntariness, it is becoming clear that one needs to resort to *another* notion voluntariness (i.e. the one which is prior to rights) to account for *rights redistribution*, the point to which we shall turn in the next section.

However, before we do so, let us pause for a moment and take a minor detour. The forthcoming digression is important since it presents the reasoning designed to undermine the Nozickian objection to any *patterned* theories of distributive justice. It was Onora O' Neill (1982, p. 309) that noted that (although she did not put it in these terms) Nozick's *begs the question* with his *Wilt Chamberlain* thought experiment. O' Neill makes an excellent point that Nozick's presumption that payments to Wilt Chamberlain violates no rights (and therefore must remain free of redistributive interferences) already presupposes *absolute* property rights, something that Nozick set himself a task of establishing. And if so, then Nozick' thought experiment does not refute patterned theories of distributive justice for, as O' Neill pointed, Nozick's intuition rests on the assumption of absolute property rights – *the very point at issue* for *patterned* theorists. The following citation from O' Neill (1982, p. 309) will further clarify that point:

> All the theories of distributive justice Nozick classifies assign individuals some control over some resources. They differ in the extent of these rights. For example, theories which hold that pattern-restoring interference by the state maintain rather than violates the rights of individuals regard property rights as limited in certain ways – perhaps by an upper limit on individual holdings, or on what individuals may do with what they hold, or on how or to whom they may transfer it.

Having said that, we must conclude that Nozick's project – albeit impressive – fails. His seeming defense of unbridled markets marked by absolute rights is either *trivial* when he resorts to a rights-based voluntariness or *question-beginning* when he considers *voluntary* (in a seemingly *different* sense from the rights-based one) rewards paid to Wilt Chamberlain. So, it looks as though even Nozick's equivocating on the meaning of *voluntariness* does not help him prove his point for, as spotted by O' Neill, his *Wilt Chamberlain* imaginary scenario *assumes* rather than argues for absolute property rights.

Now, as promised, it is high time to elaborate on the problem of establishing the priority between rights and voluntariness. So, the remainder of this

chapter will be dedicated to amassing examples that would count in favor of conceiving of voluntariness as prior to rights.

The third section of my (Wysocki 2020, p. 130) paper dealt with the problem of bequeathing. In fact, bequeathing is just a *special case* of a voluntary exchange (or of a voluntary transfer), with voluntary exchanges (or transfers) having been considered at length earlier in this chapter. Still, bequeathing, while constituting a fairly unproblematic type of transfers, will neatly serve *illustrative* purposes.

Now, suppose your friend has just done an outstanding favor to you, while risking his reputation. You feel ineffable gratitude and you would somehow like to amply reward him for his noble risk-taking. As it happens, you are a billionaire and you own a new shiny Mercedes which you are ready to give as a gift. Let us now take stock of which *normative* positions obtain *prior to* gift-giving. Assuming that you are an owner of the said Mercedes, literally all the people in the world (including your friend) owe you a duty of non-interference with your enjoyment of the car or, generally speaking, with using it as you see fit, providing you do not violate *their* rights at the same time. On the other hand, what is *normatively* implied by the fact that you transfer ownership of the Mercedes to your friend is that "legal positions swap" (Wysocki, 2020, p. 130). Now, it is your friend who has become an owner and it is you – among other people – that owe him a duty of non-interference with *his* use of the car as *he* sees fit, providing that *he* does not violate other people's rights. Now recall our previously-stated adherence to the *supervenience thesis* (i.e. the claim that moral properties *supervene* on natural properties). As can be readily seen, our gift-giving scenario clearly involves a change in the moral realm; viz., first *you* were the owner of the car (i.e. *others* owed you a duty of non-interference), whereas now *your friend* is the owner and others (including *you*) owe him a duty of non-interference with his legitimate use of the car. So, in the light of the *supervenience thesis*, what change *in the natural* accounts for the above-stated change *in the moral*? In other words, which *natural* event can account for the *moral fact* that a property right in the car was conferred upon your friend and you were thereby bound by a correlative duty? Note yet again that if we were to hit upon an (*the*?) ultimate *natural* property which account for rights redistributions, it would thus *fully* satisfy the demand of *the supervenience thesis*. Still, if a property *explaining* rights redistributions is not yet natural (i.e. it is still *normatively*-tinted), this may still count as a good explanation. After all, what we normally require of a *good* explanation is that *explicans* is simpler

than *explicandum*. Therefore, it is not really the case that *explicans* must necessarily be free of any normativity. However, the threat of *vicious circularity* would start looming if we were to explain rights redistributions by resorting to rights themselves. At this point, our imaginary unyielding critic might object that it would not be *circular* to explain the emergence of *novel rights* (and thus correlative duties) of specific content by resorting to prior rights with some other content. Granted, explaining the emergence of *some rights* by invoking *other rights* obviates the problem of vicious circularity. However, such a move would leave the very phenomenon of rights as such hanging in midair. If right a_n explains the emergence of right a_{n+1}, this appears to leave a_n craving for explanation too. And this task is delegated to right a_{n-1} etc. Less abstractly, if your friend effectively acquired an ownership of the Mercedes, you might *try* to explain his acquisition of the right in question by pointing to your being a prior property right-holder. However, what this attempt leaves unanswered is *how* you effectuated the transfer of the analyzed property right. And at best, the above reply only *shifts* the problem because what demands explanation is *your* acquisition of a property right in the Mercedes. Who transferred *that* right and by what means? It is clear to see that pointing to a previous owner of the car will not do for it will shift the problem even further without answering it.

So, in effect, we seem to have gotten rid of *vicious circularity* at the expense of running into *regressus ad infinitum* – not the best trade-off, euphemistically speaking. Therefore, it appears that it is only *via* indicating a (*the?*) right-independent (and not necessarily natural) fact that we can *satisfactorily* explain what is going on behind an act of bequeathing (or behind *any* sort of exchange of rights for that matter[9]). In my essay (Wysocki, 2020, p. 130), I suggested resorting to the notion of Hohfeldian powers to overcome the above-sketched predicament. First of all, I reminded the reader that it is *will theory of rights* that has it that what is implied by having a Hohfeldian *right* is to have a *power*, while simultaneously remarking that it is precisely *will theory* (as opposed to *interest* theory) that libertarians subscribe to[10]. And if so, there seems to be a concep-

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[9] I hasten to add that 'exchange of rights' may indeed sounds pleonastic. After all, exchanges under modern economy are normally *rights-transfer-implying*; that is, one does not normally speak of exchanges as including a *mere* transfer of possession. Therefore, perhaps slightly violating pertinent language (be it economic or legal discourse), I want to make sure that whenever we speak of exchanges, what is at stake is nothing less than rights or other normative positions.

[10] On *will theory* vs *interest theory* of rights, see: e.g. MacCormick 1977; Hart 1982; Simmonds 1986; Lyons 1994; Kramer, Simmonds and Steiner 1998; Wenar 2013.

tual resource libertarians might avail themselves of to break *voluntariness-property rights* circle.

To this end, let us look at the crucial notion of *powers*[11] in more detail. First, as already mentioned, on *will theory of rights*, having a Hohfeldian *right* is to have a *claim* for others'[12] non-interference as well as *powers*. *Powers* are second-order normative positions, which means that *exercising* a power can change *a first-order* normative positions of actors involved. *Powers* come in two kinds: a *power* of *waiver* and of *demand*. Let us illustrate how powers affect a lower-level (i.e. first-order) normative positions by dint of a fairly straightforward example. Suppose, person A contracted with person B for wall-painting for some pecuniary equivalent which A has *already* paid[13]. In effect, what A acquired is a *right* against B (and only B) that B paints A's walls. But, remember, on *will theory of rights*, *right* is in fact a combination of a *claim* (in our case, it is a claim against B that B paints A's walls) *and* a) the power of waiver and b) the power of demand. So, the power of waiver implies that A may waive B's duty to paint his walls. So, if A decides to *exercise* his power of waiver, B will be effectively absolved of his duty to paint A's walls; that is, B will *no longer* owe to A an action of painting A's walls. Less interestingly, the power of demands implies that the right-holder (in this case, A) may *demand* the performance of an action B is obligated to perform. But now, however different these powers are, exercising them seems to depend on a *voluntary* (in a descriptive sense) choice made by the power holder. And to strengthen this observation, in my original essay, I quoted the most pertinent point made by Olsaretii (1998, p. 9) at length:

> Now, we need an account of the circumstances under which an action that seems to consist in the exercise of a power is indeed such. Your full property rights in your computer, for example, consist, among other things, in your having a power to hire it out; in order to know whether a particular transaction in which someone else has come to control and use your computer and you have come to earn £10 weekly in exchange for that respects your property rights, we need to know whether that transaction occurred voluntarily. (We would think it a breach of your property

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[11] On powers, see: e.g. Hart 1972.

[12] Obviously, since in the present chapter we deal with *property* rights, the *claims* implied by such rights are claims *in rem* (i.e. against the world). But, of course, it is possible to hold a Hohfeldian *claim* against any one particular person only.

[13] That A has already transferred the required sum of money should satisfy libertarians with their commitment to title transfer theory of contract (e.g. Evers 1977; Rothbard 1982; Kinsella 2003). However, there is still a slight complication involved in our example. For example, Barnett (1986b) does not believe that A thus acquires a right to B's labor.

rights if someone removed your computer without your consent and then paid £10 weekly into your bank account.) Similarly with self-ownership. We could not make sense of the idea of full private ownership over something without the idea of what counts as a choice to use or transfer that thing in the relevant sense (so that the use or transfer of that thing is deemed to be rights-respecting), and correspondingly, of what counts as choice disrupting, and hence rights-breaching, interference. The notion of consent, or that of the power to exercise or waive a right, are integral to all libertarian rights, and any full statement of these notions will implicate some notion of voluntariness, or freedom as a quality of our choices

Before we move on to consider the problem of rights violations vis-à-vis voluntariness (or consent), let us briefly note that libertarians who are committed to alienability of rights *and* are the same time proponents of voluntary slavery (most notably, Walter Block[14]) are also hard-pressed to adopt a *rights-independent* notion of voluntariness. The question such libertarians are confronted with is: how to account for a transfer of self-ownership? In other words, how can one effectively *sell* oneself into slavery? As was already established, pointing to the person's *prior* self-ownership will not do since it is the possibility of *transfer* of rights that we struggle to explain here. If anything, one's original self-ownership is only a *necessary* condition of *selling* oneself into slavery. But this point is trivial; it simply asserts that it takes having something *first* to be able to *subsequently* sell it. What is still left unexplained is how *the redistribution* of rights may come about; that is, *how* does a previous self-owner give up his self-ownership thus becoming a voluntary slave? But as we saw, the key to the solution of this problem lies in the notion of powers. Being endowed with the *right* of self-ownership implies (at least according to Will Theorists) having *a power* to alienate the first-order claim against other people's (or a particular person's) interfering with one's bodily integrity. If this power is exercised, other people (or a particular person) is in effect absolved of their (his) duty of non-interference with bodily integrity of the person exercising the scrutinized power of waiver. And we already ventured a hypothesis that the relevant sense of *voluntariness* of an exchange should refer to *the quality of will* of the parties to the exchange. By the same token, if one sells oneself into a *voluntary* slavery, the *voluntariness* of one's slavery contract is mainly due to a *willful* (in some *rights-independent sense*) exercise of his power of waiver. Granted, a *willful* exercise of one's power of waiver most certainly presupposes having a *right* in the first place. But this, of course, does not imply that *giving up* our rights is

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[14] On the espousal of voluntary slavery, see: e.g. Block 1969; Nozick 1974; Dominiak 2017b.

effectuated *via* Nozickian *rights-based voluntariness*. Quite the contrary, it is this very *willfulness* (whether purely descriptively conceived or not) that allows a prior self-owner to give up his right of self-ownership and thereby fall into slavery. And so, ultimately, it is an expression of a *certain quality of will* that accounts for the resultant rights redistribution; viz, for the emergence of a *normative* master-slave relation.

Having said that, it is time to move on to consider what I regarded (at least at the time of writing my essay) as an original contribution of mine to the problem of property rights vis-à-vis voluntariness. What is thereby meant is the problem of what can *count* as a right violation or a threat thereof. I (Wysocki, 2020) claimed that whether a given act violates or respects rights depends on the right-holder's *consent* just as much as the presence or absence of other people's duties towards you depends on your exercising of your power of demand or power of waiver, respectively. My point was to completely *reverse* the reasoning of Nozick-style libertarians. Whereas they believe that person B's action is *voluntary* as long as other persons act within their rights (i.e. as long as they impose *legitimate* constraints on B's options), I[15] believe that the opposite holds true; that is, person A's action is either permissible or impermissible vis-à-vis person B depending on whether B *consents* to it or not; or, if B acts *voluntarily*, if you will. Consider a case of person A hitting person B on B's head. Obviously, hitting as such is neutral between *aggressive* or *non-aggressive* use of violence. In other words, we cannot deduce from the very act of hitting person B that B's rights were violated. So, what is it that makes all the difference? I (2020) contended that it is persons B's consent or the lack thereof that renders A's act of hitting B on the head permissible or impermissible, respectively. Technically speaking, if B *consents* to A's hitting B on the head, then this act absolves A of A's duty not to hit B on the head, thus leaving A *at liberty* to hit B on the head and – correlatively – leaving B at the deontic position of no-right that A hit B on the head[16]. In fact, this works similarly to the above-considered problem of bequeathing. It is *consent* itself that proves to be *morally transformative* (e.g. Wertheimer 2012). That is, in the scenario currently considered, it is B's consent (or the lack thereof) that translated into a change in deontic positions of both actors involved.

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[15] And certainly, I am not in a bad a company either.

[16] This is nowadays a hotly debated issue. Not entering the debate here, in the present chapter, I simply side with Kramer (2019), who argues that A's liberty to do x correlates with B's no-right that A do x. For a competing view, see: e.g. Hurd and Moore (2019).

However, I cannot help imaging our imaginary unyielding critic object-
ing precisely at this point. After all, can't our critic maintain that our above
position is indeed unassailable but at the price of being trivial? Consider our
scenario of A's hitting B on the head yet again. Our critic might press the point
that, of course, our position explains the fact that after a valid consent has been
given by B, then A's hitting B on the head does not violate B's rights since, trivi-
ally, there is now *no relevant right* (i.e. B's right-claim not to be hit on the head)
to be violated. But this objection actually misfires since it actually assumes our
point; viz. that it is B's *voluntary* action (his giving consent) that accounts for
the change in deontic positions of actors involved. Still in other words, it is B's
consent that made permissible what would be otherwise impermissible – the
very idea underlying the notion of consent as being *morally transformative*.
Specifically, it is B's *consent* that effectively renders A's hitting B on the head
permissible and this clearly counts in favor of our thesis the notion of *volun-
tariness* is prior to the notion of right.

Our considerations pertaining to the relation between a right violation and
consent are equally applicable to the problem of threats. Libertarians maintain
that a proposal is a threat if it promises an inexorable right violation. An inev-
itable right violation will occur if the proposer plays *only* with the rights of his
victim. For instance, a *paradigm case* of a threat by libertarian lights is "Money
or your life" proposal[17]. The sole reason of regarding this proposal as a threat is
that taking the proposee's life is impermissible. If the so-called *threat element*[18]
of the entire proposal promises a right violating, the *overall proposal* is a threat.
If it does not, the proposal is an offer. But due to the fact that a libertarian
theory of threat is *moralized* (i.e. the legitimacy of a proposal depends solely
on what the proposer threatens[19] to do), we shall deal with threats in the same
manner as we did with right violations. Since threats depend *only* on promised
right violations and since we established that right violations depend on the
lack of consent, then we have at hand a theory ready to tackle the problem of
threats. So, just as actions constituting right violations depend on their being
unconsented to, so do threats. In other words, a libertarian threat (with its

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[17]   A libertarian theory of threat will be illuminated in appendix.

[18]   Bear with me. The proposals as biconditionals and threat elements of proposals will be
elucidated in chapter 4.

[19]   Our reader might find an idea of any hint of "threats" in what is an *offer overall* rather
puzzling. But we hasten to clear up misconceptions. What is undeniably an offer is the propos-
al: "Pay me $5 and I will give you this drink", wherein an implicit threat element is the follow-
ing conditional: "If you do not pay me $5, I will *not* give you this drink".

moralized sense) ultimately depends on what it previews being unconsented to or, to put it crudely, *unwelcome*. And conversely, if a given proposal is *welcome,* it is not a threat but an offer. Note that, just as in the case of right violations, the whole moral work is done by a mental state (or by an expression thereof) of the proposee. And I will not keep the reader guessing: *this sort* of mental state that makes all the moral difference both in case of right-violating or right-respecting actions *and* in case of threats or offers I identify with *consent,* or with a *descriptively* conceived *voluntariness*, if you will. Still in other words, I contend that for a given *speech act* to count as a threat, it must, crucially, meet one specific *felicity condition*[20]: the proposee should prefer *not to receive* it in the first place. So, if the "threat" is welcome, it is definitely not a threat at all.

Let us consider one possible scenario by way of illustration. Suppose person A obstructs person B's way saying: "Give me $100 or I will hit you". As it happens, B is a masochist and he *welcomes* the proposal. Given that, would not we be prone to say that the proposal misfires as a threat? Note that our point is not a merely linguistic one. Just as hitting B would not be an independent right violation since B would consent to it (thus leaving A *at liberty* to hit B), so is the above proposal an offer given B's actual preferences.

Moreover, our making voluntariness prior to rights gets additional credibility in the light of the fact that, all in all, a libertarian *moralized* theory of threat stands or falls together with a libertarian account of right violations. And since we found a libertarian account of right violations *wanting* due to its failing to elaborate a right-independent notion of voluntariness, a libertarian theory of threat is inadequate too.

Before we conclude, there is one more problem worth mentioning. The fact that libertarians have an underdeveloped theory of *voluntariness* pollutes their theory of *fraud* too. As Child (1994, p. 735) observes, it is impossible to *infer* a characteristically libertarian ban on fraud from libertarian first principles[21]. Certainly, the phenomenon of fraud does not easily yield itself to analysis by typically libertarian conceptual apparatus. Just to reiterate, libertarians (following the footsteps of Nozick) subscribe to a rights-based conception of voluntariness; that is, person A's action is *voluntary* as long as other people act (and impose constraints on options available to A) *within* their respec-

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[20] On felicity conditions, see: e.g. Searle 1969; Austin 1976. Recently, threats in speech act theory were tackled brilliantly by Schiller (2019).

[21] The most recent treatment of the problems libertarianism has with fraud I know of is Ferguson (2018).

tive rights. And conversely, if other people do not act within their respective rights (viz., they impose illegitimate constraints on A's options), then A acts *involuntarily* as a result. When we couple this rights-based conception of (in) voluntariness with the libertarian adherence to the non-aggression principle (NAP)[22], which in turn has it that – in the absence of prior contract between two parties – the only duty the parties owe to one another is *physical* non-interference with each other's bodily integrity. Having said that, let us now spell out the consequences of this very narrow view of what constitutes *aggression* in the eyes of libertarians. Suppose, there is seller S and buyer B with no prior contracts between the two at all. To make our case against libertarians stronger, also suppose that seller S is deceitfully *misrepresenting* his product to B. Furthermore, S's *misrepresentation* concerns *material facts*; that is such facts that if B had known them, he would have entered the contract *on different terms* or *not at all*. But then again, *on libertarian grounds*, assuming no prior contracts, there is no duty of truth-telling incumbent on S owed to B or any other person for that matter. And if so, if S *misrepresents* P thereby inducing B to buy P, it seems that libertarians must willy-nilly conclude that B buys P *voluntarily*. This conclusion follows since S does not violate any libertarian rights conferred upon B. S simply exercises his freedom of speech. And as Child (1994, p. 735) notes, the libertarian attempts to obviate the above problem (e.g. Mack and Barnett 1977; Barnett 1986) fails as they are circular as merely *ad hoc*. The problem with Mack and Barnett (1977) is that these authors *model* the concept of *voluntariness* in such a way that it should exclude fraud; that is, according to them, a person would enjoy a *right* not to be deceived, stemming from the fact of the wrongfulness of "rendering a person's behavior involuntary" (p. 153). But if so, then thus modeled notion of *voluntariness* cannot *justify* a libertarian ban on fraud since the very notion of *voluntariness* is now so constructed that it rules out validly consenting to an apparently fraudulent[23] contract *by*

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[22]   Wolff (1982, p.84) most tellingly says that political philosophy is concerned with *physical aggression*. Pretty much the same thought permeates Rothbard ([1982] 2002). Perhaps the best exposition of NAP is Rothbard ([1982] 2002) and Hoppe (1989). Incidentally, NAP is *critically* (and brilliantly) scrutinized in Zwolinski (2016), whereas an attempt to illuminate the relation between NAP and property rights is made by Christmas (2018).

[23]   I do realize that the use of "fraudulent" now sounds rather question-begging. And the reader with high logical sensibilities may retort at this point that it is merely a truism to say that a fraudulent contract is by definition such that we cannot *validly* consent to it. Fair enough. The only rejoinder I can offer is that I qualify "fraudulent" with the word "apparently". If it does not satisfy the readers in questions, let them substitute "contracts with gross misrepresentation" for our use of "fraudulent contracts" in the main text.

definition. Moreover, such a move seems to be a purely *ad hoc* move. What we would welcome is to develop some *independently* sound theory of voluntariness from which we could *validly* infer a ban on fraud. Barnett's (1986a, p. 300–309) position is haunted by the same problem. For Barnett, *consent* means an *informed consent,* with the parties to the contract being obligated to provide each other with *relevant information*, which *by definition* rules out the possibility of consenting to a fraudulent contract. In other words, if, for instance, the buyer is *relevantly misinformed*, he cannot, conceptually speaking, *validly consent.* Furthermore, "Barnett explicitly founds consent upon voluntariness" (Child, 1994, p. 734), which closes the circle: consent *definitionally* rules out fraud (i.e. fraudulent contracts are such that we cannot consent to by definition) and consent is founded upon voluntariness, which, upon unravelling all those definitional relations, means that fraudulent contracts are such that we cannot *voluntarily* agree to. But this seems to be an *ad hoc* add-on to the entire libertarian conceptual edifice. To put it bluntly, the libertarian "solution" to the problem of fraud is this: **we [libertarians] do not have any *principled* justification of our ban on fraud; moreover, we do not normally recognize any duties of truth-telling and so it seems that a person can indeed *voluntarily* agree to a deceitful contract. However, because we would like to ban fraud let us *say* that if a contract is deceitful, one agrees to it *involuntarily*.** But this, as already observed, is a completely unpersuasive *ad hoc* move aimed at solving *one particular* problem that libertarians cannot otherwise solve.

This more or less exhausts the difficulties with the libertarian moralized (rights-based) conception of voluntariness. As we saw in case of Nozick, appealing to *voluntary* steps (see: his idea of justice in transfer) in Nozick's programmatic refutation of patterned theories of distributive justice either 1) *cannot get off the ground* since we need to have a right-independent (and optimally: descriptive) idea of *voluntariness* to account for a redistribution of rights or for the emergence of novel rights or 2) is question-begging as it assumes the very existence of absolute property rights it was supposed to *argumentatively* establish. Moreover, when analyzing rights violations or threats thereof vis-à-vis voluntariness, we observed that it is the latter that is *logically prior* to the former; that is, we cannot say whether rights were violated unless we know that the actions allegedly constituting the said violations are *unconsented to.* Finally, following the footsteps of Child (1994), we came to the conclusion that libertarians cannot *infer* their ban on fraud *from their principles of justice*. Hence,

Mack and Barnett's (1976) and Barnett's (1986a) attempts to justify the impermissibility of fraud is unpersuasive since they reduce to an *ad hoc* act of *defining* the exclusion of fraud *right into* the notion of voluntariness, which effectively renders the latter unable to *justify* the former without thereby running into an epistemic vicious circle. After all, it would be ideal to say that a given transaction is fraudulent if at least one party *did not consent* to it. And once we couple it with Barnett's (quite correctly!) founding consent upon voluntariness, it would indeed be best to infer fraud from *involuntariness*. Unfortunately, the two authors criticized here turn this (ideal) reasoning upside down.

The problem of *voluntariness* will be revisited in the following chapters (chapters 3–6). In these chapters we are going to be *primarily* focused on the difficulties with this concept vis-à-vis Austrian welfare economics. However, it is especially in chapter 4 that we are going to take the very problem head on and subject the Rothbardian welfare theory to critical scrutiny (it is thus this very chapter that is a central one to our whole section on Austrian welfare economics). But for the time being, in chapter 3, we are going to probe my co-authored (Wysocki, Block and Dominiak 2019) attempt to support Rothbard's welfare theory against Kvasnička (2008).

SUPPORTING ROTHBARD'S WELFARE ECONOMICS:
A REJOINDER TO KVASNIČKA

What sparked my interest in Austrian welfare economics (and especially in its Rothbardian branch) was its avowal that it makes an independent and a *distinctly economic* argument for the free market over and above the natural-rights-based justification thereof. Without a doubt, Rothbard ([1973] 2006, p. 48–49) had already made a *moral* case for the free market, as evinced by the following excerpt:

> It so happens that the free-market economy, and the specialization and division of labor it implies, is by far the most productive form of economy known to man, and has been responsible for industrialization and for the modern economy on which civilization has been built. This is a fortunate utilitarian result of the free market, but it is not, to the libertarian, the prime reason for his support of this system. That prime reason is moral and is rooted in the natural-rights defense of private property we have developed above. Even if a society of despotism and systematic invasion of rights could be shown to be more productive than what Adam Smith called 'the system of natural liberty', the libertarian would support this system. Fortunately, as in so many other areas, the utilitarian and the moral, natural rights and general prosperity, go hand in hand.

Clearly then, the primary reason Rothbard endorses the free market is based on natural rights. Moreover, he would apparently plead allegiance to the free market regime *irrespective of* whether it would finally prove to be efficient or not. However, libertarians would still like it to be the case that the free market

happens to make people better off[1]. So, I presumed that what is genuinely at stake with the entire Rothbardian welfare project is to bolster the private property rights regime *independently* of their justification in terms of natural rights.

In the present chapter, we take a closer look at how the debate on the Rothbardian welfare economics unfolded. Therefore, in this chapter, I shall first focus on the original Rothbardian ([1956] 2011) project of reconstructing welfare economics along scientifically solid Paretian lines. Then, I shall go on to consider Kvasnička's (2008) incisive criticism levelled at it. Finally, I am going to subject my co-authored (Wysocki, Block and Dominiak 2019) reply to Kvasnička to critical scrutiny. What we are about to discover is that however inadequate Kvasnička's[2] objections are, so is our rejoinder thereto. In particular, our discussion is going to revolve around the notion of *demonstrated preference*. And although Kvasnička's remarks do indeed *misfire* against Austrian-spirited concept of demonstrated preference, as advocated by Rothbard, our defense still leaves a lot to be desired. Specifically, our way of remodeling the concept of *demonstrated preference* already begs the question in favor of free market efficiency – a general theme we are about to explore throughout chapters 4–6.

However, before we get into nitty-gritty details, we should at least briefly sketch the Rothbardian welfare theory[3] and its purported merits. First of all, it must be underlined that Rothbard's attempt to reconstruct welfare economics is very ambitious on two counts. While sticking firmly to typically Austrian commitment to ordinal utility rankings and barring the idea of aggregating utility across individuals, not only does the author take pain to illuminate the apparent weaknesses of foregoing welfare theories but also does he develop *his own* account, while proceeding along scientifically sound Paretian lines. The author's idea is as simple as it is appealing. Rothbard repudiates any general equilibrium models[4] and thus makes no use of the concept of *Pareto optimali-*

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[1] See: Hausman and McPherson (2006, p. 172).

[2] Most certainly, Kvasnička is not the only critic of Rothbard's welfare theory. For other criticisms leveled at Rothbard's welfare economics, see: e.g. Cordato 1992; Caplan 1999.

[3] Lest our readers may downplay the importance of *the type* (i.e. the Rothbardian) of welfare economics we are analyzing here, we want to assure them that Rothbard's welfare theory is widely shared by the most prominent scholars within the Austrian camp; see: e.g. Hoppe 1990; Gordon 1993; Herbener 1997, 2008; Hülsmann 1999. Still, it must be noted that *some Austrian* welfare theories do not follow Rothbard's footsteps e.g. Huerta de Soto 2009; Kirzner 1988a, 1988b; 1998. For the outstanding account of how welfare economics developed historically, see: Blaug 2007.

[4] On the notion of general equilibrium and Pareto optimality, see: e.g. Samuelson 1941; Black 1995; Colander 1995; Richter and Rubinstein 2015.

ty. And rightly so, especially given Austrian avowed realism. After all, society only *leans towards* Pareto optimality, while never reaching this desirable state of affairs. Little wonder, Austrians – quite realistically – contend that people's preferences vary over time[5], which in and of itself does make room for mutually beneficial exchanges at virtually any time. Therefore, instead of the concept of Pareto optimality, Rothbard resorts to the idea of *Pareto-superior moves*. These moves are constituted by such exchanges that allow to *approximate* Pareto optimality or that make us better off than we would have been had the said exchanges not taken place at all. In other words, instead of assuming a purely imaginary situation in which all the resources are distributed Pareto-efficiently (that is in such a way that no *mutually* beneficial exchange is any longer possible by definition), the author only considers welfare-enhancing and welfare-diminishing moves. Still in other words, Rothbard does not envisage any maximum welfare but he proceeds by specifying what would count as a *step* towards (or away from) this state of equilibrium and it is for that reason that Rothbard employs the notion of *demonstrated preference*[6]. So, in a nutshell, Rothbard's welfare project hinges on two main ideas: a) Pareto-superior moves and b) demonstrated preference. The first of the two tallies perfectly well with Austrian radical ban on interpersonal comparison of utility: the state of affairs in which person A benefits (however considerably) and person B loses (however negligibly) would have to leave us agnostic as to whether "social" utility increased or decreased. By the same token, the criterion of Pareto superiority would classify such an exchange as "indeterminate". However, the Pareto criterion is purely formal. It does not specify what sort of exchange would count as a Pareto-superior move. What it says is only that if at least one person benefits (with whatever it is that renders a person better off) and nobody loses (with whatever it is that renders a person worse off), then the exchange in question constitutes a Pareto-superior move overall. And it is precisely *demonstrated preference* that *apparently* allows Rothbard to scientifically discover whether a person indeed benefits or not. At this point, it might be argued that the satisfaction of actual preference does not automatically translate into the fact that a person benefits (even in *ex ante* sense) and that in this sense, *demonstrated preference* is just as formal as the Pareto criterion itself and so the for-

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[5] On instability of preferences, see: e.g. Block and Barnett 2012.

[6] For some illuminating analysis of demonstrated and revealed preference (a slight difference!) across various economic theories, see: e.g. Rothbard [1962] 2009; Thaler 1980; Holcombe 2009; Hudik 2011.

mer must also fail to identify what counts as welfare-enhancing exchanges. This objection has some force since there are numerous theories of well-being[7]. Roughly speaking, the most hotly debated theories of well-being these days are desire-based theories, objective list one and hedonism. All these three standpoints take *different* natural facts (e.g. the actual satisfaction of desire; the acquisition of knowledge, enjoying good health, maintaining friendship; or experiencing pleasure, respectively) to be *constitutive* of welfare. Moreover, there is a major controversy cutting across the above-cited division; that is, the question arises of whether welfare is a *sole function* of the *actual* achievement of the said goods (the *actual* satisfaction of one's desires) or, perhaps, what matters *alone* is simply *the belief* that one's desires are satisfied or *the mere belief* that one is enjoying good health, rewarding friendships etc. This radical mental-state variant of well-being was famously defended by Brandt (1979). Conceivably, the actual satisfaction of one's desires or preferences as well as the economic actor's belief may *independently* contribute to their overall welfare. To give some substance to those highly abstract distinctions, let us consider the following variations on the theme of the relation between *actual preference satisfaction* and the *belief* (true or not) that the preference was actually satisfied. Person A *wants* his friend (person B) to get employed by A's acquaintance (person C). To this end, A meets C and gets him to promise to employ B. After the deal has been struck, A is forced to emigrate and he loses touch with both B and C. By assumption, there is no way A can know whether B in the end gets employed or not. The variations adduced above arise once we note that A's preference or desire may be *actually* (that is, *in fact*) satisfied or frustrated and – regardless of whether A's preference is indeed satisfied or not – A may *believe* (correctly or not, respectively) that the world turned out to be as preferred or not. Hence, logically speaking, there are four possible scenarios; that is:

1) C might finally be employed by B and A might (correctly) believe it happened, which is the case of A's preference being *actually* satisfied and A having a true belief. So, in this case, the actual preference is *satisfied* and A derives psychological *satisfaction* from his (true) belief and so the very mental state in question independently contributes to his *feeling* of happiness.

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[7] For an excellent review of various theories of well-being, see: e.g. Parfit 1984, 2011a, 2011b; Sumner 1996, Scanlon 1998, Crisp 2006. The most recent treatment of the *substantive* theories of well-being is provided by e.g. Keller 2004, Rosati 2006; Bradley 2007; Woodard 2013; Lauinger 2017.

2) C might finally be employed by B with A *falsely* believing that it did not happen, which is the case of A's preference being *actually* satisfied and A having a corresponding false belief. In this case, however, A's mental state (viz., his false belief) adversely affects A's *feeling* of happiness.

3) B may break his promise and not employ C and yet A may falsely believe that B kept his promise, which is the case of A's preference being *actually* frustrated and A having a false belief. However, the mental state consisting in holding that false belief positively contributes to A's *feeling* of happiness.

4) B may break his promise and A may (correctly) believe that B broke his promise, which is the case of A's preference being *actually* frustrated and A *mentally* suffering from having a (correct) belief that B reneged on the deal.

It seems intuitively clear that A is best off under scenario (1): not only is his desire actually satisfied but also he derives psychological satisfaction from his correct belief. Brandt's view, on the other hand, would be given some plausibility if we were to assess that A is equally well off under scenario (1) and (3). That is, the only thing that would matter to A's welfare would be his mental state (with the question of whether the belief is correct or not being irrelevant). Nevertheless, it appears that (1) is still somehow superior to (3) *because* the world turned out to be exactly as A wanted. Yet, on the other hand, it might be objected that since A cannot *know* whether C got actually employed, the *actual* satisfaction of A's desire in and of itself cannot benefit A but rather C. This objection brings us to the distinction between self-regarding and other-regarding preferences[8] and thus between welfare-enhancement in a *broad* and *narrow sense*. So, when A wants C to get employed, mainstream theories of welfare mentioned above treat this preference as an other-regarding one. Hence, if C – unbeknownst to A – gets finally employed, it is C who benefits in a narrow sense, but not A. However, it is still a contentious issue whether the actual satisfaction of A's desire *alone* benefits A (as opposed to C) in a broad sense.

By contrast, the Austrian view is that it is a conceptual truth that the actual satisfaction of one's preference makes one better off. Or to put it more cautiously, whatever the content of one's preferences (be they self-regarding or other-regarding), acting on one's preferences benefit us in expectation. Furthermore, Austrian economists do not engage in a debate over substantive theories of

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[8] To appreciate the distinction between self-regarding and other-regarding preferences, see: e.g. Feinberg 1987; Hausman and McPherson 2006, pp. 91–92.

welfare. Instead, they are committed to a *formal* theory of welfare. As noted by Mises ([1949] 1998), the actual preference satisfaction is treated as *evidential* (or as a *proxy* for) of what is *in fact* (or at least *ex ante*) good for economic actors[9]. In other words, what Austrians suggest is merely the method of finding out what is good for acting agents in expectations. They would first study actors' choices, then *infer* their respective underlying preferences, and these would finally be roughly indicative of what is good for them in *ex ante* sense.

Having clarified the general Austrian view on welfare, it is time to point to one more *distinctive feature* of Rothbard's agenda. This author, quite unlike neo-classical economists, believes that increases (and decreases) of utility are predicated of *actions*[10] – the point we shall return to when elucidating why Kvasnička's objections misfire. To summarize, Rothbard, being equipped with the two notions mentioned above, purportedly prove that 1) market exchanges are mutually beneficial and 2) no governmental actions constitute Pareto-superior moves.

And it is exactly these two theorems that are a target of a rather formidable attempt to debunk the Rothbardian welfare project embarked on by Kvasnička. This author's agenda merits particularly close scrutiny since he programmatically tries to refute Rothbard's position *on logical grounds*; that is, the former claims that the latter's two welfare theorems are mutually exclusive. And indeed, if Kvasnička's attempt succeeded, it would imply that Rothbard's welfare theory is *decisively* rebutted. After all, the demonstration that a given theory is incoherent counts conclusively against it. At best, by violating the non-contradiction law, such a theory proves literally everything and is thus rendered utterly uninformative and hence hopelessly empty. Although Kvasnička does not succeed to such an extent, his essay rightly points to the inadequacy of the idea of *demonstrated preference*, as employed by Rothbard.

As hinted at above, the main target of Kvasnička's essay are Rothbard's two welfare theorems. The first theorem has it that "the free market always increases social utility" and the second holds that "no act of government can ever increase social utility" (p. 31). Kvasnička starts on a right note by correctly

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[9] The same point is made by e.g. Scanlon 1998, pp. 115–16; Hausman 2012, pp. 88–103.

[10] By contrast, neo-classical or game-theoretical economists assign utility or pay-offs, respectively, to states of affairs or outcomes. Characteristically, says Williams (a utilitarian himself): "[…] the basic bearer of value for Utilitarianism is *the state of affairs* […]" (Williams 1981, p. 4). Neo-classicals and game theorists, while being descendants of the utilitarian tradition, subscribe to a pretty much the same view; see: e.g. von Neumann and Morgenstern 1944; Arrow 1963; Gintis 2009a, 2009b; Rubinstein 2012.

identifying the Rothbardian contention that an increase in the agent's utility is *demonstrated* only by their actions. And indeed, Rothbard claims that utility changes are inferable only by observing economic actors' actual choices. This belief is aptly illustrated in the author's imaginary example of "the envious man who hates the benefits of others" (Rothbard [1956] 2011, p 320). Rothbard claims that since his envy is not *demonstrable* in action, we cannot scientifically submit that he loses utility. At this point, it might be objected that the envious man might *try* to demonstrate that the very fact that two parties trade makes him worse off. For example, he might somehow attempt to prevent the ongoing deals between the said parties. For instance, he may offer to pay either party some sum of money if he or she *only* promises to cease to deal with the other. But then again, Rothbard would reply that the only conclusion a praxeologist can draw from such a proposal is that the envious man prefers making such an offer over anything else he saw as a possibility. And thus, while making this very offer, the envious man benefits in expectation. Whatever the merits of this understanding of *demonstrated preference*, it definitely helps to distinguish Austrians from neo-classical economists or from game theoreticians for that matter. The latter two camps predicate utility changes of *outcomes* rather than actions[11]. That is why, even in the absence of human action at one time, when a bad accident has befallen a person, he or she loses utility *at that time*. By contrast, in such a case, Rothbard would remain agnostic; he would maintain that we cannot infer whether the person lost or gained utility since he had not acted in the first place.

Given that Kvasnička was right on the mark when he presented the Rothbardian interpretation of "an agent's increase of utility" (p. 44) (i.e. via demonstrated preference), it is slightly surprising that some of his indictments against Rothbard's idea of benefitting are misconceived. For instance, Kvasnička (p. 45) charges in the following manner:

> The demonstrated preference concept looks simple but it poses severe limits that may be easily overlooked. An agent can demonstrate only those changes of his utility that are caused by his own actions, i.e. when he is active. There is no way a passive agent may demonstrate a change of his utility caused by an external force he passively suffers. Moreover, an action only demonstrates that the agent is better off choosing the action in comparison to choosing another possible action in his situation, not that he actually *is* better off

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[11] See: footnote 10.

We already mentioned that Austrians do not predicate utility changes of outcomes, *especially* when the economic agent remains passive. And they do so for a reason. To reiterate, Rothbard for one believed that there is no scientifically sound way to make utility-related inferences in the absence of human action. For what we would be left with then are sheer declarations by *apparently* affected agents, the sort of evidence quite short of apodictic knowledge that praxeologists claim for their discipline. Yet, Kvasnička seems to add insult to the injury with his statement that "an action only demonstrates that the agent is better off choosing the action in comparison to choosing another possible action in his situation, not that he actually *is* better off". But it is somehow ironic that Kvasnička should be pointing to the limitations of demonstrated preference. Albeit barely informative, it at least remains apodictically true that an actual action taken makes the actor better off *ex ante* compared to any other actions he or she deemed eligible (including non-action). In other words, we can safely say that by acting in a certain way, the actor benefits *relatively*, that is compared to his *opportunity cost*. But to satisfy Kvasnička's demand, demonstrated preference should be able to show that the actor benefits or loses *absolutely*, that is compared to the possible world in which a given event does not occur, something that *demonstrated preference* cannot be expected to establish. But this hardly counts as a shortcoming of the very doctrine of demonstrated preference. After all, how could Kvasnička possibly improve on this putative defect of the doctrine under consideration? Since, by the assumption of the agent's passivity, a certain event is not of their choosing but simply occurs, there is no feasible way of *demonstrating* in action whether they thereby benefit or lose. If, on the other hand, Kvasnička insists that the question of a change in utility is in principle resolvable in this case, he must resort to *psychologizing*. But psychologizing is *fallible* and thus has nothing to do with the praxeological method as such. Kvasnička's (p. 45–46) charge against the limitations of demonstrated preference clearly plays out when the author considers the situation of receiving a gift:

> I cannot demonstrate that I am better or worse off when I am given a gift. It is a situation that happens to me – I am passive in it. The gift may considerably change my utility; however, there is no action that could demonstrate this. It may seem that my acceptance of the gift is proof that the gift has increased my utility (otherwise I would have rejected it), but it is not so. Rejecting a gift is something quite different from not being given it, as everyone knows who was given an ugly present by someone whose feelings he does not want (or dare) to hurt.

This indictment was replied by Wysocki, Block and Dominiak (p. 22) in the following manner:

> But there most certainly is a way to reveal that an agent is better off if he receives a gift: if he accepts it. If he does, he demonstrates that he prefers a situation where he is given a gift and accepts it, to one in which he is given a gift and rejects it.

Unfortunately, it appears as though in the above-cited excerpt we failed to address Kvasnička's objection or – at best – we did not interpret him charitably. And so, it is high time to remedy this shortcoming of our rejoinder. First, for Kvasnička's criticism to even get off the ground, we should distinguish between *two events*: 1) the one of receiving a gift in which we presumably remain passive and 2) the action of accepting it. Our reply quoted above, on the other hand, seems rather inconsistent. The reply that "there most certainly is a way to reveal that an agent is better off if he receives a gift: if he accepts it" would be adequate, albeit trivial, if receiving a gift were identical with the act of accepting it. By contrast, our second statement is correct and it validly applies the doctrine of demonstrated preference. *Given the event* of being given a gift, I am indeed able to *demonstrate* that I am better off accepting it than rejecting it and I indeed do so by accepting it. Still, this does not address the point at issue. Kvasnička's criticism is levelled at the fact that demonstrated preference does not allow us to conclude whether I benefit or lose being given a gift in the first place. But to establish this, we would need a *counterfactual* comparison; that is, we would most probably need to establish nothing short of whether we would prefer or disprefer a possible world in which I am not given a gift, everything else equal, to the actual world in which I am indeed given it. But this, most certainly, can by no means be *demonstrated in action*. Quite the contrary, being given a gift calls for action: now we can either accept it or reject it. All in all, this objection by Kvasnička against demonstrated preference misfires as it not only requires the criticized doctrine to do the impossible but also demands something that Kvasnička cannot establish anyway without resorting to highly speculative *psychologizing*, the method Rothbard *programmatically* repudiates.

However, the main thrust of Kvasnička's essay is to show that Rothbard's two theorems hold only at the cost of changing the interpretation of Pareto-rule. That is, specifically, Rothbard can validly claim that "the free market always increases social utility" *only* when he interprets Pareto rule along the lines of demonstrated preference. If he were to employ "its usual 'psychologizing' meaning instead", he would have to conclude that market exchanges do

not always constitute Pareto-superior moves. The very thought experiment of "the envious man who hates the benefits of others" counts as a counterexample to the Rothbardian sweeping conclusion. Indeed, once one does not confine oneself to *demonstrated* preferences and starts considering any preferences (whether demonstrable or non-demonstrable), all the sting is taken out of the first Rothbardian theorem. After all, it would be enough to define (or indeed find) such an economic actor (actor A) whose preferences (at least partially) depend on some other person's (actor B's) preferences. Specifically, let us *stipulate* that actor A is mainly driven by a malicious glee and he gains utility when B's preferences are frustrated and vice versa: he loses utility when B's preferences are satisfied. Such a relation (not an unrealistic one) between two persons' utilities *guarantees* that it is the case that no Pareto-superior moves are possible. However, note that once we stick to the interpretation of Pareto rule along the lines of demonstrated preference, no such conclusion follows. There would be simply no way of saying whether A loses utility when B's preferences are satisfied for we would have to rely on A's declarations alone. If A, on the other hand, would try to act, we would be warranted in concluding only that A's actions benefit A *ex ante* compared to any other course of action he saw as a possibility (including non-action itself). But this interpretation of Pareto rule would not allow Rothbard to derive his second theorem, as Kvasnička correctly observes. To bolster his point, Kvasnička (p. 49) adduces the Rothbardian example of a cartel:

> [Rothbard] first argued that a cartel which came to existence on a voluntary basis increases social utility (the first welfare theorem). This is so because the members of the cartel benefit (they can charge a higher price), and they demonstrate it by an action – the formation of the cartel. The consumers have to pay the higher price, but they *cannot demonstrate* they lose by any *action*, and hence Rothbard ignores them, and calls the change Pareto-improving. Then he argued that government prohibition of the cartel does not increase social utility (the second welfare theorem). This is so because someone benefits from the destruction of the cartel. Surprisingly those who benefit are not the customers because they cannot demonstrate they benefit with any action since they are passive, but the government which acts, and its action demonstrates it benefits. But in the same time the producers lose. They can charge only competitive prices again. Rothbard says the prohibition of the cartel "demonstrably injures them". But this is not so. There is no action by which the producers could *demonstrate* they lose – in precisely the same way as the consumers could not demonstrate they lose from the cartel formation.

And one cannot help conceding the point to Kvasnička here. Rothbard appears to be caught in a predicament: if he *uniformly* sticks to the demonstrated-preference interpretation of Pareto rule, he cannot prove *both* of his theorems. If, on the other hand, he wants to preserve both of his theorems, he must jettison his contention that it is demonstrated preference that *uniquely* serves to determine whether Pareto-superior moves occurred or not.

Given the above-mentioned criticism and the alarming fact that demonstrated preference, as developed by Rothbard, seems powerless to show that the economic actor *loses*, Wysocki, Block and Dominiak (2019) tried to support the original Rothbardian account vis-à-vis Kvasnička's criticism. Because it seems that demonstrated preference says little (if anything at all) above the trivial fact that by choosing the economic actor benefits compared to alternative courses of action (including non-action), we attempted to develop such an account of demonstrated preference that would enable us to clearly distinguish between Pareto-inferior and Pareto-superior, while employing a *uniform* conception of demonstrated preference all across the board, that is irrespective of whether we deal with free market exchanges or with governmental interventions. Unfortunately, our essay (2019) barely improves on the original Rothbardian proposal since we – damagingly for our position – waver between a normatively-tinted notion of demonstrated preference and its descriptive counterpart with a small twist, with the said twist getting clarified shortly.

However, the way we apply the doctrine of demonstrated preference will be illuminated most efficiently when we scrutinize our particular replies to Kvasnička's critical remarks. First, consider the following incisive comment by Kvasnička (p. 46)

> (…) my non-resistance to a robber does not prove I enjoy being robbed – I simply may not be bold enough to resist, i.e. I prefer no action to resistance. Nor does resistance to the robber prove I do not like being robbed – I may like fighting, and could have come to a dangerous place to challenge it. In other words, every subject chooses the most preferred action in any given situation; but there is no way he could demonstrate how much he prefers the situation that happened as such

As already established, that "every subject chooses the most preferred action in any given situation" is the very essence of the doctrine of demonstrated preference. And it is beyond the scope of the doctrine in question to determine whether a person benefits or loses when a given situation over which the economic actor has no control obtains. This vividly applies to the robbery

case Kvasnička ponders over. *Once* the robber crosses my way, I start acting towards him in the most preferred way and so we can infer my preferences from my actions (indeed, those actions *demonstrate* my preferences). But then again, there was *no demonstration* that I disprefer encountering the robber in the first place. The robber simply obstructed my way. It just *happened* to me. The doctrine of demonstrated preference as it stands does not warrant an apodictic conclusion that I disprefer the appearance of the robber. This conclusion is *fallible* and can be arrived at only *via psychologizing*. Wanting to remedy this apparent deficiency of demonstrated preference, we (2019, p. 23) took the following tack, while addressing Kvasnička's highwayman example

> Every subject chooses *voluntarily* the most preferred action in any given situation. Yet, if a traveler is presented by the highwayman with the choice of "your money or your life" and he chooses his life, he does not choose *voluntarily* and so does not choose what he most prefers. He is acting, choosing, but under duress. This aside, demonstrated preference has its methodological limits. The actual voluntary choice demonstrates a relation of strict preference of that very choice over all other options available (including non-action). We can only conclude from the fact of a given voluntary choice that it is precisely this choice that increased the actor's welfare compared to its opportunity cost, at least in his own mind at the moment of decision.

In this excerpt, we play our hand. It is not merely choosing "in any given situation" that demonstrates that we, by making our actual choice, benefit in expectation compared to other feasible actions (including non-action). It is choosing *voluntarily* that purportedly allows to establish that we benefit. And conversely, if we choose *involuntarily*, then it seems that we lose utility. This move of conceiving of benefitting as a function of *voluntariness* of a choice seems *prima facie* very attractive. After all, it tallies well with the Paretian intuition that a *voluntary* choice is indicative of its welfare-enhancing character. Yet, the question remains: when is a choice *voluntary*? To be able to show that the free market always increases social utility, whereas governmental actions always constitute Pareto-inferior moves, we should put forward such an account of *voluntary choices* that would be conceptually neutral between free exchanges and governmental interventions. In other words, a desired theory of *voluntary choices* should not beg the question in favour of free market. Nor should it beg the question against governmental interventions. In other words, the account at stake should not be normatively-colored; or at the very least, it should not appeal to the libertarian principles of justice Rothbard himself advocated. And it is because, in that case, voluntary exchanges would be *necessarily* (via

the *stipulated* understanding of what counts as a voluntary exchange) co-extensive with market exchanges[12]. In other words, one would be *conceptually* barred from coming up with a counter-example; that is, there would be no *market exchanges* that could possibly be *involuntary*. Neither could there be voluntary but non-market exchanges. However, this *market-laden* notion of voluntariness would (analytically) effectively beg the question against Kvasnička, who casts doubt on Rothbard's contention that free market exchanges always increase social utility[13]. Therefore, we cannot appeal to market-dependent idea of voluntariness if we want to *prove* that economic actors demonstrate *via* their voluntary choices that free market always increases their utility since voluntary exchanges (in our and in Rothbard's view) *already presuppose* market exchanges. Hence, the same problem thus haunts our remodeled idea of *demonstrated preference*. Now that *demonstrated preference* has gotten rooted in the notion of *voluntariness*, the actor *cannot* demonstrate that he benefits unless his choice is voluntary; viz. it occurs under rights-respecting conditions. This seems to dismiss Kvasnička's skepticism as to Rothbard's welfare theorems out of hand – the most unwelcome result. Note that, in a nutshell, the remodeled doctrine of demonstrated preference has it that the economic actor *can* demonstrate that they benefit *only on the market* (after all, it is only *market exchanges* that are *voluntary exchanges* and vice versa), whereas they *demonstrably* lose utility once the government steps in (after all, governmental interventions are paradigm cases of rendering an exchange *involuntary*).

We mistakenly tie welfare considerations to property rights (and therefore to voluntary exchanges) in still other places. For example, we (2019, pp. 31–32) held that

> In the case of robbery, the victim loses welfare. He had money, and the thief relieved him of what he had. In the case of threatened competition, however, the target does not lose welfare since he never owned the customer in the first place. We know that he benefitted from each day he had the customer since he voluntarily interacted with him. At the dawn of a new day, though, he no longer "had" the

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[12] Remember, the major libertarian case for the free market appeals – firstly and foremostly – to natural rights. And the libertarian idea of *voluntariness* is unfortunately, as we saw in previous chapters, rights-based. Hence, the free market, by virtue of *being* a totality of *voluntary* exchanges, simply accords with the rights recognized by the libertarian principles of justice. And it is precisely this rights-respecting character of the free market that makes free market what it essentially is.

[13] Just recall Kvasnička's example of a possibly unwelcome gift an economic actor might be given.

customer; – he only ever had him on sufferance. On the day that the competitor succeeded in alienating the customer from him, the target of competition did not lose anything he already had, as in the case of the robbery; rather, he failed to gain.

This excerpt says it all. Our account seems to *prejudge* that the free market (with its *definitional* commitment to respecting property rights) maximizes welfare because no exchange could even *count as* minimizing welfare unless it is a right-violating one, as evinced by our above treatment of the robbery case vis-à-vis the threatened competition case. But why should that convince Kvasnička? After all, our position seems to assume precisely what he denies; that is, that we can *demonstrably* benefit *only* via market exchanges. It seems that we *still* owe to Kvasnička an *argument* of why beneficial exchanges imply (or are indeed equivalent with) market (that is, property rights-respecting) exchanges. But to make such an argument, we should start with a market-independent idea of benefitting (welfare-maximization). And so, ultimately, we should somehow develop a market-independent idea of *demonstrated preference*. That we *demonstrably* benefit from market exchanges should come as a *conclusion*. By contrast, on our grounds, *our demonstrated preferences* (as opposed to non-demonstrated or non-demonstrable ones; that is, the ones that science should apparently take no interest in, according to Rothbard) *presuppose* that they are *market* exchanges (because they are *voluntary*)[14]. So, this *conceptually* guarantees that we can *demonstrate our* true preferences only on the market. However, we would like it to remain an *open question* whether there are such market exchanges that render us *demonstrably* worse off or, even more interestingly, whether there are such non-market exchanges that render us *demonstrably* better off.

 Probably sensing that our appeal to the notion of *voluntariness* in our readjustment of the doctrine of demonstrated preference is not fully satisfactory, we also, rather hesitantly, in various places employed the criterion of demonstrated preference in still *another* way. Consider the following fragment (p. 29) from our essay pertaining to Kvasnička's cartel thought experiment already invoked above:

[T]he cartel is "demonstrably injured" by the government's coercive dissolution; if it were not worse off, it would have dissolved itself voluntarily before, or at least at the time that government coercively dissolved it. Because the cartel had not done

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[14] Still bear in mind that libertarians propose a rights-based idea of voluntariness and they define the free market as a totality of voluntary (viz. rights-respecting) exchanges.

any such thing, it demonstrated that it had been benefiting from the continuation of its operations and lost from the discontinuation thereof.

And in still another place, we try to rebut Kvasnička's claim to the effect that, *having already encountered* the robber, there is no way we can possibly *demonstrate* whether we prefer or disprefer the robber's appearance in the first place. In our counter-argument we (p. 22) appeal to the pretty much the same (as in the example right above) sort of counterfactual reasoning, while saying that "the victim does not prefer to be robbed" and bolstering our claim with the following statement: "Since the actor in question has not given up the money so far, how can he prefer it now? After all, it was possible for him to discard the money earlier, but he did not do so".

In those two fragments cited above, we resort to what we dubbed as "the negative side of the demonstrated preference doctrine" (p. 28). Although the reasoning appears to be fairly straightforward, it is fallacious since it rests on a false premise to the effect that a given *event* (in our case: the dissolution of the cartel and handing money to the robber) must render a given economic actor worse off *because* the actor has not *so far* brought about this very event voluntarily, that is *via* his own uncoerced actions. But this is a *non sequitur*. It simply does not follow that a given *event* (or action) cannot benefit us simply because we have not so far brought about the event in question voluntarily. First of all, Austrians' avowed realism commits them to conceding that people's preferences change over time. It is perfectly conceivable that the cartel did not want to dissolve itself *until* the government stepped in. It is possible that one day the cartel simply reached a conclusion that it would be better to cease its operations and precisely on the very same day the government intervened. Therefore, the cartel might as well find *this very* governmental interference highly beneficial as it is now dissolving itself at literally no cost. And exactly the same applies to the robber case: the fact that I have not *so far* handed money to the robber voluntarily does not demonstrate that I *cannot* benefit by handing some money to the robber *now* because my preferences might have changed in the meantime. What is worse, our "negative side of the demonstrated preference doctrine" proves too much and thus throws the baby out with the bathwater. If we were to hold on to *this negative version* of the doctrine of demonstrated preference, we would have to conclude that a vast majority of actions do not benefit us. By way of contrast to the robber case, consider the fund-raising case. A fund-raising volunteer crosses your way and *asks* you for

money. *Given the situation*, you decide to pay him, thus benefitting compared to not paying and (at the same time) having remorse or having one's reputation tarnished in the eyes of onlookers. Concluding that much is fairly incontrovertible. Kvasnička would also agree that *any actual action taken* benefits us in expectation compared to the (expected) opportunity cost. But, more critically, Kvasnička would remain *agnostic* as to whether we can demonstrate that we gain utility (or lose it) due to the very appearance of the fund-raising volunteer in the first place. We (Wysocki, Block and Dominiak), on the other hand, while employing our "negative side of the demonstrated preference doctrine", would have to conclude that we do not benefit from paying the fund-raiser because we have not handed the money to him so far. In effect, we say that since we have not made any effort to find the fund-raiser and to give him some money, we do not benefit by giving him money *now*. But this absurdly rules out innumerable actions that are plainly beneficial. There are countless actions that economic agents are taking right *now* that they have not (but might have) taken before. Are we to conclude that they constitute Pareto-inferior moves? Of course, not. After all, budget constraints and opportunity costs vary over time and so do people's preferences.

Let us first consider *variable budget constraints*, while controlling for other relevant variables. For example, I may have not embarked on a given proposal (e.g. a plain market offer of selling a car) *thus far* only because I could not afford what I was offered. Then, everything else equal, it is my expanded budget that makes all the difference. Indeed, even a small income increment can turn an *undemonstrated* preference into a *demonstrated* one. So, it might be the budget constraint that does all the explanatory work of why we have not thus far taken a particular action. And hence, from the very fact that I have not taken a particular action *before*, it cannot follow that I cannot benefit therefrom *now*. Holding my preferences constant (by assumption), we simply conclude that I *could not thus far demonstrate* my preference for the car simply because I have lacked money *thus far*. Everything changes the moment I acquire sufficient financial means.

Second, holding both budget constraints and preferences (most unrealistically) constant, let us allow opportunity costs to vary. Incidentally, it is this variable alone that could explain why the cartel (in the scenario considered above) has not dissolved itself before the government stepped in. As we already explained, driven by the cost-benefit analysis, the cartel may have not dissolved itself *only because* the cost of the dissolution expectedly exceeded its benefits.

And so, the cartel might have continued its operations over time while having an *undemonstrated* preference (over *that* time) *for dissolving itself at no cost*, with the opportunity to satisfy this desire coming only with the governmental intervention. So, once the government steps in, the dissolution of the cartel might well prove to be beneficial because its costs are now virtually nil. By the same token, we may assume that the victim of the robber cherished a perverse thought of handing money to the robber *all the time* but he has never had the opportunity to do so and the (expected) cost of looking for the robber would exceed the (expected) psychic benefits of handing money to him. But once the robber crosses the victim's way, the latter may find – paradoxically enough – the circumstance *welcome*. Here, it might be retorted, as we in fact did in our paper (p. 23), that if we find the robber's appearance welcome, "it would not be theft; it would constitute charity, or gift-giving". But such a rejoinder start to lean dangerously towards *voluntariness-based*[15] (and therefore market-presupposing) idea of benefitting, the idea already criticized in the first part of this chapter.

Finally, holding budget constraints and opportunity cots equal, we may allow people's preferences to vary over time. Most trivially, the cartel did not dissolve itself until the government stepped in because the former dispreferred the dissolution *until* the government stepped in. Suppose that at t_1 the cartel might have started preferring the dissolution of the cartel over its continued operations and that at t_2 the cartel found out that the government decided to dissolve it. Given the preference at t_1, the cartel must find its dissolution by the government welcome since the dissolution shall now occur at no cost to the cartel; and hence, the cartel's preference at t_1 will be satisfied even more efficiently than it otherwise would have been. I believe that in the light of the above arguments, our "negative" version of demonstrated preference ought to be rejected.

To recapitulate, our attempt to support the Rothbardian welfare theory vis-à-vis Kvasnička's criticism failed. Granted, this critic's demands are at times too strict; viz., Kvasnička appears to be oblivious of Rothbard's *programmatic* interpretation of Pareto-superior moves along the lines of *demonstrated* preferences. However, the main thrust of former's argument remains unscathed. Moreover, Kvasnička's major point is all the more powerful because he shows

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[15] With voluntariness being understood in the libertarian vein, that is in terms of respecting property rights.

the *inconsistency* in the derivation of Rothbard's two theorems, while arguing on *purely Rothbardian grounds*; which means that the crux of Kvasnička's main objection does not invoke any further assumptions. Hence, his argument does not run the risk of begging the question against Rothbard. It is in this sense that Kvasnička's reasoning is so formidable and makes – if it indeed succeeds – the strongest possible case against Rothbard's welfare theory.

My co-authored paper, on the other hand, does not pass muster. First, it starts on a right note, while trying to *qualify* the thin idea of demonstrated preference, which has it that *an actual choice* implies that the actor *expects* to benefit therefrom more than from any other action he deemed possible (including non-action). Our appeal to *voluntary* choices (as opposed to choices as such) was meant to circumvent a rather trivial idea of an actual choice as maximizing welfare in expectation *compared to* this choice's opportunity cost. Indeed, if this trivial idea of benefitting were all that there is to Pareto-superior moves, then the very distinction between Pareto-superior and Pareto-inferior moves would collapse. We would thereby reach an absurd conclusion that whatever *actual* actions are welfare-enhancing (in expectation). It is for that reason that we felt hard-pressed for *some* qualification of the thin doctrine of demonstrated preference. If *any* actual choice in *any given* actual situation (viz. under actual constraints) benefits us only in a trivial sense, then – as we intuited – Pareto-superior moves should perhaps have something to do with the *nature* of those constraints. Therefore, *voluntariness* of choices seemed *prima facie* to be a reasonable candidate for the much-desired qualification. However, we left our account hopelessly underdeveloped. Having shunned the reconsideration of what a *voluntary* choice should consist in, we simply subscribed to the libertarian rights-based conception of voluntariness. Unfortunately, libertarians conceive of the free-market as, first and foremost, the emanation of natural rights. Hence, it is little wonder that, having founded *demonstrated* preferences on *voluntary* choices[16], we would reach the conclusion that it is only the free market (as a property-rights-respecting regime) that *demonstrably* benefits us. But why should *voluntariness* of one's choice (or exchange for that matter) necessarily presuppose the libertarian ethic? If it really did, we would have a ready-made argument for the free-market efficiency at our disposal. But this is too quick. What we would owe to Kvasnička is such an ac-

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[16] Remember, on our account a choice under duress does not *demonstrate* our preference. And conversely, it is only *voluntary* (i.e. rights-respecting) choices that *demonstrably* benefit us.

count of a voluntary choice that would not beg the question in favor of the free market. The most welcome result would be to come up with a market-independent theory of voluntariness and then show (via the Paretian premise that voluntary exchanges are mutually beneficial) that there is indeed this happy coincidence that the free market always increases social utility. Most certainly, our essay falls short of this expectation.

Another grave error our paper suffers from stems from the arbitrary inclusion of what we labelled as "the negative side of the demonstrated preference doctrine". Not only does this arbitrary inclusion shatter any hope of elaborating a *univocal* meaning of the demonstrated preference, but also it is *inherently* defective. First and foremost, nothing in regard to Pareto-superiority or Pareto-inferiority of a given *event* follows from the fact that the economic actor has not so far brought about this event voluntarily. As we demonstrated, many factors might change over time. Most naturally, preferences change over time, the point well recognized within the Austrian camp. Second, one's budget constraint might change in the meantime. For instance, the fact that the economic actor has not donated money to charity *before* is easily explicable by the fact that until now the said economic actor could not afford to do so. Hence, one cannot *apodictically* reason from the former fact to the latter.

Finally, one and the same action-type[17] may have variable opportunity cost. So, it can be the case that a given event would be very welcome indeed *if it occurs at no or little cost to us*. Yet, to bring this event about *voluntarily* would imply bearing some cost. And it is this cost that constitutes an explanatory reason why we have not so far brought this event into existence. But then again, this observation also invalidates our "negative version" of the demonstrated preference doctrine. Having realized all the deficiencies of our (2019) essay, I started to have a suspicion that perhaps there is something flawed about Rothbard's welfare theory and so I turned a more critical eye thereto myself.

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[17] It is safer to speak of action-*types* here instead of action-*tokens* because we are considering a temporal dimension here. After all, if any two (however similar) actions take place at different times, then they must necessarily constitute two *distinct* action-*tokens.* On the distinction between action-tokens and action-types as well as on individuating actions, see: e.g. Thomson 1971; Davidson 1980; Moore 1993; Steiner 1994; Bennett 1995; Carter 1999; Kramer 2003. Most recently, the problem of action-tokens vis-à-vis action types (especially in the context of epistemology) was tackled by e.g. Gaultier 2017; Young 2017, 2019.

Chapter 4

INTUITIVE ATTEMPT TO DEBUNK
ROTHBARD'S WELFARE THEORY

As mentioned in the previous chapter, somehow ironically, while trying to defend the Rothbardian welfare theory against Kvasnička's staunch criticism, I realized the inadequacies of the former. Although, as I believed, Kvasnička did not get it all quite right, his position has relative merits as it objects to Rothbard's theory on purely logical grounds. Having appreciated Kvasnička's fairly straightforward criticism and become disillusioned with our (Wysocki, Block and Dominiak 2019) merely apparent defense of Rothbard, I grew increasingly suspicious of the entire Rothbardian welfare project. The result of my newly-adopted critical attitude thereto was the paper I co-authored with Dawid Megger (2019) bearing the title *Austrian Welfare Economic: A Critical Approach*.

In this paper we proceed in a two-fold manner: a) we try to most charitably interpret the baseline Rothbard adopts[1] and against which he assesses whether given exchanges constitute Pareto-superior or Pareto-inferior moves and b) having (tentatively) justified the Rothbardian baseline as stemming from the general premises Austrians adopt, we subject his theory to critical scrutiny. So, while trying to make sense of the Rothbardian baseline for judging specific exchanges as Pareto-superior or Pareto-inferior, we first sieve out those *con-*

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[1] As already mentioned, we mainly deal with Rothbard as his welfare economics is by far the most representative (most widely shared) of the entire Austrian camp. The Austrians subscribing to the Rothbardian welfare theory are enumerated in chapter 3.

ceivable baselines that would be incompatible with the general assumptions Austrians subscribe to. We start by considering whether it is the opportunity cost that may constitute a criterion for assessing welfare-enhancement or welfare-diminishment. We (p. 74) correctly dismiss this *baseline* as trivial, albeit logically flawless:

> [A] Pareto-superior move cannot be conceived as the one which increases welfare as compared to the opportunity cost. (…) For it is true of all the actions conceivable that they increase welfare compared to their respective opportunity costs. After all, Austrians believe that people's actions demonstrate strict preference (…), which in turn implies that having taken a given action the actor in question benefits at least *ex ante*, as compared to taking any other action or not taking any action at all. Hence, an actor, having acted in one way or the other, *a fortiori* benefits as compared to his opportunity cost, which is merely the second best opportunity foregone.

Then, we go on to say that such a conception of benefitting (as compared to one's opportunity cost) would indeed "prove too much". If Rothbard were to assume (which, of course, he did not) such a baseline, he could argue not only for the free-market but also for *any other regime* too. After all, the opportunity cost analysis does not take stock of the *nature* of constraints on our options. Rather, it takes *constraints* as given. So, whether we deal with a socialist, communist or libertarian society for that matter, the most that the opportunity cost analysis can tell us is that all across the political regimes, people will act in such a way as to try to maximize their expected welfare as compared to their respective second-best alternatives. Hence, the opportunity cost as a baseline would be *indiscriminatory* between given constraints in terms of their Pareto-inferiority or superiority. In other words, put people under socialism or communism and they will behave efficiently (with opportunity cost constituting a baseline); put them in a libertarian society and the same would apply. Since opportunity cost analysis is mute on the efficacy of the circumstances under which we make choices (e.g. legal systems or political regimes), if it were to serve *alone* as a *baseline* for judging whether given actions (or exchanges) are welfare-enhancing or welfare-diminishing, it would mistakenly predict that *all actions* across *all possible* political regimes always translate into Pareto-superior moves. But this, more or less, concludes our attempted *reductio ad absurdum*. After all, as we (p. 74) observed, if all actions are *Pareto-superior*

> there is no point in introducing the very predicate in question in the first place. It runs counter to the well-known principle in logic; to wit, that a predicate P is use-

less if there is no such thing that would instantiate non-P. Then P does not point to any distinctive feature of actions at all; it does not single out any subset of all the actions. In other words, P is utterly uninformative in the universe of actions.

If the inquisitive reader were not satisfied with this purely logical point, what we had to offer over and above it was an intuition aimed at strengthening the said *reductio ad absurdum*. We (p. 74) simply imagined "a mugger coming to us and threatening with a 'your money or your life' proposal". Then again, if the opportunity cost were all there is to Pareto-superior moves, then the analysis of the above proposal would have to run along the following lines. The mugger *demonstrably* benefits by making the very proposal. Rather trivially, it must be the case that the mugger, by acting as he does, *expects* to benefit compared to any other action he deemed possible (including non-action). But what about us, the mugger's target? As we saw in the previous chapter, the doctrine of demonstrated preference *alone* (at least in its thin sense) cannot inform us whether we welcome the mugger obstructing our way or not since the latter's act was beyond our control and was therefore not subject to our choice. However, *given the constraint* imposed by the mugger's proposal, the opportunity cost analysis (quite like – rather unsurprisingly – the idea of thin demonstrated preference) leads us to the same conclusion. Still, before we spell out the full implications of adopting the opportunity cost as a baseline, let us render the mugger's proposal in a bi-conditional form[2]. So, the mugger's proposal 'your money or your life' can be translated into the following bi-conditional:

1. If you pay me, I will not kill you.
2. If you do not pay me, I will kill you.

As we can see, what the mugger's proposal effectively achieves is to deprive us of the freedom consisting of the *conjunction* of preserving one's life and one's money[3]. And this is precisely what the newly imposed constraint consists in: after the proposal had been made and the mugger is assumed not to bluff, there is no longer an option of us preserving *both* our life *and* our money. Yet, both *demonstrated preference* in its thin sense (see: chapter 3) and *the opportunity cost analysis* must remain agnostic on the question of whether the mugger's proposal already counts as welfare-diminishing or welfare-enhancing for that

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[2] On analyzing proposals (be it threats or offers) in terms of bi-conditionals, see: e.g. Gorr 1986; Feinberg 1989; Altman 1996; Westen 2012.

[3] On conjunctions of liberties, see: e.g. Carter 1999; Kramer 2003.

matter and the reason therefor is that there is no action on the part of the mugger's target *just yet*. By way of contrast, what *both* demonstrated preference *and* the opportunity costs analysis inform us about is that once the target decides to accede to the mugger's demand, he thereby *demonstrates* that he expects to benefit if the scenario (1) obtains, as compared to the state of affairs in which the scenario (2) were to obtain. Now, to put in the jargon of the opportunity cost, by complying with the mugger's demand, and thus by paying him, the target *demonstrates* that he benefits as compared to what the target *believes* to be the second (indeed, the only one) best alternative; that is, to losing his life but – rather unimportantly then – keeping the money. But note again that this sense of benefitting (comparison to one's opportunity cost) is trivial and it goes no way to settle the issue of whether the mugger's proposal *itself* increased or decreased the proposee's welfare, *as compared*, perhaps, to the absence of this proposal, *ceteris paribus*. Rather, reasoning in terms of opportunity cost tells us *only* that the mugger, by crossing our way, benefits *relatively* to any other action he saw as a possibility (including the possibility of not acting at all) and that, *given the mugger's proposal*, we benefit by acceding to the mugger's demand (i.e. paying him some money) *relatively* to the refusal to hand some money to him, which would *expectedly* bring our demise. So, the conclusion seems to be that both parties to the exchange benefit and hence, the exchange is Pareto-superior. Moreover, strangely enough, if the opportunity cost supposedly served as the baseline and if the target brought about the scenario (2); that is, he would not accede to the mugger's demands, the target's death would also have to be assessed as efficient. After all, the mugger's maximized his expected welfare by the proposal he made and the target maximized his welfare by deciding not to pay. There were no other actions or omissions (with the latter also counting as broadly understood *actions* on Austrian grounds[4]) at stake in the thought experiment under consideration. Therefore, the mugger benefits in expectation by making the proposal (as compared to not making it), whereas the target benefits by not paying *and* dying (as compared to paying *and* surviving). The reason we reach such conclusions is that the opportunity cost analysis is

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[4] Note that for Austrians omissions count as actions since omissions (just like actions proper; viz. willed bodily movements) might be consciously employed by the actor as means leading to a desired end. Also Hart (1968) agreed that some actions are indeed omissions. For a dissenting view to the effect that actions are *only* willed bodily movements, see: e.g. Austin 1869; Thomson 1977; Davidson 1980; Brand 1984; Moore 1993. For a highly original attempt to draw the distinction between actions and omission along different lines (i.e. the number of ways in which an end may be brought about), see: Bennett 1966.

trivial in this sense that the opportunity cost of one's action is *defined* as the sec-ond-best alternative on one's value scales, second to none but to the very action one *actually* chooses to perform. Therefore, as we already noted, were the target decide not to pay (and die as a result), we should also conclude that he would benefit in expectation relatively to parting with money *and* preserving his life. Once we are committed to the view that economic agents act on *strict prefer-ence*[5], the opportunity cost must count as an alternative being *strictly worse* than the action actually taken. To summarize, the opportunity cost analysis is on a par with the thin doctrine of demonstrated preference with respect to judging whether given exchanges are Pareto-superior or not; that is, the ques-tion of efficiency cannot be meaningfully (informatively) founded upon them for both criteria under consideration would predict that *whatever* actions are taken, given the constraints under which they are chosen, they *would* translate into Pareto-superior moves and thus must be considered welfare-enhancing. And that is why, it must be some *proper subset* of all actions that would consti-tute Pareto-superior moves and that is why *benefitting compared to the opportu-nity cost* must fail as the criterion of welfare for it is definitely too broad.

Having dismissed the above (merely putative) criterion of welfare, we (p. 75) also went on to show that we cannot conceive of welfare-enhancement in terms of some *absolute* scale extending *over time*. The reason for this is not so much connected with characteristically Austrian *ordinal utility rankings* as it is with the *instability of preferences*[6]. For suppose, most unrealistically, that at t_1 very wealthy person A has some set of preferences (call it S_1), with all of them satisfied and at t_2 (any time later), the very same person has a non-over-lapping set of preferences (call it S_2), with all the latter preferences also sat-isfied. At both times, person A is *extremely* satisfied but *relative* to two dis-tinct sets of preferences. And so, we may raise the question: what happened to person A's welfare *over the period* under consideration? We posit that even if we firmly stick to ordinal utility rankings, there is no way of saying wheth-

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[5] On this view, see: e.g. Block, 2009a, 2009b; Block and Barnett, 2010. However, note that there are Austrians who assign a praxeological role to indifference, see: e.g. Machaj 2007. O'Neill (2010), in turn, claims that we do act on indifference and therefore it is the relation of *weak preference* that is fundamental, with the one of *strict preference* being only derivative; that is, A is strictly preferred to B *iff* A is weakly preferred to B *and* B is *not* weakly preferred to A. Incidentally, it was also Nozick (1997) who powerfully argued that Austrian are *logically* com-mitted to employing the notion of indifference since the law of diminishing marginal utility depends for its formulation on the said concept.

[6] On the said instability, see: e.g. Mises [1949] 1998, p. 220; Block and Barnett 2012.

er person A's welfare increased, decreased or remained equal over the period $t_1 - t_2$ simply because his preferences changed over that period. It seems then that we can *only* assess whether a person is better off or worse off (in ordinal terms) *given his preferences*; that is, preferences must be held fixed. This in turn coheres with the Austrian idea of trying to infer increases in the actor's well-being from the satisfaction of his *actual* preferences. After all, as indicated in chapter 3, Austrians subscribe to the *formal* view of perceiving actors' actual preference satisfaction as a *proxy* for their respective welfare enhancement. This formal view carefully sidesteps any dispute over whether the economic actor might be better off having a *different* set of preferences to the one he actually has. In particular, treating *actual* preferences as *an ultimate given* allows Austrians not to get enmeshed in a highly speculative debate over whether the person might benefit by *adjusting* his preferences to his present (economic) situation[7] just as well as by *satisfying* his actual preferences by trying to change his present situation. Technically speaking, preferences might be *satisfied* in a two-fold manner simply because the concept of *satisfaction* at stake here is *relational*. Therefore, (actual) preferences might be satisfied by making reality fit one's preferences or by making one's preferences fit reality. But note that the latter possibility is beyond the scope of Austrianism since the latter scenario assumes changing one's *actual* preferences. Austrians have none of that. The point of departure for their analysis are *actual* preferences, period.

Similarly, Austrian economics takes no stock of *actual* meta-preferences[8]. For instance, suppose some person cherishes the following second-order preference: he prefers *not to want to smoke*. However, as a matter of fact, his overriding first-order preference is that for a cigarette over anything else. So, if he indeed reaches for a cigarette and smokes it, this action would satisfy his *actual* (first-order) preference and Austrians would treat it as *evidential* of his welfare-enhancement. But then again, welfare-enhancement compared to what?

On a positive note then, the only sort of comparison Austrians must employ is the *synchronic counterfactual comparison*. That is, an *actual* action taken at t_1 (in the actual world W) must benefit the actor compared to the *closest possible* world W* in which the actor does not take at t_1 the action that he indeed takes in W but takes some other action instead, everything else equal. In other words, *given the actor's actual preferences,* he would be better off in W than in

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7 On the possibility of so-called *adaptive* preferences, see: e.g. Sen 1979, 1985, 1992, 1999; Nussbaum 2000, 2001.

8 On the phenomenon of meta-preferences, see: e.g. Frankfurt 1971; Elster 1979, 1985.

W*. Still, the above requirement is too weak as it is perfectly compatible with the trivial idea of benefitting r*elatively* to the (actual) action's opportunity cost. Consider a person with the following value scale at some given time:

1.   Going to a cinema.
2.   Playing poker with his friends.
3.   …

Given the person's actual preferences, it is trivially true that by *actually* going to a cinema the person benefits as compared to playing poker with his friends, with the latter action being the opportunity cost of the former. So, it is indeed the case that, *given the person's actual preferences*, the person is better off in W (the actual world in which he decides to go to a cinema) than in W* (the closest possible world in which the person does not go to a cinema but decides to play poker with his friends or takes any other sub-optimal action for that matter). In other words, in the light of the fact that W* is the closest possible world to W and thus in W* the actor has – by assumption – the same preferences as in W but he acts *differently,* he must be rendered worse off compared to W simply because in W* he picks some other option than (1), which implies that he necessarily picks an option he prefers less[9].

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[9]   I can almost hear all the Misesians out there protesting that the very *fact* of choosing *anything* in W* implies that *this* is indeed the most preferred option, and so the idea of *choosing* anything sub-optimal in W* is just incoherent. This all stems from the well-known Mises' ([1949] 1998, p. 95) contention which I cannot help indulging myself to quote in full: "[…], one must not forget that the scale of values or wants manifests itself only in the reality of action. These scales have no independent existence apart from the actual behavior of individuals. The only source of which our knowledge concerning these scales is derived is the observation of a man's actions. Every action is always in perfect agreement with the scale of values or wants because these scales are nothing but an instrument for the interpretation of a man's acting." Clearly, there is some tension in this quote. First, Mises seems to imply that a man's action is *evidential* of his value scales. After all, he speaks of a "source of knowledge" of these scales, which seems to suggest that there is indeed *something* that we can find out about; viz. *actual preferences* (or value scales, if you will) people have. On the other hand, he contends that value scales do not exist independently of a man's "actual behavior". However, if these value scales are mere instruments, what is there to be *really* inferred from individuals' actual behavior? And wouldn't we normally like to *infer* preferences (i.e. genuine mental rankings) from actual choices? It is no wonder then that for Mises action is perfectly aligned with value scales as the latter is *only an instrument* (isomorphically?) reflecting the former. However, this renders value scales ontologically void and choices actually unexplained. For how are Austrians supposed to *explain* actual choices people make if not by resorting to their respective preferences? Still, if we are to bite the bullet and accept the avowed "perfect agreement" between choices and value scales, then my idea of *choosing a sub-optimal option* in W* does not make sense. However, on *choices-as-evidential-of-preferences view*, we do

However, as already hinted at, the *synchronic counterfactual comparison* is only a necessary condition for the elaboration of any relevant baseline by dint of which Pareto-superior or inferior moves would be identified. For as we saw, when unaided, the above counterfactual reasoning simply restates in more technical terms the idea of benefitting relative to the actual action's opportunity cost. But we wanted to avoid this trivial idea of benefitting in the first place. Unsurprisingly, Rothbard obviates this difficulty, while contending that only voluntary choices translate into Pareto-superior moves. Given our doubts – expressed in chapter 3 – as what a voluntary choice (or exchange for that matter) consists in, we should focus on a very eloquent exposition of Rothbard's welfare economics provided by one of his followers, Jeffrey Herbener (2008, p. 61):

> Voluntary and involuntary interactions are defined in economics to recognize the distinction between cases in which it is possible to deduce that a person is better off from an interaction with another person and cases in which it is possible to deduce that he is worse off. Each person comes to an exchange with his naturally-owned property. A voluntary exchange occurs when neither trader uses or threatens violence against the property of the other. If the two persons trade the ownership of property without aggressive violence, then the exchange is voluntary. Given their natural ownership of property, each person chooses an alternative he prefers more than the non-interaction alternative. Both traders benefit. If one person violently aggresses against the property of the other person, then the exchange is involuntary. Given their natural ownership of property, the aggressor chooses an alternative that he prefers more than the non-interaction alternative and the victim is forced to choose an alternative that he prefers less than the non-interaction alternative. The aggressor benefits and the victim loses.

First of all, this *voluntariness proviso* seems to make a lot of sense *prima facie*. But for the proviso, we would be still left with the trivial truth that under given circumstances the actual action benefits the actor compared to this action's opportunity cost. By way of contrast, the position expressed by Herbener is *informative*; that is, it specifies two proper subsets of actions that would constitute Pareto-superior and Pareto-inferior moves: voluntary choices and coerced

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not need perfect agreement between the two as evidence is normally far from perfect (i.e. actors' weakness of will, their ignorance etc. are usual distorting factors, which would only *fallibly* lead the observer from the actors' choices to their respective preference). One disclaimer is due at this point: as the above excerpt from Mises is rather dark and murky, I am already *at a disadvantage* and so I claim I should be *compensated* by philosophically inclined readers' holding me to a slightly lower epistemic standard than they usually do.

choices, respectively. Moreover, we are offered an account of voluntary choic-
es. It appears that a voluntary choice is an absolute complement of a coerced
choice. In other words, given person A's property, the person may exchange it
either voluntarily or involuntarily. The first sort of exchange obtains in the ab-
sence of *aggressive* violence, while the other obtains "[if] one person violently
aggresses against the property of the other person". So, all in all, we are finally
given a non-trivial account of welfare-enhancement and welfare-diminish-
ment. The Rothbardian welfare theory (and the Herbenerian defense there-
of) is pretty straightforward: coerced exchanges translate into Pareto-inferior
moves, whereas voluntary (that is such that obtain in the absence of aggressive
violence) exchanges translate into Pareto-superior moves. However, as we not-
ed in chapter 3, if the proposed account of *voluntary* exchanges in the end *pre-
supposes* free market exchanges, then the whole Rothbardian argument *for the
free market* from the concept of *efficiency* is vitiated. But as we saw in the first
two chapters of the book, Austro-libertarians subscribe to rights-based notion
of voluntariness. That is, person A's choice would not count as voluntary unless
his rights are respected. In particular, according to libertarians, people would
not give up their property *voluntarily* if they were faced with an illegitimate
proposal, with the illegitimate proposal being such a bi-conditional that the
proposee would necessarily have to give up one of his rights no matter whether
he accedes to the proposer's demand or not. In other words, if the proposer's
proposal is such that the *threat element* of a bi-conditional promises the vi-
olation of one of the proposee's right, this proposal falls under the rubric of
threats overall[10]. And the victim does not (and cannot) accede to either aggres-
sive violence or to threats *voluntarily*.

To better elucidate the distinction between legitimate proposals (that is
such that their recipient accedes to voluntarily) and illegitimate ones (that is
such that their recipient cannot accede to voluntarily), let us compare the fol-
lowing two proposals in the form of bi-conditionals:
1) A plain market offer
    a) If you pay me $5, I will give you this beverage
    b) If you do not pay me $5, I will not give you this beverage (**the threat
       element**)

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[10] That threats are inherently coercive follows from the moralized baseline that libertar-
ians employ. Bear with us, the libertarian theory of threats will be illuminated in appendix.

As already mentioned, libertarians view the morality of proposals as a function of one (and only one) variable: **the threat element**. Specifically, the proposal is a *threat overall* if its threat element promises the right violation or – in other words – if the action threatened would *independently* count as a right-violation. If it does not, it is an *offer overall*. Therefore, what makes proposal (1) legitimate is the fact that the threat element of this bi-conditional does not involve the right violation since we assume that it is the seller that has a property right in the beverage. Hence, after the proposal has been made, the proposee is not about to lose anything he is *entitled* to. After all, by assumption, it is the seller that has a title to the beverage and it is the buyer who has a title to $5. The proposal is of such a character that no violation of the proposee's rights inevitably follows. If the proposee decides to part with money (a), it is *only* because he finds the beverage preferable to the money. Still, if he wants to preserve *status quo*, scenario (b) will materialize. However, as already observed, under (b) no right violation follows; that is, the buyer keeps *his* money, while the seller keeps *his* beverage. But then again, if so, the libertarian theory classifies such a proposal as legitimate or indeed as an offer.

By way of contrast, let us consider an illegitimate proposal:

2) A highwayman scenario
   a) If you give me $1,000, I will not kill you
   b) If you do not give me $1,000, I will kill you

In this case, **the threat element** is (b). Assuming that the proposee has *morally* nothing to do with the proposer (in particular, the former is not the latter's voluntary slave; nor does the former owe any money to the latter[11]), the threat element of the proposal under consideration is most clearly illegitimate. That is, it would be *independently* unrightful to kill the proposee only because he would not hand $1,000 to the highwayman. After all, by assumption, the highwayman may not legitimately claim the proposee's money. Nor may the former kill the latter since we also assumed that the target has not forfeited or extinguished his right to bodily integrity. And in the end, remember, if the *action threatened* in the proposal's threat element (viz. "or I will kill you") would *independently* constitute a right-violation, then *the entire proposal* must be regarded as illegitimate or as a *threat overall* on libertarian grounds.

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[11] Let us put the complications connected with *proportionality* aside. It is contestable whether a creditor may enforce his right to $1000 by such a grossly unproportional threat (viz. "…or I will kill you"). Readers interested in the concept of proportionality might find the following references useful: Otsuka 1994; Kinsella 1996; Block 2010, 2011; Frowe 2014.

Interestingly enough, since the libertarian ethic with its advocacy of barely restricted freedom of speech[12] takes gossiping about people to be permissible, it would follow – according to the libertarian view on the morality of proposals – that *threatening* to reveal people's secrets would be permissible too. As we saw, the (il)*legitimacy* of the proposal is a *sole function* of the *(il)illegitimacy* of the *independent* action the proposer is threatening with. Therefore, what would count as permissible on libertarian grounds are not only *non-conditional pre-views* of revealing people's secrets to the public (e.g. "I am going to tell your wife") but also, and crucially, *bi-conditional* proposals the **threat element** of which is to (conditionally) reveal people's secrets unless they accede to the pro-poser's demands. By way of illustration, let us consider the following proposal:

3) Blackmail[13] scenario
   a) If you pay me $ 10, 000, I will not tell your wife.
   b) If you do not pay me $ 10, 000, I will tell your wife.

Then again, since telling the proposee's wife would be *independently* per-missible, *the whole proposal* in the eyes of the libertarian ethic must be deemed permissible. Even more interestingly then, if the proposee decided to pay, he would be paying *voluntarily* and hence, the transaction would also have to be regarded as valid. To put it slightly more technically, handing money to a blackmailer would constitute a *voluntary transfer* and so the resultant (re)distribution of resources would be perceived by libertarians as just. If such a transfer were indeed made, it would be then a blackmailer who would have a property right in newly acquired $ 10 000, whereas the blackmailer's target would then hold a right against the blackmailer that the latter should not re-veal the former's secret. Correlatively, what the blackmailer would give up for money is his *liberty* to reveal his target's secret and thus the blackmailer would incur a duty not to reveal the secret.

Now that we are in position to distinguish between *legitimate* and *illegiti-mate* proposals and – correspondingly – between valid and invalid transfers,

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[12] If fact, Rothbard ([1982] 2002) in his "Ethics of Liberty" treats *even* inciting to crime as permissible. The types of speech acts that the libertarian ethic bans are those constituting threats of property right violation. See also: Dominiak and Block 2017.

[13] Blackmail has been extensively analyzed in professional literature. For a libertarian treatment of the problem, see: e.g. Epstein 1983; Block and Gordon 1985; Block, Kinsella and Hoppe 2000; Block 2013. For some mainstream analyses thereof, see: e.g. Feinberg 1988; Evans 1990; Gorr 1992; Altman 1993; Fletcher 1993; Mitchell 1998, 2006; Malcolm 1999; Levy 2007; Shaw 2012; Rivlin 2015; Elhauge 2016; Galoob 2016. For further references on the *libertarian* take on blackmail, go to appendix.

we should test what sort of bearing the above distinction should have on the *efficiency* of an exchange. As we remember from the Herbenerian exposition of Rothbard's welfare theory, it is only *voluntary* exchanges that translate into Pareto-superior moves. Therefore, trying to come up with a much-desired test of the Rothbarian welfare theory, Wysocki and Megger (2009, p. 76) proposed a thought experiment involving two such scenarios that they minimally (if at all) differed in their *economic* aspects but clearly differed in terms of their respective *legitimacy*. Compare the following two cases:

4) Tax collector case

A tax collector comes to you and says: "Pay me $1,000 or you will go to prison". You decide to succumb to his proposal. You pay and preserve the *status quo*.

For the sake of clarity, the above proposal might be rendered in a bi-conditional way:

4a) If you pay me $ 1,000, you will not go to prison.

4b) If you do not pay me $ 1,000, you will go to prison.

5) Potential competitor case

You run a successful business and one day your potential competitor comes to you saying: "Pay me $1,000 or I will open a competitive retail shop in close proximity to yours". You decide to accede to the person's proposal. You pay and preserve the *status quo*.

The corresponding bi-conditional form is:

5a) If you pay me $1,000, I will not open a competitive retail shop in close proximity to yours.

5b) If you do not pay me $1,000, I will open a competitive retail shop in close proximity to yours.

As promised, the two cases differ *normatively*, whereas everything else appears to be equal. As for the normative aspect of the two scenarios under consideration, we can safely say, while applying the libertarian conception of the morality of proposals, that proposal (4) is illegitimate, whereas proposal (5) is legitimate. The reason (4) is illegitimate is that its threat element (marked in bold) previews the right violation. After all, libertarians view the institution of tax-collecting as inherently aggressive, the intuition aptly captured in the catchy phrase 'taxation is theft'. But if so, then (4b), which is the threat element of the whole proposal, cannot be legitimate. That is, the *independent* action of imprisoning the proposee were he to fail to pay the tax collector would count as an instance of aggression. This in turn predicts that proposal (4) is illegiti-

mate; or, to use a libertarian parlance, it is a threat[14]. By contrast, (5b), which is the threat element of proposal 5, does not preview any action that would *independently* amount to right violation. The proposer's opening a competitive business in case the proposee decided not to pay him for his abstention therefrom would constitute a perfectly legitimate action in a free society, wherein everybody would be at liberty to set up his or her business enterprise. And if so, proposal (5) is also morally permissible and would therefore count as an offer by libertarian lights.

Having said that, let us now go on to investigate how (if at all) scenarios (4) and (5) differ *economically*. First, we claimed (Wysocki and Megger 2019, p. 77) that when we judge both exchanges in *ex post* terms, they seem to be identical. In both (4) and (5), the proposee pays the same amount of money only to preserve the *status quo*. In other words, in fact, the proposee must now *pay* to remain as well off as he was in a *pre-proposal* position, which clearly shows that the preservation of the actor's *status quo* comes at a price.

And how should we conceive of the exchanges under (4) and (5) in *ex ante* terms? We also maintained that in both cases it looks as though the actual proposee would rather the proposer "dropped dead"[15], which means that the proposee would be better off if the proposer had nothing to do with him. This seems to hold true because the "drop dead" counterfactual reasoning relies on a comparison of the actual world W, in which a proposal was indeed made, with W*, the closest possible world in which the proposal made in the actual world is taken out of the picture together with *any actions* of the proposer that might affect us (adversely or not). And indeed, the proposee in both (4) and (5) would be better off if the tax collector and potential competitor disappeared completely or at least had nothing to do with him[16]. Remember, the Nozickian "drop-dead" condition would not investigate into what the tax collector or

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[14] Remember that libertarians resort to a moralized baseline when they assess the legitimacy of proposals. Therefore, on libertarian grounds the expression "illegitimate threat" is pleonastic, whereas "legitimate threat" is oxymoronic.

[15] This catchy phrase 'drop dead' is actually attributable to Rothbard ([1982] 2002, p. 245) and not to Nozick, whose theory of (un)productivity was rendered by Rothbard in terms of the "drop-dead" principle. However, the concept of *dropping dead* involving a certain counterfactual comparison is clearly attributable to Nozick, its originator.

[16] Incidentally, in his theory of (un)productive exchanges, Nozick resorts not only to the drop-dead counterfactual but also considers within his second condition of an unproductive exchange whether a proposal benefits the proposee, given the proposer's existence and the fact that he may indeed take rightful actions adversely affecting the proposee. The technicalities will play out in chapter 6.

a potential competitor would do *to the proposee* were they not given a chance to make their respective proposals. It is precisely in the "drop-dead" sense that – from the position of the proposee – *both* the tax collector *and* potential competitor via their respective proposals can *at most* solve the problems they created[17]. For it is to be re-emphasised that although the proposee under (4) does indeed decide to pay, thus benefiting *ex ante* as compared to going to a prison, there would be *nothing* to pay for had the tax-collecting institution (with the generic tax collector being an incarnation thereof) "dropped dead". By the same token, the proposee under (5) does indeed decide to buy off his competitor, thus benefitting *ex ante* compared to having to face a competitive retail shop in close proximity of his. However, there would be no such *abstention* to pay for had this potential competitor "dropped dead". Hence, scenarios (4) and (5) seem to be *economically* on a par.

Still, we can envisage the reader who is not persuaded that the *only* difference between scenarios (4) and (5) lies in the moral nature of these proposals, with (4) being an impermissible proposal and (5) being a permissible one. After all, a *type* of the proposer and proposal varies across the two scenarios under scrutiny. At any rate, the institutions the proposers incarnate are clearly distinct: tax-collecting vs market competition. And so, the skeptic might retort: "You allow *too much* to vary. You fail to make good on your promise. Proposals (4) and (5) do not differ *only* in regard to their respective illegitimacy/legitimacy. Either proposal is made by a *diametrically different type* of the proposer. And the contents of the proposals are different. Given those *additional* differences, how can I know that *the moral character* of those proposals is *economically irrelevant?* Perhaps, the *moral* character of the proposal does indeed matter to its recipient's welfare and so do *a type* of the proposer and the content of the proposal. If so, it is conceivable that the efficiency of an exchange would be a function of *three* variables: a) the morality of a proposal and b) a type of the proposer making the very proposal and c) the content thereof.

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[17] Some people believe that this also applies to socialism. As Stefan Kisielewski, a Polish liberal thinker, essayist and classical music composer at the same time, famously quipped: "Socjalizm jest to ustrój, w którym bohatersko pokonuje się trudności nieznane w żadnym innym ustroju", which expresses more or less the following thought: Socialism is a system in which one bravely overcomes the problems unknown to other systems. Another example might by Chet Baker's witticism to the effect that he never heard a jazz drummer who would sound as good as no drummer.

Now, our point is *not to concede or deny* that the distinctions (b) and (c) may indeed matter *economically* (viz., have a *differential* bearing on the welfare of the recipients of the proposal (4) and (5), respectively). Rather, what is at stake is whether it is *the morality* of a proposal (its legitimacy or illegitimacy) that figures as a variable in welfare-enhancement/diminishment function. The force of the skeptic's claims derives not from the fact that a type of the proposer and the proposal may be *economically relevant* per see, which, especially given Austrian subjectivism, may be indeed plausible. Remember, what we (Wysocki and Megger, 2019) were trying to show was that *voluntariness* of an exchange does not matter for welfare considerations. But to *conclusively* demonstrate that, we need to rule out the skeptic's objection. And to do so, we must modify our thought experiment in such a way that the two thus proposed scenarios should indeed differ only in terms of the legitimacy of proposals made therein. In other words, we should control for other *possibly relevant variables*. This compliance with more rigorously construed *ceteris paribus* requirements should satisfy our skeptic.

We posit that by building on scenario (5) and proposing an *illegitimate* variant thereof (5') we can easily wind up with such a pair of scenarios that the *economic* gap between them is closed. Now, let (5) stay as it is; that is, a competitor unknown to us threatens with opening a competitive retail shop in close vicinity to ours. Moreover, let the *distinctive feature* of (5) be the fact that the competitor has had nothing to do with us so far. At any rate, by assumption, he has a *liberty* to open that business in the area. In particular, let us suppose that the proposer under (5) entered no contract with us and hence he did not incur *a duty* not to open that business. By contrast, we should construct (5') in such a manner that the proposal and the type of the proposer should be the same but that the proposal itself be immoral. Everything else equal, to render (5') impermissible, it is enough to stipulate that in this scenario, the proposer had already entered into a contract with the proposee, with one of its provisions being such that the former had already incurred a *duty to abstain* from opening a competitive retail shop. This would in turn confer upon the proposee a correlative *right* against the proposer's opening that shop. So, how are we to conceive of the proposal "Pay me $1,000 or I will open a competitive retail shop in close proximity to yours" made under those new circumstances; that is under the assumption that the proposer had already struck a prior contract with the proposee, which *legally* secured the former's abstention from setting up the competitive business? The libertarian theory of threat is crystal-clear

on that issue. Since the proposer *now* threatens with an action which would in and of itself constitute a right violation, the whole proposal is illegitimate. For the sake of clarity, let us juxtapose (5) and (5') in their full bi-conditional form:

  5) Legitimate competitor (no prior contract with the proposee)

  5a) If you pay me $1,000, I will not open a competitive retail shop in close proximity to yours.

  5b) If you do not pay me $1,000, I will open a competitive retail shop in close proximity to yours.

  5') Illegitimate competitor (a prior contract with the proposee)

  5'a) If you pay me $1,000, I will not open a competitive retail shop in close proximity to yours.

  5'b) If you do not pay me $1,000, I will open a competitive retail shop in close proximity to yours.

Plausibly enough, the threat (**5'b**) might be as powerful to the proposee as is (**5b**). Most certainly, the recourse to the law and the subsequent enforcement of one's rights takes time. Therefore, the proposee might as well decide to buy off the illegitimate competitor anyway. The former may reasonably apprehend the situation in which his competitor will solicit his goods and services so successfully – albeit illegitimately – that the former's corresponding goods and services will get permanently compromised in the eyes of his customers despite the fact that the said competitor may have ended up in prison in the meantime. So, the proposee could pay $1,000, thus demonstrating that he benefits in expectation *relatively* to facing a competitive (albeit illegal) business run at least for some time. And ironically enough, it seems that we might dismiss the objection that under (5) the proposee pays *voluntarily,* whereas under (5') he pays *involuntarily* with the cavalier Rothbardian 'so what?'[18]. Once the proposee pays under both (5') and (5), the two exchanges appear to be *economically iden-*

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[18]   On the other hand, if we take some better supported theory of voluntariness such as, say, Werheimer's (1989), our apparently contrasting scenarios would prove to be *merely apparently* contrasting. In fact, Wertheimer's theory resorts to two prongs: proposal prong and choice prong. And as far the proposal prong goes, Wertheimer would agree with Rothbard: proposal 5' is *coercive*. However, for Wertheimer, the proposal being coercive is only a necessary condition of coercion. For another necessary condition (with both of them being jointly sufficient) of coercion has to do with the *choice prong*. If the proposee indeed had a reasonable alternative at hand; for example, a recourse to the law, then him not taking advantage of that opportunity and paying off the illegitimate competitor might as well count as a *voluntary* payment. To summarize, our thought experiment successfully provides two morally contrasting cases against Rothbard (with his theory of voluntariness) but would fail to do so against Wertheimer (with his two-pronged theory of coercion).

tical. And now that the contrast between (5') and (5) is indeed narrowed down to the *normative* element of both proposals, the only valid conclusion is that the *economic efficiency* is not a function of *voluntariness* (in the rights-respecting sense) of an exchange. The two exchanges in question seem to be equally bad regardless of the fact that one of them is voluntary and the other is not.

However, notwithstanding the appearances to the contrary, our (Wysocki and Megger, 2019) anonymous reviewer, who promptly launched his rejoinder to our criticism of Rothbard's welfare economics, did not find our original intuition (appealing to cases (4) and (5)) persuasive. We (p. 78) rendered his indictment in the following way:

> [I]n [4], our economic actor (by acceding to the issued threat) does not get anything over and above what he has already had (money and liberty) and since he has not disposed of this certain amount of money so far just like that (that is in the absence of the threat in question), it can reasonably be inferred that the actor's welfare must have necessarily diminished. On the other hand, in [5], it seems that our actor buys something new: he pays one of his potential competitors to "drop dead"; that is, the former buys a more desirable business environment.

First of all, as shown in chapter 3, "it cannot reasonably" be inferred that a given *event* must be welfare-diminishing only because the actor involved has not so far brought about this very event voluntarily. Remember, such an inference would be a plain *non sequitur* for other *relevant factors* (e.g. the actor's preferences) might have changed in the meantime. We do believe that we delivered a fatal blow to the "the negative side of the demonstrated preference doctrine" in the previous chapter; so, we will instead delve into and elaborate upon the second objection expressed by our reviewer.

First of all, it is to be noted that our critic, strangely enough, appeals to *different criteria* of welfare-enhancement/diminishment throughout his comment. The way he deals with case (4) seems to appeal to as many as *two reasons* why we should deem the exchange (4) welfare-diminishing. First, our anonymous critic (2019, p. 26) appears to be evaluating the exchange in terms of overall liberty[19]; that is, he rightly observes that proposal (4) effectively deprives the proposee of the *conjunction* of liberty and money. In other words, necessarily, either will have to give now. Second, he bolsters his point by resorting to, as we believe, the already compromised "negative side of the demonstrated preference doctrine". The latter doctrine aside, let us try to interpret our critic most charitably and

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[19]   On the notion of overall liberty, see: e.g. Carter 1999; Kramer 2003.

let us see how his criticism *would* fare were he to assess the two exchanges *exclusively* from the angle of their impact on the proposee's freedom. Apparently, our reviewer perceives the exchange under (5) as beneficial since he perceives it in terms of buying "a more desirable business environment". But the effect of proposal (5) on the proposee's freedom (or, more technically, overall liberty) is exactly the same as that of proposal (4). As a result of proposal (5), the proposee loses the *conjunction* of facing no competition *and* money. In other words, once proposal (5) is made, the proposee will necessarily give up either his money or his comfortable business environment. But note that our critic views acceding to proposal (4) as welfare-diminishing as "our economic actor (…) does not get anything over and above what he has already had". But alas, exactly the same is true of exchange (5). On the other hand, if the reviewer is entitled to say that under (5) the proposee "buys a more desirable business environment", we are *equally entitled* to say that under (4) the proposee buys "a more desirable social environment" (Wysocki and Megger, 2019, p. 78). However, with the notion of "environment" being so vague, this kind of perverse way of speaking of "buying environments" is empty. After all, any actual payment implies buying some more desirable environment as compared to the one that would (expectedly) obtain in the absence of our payment – the *belief* in this counterfactual is the very reason that we decide to pay in the first place. Additionally, the above jargon in fact *merely restates* the idea of benefitting *relatively* to one's actual action's opportunity cost – the idea already discredited as a criterion of welfare-enhancement. Hence, in the section under scrutiny, what remains the only interesting yardstick serving to measure the effects on the proposee's welfare exerted by proposals (4) and (5) consists in measuring their respective effects on the proposee's overall liberty. But then again, *contra* our critic, it transpires that the two exchanges do not differ *relevantly* in terms of their respective impact on the proposee's overall liberty. Both proposals deprive the proposee of *a conjunction* of two options.

As a last resort, our reviewer might be (charitably) construed as subscribing to a *moralized* baseline. In other words, a baseline against which we would then assess Pareto-superior or inferior moves would be constituted by any distribution of resources to which the proposee is morally entitled to. Specifically, and most interestingly from the viewpoint of our present considerations, Pareto-inferior moves would be then such moves that make the economic actor worse off than he is *morally entitled* to be. Most likely, it is *this baseline* that enables us to make *best* sense of our critic's retort. This would explain why our

critic most asymmetrically acknowledges that the proposee "buys a more de-
sirable business environment" under (5) and fails to acknowledge that the pro-
posee buys "a more desirable social environment" under (4). Our critic could
submit that there is indeed a relevant difference between the two exchanges.
After all, in (5), the proposee buys something that he is not originally entitled
to; viz., he buys a *right* against the proposer's setting up competitive business.
Clearly then, if one employs a rights-based baseline, the proposee benefits by
buying "a more desirable environment" simply because he had no right to this
environment before his purchase. By contrast, if we perceive tax-collecting un-
der the threat of imprisonment as morally impermissible for the reason that we
have a self-ownership right, which morally secures the use of our body as we
please as long as we violate no rights of others, then we must view paying the
tax-collector as a Pareto-inferior move. After all, we have a right to our bodily
integrity, as our moral baseline would have it. Therefore, being deprived of
at least a part of our income for remaining free (something we have a moral
a right to *anyway*) must count as a Pareto-inferior move. So, the relevant con-
trast between (4) and (5) would reduce to having one's right violated vs buying
a negative right. Just to reiterate, in (4), the proposee *merely apparently* "buys"
freedom since he is morally entitled to remain free by default. In other words,
there is no genuine (moral) entitlement he buys, while paying the tax-collec-
tor. By contrast, in (5), the proposee buys a genuine negative right against the
competitor since before the transaction the former does not hold a negative
right against the latter that he should not open a competitive retail shop. As
a result of the transaction, the proposer in effect gives up his *liberty* to set up
some competitive business and thus incurs a *duty* not to do so. Note that the
same point can be reformulated in terms of *moralized freedom* (see: chapter 1).
Our critic might concede that *both* proposals diminish the proposee's freedom
in a neutral sense. However, he might contend that under (5) the *conjunction*
facing no competition *and* money does not constitute a relevant baseline since
on the free market we are not *morally entitled* to one of the conjuncts; viz., we
have no right that others should not compete with us business-wise. Granted,
conferring upon individuals the right to monopoly and exclusivity would be
a travesty of the free market. By contrast, in (4), we are indeed morally enti-
tled to the *conjunction* of remaining free (not being imprisoned) *and* keeping
money. Remember that on a moralized view of freedom, we can be rendered
unfree only when there obtains an *illegitimate* man-made constraint on our
freedom; viz., there is some other individual that by his action(s) limits one of

our freedoms *that we are entitled to have*. Before proposal (5), it is only a *happy circumstance* that the proposee does not have to deal with the competitor. And so, not having *a right* to monopoly or exclusivity, proposal (5) cannot count as diminishing the proposee's moralized freedom.

It must be conceded that the above appeal to a moralized baseline (whether in terms of rights or moralized freedom) seems to have some force. However, the very point of our original thought experiment (Wysocki and Megger, 2019) and its further elaboration presented herein is to show that two exchanges admittedly differing in their legitimacy do not necessarily differ in their respective efficiency. In other words, the very aim of our thought experiment was the demonstration that the relation between respecting rights and benefitting is *contingent*. Specifically, we were intent upon showing that some voluntary (rights-respecting) exchanges cannot be regarded as mutually beneficial. So, in the end, if the intuition inhering in our thought experiment counts for something, then appealing to the fact of buying genuine rights (as opposed to having one's rights violated) as necessitating a beneficial exchange begs the question against our intuitive, albeit well-considered, judgement. After all, the audience that finds our thought experiment and the conclusion stemming therefrom persuasive *cannot* believe that respecting rights automatically translates into Pareto-superiority, whereas coercive proposals automatically give rise to Pareto-inferior moves. At this point, our Austrian-inclined critic might reply that it is our resort to some other concept of *benefitting* that begs the question against Austrians. And we would concur: our concept of *benefitting* is only *contingently* related to respecting rights. On the other hand, we want to *independently argue* for our rights-independent idea of benefitting on the strength of the intuition emanating from our thought experiment. And then again, if the reader finds our intuitive judgement compelling, this alone should give him a reason to believe that there is indeed something wanting about the Austrian conception of *benefitting* as *being parasitic on rights*. And finally, we cannot see any *decisive reason* counting in favor of the Austrian rights-dependent view of benefitting. Rather, our reasoning runs along the lines of *modus tollendo tollens*: since our intuition appears to be compelling, the Austrian rights-based view of benefitting, instead of being unshakable, ought to be jettisoned.

However, our complacency was soon to be shattered as the exquisite diehard Austrian economist Jakub Bożydar Wiśniewski (2019) was swiftly alarmed and produced a short but sharp rejoinder to our original paper. Al-

though some remarks by Wiśniewski have been perhaps already preempted herein, it is always instructive to cite flesh-and-blood human beings rather than fend off purely imaginary (and hence pretty unresponsive) intellectual adversaries. The former has this advantage over the latter that it allows the debate to roll on, as we are about to see. First of all, Wiśniewski (p. 26) charges that

> (…) paying the tax collector off does not preserve the pre-existing status quo, but rather, first, deprives the payer of the money that he originally possessed, thus leaving him worse off, and, second, testifies to the fact that he now inhabits an interventionist, zero-sum world instead of the voluntarist, positive-sum world that he inhabited before the tax collector showed up. Paying off the potential business competitor, on the other hand, is a purely contractual interaction, which, instead of preserving the status quo, establishes a more favorable business environment as far as the payer is concerned.

Funnily enough, this passage by Wiśniewski at best restates our position and at worst (unfortunately, the more probable outcome) begs the question against us. Wiśniewski (p. 26) perceives our two scenarios (4) and (5) as "significantly dissimilar". However, the only (relevant?) difference that this author pinpoints is that the exchange under (4) is coercive, whereas the one under (5) is voluntary. In our (Wysocki and Megger 2000, pp. 104–105) rejoinder to Wiśniewski's rejoinder we responded to this objection as follows:

> It cannot count as any indictment against us that our two scenarios are "significantly dissimilar" in *this* respect because it is *exactly* what our thought experiment strived to achieve. If Wiśniewski insists that voluntariness/involuntariness makes the world of a difference for the respective efficiency in the two transactions, he simply *begs the question against us* since the necessary relevance of voluntariness to efficiency is *precisely what we question*.

To argue against skeptics (such as us), Wiśniewski should provide some *independent reason* why *voluntariness* of an exchange should have a bearing on its efficiency. We do agree that (4) and (5) are "significantly dissimilar"; after all, it makes the world of a difference whether an exchange is legitimate or not for this consideration in turn determines whether a resultant distribution of resources is just or unjust, respectively. However, Wiśniewski still owes us *an argument* to the effect that *voluntariness* of an exchange is a sufficient condition for its efficiency. Plain denial of our view that some voluntary exchanges are as bad as involuntary ones cannot do dialectically.

Unabashed, Wiśniewski (p. 27) goes on to invoke the concept of baseline (or normalcy). Alas, he clearly subscribes to *some* moralized baseline[20]. If he did not do so, he would not necessarily see any *economically relevant* difference between the case of extortion (as exemplified by the tax-collector case under (4)) and a mere blackmail (as exemplified by the competitor case under (5)). The fact that Wiśniewski indeed advocates *some* moral baseline is evidenced by the following quote: "(…) there is a fundamental praxeological asymmetry between responding to voluntary business offers (of whatever nature) and responding to coercive "offers one can't refuse"". But why should there be "a praxeological asymmetry"? However hard Wiśniewski tries, he cannot have it both ways. For either his praxeology is anemic or his Austrian-spirited *economic* advocacy of the free-market regime fails. After all, praxeology is a *formal value-free* study of human action and as such it cuts across political regimes. So, what does Wiśniewski effectively tell us? That praxeology is parasitic on the right talk? That the concept of *choice* (or *opportunity cost* for that matter) depends for its application on certain normative conditions having been antecedently met; in particular, that man chooses *only* voluntarily? These are very deep questions which I would by no means dismiss. It might as well transpire, on the most plausible theory of choice, that man indeed *chooses* only voluntarily (viz. under the condition of rights being respected), which would *entail* that once rights are violated man does not choose at all. This could in turn provide a clue for why paying an extortionist is not mutually beneficial, whereas paying a blackmailer is. However, the gap between rights-based voluntariness and the mutually beneficial exchanges is not bridged yet and Wiśniewski makes no attempt to overcome this shortcoming.

There is one more remark by Wiśniewski (p. 27) that we cannot let go unnoticed

> (…) preserving one's liberty in an extortionist system and maintaining one's market niche in a competitive business environment are most definitely not identical benchmarks as far as praxeologically understood Pareto-efficiency is concerned. Operating in the context of the former requires incurring additional opportunity costs just in order to retain one's ability to enter into voluntary transactions and raise one's welfare above the initial baseline. Operating in the context of the latter requires no such thing – as mentioned earlier, the emergence of an additional competitor need not be construed as a downward departure from the initial baseline of one's welfare.

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[20] As observed earlier, this in and of itself comes perilously close to *prejudging* that it is only the free market that increases social utility.

The above rather murky remark on "not identical benchmarks as far as praxeologically understood Pareto-efficiency is concerned" left us (Wysocki and Megger, 2020, p. 106) with no clue as to its meaning. Yet, since Wiśniewski regards the appearance of "an additional competitor" as not necessarily welfare-diminishing from the perspective of the proposee to whom the former's abstention from opening a competitive retail shop is offered, whereas he sees paying an extortionist as requiring "incurring **additional** cost", it might be presumed that in Wiśniewski's view *the relevant baseline* is a moralized baseline. This would smoothly explain why an extortion generates "additional cost", while the appearance of the competitor does not. The reason is straightforward: the former has *no right* to extract money from the proposee by definition – otherwise he would not be an extortionist but a blackmailer, while the latter is *at liberty* to open his competitive retail shop and so he may give up this liberty for money. Correspondingly, as predicted by a moralized baseline, paying an extortionist diminishes the payer's welfare, whereas buying off the competitor enhances the welfare of the buyer.

However, remember that employing a moralized baseline while arguing for a specific political regime carries a risk of *fudging the baseline* to reach a desired conclusion. Specifically, because the libertarian case for the free-market is primarily *moral* (viz., it appeals to natural rights in its moral justification of the free market), we can **weave** a moralized baseline around property rights morality and then the conclusion that free market **always** increases social utility will inevitably, albeit trivially, follow. By the same token, we can *fudge* a moralized baseline in such a way that it would fit the conclusion that it is only socialist command economy that always increases social utility. Therefore, *fudging* would not get us far. The question of *the* relevant baseline is most certainly the deepest *normative* question yet to be answered as far as welfare economics goes and no *purely analytical* (let alone *stipulative*) work will do in this respect. The most satisfactory version of welfare economics would answer which proposals count as offers (or threats for that matter), period. Such a welfare theory would not *relativize* its assessments of Pareto-superiority or inferiority to particular baselines for it would eventually hit upon *the* relevant baseline. Surely, Wiśniewski does not provide us with any hints as to the relevant baseline but who can blame him for that.

To finish with an exercise in humility, I have to admit that our (Wysocki and Megger, 2019, pp. 78–79) paper rather cursorily tackled the problem of whether the Rothbardian argument for the free market begs the question. We

(p. 78) nonchalantly stated that more or less the only way to make sense of the Rothbardian idea of benefitting is to take him as **stipulating** "the concept of Pareto-superior moves and defin[ing] them as increases in utility (compared to opportunity cost) within voluntary choices". However, this interpretation unjustifiably points to one direction: that Rothbard's premise to the effect that all voluntary exchanges are mutually beneficial is *analytical*. Moreover, we *implicitly* assumed that Rothbard's definition of the free market as "a totality of voluntary exchanges" is *nominal* rather than *real*. Given this uncharitable reading of Rothbard, it is little wonder that we "spotted" circularity in his reasoning from free market to efficiency. It seemed to us that since Rothbard admittedly *analytically* defines Pareto-superior moves in terms of rights-based voluntariness, then he simply **defines** free market into increases of efficiency. And indeed, if Rothbard's whole welfare theory rested on a) an analytic premise and b) a nominal definition, then our blissful conclusion that Rothbard makes a case for free-market efficiency simply by tinkering with definitions followed.

So, given that clear deficiency of our paper, I want to remedy it in the following chapter by providing a more detailed and formalized analysis of the Rothbardian argument. Specifically, I am going to reconstruct our (2019) logical argument in detail. Having done so, I shall in turn address Wiśniewski's (2019) criticism thereof, while focusing on our (Wysocki and Megger, 2020) rejoinder thereto. Alas, it will transpire that over those two years (2019–2020), we cited *two distinct reasons* for classifying the Rothbardian argument under the rubric of question-beggingness. Eventually, chapter 5 will be concluded by considering the critical remarks made by Łukasz Dominiak[21], who – in passing – kindly reminded of the principle of charitable interpretation.

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[21] Made during priceless private conversations.

IS ROTHBARD'S ECONOMIC ARGUMENT
FOR THE FREE MARKET DIALECTICALLY FALLACIOUS?

As mentioned in chapter 4, the second criticism we (Wysocki and Megger 2019) levelled against the Rothbardian argument for the free market from efficiency was that it begs the question. However, as hinted at above, our paper left this very point hopelessly underdeveloped and so it was later to meet with some well-deserved objections. There is no denying that we were proceeding too hastily, while trying to deliver the final blow to the whole Rothbardian conceptual edifice. What is worse, we are going to demonstrate that our (Wysocki and Megger, 2020) rejoinder to Wiśniewski's (2019) response to our original paper is misconceived as we impermissibly shift to an alternative reason why we believe that Rothbard's argument is question-begging. It is in this sense that we (2020) at least partly talk past Wiśniewski. Having thus presented the whole debate we were involved in, I will in turn try to reconstruct our latest position (2020) in greater detail. Eventually, the thus sharpened view on why Rothbard's argument is purportedly question-begging will be confronted with Łukasz Dominiak's critical remarks. But instead of precipitating things, let us start with our original *logical* argument against Rothbard's welfare economics.

As mentioned in chapter 4, we (2019, pp. 6–7) contented ourselves only with stating that "the Rothbardian concept of Pareto-superior moves does not capture linguistic intuitions" (in the light of our antecedently proposed thought experiment). Having said that, we went on to say that *the only other* way to make sense of voluntary exchanges constituting Pareto-superior moves

is to understand the latter as being *stipulatively* defined in terms of the former. In other words, we contended (although we failed to put it expressly) that the premise to the effect that all voluntary exchanges constitute Pareto-superior moves is an *implicit definition*. Namely, no exchange could count as a Pareto-superior move unless it is voluntary. And the truth of that claim would be *axiomatically laid down* – pretty much in the spirit of *conventionalism*. So, on thus reconstructed account, an involuntary exchange cannot logically constitute a Pareto-superior move no matter what. This resembles ensuring the truth of the theory's hard-core by *methodological fiat*[1], which is reminiscent of the famous "white swan" problem. Specifically, there is such a way of conceiving of the premise to the effect that *all swans are white* that guarantees that this premise in question shall remain unassailable. To illustrate the point, recall that up to some moment all the swans scientists encountered were white, which prompted the belief in the above proposition. That all swans are white was then as well corroborated as can be. So how can a scientist react when confronted with the actual discovery of a black swan?[2] The most radical way to keep the truth of the proposition *All swans are white* by convention is to conceive of *whiteness* as a part of the *meaning* of *the swan*[3]. This would effectively rule out such apparent counter-examples as black swans. That is, if *swanness* implies *whiteness*, then – via *modus tollendo tollens* – for every x, x being non-white, x is not a swan.

By analogy, we (Wysocki and Megger 2019) unreflectively thought that, given our thought experiment designed to raise disbelief in Rothbard's premise to the effect that *voluntary* exchanges constitute Pareto-superior moves, *the only way* in which Rothbard can ensure its truth is to conceive of this premise as an *implicit definition*. That is, since *voluntariness* (of an exchange) is *a part of the meaning* of Pareto-superior moves, no exchange can count as Pareto-superior unless it is *voluntary* and the truth of that statement is guaranteed *by*

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[1] On truth by convention (whether critical or apologetic), see: e.g. Poincaré [1905] 1982; Quine [1936] 1976; Lakatos 1978; Putnam 1987; Sidelle 1989; Dummett 1991; Warren 2015, 2017; Linsbichler 2017, 2019.

[2] Or, to put it non-question-beggingly, let us say that *this apparent black swan-like counter-example* is exactly like the white swan in all other respects.

[3] After all, after Quine (1951), it is more or less generally accepted that observations are fundamentally *theory-laden* and so it is impossible in principle for an observation to refute a single proposition *in isolation*. But if so, there is some room made for conventionalism: one might as well simply *decide* to keep a particular proposition true, while trying to adjust the remaining parts of one's theory.

(stipulative) *definition*. And indeed – absent the possibility of strawmanning Rothbard – it would follow that Rothbard simply begs the question in favor of the free market and so our (2019) point would be valid. If *voluntariness* of an exchange is stipulatively **defined into** Pareto-superior moves, and the libertarian account of *voluntariness* is property rights-based, then it is little wonder that Rothbard concludes that it is the free market that always increases social utility. After all, the presumption that *voluntariness* is *directly* defined into Pareto-superiority means that, given the property rights-based account voluntariness, the free market is presumed to be *indirectly* defined into Pareto-superiority. But then again, the Rothbardian argument was supposed to *argue for* the free market from Pareto-superiority and it seemed to us that Rothbard *models* his concept of Pareto-superiority in such a way that it *already presupposes* the free market. Then we concluded our (2019) paper on a more or less correct[4], as I still believe, note:

> To argue for the free market, we should have at our disposal a descriptive (value-free) concept of efficiency and then argue for the free market on the basis that it happens to be the free market itself that maximizes efficiency. Instead, Rothbard assumes voluntariness as a necessary and sufficient condition for a Pareto-superior move. But then, if the concept of Pareto-superior moves relies on voluntariness, then the former cannot justify the free market, with the free market being defined as a universe of voluntary exchanges, since the Pareto-superior already assumes only free-market transactions. In other words, the Rothbardian project is flawed as it begs the question.

The intuition we cherished here is indeed more or less correct. Still, our demands as to "the concept of efficiency" are definitely *too strong* and partly misconceived. In truth, to non-question-beggingly argue for the free market it is enough *not to presuppose* it in one's premises. We may correctly argue for the free market while resorting to *other values*. In fact, the very notion of *efficiency* is moralized itself. As Wight (2015, p. 59) maintains, efficiency provides *a measure* of to what extent what is desirable (or good for us) is satisfied. It is in this sense that the concept of *efficiency* rests on some idea of *welfare*. It is logically impossible to speak of efficient (or inefficient for that matter) outcomes without specifying *which good* is to be maximized. Therefore, an *economic* argument for the free-market does not need to be (and it cannot be, as Hume's guillotine has it) value-free. As established, *efficiency* willy-nilly presupposes

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[4] That it is not *entirely* correct will be illuminated quite shortly. So, bear with me.

some idea of *welfare*. In the light of this, our desideratum of having a "descriptive (value-free) concept of efficiency" is completely misguided. Yet, the part of our intuition survives. Namely, we should conceive of *free market* and *efficiency* as logically independent so that it should be an *open question* whether "it happens to be the free market itself that maximizes efficiency". And "happens" is a key word here. It should be a question of *happy coincidence* rather than *conceptual necessity* that the free market – apart from being the only just regime in the eyes of libertarians – also increases social utility. We (2019) thought[5] that if Rothbard *indirectly* **defines free market** into his notion of Pareto-superiority, then unsurprisingly (because question-beggingly) he winds up with the conclusion that it is the free market that is a proper home for Pareto-superior moves. But if it were Rothbard's real agenda, then he would indeed fatally conflate *justice* with *efficiency*. But we (2019) were far from *establishing* that Rothbard's premise to the effect that all voluntary exchanges translate into Pareto-superior moves *must* be given this radical conventionalist reading, which would guarantee its truth by definition. To make things worse, we (2019, p. 78) simply assumed[6] that it is for the purpose of his argument that Rothbard defines the free market "as a collection of all voluntary exchanges". Apparently, we could not shake off the feeling that the whole Rothbardian welfare project is an exercise in *fudging*; that is, that Rothbard *first* "knew" his conclusion and so he adjusted his premises accordingly. Specifically, as hinted at above, we believed that to establish that free market increases utility, Rothbard *indirectly* defined free market into utility increases. Most uncharitably, we thought that to hide this dialectically fallacious maneuver, he did so *via* the concept of voluntariness. In other words, we presumed that he simply *defined* Pareto-superiority in terms of *voluntariness,* while simultaneously *defining* the free market as a totality of *voluntary* exchanges. Given these two stipulative definitions, the Rothbardian conclusion necessarily (analytically) followed.

To summarize, our (2019) original attempt to shake the whole Rothbardian welfare economics rested on two most suspicious assumptions: a) that Rothbard simply *stipulates* the concept of Pareto-superiority in such a way that Pareto-superior (in his stipulated sense) moves can now – via conceptual necessity – obtain *only* on the free market and b) that it is Rothbard who "defines the free market as a collection of all voluntary exchanges". Point b) is indicative

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[5] And rightly so if it were not for the strawmanning Rothbard.
[6] Although this assumption has some textual support, as we are about to see.

of our then belief that the *identification* of the free market with the totality of voluntary exchanges is simply arbitrary and merely *designed* to serve the Rothbardian purpose of the *purportedly* economic defense of the free market. Fortunately, our complacent critique of Rothbard's welfare economics was not here to stay once Jakub Bożydar Wiśniewski (2019) came up with his incisive rejoinder.

Although – for the lack of space, Wiśniewski does not extensively *argue for* his points, his criticism is eye-opening anyway since he brings our attention at least to the *possibility* that Rothbardian premises are, in the end, not arbitrary, something we were blind to from the very beginning. The following excerpt from Wiśniewski's (p. 27) rejoinder aptly illustrates how he counters our *logical* indictment against Rothbard:

> In fact, however, Rothbard's argument follows a clear line of deductive, causal-realist reasoning. To wit, rather than arbitrarily defining Pareto-superiority as the result of voluntary interactions, Rothbard derives such a definition from the action axiom and its subjectivist implications, including the impossibility of making interpersonal utility comparisons. Consequently, his definition of the free market as the sum total of voluntary transactions is likewise not arbitrary, but deductively justified, grounded in the nature of catallactic development and in the fundamental distinction between the economic and the political means (…) As such, it is perfectly consistent with the description of the free market offered by his mentor, Ludwig von Mises, who described the institution in question as "the total complex of the mutual relations created by […] concerted actions" aimed at "cooperation and coadjuvancy with others for the attainment of definite singular ends" (…).

It does not matter for our purposes that Wiśniewski provides little by way of argument for his claims. What is really important is that it made us (Wysocki and Megger, 2020) come up with a rejoinder to Wiśniewski's rejoinder. Moreover, it was mainly the desire to yet again probe the problem of whether Rothbard in his argument begged the question that was a motivating reason for us to write our next (2020) essay. Even our intuitive argument tackled in chapter 4 did not attract as much attention in our rejoinder as the apparent dialectical fallacy of begging the question we claimed Rothbard fell prey to. In the light of this monomaniacal preoccupation with the above fallacy, it is all the more surprising that our rejoinder (2020) addresses Wiśniewski's in a both confusing and confused manner. As we are about to see, in our latest paper, while trying to take the sting out of Wiśniewski's objection, we *imperceptibly* shifted into a different interpretation of the alleged Rothbardian question-beggingness,

which, instead of taking Wiśniewski's challenge head on, muddles the issue. Still, general remarks aside, let us take stock of how our views unfolded over last two years.

Whereas in our first (2019) paper, we thought that the whole Rothbardian *logical* edifice of welfare economics rests on two stipulative definitions, the claim advanced in our rejoinder (2020) to Wiśniewski is most certainly more modest. We (2020) do not any longer impute to Rothbard two premises consisting in stipulative definitions. Instead, due to the ever-present force of our thought experiment, we still cherish the intuition that not all voluntary exchanges translate into Pareto-superior moves (see: chapter 4), which gives us a reason to *cast doubt* upon the Rothbardian premise having it that *voluntariness* of an exchange is a sufficient condition for Pareto-superiority. And this time – quite unlike in our first paper – we claim that *the only* definitional premise in Rothbard's argument is the one identifying the free market with all voluntary exchanges. And since it seems that – upon this reconstruction – the Rothbardian conclusion simply restates his non-definitional premise, his whole argument is presumed to be question-begging[7]. So, the *order* of our two arguments was not accidental. For, as a first step, we clung to our intuition stemming from our thought experiment which was designed to undermine the appeal of the Rothbardian *premise* to the effect that all voluntary exchanges are mutually beneficial. And it is indeed *only when* we cast doubt upon that very premise that we could call into question Rothbard's conclusion that free market always increases social utility since, as hinted at above, we believed that Rothbard's conclusion is a mere restatement of his non-definitional premise[8].

At this point, a word of caution is due. We do concede the *validity* of the entire Rothbardian argument. However, the *validity* of an argument most certainly does not imply its *persuasiveness*. That is, for the argument's conclusion to be epistemically *justified*, its premises must be *justified*[9]. In other words, we should have an *independent epistemic reason* to believe in the argument's

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[7]   There are innumerable works on the fallacy of begging the question. Douglas Walton stands out as perhaps the most systematic thinker on that issue; see: e.g. Walton 1985, 1991, 1994, 2005, 2006 as well as Woods and Walton 1975. Moreover, Sinnott-Armstrong's (1999) treatment of begging the question as a pragmatic fallacy is still considered a classic. Finally, for most recent works on the fallacy, see: e.g. Hazlett 2006; Ritola 2006; Williamson 2007; Betz 2005, 2008, 2010; Elgin 2020.

[8]   This point will be, of course, further illuminated in the forthcoming part of the present chapter.

[9]   And it is indeed Rothbard's premises that gave us something to bite on.

premise(s). But for this standard, we could simply infer *justified* (*persuasive*) conclusions from themselves. Consider the following *merely valid* reasoning:

P: Michael is the smartest boy in town.

_____

C: Michael is the smartest boy in town.

Clearly, the above argument is *valid*. But can it be persuasive? Suppose that what is *at issue* is precisely whether Michael is the smartest boy in town. Given that, if the argument's conclusion (the proposition expressed by the sentence "Michael is the smartest boy in town") is to be justified, which is the point of making an argument in the first place, the argument cannot appeal *to the same proposition* in its premise(s) for that premise would be open to doubt just as much as the conclusion. After all, the premise and the conclusion express (even in the same wording) the same proposition. It is in this sense that an argument can be *viciously circular*[10].

Moreover, there is another (or actually a *broader*) way in which arguments may prove to be dialectically fallacious. As remarked by Richard L. Epstein (2011) in his textbook *Pocket Guide to Critical Thinking*, some arguments may beg the question *in a broad sense*; that is, their respective premises do not have to be mere restatements of their respective conclusions but the former may be simply *no more plausible* than the latter. Note that the concept of *begging the question in a broad sense* unproblematically encompasses begging the question *in a narrow sense*, with the latter involving the situation wherein one of the argument's premises merely restates (or repeats *verbatim*) the argument's conclusion. After all, when the argument begs the question in a narrow sense, it is trivially true that the argument's premise is *no more plausible* than the

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[10] Still, the fact that the argument's conclusion is a *verbatim* repetition of its premise is *insufficient* to render the whole argument *viciously* circular. Consider the following example from Sinnott-Armstrong (1999, p. 4):

P: Some valid arguments have only particular premises.

_____

C: Some valid arguments have only particular premises.

Note that this *entire* circular argument serves as a very interesting instance justifying its conclusion. So, this argument has a normative force to convince a skeptic who doubts its conclusion. The fact that the argument is indubitably valid (and it cannot be otherwise since the conclusion is identical with the premise) and that its premises are indeed particular gives a skeptic an epistemic reason to believe its conclusion.

argument's conclusion for the two are *propositionally* identical. Therefore, begging the question in a narrow sense is just a *special case* of begging the question in a broad sense. Incidentally, there is nothing contrived in the idea of *begging the question in a broad sense*. The concept is simply identical with *petitio principii*, as traditionally conceived. The fallacy of *petitio principii* is an argumentative defect which involves at least one of the argument's premises not being antecedently and *independently* justified. Therefore, we may correspondingly speak of *petitio principii* not only in a broad sense; that is when one of the argument's premise is *no more plausible* than its conclusion, but also in a narrow sense; that is when one of the argument's premises is logically equivalent to the conclusion and is therefore as plausible as the conclusion itself. Moreover, we may distinguish the concept of *begging the question in a **strictly** broad sense* and correspondingly – of *petitio principii in a strictly **broad** sense*[11]. So, the concept of *begging the question in a **strictly** broad sense* would apply to an argument which begs the question in a broad sense but (simultaneously) does not beg the question in a narrow sense. In other words, at least one of the premises of such an argument would be *more unwarranted* (or less warranted) than its conclusion. For the sake of illustration, let us shift back to the previous viciously circular argument and suppose yet again that the point at issue is whether Michael is the smartest boy in town. However, this time, while trying to conclude that Michael is indeed the smartest boy in town, we shall construct a non-circular but begging-the-question-in-a-strictly-broad-sense argument. Consider (A0):

P_1: God told me that Michael is the smartest boy in town.
P_2: Whatever God communicates is true.
C: Michael is the smartest boy in town.

Let us now test whether an arguer can succeed in convincing a skeptic that Michael is indeed the smartest boy in town. As P_1 is *prima facie* more controversial, we shall investigate P_2 first. Is this premise eligible for increasing our confidence in C? A skeptic might claim that P_2 already presupposes God's existence but it does not have to be so. Instead, P_2 may be a fragment of an implicit definition of God; viz. it is a part of the meaning of *the concept* of God

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[11] Remember, the two concepts are not distinct. We just introduce the latter wording to avoid the tediousness of our prose.

that whatever he communicates is true[12]. And equivalently, by entailment, any entity that happens to communicate anything false is not God by definition. It would be unfair to take issue with this definition. So, let us conclude that P_2 states an analytic truth and let us happily proceed. P_1, on the other hand, is by no means indubitable; nay, it is *prima facie* highly unlikely that an arguer heard anything directly from God himself. Thus, any audience which is not particularly religiously inclined, would find P_1 argumentatively unsatisfactory and the reason therefor would be that such an audience would find P_1 ***strictly less credible*** than the argument's conclusion itself. Therefore, as it stands, A0 is unpersuasive towards any audience which has not yet embraced mysticism. This sort of audience would find the argument *question-begging in a **strictly broad sense***.

With those general conceptual remarks aside, it is high time to study the *logical* aspect of Rothbard's argument in detail. In order to do so, it would be advisable to represent the Rothbardian argument in a syllogistic form. But first we should do justice to Rothbard himself by quoting him at length on the crucial point under scrutiny herein. In his essay *Toward a Reconstruction of Utility and Welfare Economics*, Rothbard ([1956] 2011, p. 320) first purportedly repudiates all the major economic welfare theories hitherto proposed and only then puts forward his own positive agenda as follows:

> Let us now consider exchanges on the free market. Such an exchange is voluntarily undertaken by both parties. Therefore, the very fact that an exchange takes place demonstrates that both parties benefit (or more strictly, *expect* to benefit) from the exchange. The fact that both parties chose the exchange demonstrates that they benefit. The free market is the name for the array of all the voluntary exchanges that take place in the world. Since every exchange demonstrates a unanimity of benefit for both parties concerned, we must conclude that *the free market benefits all its participants*.

As promised, let us now render the above reasoning in a concise syllogistic form (A1):

P1: All voluntary exchanges are mutually beneficial (at least in expectation)
P2: Free market is a totality of voluntary exchanges
C: Free market benefits all its participants (at least *in expectation*)

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[12] And, of course, concepts do not have to be instantiated. For example, we can *meaningfully* speak of unicorns but, most probably, there is nothing out there which is a unicorn.

Additionally, what merits special attention is the fact that Rothbard treats the free market as "the name for the array of all the voluntary exchanges that take place in the world". Being equipped with the thus delineated framework, let us first *rationalize* our (Wysocki and Megger, 2019) original intuition to the effect that Rothbard's putatively *economic* argument for the free market ultimately begs the question. First of all, we took P2 to be a nominal or stipulative definition. In other words, we took it for granted that it amounted to nothing over and above a *terminological regulation*. Specifically, we thought that the phrase "all voluntary exchanges" *merely* imports meaning to the phrase "free market" and so the latter might be treated as a useful *shorthand* for the former. It is already crucial to note that this interpretation is not as innocuous as it might seem at first. If the free market is indeed *definitionally* (analytically) reduced to the totality of voluntary exchanges, the Rothbardian argument would carry as much (non-linguistic) information if it were to skip the phrase 'free market' altogether. On this interpretation, the illusion that Rothbard's argument predicates something of substance of **the free market** stems from the familiarity of that very phrase. Under this interpretation of P2, we (Wysocki and Megger, 2009) could have claimed (although, sadly, we never explicitly did) that Rothbard's argument predicates something of substance of one entity and one entity only: **voluntary exchanges**.

To make this point more vivid, I invite the reader to suspend disbelief for a moment and carefully consider the *caricature* of Rothbard's argument (A1'):

P1': All voluntary exchanges are mutually beneficial (at least in expectation)
P2': Shree market is a totality of voluntary exchanges
C': Shree market benefits all its participants (at least *in expectation*)

Nobody of the right might would claim that (A1') *discovers* something about the nature of shree market. It is fairly clear that the above argument is a playful (albeit valid) exercise in substitution. The *only* purpose shree market serves is to provide a useful shorthand for the more clumsy "a totality of voluntary exchanges". So, in the end, if shree market *is definitionally* (analytically) *reducible* to "the array of all the voluntary exchanges that take place in the world", the conclusion is not really about shree market. Rather, it is about **all voluntary exchanges**. To summarize, P2' does not discover *the essence* of shree market but simply stipulates the meaning of the phrase 'shree market'. It is only *for the sake of brevity* (or for nerdy fun) that the phrase 'shree market' is introduced.

And so, P2' would not be a substantive premise. Instead, P2' is trivially true on the strength of its *stipulative* character. In other words, it is trivially true because we made it trivially true. That is, we defined all voluntary exchanges into the notion of *shree market*. We *made* the relation of identity hold between shree market and all voluntary exchanges. And this is the reason why (A1's) conclusion cannot say anything interesting (or informative) over and above P1'.

To still better appreciate our point, let us stack one more propostion stipulating the relation of identity between its terms. So, let P3'' stand for "Shree market *is* blahblahblah". Now consider the following (A1'') even nerdier variant of the previous argument in full.

P1'': All voluntary exchanges are mutually beneficial (at least *in expectation*)
P2'': Shree market *is* a totality of voluntary exchanges
P3'': Shree market *is* blahblahblah
C'':   Blahblahblah benefits all its participants (at least in expectation)

Since in A1' we concluded that shree market benefits all its participants and A1'' adds another premise stipulating the relation of *identity* between 'shree market' and 'blahblahblah', we can infer C'' by indiscernibility of identicals. If whatever is true of shree market is true of blahblahblah and *vice versa*, we can validly conclude that it is also blahblahblah that benefits all its participants since shree market does so. But does C'' *discover* anything about the nature of blahblahblah? Of course, not! But to see that is to see that C' does not *discover* anything about the nature of shree market either. In (A1'), the whole substantive work is done by P1'. What is more, however many stipulative identity-stating propositions one may stack over P1, the resultant argument's conclusion will always *merely* restate P1. Note that this applies to the conclusion of (A1') and of (A1''). Whether we predicate 'benefitting of all its participants' of shree market or of blahblahblah, it is *ultimately* all voluntary exchanges that do the job. It is *voluntary exchanges* that have a *conceptual import*, whereas 'shree market' and 'blahblahblah' are theoretically redundant linguistic add-ons.

This brings us back to the original Rothbardian argument. Our (Wysocki and Megger 2019) implicit belief that Rothbard's P2 is a *mere linguistic stipulation* gave as a reason to believe that the Rothbardian argument is question-begging. For then, by analogy to the grotesque arguments (A1') and (A1'') presented above, the Rothbardian conclusion would simply restate his premise P1. His conclusion to the effect that free market benefits all its participants (at least in

expectation) would *carry the same information* as his premise having it that all voluntary exchanges are mutually beneficial (at least in expectation).

In the light of the above exposition, we (Wysocki and Megger 2020, p. 107–108) believed that the only audience against which Rothbard's argument does not beg the question is the one which is unfamiliar with the *meaning* of the phrase 'free market'. In other words, it is only when P1 is not at issue that the entire argument is not dialectically fallacious. After all, if a skeptic doubts the argument's conclusion but does not doubt P1, the (stipulative) definition laid down by P2 endows the skeptic with *a reason* to believe the conclusion. Such a skeptic would be then *justified* in experiencing a eureka moment upon hearing P2 for it is precisely P2 alone that could (justifiably) make him believe the argument's conclusion. However, if only P1 is doubted, then – as we maintained – P2 alone cannot do the heavy-lifting. It is because P1 merely restates the conclusion and since in the scenario under consideration it is the conclusion which is called into question, a *mere restatement* thereof (P1) cannot justify the conclusion as the former is unsurprisingly open to as much doubt as the conclusion itself. In other words, it is a truism that nothing can be a reason for itself. In other words, when a terminological regulation (P2) is not the skeptic's target but P1 is, Rothbard's argument leaves the conclusion hanging in mid-air.

This *pragmatic* account of begging the question we (2020) borrowed from Sinnott-Armstrong (1999), who has it that whether an argument commits the above dialectical fallacy is *relative* to an audience which is the argument's target. Sinnott-Armstrong's essay not only provides a road map to various theories of question-beggingness in general but also presents a *strikingly* similar argument to the one made by Rothbard in particular. Thus, in order to bolster our *logical* point, we (2020) decided to juxtapose Sinnott-Armstrong's (1999, p. 176) celebrated example with the Rothbardian argument for the free market. The former assumed the following form:

> Suppose Kate says to Larry, 'Mary lives in Buckeye State'. Larry responds, 'No. I've never heard of the Buckeye State, but Mary lives in Ohio'. Kate then argues,
>
> (A3) Ohio is the Buckeye State.
> Mary lives in Ohio.
> _____
> Mary lives in the Buckeye State.
>
> The second premise is equivalent to the conclusion, since Ohio is the Buckeye State. So Kate's argument is weakly circular. But Kate's use of the argument is still informative for Larry, who did not know that Ohio is the Buckeye State.

Having cited the above piece of reasoning and having presumed that it bears a striking resemblance to the Rothbardian *allegedly economic* argument for the free market, we (Wysocki and Megger 2020, p. 108) concluded, while taking the analogy between the two even further, that the latter does not beg the question only against "a Larry-like audience". But if our interpretation of Rothbard's argument were to be correct, this would be a rather Pyrrhic victory for this author's avowed *economic* argument for the free market would come to naught. After all, if his *only* substantive premise (P1) is presumed to be a mere restatement of his conclusion, then P1 cannot by itself provide any *independent reason* to believe the argument's conclusion. And remember, our (Wysocki and Megger 2020) perusal of Rothbard's argument construed of P2 as a stipulative (analytic) premise. And if so, then Rothbard's argument may be indeed *only persuasive* to an audience which finds the definitional (analytic) premise P2 illuminating. But then again, any target audience consisting of *economists* who are aware of the meaning of 'free market' would find the entire argument implausible. This is so, because its major premise (P1) *cannot* be more plausible that its conclusion. And the reason is simple: P1 is as (im)plausible as is the argument's conclusion, since they both express the same proposition – at least in our (Wysocki and Megger 2020) view. And that is why, we believed that the Rothbardian arguments fails to make an *economic* case for the free-market, notwithstanding its pretenses to the contrary.

Incidentally, note that once we construe of P1 as logically equivalent to C and of P2 as an analytic premise, the Rothbardian argument would be equally *unpersuasive* if it ran in the opposite direction. Consider the Rothbardian (A1*) argument after the said rearrangement:

P1*: Free market benefits all its participants (at least *in expectation*)
P2*: Free market *is* a totality of voluntary exchanges
C*: All voluntary exchanges are mutually beneficial (at least *in expectation*)

Rather unsurprisingly, A1* is also a valid argument. This point is completely trivial since it assumes the logical equivalence between P1* and C* (because we assumed the equivalence between P1 and C in the first place and because equivalence is a symmetric relation). However, it quite elegantly illustrates the purportedly playful and void character of the Rothbardian reasoning. Just to reiterate, once the argument's only *substantive* premise is a restatement of its conclusion (and this presumably applies to both A1 and A1*), the argument

cannot increase our reasonable degree of confidence in its conclusion since its only *informative* premise is, trivially, as plausible as its conclusion.

However, it remains to be noted that even if the relation between P1 and C were not that of equivalence, the argument would not even then be *conversationally* remedied. According to some logicians[13], the reason is that as long as P2 remains analytical, question-beggingness would still haunt the argument. Consider the following argument:

P1**:   All squares are rectangles
P2**:   This figure is a square
C**:   This figure is a rectangle.

The reason why this argument is uninformative, albeit valid, is that its minor premise (P2**) *by definition* presupposes the argument's conclusion. After all, it is true *by definition* that all squares are rectangles. Furthermore, an analytic premise (P1**) aside, can P2** provide an *independent reason* to believe the argument's conclusion? Let us suppose that the point at issue is precisely C**. Is the skeptic warranted in suspending his disbelief in C** in the light of P2**? In other words, is P2** more plausible than C**? Quite the contrary, it is more probable for a figure to be a rectangle than a square since all squares are rectangles and not all rectangles are squares. Given all this, it seems that to remedy the Rothbardian argument, two conditions must be met: a) the relation between P1 and C cannot be that of equivalence and b) P2 cannot be a merely analytic point[14]. However, that the Rothbardian argument meets the said two conditions was what Wiśniewski (2019) seemed to be implying. So, having rationalized our (Wysocki and Megger 2020) quite adamant position, it must be yet again confessed that we failed to address Wiśniewski's above objection to the effect that neither of Rothbard's premises is arbitrary. In particular, if the premise to the effect that all voluntary exchanges are mutually beneficial (at least *in expectation*) is indeed justified *independently* of Rothbard's argument's conclusion, then the main thrust of our (Wysocki and Megger 2020) rejoinder loses its force. Additionally, if, as Wiśniewski (2019) claims, the understanding of free market in terms of voluntary exchanges is of non-arbitrary character, then our whole *logical* counter-argument against Rothbard's economic case for the free market collapses.

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[13] See: e.g. Keynes 2018.
[14] With point b) being still controversial.

Funnily enough, almost the same criticism as the one by Wiśniewski (2019) was levelled at our (Wysocki and Megger 2020) position by Łukasz Dominiak during one of our casual peripatetic philosophizing sessions. Since great minds apparently think alike, Dominiak made his point almost simultaneously with and completely independently of Wiśniewski. If this does not remind our reader of Newton and Leibniz discovering the differential calculus, I do not know what can. Moreover, remember, it was Dominiak himself that always kept reminding me of the principle of charitable reading and thus kept my strawmanning tendencies in check. Having said that, let us now focus specifically on the way the Rothbardian argument can be saved at least from the fallacy of begging the question in a narrow sense, as suggested by Dominiak.

First of all, as we maniacally noted throughout this chapter, a *paradigm case* of begging the question in a narrow sense (*circulus (vitiosus) in probando*) obtains once one of the argument's premises *merely restates* the argument's conclusion[15]. Or, generally speaking, the above fallacy is committed once one of the argument's premises is not justified *independently* of the argument's conclusion. For the sake of clarity of exposition, let us once again invoke the Rothbardian argument rendered in a syllogistic form (A1)

P1: All voluntary exchanges are mutually beneficial (at least *in expectation*)
P2: Free market *is* a totality of voluntary exchanges
C: Free market benefits all its participants (at least *in expectation*)

So, the first point to note is that there is at least a way of conceiving of P1 and C such that the relation between the two propositions is not that of *equivalence*. If so, this would allow us to avoid the situation wherein one of the premises (*verbatim* or not) restates the conclusion. The said way consists in construing P1 more broadly than C. Namely, we can conceive of free market exchanges as a *proper subset* of *all voluntary exchanges*. After all, what we may encounter in Mises ([1949] 1998, p. 195) is the concept of an *autistic exchange*. In other words, in the absence of another economic actor, one person may exchange a less desirable state of affairs for a more desirable one. An autistic exchange may indeed strike as a somewhat idiosyncratic and borderline sort of exchange but in fact the concept makes a lot of sense. Most of all, it allows us to *explain* human action in the Robinson Crusoe economy. It is undeniable that in a such

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[15] But see: footnote 10.

a simple economy, man also make choices, man economizes his time – a scarce resource. Primarily though, the concept of *opportunity cost* seems to apply. When Crusoe decides to rest, the cost of resting is the second-best opportunity foregone; for example, picking up berries. It is in this sense that Crusoe *exchanges* picking up berries (an action he deems possible) for resting and that is why he benefits in expectation from resting, as compared to picking up berries. Granted, an autistic exchange is not a *pros hen* sort of exchange. Whenever we think of exchanges, the focal meaning thereof seems to be a market exchange or an exchange between two economic actors, at any rate. However, once we come to terms with this slightly peculiar application of a concept of exchange to the Robinson Crusoe economy[16], we should have no trouble of concluding that autistic exchanges are indeed mutually beneficial (at least *in expectation*). In fact, the insight that all autistic exchanges are mutually beneficial at least in *ex ante* sense is far less problematic than the conclusion that *all non-autistic voluntary exchanges* benefit all the parties thereto. Remember that a Pareto-superior move involves benefitting at least *one* person, while not rendering any other worse off. Whereas *uncoerced* Robinson Crusoe undeniably benefits in expectation by *exchanging* one state of affairs for another, it is also *trivially true* that nobody else is made worse off since there is nobody else yet in the first place (in the Robinson Crusoe economy, there is no Friday yet). Most certainly then, an autistic exchange is just a special case of Pareto-superior moves. But if that is so, thus reconstructed Rothbard's argument is at least not question-begging in a *paradigm sense* of *vicious circularity*; that is, when one of the argument's premises is *propositionally identical* with the argument's conclusion. For, indubitably, P1 *now* speaks of a sort of exchanges (autistic ones) that the conclusion stays mute about.

Having established this, it is vital to analyze the nature of P2 since it must be borne in mind that according to some logicians, an argument may be question-begging (in perhaps some more anemic sense) if one of its premises makes a purely *analytic* point (by stipulating the relation of equivalence or by merely spelling out a part of an implicit definition) despite the fact that its other premise is not equivalent with the argument's conclusion. To illustrate *such* an argument, we resorted to the following example:

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[16] This *heuristic device* is used by economists of different provenance; see: e.g. Schumpeter 1934; Hayek 1941; Mises 1960; Rothbard [1982] 2002; Starr 2011; Riley 2012.

P1**:   All squares are rectangles
P2**:   This figure is a square
C**:   This figure is a rectangle.

Note that P1** states *purely analytic truth* but the relation between squares and rectangles is obviously not that of equivalence. Instead, being a rectangle is only *entailed* by the concept of *square*. Or, in other words, for every x, x being a square, x is a rectangle and – by contraposition – for every y, y not being a rectangle, y is not a square. So, as we see, an analytic premise does not have to state a proper equivalence between *definiendum* and *definiens*. Instead, it may merely spell out *a part* of a conceptual content of *definiendum*, which still makes question-beggingness loom large. Incidentally, if, *arguendo*, P1** stated an equivalence between squares and rectangles, then we would be back to the most salient case of begging the question; viz. the case wherein P1** is propositionally identical with C**.

By the same token, if Rothbard's P2 (free market *is* a totality of voluntary exchanges) merely stipulates the *relation of equivalence* between voluntary exchanges and free market exchanges, then even *the reconstruction of P1* would not help avoiding making a viciously circular argument for then P1 would still express the same proposition as C. However, after the reconstruction of P1 (i.e. with the inclusion of autistic exchanges under the rubric of voluntary exchanges), C would have to be interpreted more broadly too. Specifically, market exchanges would then *by definition* encompass autistic exchanges too. But this rendering of the Rothbardian argument would be as bad as our (Wysocki and Megger, 2020) interpretation thereof. The only difference would be *the broader extension* of the concept of voluntary exchanges, and hence of market exchanges too.

Having established that to remedy the Rothbardian argument we cannot conceive of P2 as stipulating the relation of equivalence between free market (exchanges) and all voluntary exchanges, we should note that *voluntary exchanges* should not simply *analytically* follow from the concept of the *free market (exchanges)*. Because if they did, Rothbard's argument would be caught in a predicament instantiated by the above argument including squares and rectangles. All in all, there seems to be one way to *dialectically* repair the Rothbardian avowedly economic argument for the free market: we should avoid *not only* interpreting P1 as propositionally identical to C *but also* construing P2 as a part of a stipulative (or nominal) definition of free market (lest we are back

to squares and rectangles in this case). We have already demonstrated how to satisfy the first condition: we (not utterly artificially) expanded the concept of voluntary exchanges by autistic exchanges, which effectively made P1 and C logically non-equivalent to one another. But how to meet the second condition? The only way I can think of (and the way antecedently approved by Łukasz Dominiak during the said philosophical walk) is to interpret P2 as a part of a *real definition* of the free market. The inquisitive reader may at this point start wondering why to employ the above "a part of" proviso? It seems to me that if we believe that what *really* makes market what it is (or, in other words, what really accounts for the emergence of the free market as pre-theoretically or nominally defined) is *literally* the totality of voluntary exchanges, then willy-nilly we would be forced to concede that autistic exchanges (after all, they constitute a proper subset of the totality of voluntary exchanges, as our reconstruction has it) form at least a part of an underlying nature of the free market. But somehow I intuitively recoil at the thought that autistic exchanges have *anything* to do with the *real* composition of free market. Therefore, it appears as though the best interpretation of P2 is to conceive of free market exchanges as a proper subset of voluntary exchanges. Technically speaking, for all x, x being a market exchange, x is a voluntary exchange and – by contraposition – for all y, y being an involuntary exchange, y is not a market exchange. In other words, we would conceive of *voluntariness* as a *real* (as opposed to *purely analytic*) necessary (but not sufficient) condition of a market exchange. So finally, what cries for a remedy is the *very wording* of P2. Remember, we wanted to render voluntariness a real *necessary* condition of market exchanges. Therefore, it would be clumsy to say that free market is a *totality* of voluntary exchanges, given our expanded reading of voluntary exchanges under P1. Hence, to do justice to the novel propositional content of P2, let us give it the following novel expression:

P2: Free market exchanges are voluntary

Given that, our purported logical remedy of Rothbard's argument yields the following restatement thereof (in full):

P1: All voluntary exchanges are mutually beneficial (at least *in expectation*)
P2: Free market exchanges are voluntary
C: Free market exchanges benefit all the parties thereto (at least *in expectation*)

But then again, the syllogistic form aptly illustrates only the *validity* of above argument. So, by way of recapitulation, let us show why this reconstructed argument does not, as I believe, beg the question at least in a narrow sense, or *internally* if you will. First, because we expanded the concept of voluntary exchanges by autistic exchanges, P1 does no longer restate C as market exchanges are now construed as a *proper subset* of voluntary exchanges. Second, I suggested that P2 be read as *a part* of the real definition of the free market. The point of that was to avoid the alleged question-begginess of a *structurally* similar argument invoked above (viz., the one with squares and rectangles). Incidentally, I am not oblivious of the fact that Rothbard's original P2 is most certainly meant as a *proper definition* (whether stipulative or not) as he – rather tellingly – speaks of the free market "as the name for all voluntary exchanges". Therefore, it should be presumed that it is the *relation of equivalence* that holds between the free market and all voluntary exchanges. However, as already noted, given our expanded extension of the concept of voluntary exchanges (by autistic ones), it would be suspicious to subsume autistic exchanges under the rubric of market exchanges. That is why, given our reconstruction of P1, we are forced not to conceive of P2 as a proper (viz., stating the relation of equivalence between *definiendum* and *definiens*) definition. Instead, we should take P2 as (strictly) *predicating* voluntariness of market exchanges. That is, all market exchanges are voluntary exchanges but not all voluntary exchanges are market exchanges.

Still, the impatient reader might ask what is all this fuss with real (as opposed to nominal or stipulative) definition of the free market. First, on a negative note, we remember that if P2 is to be interpreted as a mere terminological regulation, then it would follow *by definition* that market exchanges are mutually beneficial – just as it follows *by definition* that this figure is a rectangle (C**) given that this figure is a square (P2**). By contrast then, if it is somehow *discovered* that *voluntariness* makes the free market what it is[17], then the en-

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[17]   To elucidate this point, the distinction is to be drawn between nominal definitions and real definitions. So, whatever the nominal definition of the free market is (or in other words, whatever the *pre-theoretical concept* of the free market is), it does not include *voluntariness*. And, once we allow for the distinction between a nominal and real definition with respect to the free market, we thereby make a room for *the discovery* of its *real essence*. For its *real essence* would simply be *whatever* gives rise to the phenomenon which satisfies the nominal definition of the free market (whatever that is). Although it might be a stretch, let us consider an analogy. Water is usually taken as a paradigm example illustrating the distinction between nominal vs real definition. *Nominally*, water *is* thirst-quenching, odorless liquid etc. However, this nominal definition leaves a slot to be filled in by its *real essence*. That is, a *real essence* would be whatever gives rise to (or is an underlying nature of) a substance which fits the nominal definition

tire argument becomes informative. P1 would claim that *voluntariness* of an exchange is a sufficient condition for mutually benefitting (at least *in expectation*), whereas P2 would *interestingly* (informatively as opposed to analytically) relate the phenomenon of free market to *voluntariness*. And hence, it would *interestingly* follow that free-market exchanges benefit all the parties thereto (at least *in expectation*).

At this point, it might be retorted that I brought the Rothbardian argument to such philosophical heights that it is disfigured beyond recognition. And indeed, Rothbard provides us with no clues as to the interpretation of his apparently definitional premise (P2). Are we to take it a linguistic stipulation or as a discovery? Wiśniewski (2019), as we remember, claims that in Rothbard, the definition of the free market is not arbitrary but he offers no guidance of how we should conceive of the relation between the free market and voluntariness. Is voluntariness a part of what *makes* the free market as nominally understood? Such considerations are missing both in Rothbard's welfare project and in Wiśniewski (2019).

As for P1, it might also be presumed that by voluntary exchanges Rothbard means interpersonal exchanges. However, as repeatedly noted above, under this interpretation P1 always comes perilously close to a restatement of C. And it is this very possibility that prompted my reconstruction of P1 in the first place. So, it is difficult to blame me for doing my best to improve on Rothbard's argument. But it ultimately raises the question of whether the Rothbardian argument is *persuasive* upon its reconstruction, which brings us all the way back to the notion of *begging the question in a strictly broad sense*. What is left to establish then is whether P1 now is more plausible than C.

It must be borne in mind that chapter 4 endeavored to equip us with a reason to doubt the conclusion to the effect that free market exchanges always increase social utility. And I still believe that our (Wysocki and Megger 2019) thought experiment shifts the burden of proof to Rothbardians such as, say, Wiśniewski himself. For it seems at least *intuitively* clear that some voluntary transactions (e.g. paying off a blackmailer) are as economically bad as involuntary ones. Wiśniewski's contention that "rather than arbitrarily defining Pareto-superiority as the result of voluntary interactions, Rothbard derives such a definition from the action axiom and its subjectivist implications, including the impos-

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of water. And, it was *discovered* that it is H_2O that is responsible for the bundle of properties captured in the nominal definition of water. On the distinction between nominal vs real definitions, see: e.g. Robinson 1950; Dudman 1973; Kripke 1980; Horwich 1998; Charles 2010.

sibility of making interpersonal utility comparisons" is sadly left underdeveloped. Wiśniewski does not indulge us with the derivation of the Rothbardian account of Pareto-superiority from the action axiom. Given this shortcoming, we are warranted in holding on firmly to our original thought experiment and the intuition stemming therefrom. But then again, if we still have a reason to doubt C, don't we have at least an equally strong reason to doubt P1? Granted, upon reconstruction the argument does not necessarily beg the question in a narrow sense, or *internally* if you will. But what gives us an independent reason to believe P1? As mentioned above, we do have a reason to doubt C (in the light of our thought experiment); that is, we are justified in disbelieving that all market exchanges are mutually beneficial. *A fortiori*, we do have a reason to disbelieve the premise to the effect that all voluntary exchanges (including autistic ones) are mutually beneficial. Hence, if the reconstructed argument is to be persuasive, Rothbardians owe us some *independent* support of P1[18].

All in all, it seems to me that despite all the desperate effort to remedy the original Rothbardian argument, it still seems to beg the question in a strictly broad sense. Given that, I gradually grew disillusioned with the whole Rothbardian welfare project. In particular, what started to seem wanting to me was the general Austro-libertarian account of *voluntariness*. I experienced an epiphany that to make a purely *economic* case for the free market, we cannot conceive of Pareto-superior moves in any terms that would already presuppose the free market regime, as is *apparently* the case with Pareto-superior moves as resting on *voluntary* (that is, rights-respecting) choices. So, I embarked on a project of elaborating a purely *descriptive* criterion of welfare-enhancement by heavily drawing on Nozick's account of (un)productive exchanges[19]. However, it was yet again Łukasz Dominiak who smashed my dream of grounding Pareto-superiority in the notion of (un)productivity.

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[18]   We kindly take P2 for granted.

[19]   At this point, I owe a word of explanation to pedantic readers. Obviously, welfare is a normative notion. Yet, its *criterion* can be, most unproblematically, descriptive. That is, it is some *natural facts* that can be *constitutive* of welfare-enhancing or welfare-diminishing moves. By the same token, we can identify a *good* runner or a *good* chess player *merely* by studying their respective *natural* properties. Importantly enough, the above point can hold regardless of our meta-ethical commitments. Specifically, it does not by itself commit us to either meta-ethical naturalism or non-naturalism. On moral naturalism, see: e.g. Geach 1956; Sturgeon 1985; Brink 1986, 1989, 2001; Railton 1986; Moore 1992, 2002; Thomson 1997, 2001, 2008; Hursthouse 1999; Foot 2001, 2002. On the other hand, on moral non-naturalism, see: e.g. Moore 1903; Nagel 1996; McDowell 1998; Gibbard 2002; Shafer-Landau 2003; Huemer 2005; Enoch 2011; Parfit 2011a, 2011b; Scanlon 2014; Wielenberg 2014; Chappel 2019.

(UN)PRODUCTIVE EXCHANGES
AND HOW I WOKE UP FROM A DOGMATIC SLUMBER

As mentioned in the previous chapter, having grown suspicious of Rothbard's reconstruction of welfare economics, I (Wysocki 2021, unpublished) started considering some alternative baselines Pareto-superior and inferior moves could rest on. What guided my methodology was to modify Austrian economics as little as possible. In particular, I took for granted the Austrian formal idea of welfare, viz. *actual preference satisfaction view*. Moreover, I tried to employ typically Austrian counterfactual reasoning with an uncompromising adherence to *ceteris paribus* clause. Finally, I thought, what was to be avoided like a plague is any baseline which would presuppose any principles of justice. In particular, as I mainly operate within the Austro-libertarian paradigm, I believed that the crucial thing was to divorce the notion of welfare from the notion of justice. After all, what the Rothbardian welfare theory purports to study is whether free market always increases social utility. But to *meaningfully* study welfare-enhancing (or welfare-diminishing for that matter) market exchanges, we definitely need a market-independent account of welfare.

As already noted in chapter 2, Austrians are not engaged in any *substantive* dispute over the nature of welfare. Instead, they modestly subscribe to the formal view that regards actual preference satisfaction as a *proxy* for what really makes economic actors better off. Most certainly, this formal view cannot *practically* provide us with anything more than a proxy for economic actors' welfare unless they hold *only* true beliefs and are perfectly rational (i.e. they do

not suffer from akrasia[1] etc.). On the other hand, Austrian position on welfare is probably even weaker than that. After all, Austrians are concerned with *an expectation* to have one's preferences actually satisfied, which is reflected in the fact that they speak of benefitting *ex ante* rather than *ex post*. At this point, it would be advisable to reassure the reader: all these subtle distinctions are not an exercise in futility as they will enable us to appreciate a small twist I was forced to introduce to the Austrian idea of benefitting. However, the promised slight modification is going to be elaborated upon in detail once we tackle the Nozickian ([1974] 1999, pp. 84–87) second condition of unproductive exchange.

Anyhow, the crux of my (Wysocki, 2021, unpublished) paper was that *voluntariness* of an exchange is *insufficient* to render the exchange mutually beneficial and that within the universe of voluntary exchanges there is *another* distinction to be drawn that can capture welfare-enhancement and welfare-diminishment. I contended that it is the Nozickian *productive* vs *unproductive exchanges* that are in turn constitutive of Pareto-superior vs Pareto-inferior moves, respectively. First, the reason I confined myself to *voluntary* (viz., rights-respecting) *exchanges* is that I wanted to test whether (in the light of my newly adopted descriptive criterion of welfare) there are indeed some market failures. Remember, my aim was always to leave the question of market inefficiencies *conceptually* open. However, when I now reflect on Nozick's *absolutist* view of rights as side-constraints, it is no wonder that Nozick did not speak of productive (or unproductive) exchanges outside the universe of all voluntary exchanges. After all, side constraints *by definition* constrain our pursuit of utility. Even if a given involuntary exchange would increase social utility on balance[2], it would still be forbidden on *independent moral* grounds. Let me

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[1] On akrasia vis-à-vis rationality, see: e.g. Hare 1963; Bennett 1974; Bratman 1979; Davidson 1980, 2004; Taylor 1980; Rorty 1983;; Moore 1983; Mele 1987; Buss 1997; Arpaly 2000; Peijnenburg 2000; Adler 2002; Sandroni 2011. For a specifically Austrian take on the problem, see: e.g. Callahan 2008.

[2] I do realize that Austrians disown the notion of Marshall-efficiency as they repudiate interpersonal comparisons of utility. I just, *arguendo*, use the above notion to illustrate that even if a given involuntary exchange would benefit society on balance, it would still be forbidden on moral grounds (i.e. by Nozickian rights as absolute side constraints). However, we can make our point stronger because there is indeed a way to obviate the interpersonal comparisons of utility and construct an example which does not have to resort to Marshall-efficiency. The example will shortly follow in the main body of the text. Incidentally, for a penetrating (and yet accessible) presentation of the concept of Marshall-efficiency, see: e.g. Friedman 1990, 2000.

just briefly illustrate the point[3]. Imagine two persons: A and B. Suppose person A (barely making ends meet) is afflicted with a serious illness, whereas person B (being affluent) enjoys good health. Moreover, B happens to be in possession of the medications that A desperately needs. Also, B (being as affluent as he is) has tons of medications A needs. Indeed, B has so many packages of them that he treats a *marginal* package as an economic bad. This very marginal package, by virtue of its being perceived as an economic bad, is such that B would be ready to pay to have it removed. However, A is unaware of the fact that B values this marginal unit *negatively* and he *mistakenly* believes that B would heartlessly charge a market price for the said package if A happened to ask. A, holding the above (false) belief, comes to the conclusion that, everything considered, the best for him would be to steal a package of desired medications from B; and so he does. Now, given that B indeed had a property right in the said package and he did not *actually* consent to A's taking possession of it (as A falsely believed that the consent would not be forthcoming even though, ironically enough, B would be even willing to pay for the removal of the package), Nozick would deem this non-consensual exchange right-violating. But note that – given the assumptions of our imaginary scenario – the exchange would most certainly be consensual and therefore valid if only A *correctly* believed that B values the package negatively. It is because A's utmost desire to get cured coupled with A's merely possible (correct) belief that B values the package of medications negatively would give A *a* (desire-based) *reason* to simply approach B and ask him for a package of the much-desired medications (e.g. at the price of zero, which would be – by assumption – accepted by B). Therefore, and crucially for our purposes, if only A held a correct belief, a mutually beneficial exchange would definitely occur. However, rights absolutists would deem the resultant distribution of resources (viz., A taking the possession of B's marginal package of medications) *unjust* even though the exchange seems to be (*ex hypothesi*) Pareto-efficient[4]. The reason is that B did not *actually* consent to

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[3] As promised, Austrian should not object to the following example as it does not rest on the notion of Marshall-efficiency.

[4] Łukasz Dominiak drew my attention to the fact that there is a variation on my thought experiment that would be even more persuasive against Austrians who are committed to the doctrine of demonstrated preference. With my thought experiment standing as it is, Austrians can rightly object that my imaginary scenario must resort to futile *psychologizing* to be able to back up the assertion that B values a marginal package of medication negatively; viz., that he treats it as an economic bad. After all, B *does nothing* to get rid of the package. However, as Dominiak pointed out, we can easily imagine B tossing his medications into the trunk of his

taking the possession of the said package even though B *would have done so* if only A had asked for it[5]. So, the moral of the whole story is that for Nozick (*qua* right absolutist) rights set *absolute constraints* for the pursuit of utility. Therefore, even if the exchange under scrutiny seems to make the world better (in terms of *welfare*), it is still forbidden on *other moral* (rights-based) grounds. It is probably useful to think of Nozickian rights as *budget constraints*. That is, quite like[6] budget constraints, rights as side constraints limit the pursuit of utility. If we have $100, we cannot obtain more utility than $100 can buy. Similarly, the maximization of one's utility is (this time *normatively*) constrained by other people's rights.

The agenda of my (Wysocki 2021, unpublished) essay was rather modest and I simply took typically libertarian *rights absolutism* for granted. Still, this allowed me to have my cake and eat it: I could still make it a *conceptually* open question whether there are market inefficiencies. After all, operating within the universe of voluntary exchanges still allows for the (interesting) possibility of Pareto-inferior *voluntary* exchanges. But this in turn implies – *contra* Rothbard – that it is no longer voluntariness/involuntariness that serves as a criterion of Pareto-superior/inferior moves. So, what is this promised descriptive criterion of welfare-enhancement? As hinted at above, in my most recent investigations I drew heavily on the Nozickian account of (un)productive exchanges. However, I did not *merely* employ the Nozickian *productivity* and *unproductivity* of exchanges as criteria of their welfare-enhancing and welfare-diminishing character, respectively. Quite the contrary, there were many

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car and starting to head for the junk yard. Clearly these actions demonstrate that he disvalues the medications. But now suppose that unbeknownst to B, B is followed by A. After a couple of miles, B – still *en route* to the junk yard – stops for a cigarette. Capitalizing on the fact that B is now enjoying his cigarette, A sneaks into B's trunk and grabs handfuls of B's medications. Having finished his cigarette, B finally spots the thief but (in line with his preferences) does nothing to prevent A from stealing. He did incur some (sunk) cost by driving thus far but now, once A started taking possession of the said medications, the removal of economic bads comes to A for free. Therefore, doesn't A thereby demonstrate his preference for this "method" (i.e. a theft) of getting rid of the waste? Still, note that A's taking possession of B's medications counts as a right violation. In effect, can't we say that B demonstrates a preference for being robbed? And if so, libertarians should at least consider the possibility of unjust but Pareto-superior exchanges.

[5] Technically speaking, in the scrutinized scenario we may talk at most of B's *hypothetical consent*; viz. B would have consented if asked. However, B's *actual consent* has never been given. On philosophical problems with hypothetical consent, see: e.g. Johnson 1975; Dworkin 1988; Brudney 1991; Huemer 2013; Enoch 2017.

[6] Although there is of course some disanalogy.

hurdles to overcome in the meantime. First and foremost, what I found wanting is the elaboration of the celebrated *drop-dead condition* (i.e. Nozick's first necessary condition of unproductivity). It took me a while to *clearly* express what it means that person A would be better off if person B dropped dead. To that end, I resorted to possible worlds semantics, as we are about to see. Second, I considered what role is played by (often neglected) *Nozick's second condition* of unproductivity. I also felt obligated to reply Mack's (1982) *seemingly* withering criticism of Nozick's account of (un)productivity. Finally, my essay is permeated with the attempt to point out that Nozick's conditions finely capture the intuition that plain market offers are Pareto-superior proposals since Nozick's theory predicts that such proposals may lead only to productive exchanges. Still, let the reader now kindly allow me to keep the suspense and to *gradually* and *methodically* build upon the original Nozickian account of (un)productivity for it is only this slow narrative pace that will enable us to fully appreciate a fatal intellectual blow to our improved theory of (un)productivity ultimately dealt by Łukasz Dominiak. So, we shall first present the original Nozickian account of unproductivity itself and only then make all the necessary adjustments thereto. Nozick advances a two-pronged account of unproductivity. For an exchange to count as unproductive it must satisfy two conditions either of which is necessary and neither of which is individually sufficient. However, the two conditions are *jointly* sufficient to render an exchange unproductive. Nozick ([1974] 1999, p. 84) formulates his first condition in the following way:

> If I buy a good or service from you, I benefit from your activity; I am better off due to it, better off than if your activity wasn't done or you didn't exist at all. (…) Whereas if I pay you for not harming me, I gain nothing from you that I wouldn't possess if either you didn't exist at all or existed without having anything to do with me. (…) Roughly, *productive activities* are those that make purchasers better off than if the seller had nothing *at all* to do with them. More precisely, this provides a necessary condition for an unproductive activity, but not a sufficient condition.

For the sake of convenience, let us introduce some terminology at this point. From now we shall label Nozick's first condition as *drop-dead condition*[7]. Whenever we say that *drop-dead condition* is satisfied, what is thereby meant is that the buyer or proposee for that matter would be better off if the seller

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[7] For the origins of the phrase, see: chapter 4, footnote 15.

or proposer, respectively, dropped dead or, in other words, if the latter "had nothing at all to do with" the former. Conversely, if the drop-dead condition is not satisfied, the buyer or proposee would be *no worse off*[8] with the seller (or proposer) staying in existence compared to the seller (or proposer) dropping dead. Note that there are already a few loose ends to tie up. Let us note that since a drop-dead condition is a *necessary condition* of an unproductive exchange, then *the non-satisfaction* of the condition in question is *sufficient* to render a given exchange productive. After all, if x entails y, then ¬y entails ¬x. In our case, if an exchange is unproductive, it has such a property (its necessary condition) that we would like the other party to this exchange to drop dead in the first place. Necessarily then, if we would not like the other party to the exchange to drop dead, then the exchange in question is productive. Now, because it seems that even very unattractive *market offers* (with offers being by all means a paradigm case of productivity) at the very least leave us indifferent (viz. we might *at least* be as well off with an offer as without it), *the satisfaction* of drop-dead condition must *exclude* the situation in which we are indifferent between there being a proposer and the proposer dropping dead. Conversely, the situation in which we are indeed indifferent between these two situations must count as *non-satisfaction* of the condition under scrutiny. Therefore, if a given proposal is such that we are indifferent between there being this proposer with his proposal and the situation wherein the proposer drops dead, this proposal must be considered *productive*, which tallies well with our pre-theoretical concept of market offers.

Second, we should bear in mind that, when read literally, Nozick's drop-dead condition of unproductivity has it that the buyer (or a proposee) would be *in fact* better off than if the seller (or proposer) did not exist at all or had nothing to do with the former. However, we might as well stick firmly to the Austrian-spirited analysis in terms of benefitting *ex ante*. That is to say, instead of speaking of being *in fact* better off if the seller (or proposer) dropped dead, we might as well interpret the satisfaction of the first condition as running along these lines: if I *expect* to be better off if the seller (or proposer) dropped dead, then the drop-dead condition is satisfied[9].

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[8] "No worse off" adjustment seems necessary for Nozick's account fails to classify *indifference* under either productivity or unproductivity. Our account remedies this omission, while naturally classifying the cases of indifference under the rubric of productivity. After all, even very bad offers leave us indifferent at the very least.

[9] Incidentally, this laxity of interpretation (in terms of either benefitting *in fact*, which is

Third, Nozick's first condition must be qualified in yet another way. All our counterfactual comparisons forthcoming shall be *synchronic* and shall relate to particular times. So, finally, what we are going to mean by the satisfaction of *drop-dead condition* is that we *expect* to be better off if the person making an actual proposal *at a given time* did not actually exist *at that time* or had nothing to do with us *at that time*. This at that time caveat is crucial since it allows us to avoid the complication of diachronicity mentioned by Mack (1982, p. 188, footnote 7): "Nozick notes ambiguities and complexities with this formulation. Suppose that on other occasions the neighbor benefits you." Granted, the neighbor may bring us net benefits *over time*; if so, we would not like him to drop-dead at least *over that time* since he benefitted us over that time *on balance* (harming us only occasionally). To put it differently, *over that time* his existence benefits us compared to his contrary to fact non-existence over the same time. However, at this point we are interested in the productivity (unproductivity) of *particular* exchanges taking place at *particular* times; and hence, our drop-dead criterion is time-indexed for particular times (the times in which exchanges take place) rather than for time spans.

To close our ponderings on the Nozickian drop-dead condition, it must be observed that Nozick (p. 85) in his drop-dead considerations relies on *a rich hypothetical analysis* (see: e.g. Feinberg 1986), which enmeshes him in a troublesome entanglement of counterfactuals, as we are about to see. However, in the forthcoming part of this chapter, I shall put forward an Austrian-spirited remedy for the above shortcoming in the form of *lean hypothetical* analysis[10].

At this point one question remains: what role is played by Nozick's second condition, with the second condition being this property of an exchange that "it merely gives you relief from something that would not threaten if not for the possibility of an exchange to get relief from it" (Nozick, 1999 [1974], p. 85)? As we established above, one's expectation that one would be better off if the other party did not drop dead is a sufficient condition for the exchange in question to be productive. In this case, the question of whether the second condition applies or not does not even arise. Therefore, the only interesting case

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constituted by having one's preference *satisfied in fact*, or only *in expectation*) will not apply to the second condition of unproductivity. Under *expectation* interpretation, the second condition would be rendered trivial. More on that later.

   [10]   To appreciate the variety of counterfactual reasoning when trying to capture the idea of threats (and offers for that matter), see: e.g. Nozick 1969; Lyons 1975; Gorr 1986; Wertheimer 1987; Feinberg 1989; Altman 1996; Hetherington 1999; Berman 2001; Rhodes 2002.

in which the second condition plays a *decisive* role, thus determining whether a given exchange is productive or not, is when we would indeed like the other party to drop dead. With the first condition satisfied, the satisfaction of the second condition would yield the exchange under consideration unproductive whereas if the second condition is not met, the overall exchange would be considered productive. Furthermore, the second condition elegantly captures the intuition that blackmail proposals cannot be productive *once a blackmailer does not intend to carry out his threat and that he merely sells his apparent abstention from something that was not about to do in the first place* i.e. to destroy the victim's reputation by gossiping. On the face of it, such an exchange looks like a *mere* money transfer. And finally, even if we wish that the other party to an exchange would drop dead, the exchange might still be productive (and therefore beneficial?) if the other party is in fact intent upon doing what he threatens to do[11]. In other words, the other party is not bluffing. To illustrate our point, a blackmailer who is *really* keen on gossiping, by selling his silence does give up some action that he would have indeed taken had blackmail been illegal.

Having said that, it is high time to make good on my promise made earlier. What is due at this point is to improve upon Nozick's counterfactual analysis (by substituting a *lean hypothetical* analysis for a *rich* one) implied by his drop-dead principle and to endorse the indispensability of the second condition of an unproductive exchange, while spotting a certain subtlety pertaining to its interpretation (benefitting *in fact* vs benefitting *ex ante*).

So, let us now test how *a lean hypothetical* fares as compared to the Nozickian *rich hypothetical*. First of all, as already noted, it looks as though plain market offers are such that we would not like their offerors to drop dead. So, it seems that the non-satisfaction of the drop-dead condition would be also a sufficient reason to classify proposals as offers[12]. Let us now check then how

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[11] Remember that we still operate within the universe of *voluntary exchanges* and so the threats under consideration are *legitimate*. Libertarians employing a *moralized* baseline for classifying proposals under the rubric of either threats and offers might object that the phrase "legitimate threat" is thus oxymoronic. However, as the careful reader definitely remembers, my aim is to leave the possibility of threats (or Pareto-inferior proposals) on the free market open. Moreover, the *concept* of threats as cutting across legitimacy/illegitimacy is definitely closer to the one employed in common parlance.

[12] For the time being, we leave open the question of whether the non-satisfaction of drop-dead condition exhausts the universe of offers; that is, we do not yet settle the issue of whether the non-satisfaction of the said condition is just a sufficient or also a necessary condition of offers. For, given Nozick's two (jointly sufficient and individually necessary) conditions of unproductive exchanges, it might be the case that satisfaction of the drop-dead condition and the

Nozick's drop-dead condition does when dealing with market offers.

Suppose, the seller's proposal (P) is to sell a bottle of water for $5. This can be analyzed as the following biconditional:

1.   If you pay me $5, I will give you a bottle of water
2.   If you do not pay me $5, I will not give you a bottle of water

On the face of it, it looks as though the seller dropping dead would render the purchaser no better off. For even if the purchaser does not *actually* buy a bottle of water from the seller, then the seller dropping dead would apparently not render the purchaser better off. Therefore, with the seller's *actual* existence, the purchaser seems to be no worse off than if the seller dropped dead[13]. But there is a problem lurking here and involving the indeterminateness of counterfactuals (e.g. Moore 2009, pp. 380–82; Stalnaker 1968). For what *exactly* would happen if the actual seller dropped dead? Is it not conceivable that only if this actual seller were to drop dead, there would appear in his place a seller whose proposal (P*) would assume the form of the following biconditional:

1*. If you pay me $3, I will give you a bottle of water
2*. If you do not pay me $3, I will not give you a bottle of water.

If this counterfactual were true, viz. if P* were the proposal to be encountered were the original seller with his proposal P to drop dead, then our drop-dead condition would be satisfied, that is, we would indeed be better off if the original seller (with his proposal (P)) dropped dead. But if so, then proposal (P) would not count as an offer. But this clearly clashes with our intuitions. However, we believe there is a fairly straightforward way of remedying this problem. We contend that what takes improving upon is the very *description of the counterfactual world* (W*) once the *actual* seller is subtracted (drops dead). And in our view, W* should differ from the actual world (W) *in one re-*

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non-satisfaction of the second condition might still yield an offer. That is, we are still mute on whether offers are co-extensive with productive exchanges. However, we take it for granted that for x to be an offer it is sufficient that x does not satisfy the drop-dead condition.

   [13]   Note that in order to accommodate market offers into productive activities (exchanges), we varied slightly from the original Nozickian formulation. Where Nozick speaks of "being better off" than if the seller had nothing *at all* to do with them, we speak of "being no worse off", thus employing a weaker condition for productivity.

spect only: the actual seller is subtracted in W* with nobody else filling in thus emptied slot. In W* the actual seller is taken out of the picture, *ceteris paribus*.

And this improvement seems to yield intuitively correct results. If in the actual world (W), the seller makes the proposal P, then in the merely possible world (W*), this very seller is absent, *everything else equal*[14]. The caveat "everything else equal" is to ensure that there is no other proposal instead. If that is so, the purchaser in W would not like the seller to drop dead. In other words, the seller's move from the W to W* would render him no better off, if not worse off. If that is so, the actual proposal must constitute an offer. And conversely, suppose that in the actual world the above-considered seller is absent and *a fortiori* there is no proposal (P) of selling a bottle of water for $5 and that in some possible world W* this seller (with his proposal) exists, everything else equal. Now, *if only* we would weakly prefer (would be at least indifferent) W* to W, then the seller's proposal promises a productive exchange: we would not like this seller to drop dead; that is, we would not like to move from W* to W. Again, if we do not mind the seller's existence (if we are *at least* as well off with his existence as without it), then the seller's proposal must count as an offer. Note that thus improved drop-dead condition allows us deal with many problems besetting the *original Nozickian* formulation. First, equipped with the said improvement, we are able to distinguish between *more* and *less attractive offers*. Selling a bottle of water for $5 is still an offer (compared to the seller's non-existence, *ceteris paribus*) and so is a proposal to sell it for $3 and for precisely the same reason.

Second, our improved rendition of the said principle fairly convincingly solves Nozick's (p. 85) problem of two blackmailers:

> Though people value a blackmailer's silence, and pay for it, his being silent is not a productive activity. His victims would be as well off if the blackmailer did not exist at all, and so wasn't threatening them. (…) But if he did not exist, mightn't another have stumbled on the unique piece of information and asked a higher

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[14] Treating W* as the closest possible world to W, we believe, tallies well with the overall spirit of Austrian economics. After all, we are interested in *the difference* the absence of the proposer makes. Technically speaking, we let only one independent variable (viz., the dummy variable assuming the values of the absence/presence of the proposer) to vary, and so study *the difference* that the proposer's dropping dead makes, keeping everything else fixed. By the same token, when Austrians claim that raising minimum wage causes unemployment (e.g. Hülsmann 2003), the only variable they allow to vary is minimum wage. Otherwise, that law could not be construed as apodictically true for with the rise of minimum wage other variables might change their values so that even a reduction of unemployment might be a consequent.

price for silence? If this would have occurred, isn't the victim better off because his actual blackmailer exists?

This seeming objection to drop-dead principle is a mirror image of our case of two offerors and is solved in the same manner. Just to reiterate, we determine whether the drop-dead condition is satisfied or not by *univocally* testing whether a proposee is better off than if the proposer dropped dead or not, respectively, *everything else equal*. Therefore, Nozick's case of two blackmailers is solved straightforwardly. The actual blackmailer selling his silence satisfies the drop-dead condition as the counterfactual world W* is the world in which the actual blackmailer is subtracted and there is no other blackmailer actively operating since we keep everything else equal. And that is why, this *lean hypothetical* yields a correct prediction, as opposed to a *rich hypothetical* which would allow – as in Nozick's example cited above – in W* for a blackmailer charging a higher price than the one in W, therefore rendering the blackmailer's proposal in W the one being on a par with plain market offer – the most unwelcome conclusion[15].

Third, we contend that it is precisely our improved drop-dead principle that successfully replies the powerful criticism levelled at the Nozickean theory of unproductive exchanges as such. Mack (1982, p. 178–184) apparently makes a brilliant *reductio ad absurdum* argument against Nozick showing that the latter's view would imply that ordinary market exchanges (and precisely because they are *market* exchanges) count as unproductive exchanges. First, Mack persuasively argues that market exchanges as such satisfy the second Nozickean condition for unproductivity[16]:

> (…) for in all typical market exchanges the purchase price of some activity, of some service or transfer of goods, is as high as it is partially because of the possibility of sale at that or higher prices. Characteristically, the seller gets more than some price *m* which would have motivated him to sell had exchange for more than *m* been forbidden or impossible (and this was known to the seller). Once the seller has been offered *m* – which characteristically is less than what unconstrained bargaining will settle upon – he withholds his activity solely because of the possibility

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[15]   Since, as established, the non-satisfaction of the drop-dead condition is a sufficient condition for an offer. See: footnote 12.

[16]   Remember, the second condition of an unproductive exchange is satisfied when the exchange "(…) merely gives you relief from something that would not threaten if not for the possibility of an exchange to get relief from it" (Nozick [1974] 1999, p. 85).

of eliciting a higher payment. If exchange at above m were forbidden and impossible the buyer would be better off.

Taking for granted that there is indeed some price m that would minimally motivate the seller – the point that Mack (p. 189, footnote 12) himself acknowledges – the above argument is indubitably correct. But for the market itself, the seller would be *minimally* motivated to charge for a given good *the value he attributes to the good* $+ \varepsilon$. To illustrate this, if we subjectively value a good at m, but for the market regime, we would be minimally motivated to charge $m + \varepsilon$ for it[17]. However, if on the free market the good is priced at n, where $n > m + \varepsilon$, the seller would charge n. Therefore, the buyer in Mack's example is indeed worse off than if exchanges above m (and we assume that $n - m$ increment in the price charged would be a direct result of the fact that free market started operating) were prohibited. Conceding that point to Mack, let us bear in mind that the second condition of an unproductive exchange is only a *necessary condition* thereof. Mack (p. 179) is acutely aware of the fact that for an exchange to count as an unproductive one not only the second but also the first (drop-dead) condition must be satisfied. This is evidenced when he grants the following: "The fact is that if typical market exchanges are not to count as unproductive, it must be because of the failure of the first condition." For the sake of illustration, Mack (p. 180) picks up boycotts, blackmail and hard bargaining as satisfying both conditions of unproductivity. Let us cite the relevant quote in its entirety:

> There are, however, many interesting cases in which one party does provide a good or service to another, this provision seems to be a part of a free market exchange, and yet this provision also seems to satisfy both the first and second condition for unproductivity (…) When X boycotts Y he offers Y his future patronage solely on condition of Y's changing his ways in some manner pleasing to X where this change is external to the normal conception of what Y sells. Thus, X boycotts Y if he indicates that he will not patronize retailer Y unless Y ends racial discrimination in his hiring practices or unless Y begins racial discrimination or unless Y supports this or that political campaign, etc. Since what is demanded of Y is external to the normal conception of what Y offers on the market, Y will see the financial and psychic costs of securing relief from the boycott as purchasing something which he would have gotten anyway in the normal course of events. He will be tempted to describe the boycott as "blackmail" even more than we are all so tempted whenever the parties we are bargaining with strongly resist *our* favoured terms.

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[17]   Those who are bent on indifference can do without ε, for they could claim that the actor might be indifferent between using this good or selling it for *exactly* its (by his lights) value.

If Mack's scenarios cited above could plausibly be classified as the ones wherein Y indeed would be better off if X dropped dead, then, given the fact that ordinary market exchanges normally satisfy the second condition of unproductivity, it is to be expected that there would be numerous instances of unproductivity on the free market. If so, Nozick's two conditions would prove to be over-inclusive. Therefore, this fact would give us a decisive reason to reject Nozick's two conditions as they stand. However, remember that the drop-dead comparison adopted in this paper differs from Nozick's.

Even if we grant that the above cases of boycott, blackmail and hard bargaining satisfy the second condition for unproductivity (viz., the boycotter may only *bluff* that he would "not patronize retailer Y"; the blackmailer may only *pretend* that he intends to do what he threatens to do; and the seller may try to *trick us into believing* that he values the good higher than he really does (at the price *m*) *only* because he is allowed to negotiate freely, for otherwise he would be ready to sell his good at the price of $m + \varepsilon$, respectively), what is still left to show is whether Mack's example satisfy the drop-dead condition *in our sense,* viz., whether a proposee would be better off if the proposer dropped dead, *everything else equal.*

Only if the latter condition is satisfied would this be damaging to our position. Whereas we are ready to grant that a blackmail constitutes under special conditions (namely, the blackmailer merely pretends that he intends to execute his threat) an unproductive exchange, as far as boycotts and hard bargaining are concerned, we demur. When boycotters threaten to stop patronizing Y unless Y ends his racial discrimination, it looks as though Y is rendered *no worse off* compared to boycotters' non-existence. The boycott may, of course, be analyzed in terms of a biconditional:

1) If you stop racial discrimination, we will remain your customer.
2) If you do not stop racial discrimination, we will resign from being your customers.

If Y accedes (and the consequent of scenario 1 materializes) to the boycotter's demand, he thereby demonstrates that he still prefers keeping customers even at the cost of ending discrimination to losing them and keeping discriminating. But note that 2) is in relevant respects *identical* with our reading of the drop-dead principle. If the boycotters drop dead or if they have nothing to do with Y, then – most relevantly – they are not Y's customers and Y keeps discriminating

(since we employ *ceteris paribus* caveat[18]). But now, since the *actual proposal* cannot render Y worse off than in scenario 2), which is in turn economically identical with the situation in which boycotters drop dead, then the proposal under scrutiny can make Y *at least as well off* as the boycotter's non-existence, everything else equal. But if so, then the drop-dead condition is not satisfied and the whole boycott scenario envisaged by Mack cannot count as an instance of unproductivity.

Mutatis mutandis, the same remarks apply to hard bargaining cases. If we decide to buy a good even at an unfavorable price, we thereby demonstrate that we prefer the state of affairs with a good and no money to the situation in which we keep the money but we do not have the good. But if so, keeping the money and not having the good is *economically identical* with the situation in which the actual offeror drops dead, *ceteris paribus*. And if we, alternatively, find the proposal under scrutiny unattractive, then we simply do not make a purchase, thus ending up in the *economically same* situation as the one in which the proposer drops dead in our lean sense. Therefore, neither do hard-bargaining cases satisfy the drop-dead condition as we conceive of it.

Finally, let us consider the cases in which the drop-dead condition is satisfied and all the decisive work in determining whether an exchange is productive or not is now done by Nozick's second condition. We believe that the most illustrative contrasting scenarios can be provided when we *bifurcate* blackmail proposals[19]. Generically speaking, *both* types of blackmail proposals are such that the proposee would rather the proposer dropped dead at least on that particular occasion. After all, there is no fear that the blackmailer in the absence of his proposal would simply reveal our secret, thus damaging our reputation, since in the closest counterfactual world W* there is no blackmailer in the first place, which is precisely what follows from the application of our lean hypo-

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[18] And this is the advantage of our lean hypothetical over Mack's (p. 81) employment of a rich one when he suggests that Y could have different (i.e. non-boycotting) retailers if the actual ones dropped dead. Then yes, it would indeed follow that the boycott proposal is an instance of unproductivity. Yet, because a well-considered judgement prompts the understanding of this proposal as still beneficial to Y, a lean hypothetical seems superior to a rich one since it is only the former that correctly predicts the status of the proposal in question.

[19] Note that blackmail is a safe case (in the absence of any prior contracts between the parties) for a blackmail proposal falls within non-coercive (in the libertarian *moralized* sense) proposals, and therefore a victim's paying a blackmailer is a *voluntary* (again in the same libertarian moralized sense) act. So, we still stick firmly to our assumed universe of voluntary actions.

thetical understanding of the drop-dead condition. So, what are the *distinctive features* of the two putatively distinct blackmail scenarios? As alluded to above, what distinguishes between the two is whether the second condition is satisfied or not, which renders a given blackmail exchange unproductive and productive, respectively. Technically speaking, *given the blackmailer's existence*, whether paying the blackmailer is a productive exchange or not depends on what the blackmailer would do in the counterfactual world W** in which he does exist but he is not given a chance to make a blackmail proposal. Note that what the blackmailer would do but for the proposal is pretty much a question of his *intention*. So, let us now introduce our two blackmail scenarios, allowing for the blackmailer's intention to vary (which will be promptly reflected in different counterfactual analyses), everything else equal.

1) Entrepreneurial (and not malicious) blackmailer

This sort of blackmailer makes his living by collecting information about others and then blackmailing them. We assume that were blackmail to be declared illegal, such a blackmailer would have no *incentive* to collect damaging information about others. Technically, in W ** (in which blackmail is illegal and, let us assume, costs are now too high for anybody to engage in illegal blackmailing) this blackmailer does not collect damaging information and even if he happens to acquire some damaging information about anybody, he is not prone to gossip. Therefore, if in W (the actual world in which this entrepreneurial blackmailer exists and blackmail is legal) his victims do pay him, they pay for the absence of some disvalue that would *not otherwise* (in W**) befall on them. In other words, his victims would be better off not paying in the first place since there is *nothing* that is really threatening them. In still other words, if they do pay this sort of blackmailer, this exchange constitutes a *mere* money transfer. Therefore, it looks as though the Nozickian account correctly predicts the unproductivity of exchanges with entrepreneurial (not malicious) blackmailers.

2) Malicious blackmailer

If such a blackmailer is indeed keen on spreading damaging information, he would *abstain* from his malicious activity *only* if he could get a proposee to do for him something (which usually involves the blackmailer's victim paying

some money) that he values even higher than revealing secrets. In other words, this sort of blackmailer would really *intend* to spread the gossip and so we might presume that in W** he does indeed disseminate the information for in W** there is no blackmail proposal and, remember, it is only a blackmail proposal that might possibly benefit (as compared to gossiping) this blackmailer. Therefore, his victims paying him would really buy the absence of something of disvalue that would *otherwise* (in W**) befall them. For that reason, paying this sort of blackmailer is not a *mere* money transfer, and therefore it seems intuitively *productive*. And hence, the Nozickian account correctly predicts the *productivity* of such an exchange.

What is now left is to explain the promised subtlety pertaining to the interpretation of the *satisfaction* of the second condition. Note that if a victim does in fact pay an entrepreneurial blackmailer, the victim must *believe* that this blackmailer is not entrepreneurial. If he *correctly* believed that the blackmailer would not gossip when not paid (after all, by assumption, this blackmailer is not malicious but merely entrepreneurial), the victim would not pay in the first place. So, while paying, the victim *believes* that he buys the absence of something of disvalue that he would otherwise suffer from. Therefore, by his lights, the exchange *seems* productive (i.e. he *believes* that the second condition is not satisfied). However, if the actor's *mere belief* that an exchange is productive (stemming from his belief that the second condition is not satisfied) were to render the exchange productive, then all exchanges would have to count as productive. After all, one decides to pay a bluffing blackmailer (with the bluff being that the blackmailer would indeed spread the news) *only* if one falsely believes that the blackmailer is *not bluffing*. And hence, one *falsely* believes that the exchange is productive. So, if the criterion of productivity were subjective beliefs alone, all unproductive exchanges (the ones in which a victim would be *in fact* better off if he decided not to pay a blackmailer) would be viewed as productive, with the whole distinction between productivity and unproductivity collapsing. Such a criterion should be rejected then. Furthermore, note that the above-stated belief that one benefits (falsely believing that the blackmailer is not bluffing whereas he is) simply collapses into *ex ante* opportunity cost analysis. However, this criterion of benefiting is empty since it applies to all the actions. Indeed, what explains choosing A over B is that I *expect* to be rendered better off having chosen A than if I were to choose B. By contrast, our *benefitting-in-fact* interpretation of the second condition does not blur the distinction between unproductivity and productivity by taking heed of *real* opportunity

cost[20]. Specifically, if the blackmailer is bluffing but we falsely believe that he is not, then we *actually* pay for no service, which means that the real opportunity cost (the possibility sadly foregone) is experiencing no harm and keeping the money. But the victim holding a false belief *does* pay in the actual world (no harm but no money) and in this sense he is rendered worse off – compared to the *real* opportunity cost. And it is in this sense that given the fact that the drop-dead condition is satisfied, the satisfaction of the second condition renders the entire exchange with the bluffing blackmailer unproductive.

This more or less recapitulates my (Wysocki 2021, unpublished) essay, the aim of which was to seek for a meaningful *descriptive* (since voluntary; viz. rights-respecting, exchanges constituted the starting point of my analysis) criterion of welfare-enhancing and welfare-diminishing exchanges[21]. As a punch-line, I contended that *voluntariness* of exchanges is too crude a property to be able to distinguish between Pareto-superior and inferior moves. Instead, I advanced the thought that it takes the *bifurcation* of voluntary exchanges into productive and unproductive ones to ultimately arrive at a criterion to gauge market *efficiency*. After all, as implied many times before, *voluntariness* of an exchange basically amounts only to its *just* (rights-respecting) character by definition. That is why *voluntariness per se* cannot discriminate between efficient and inefficient exchanges since even Rothbard and his followers try to make an *economic* case for the free market (*qua* a property-rights respecting regime). If so, then at the very least the efficiency/inefficiency distinction should cut across voluntary exchanges. And this is precisely something that I have always (whether in my solitude or with my co-authors) programmatically assumed; that is, that a voluntary (i.e. rights-respecting) exchange should make a *conceptual* room for both Pareto-superior and inferior moves. So much for the virtues of my paper.

That I was blind[22] was first indicated to me by Dawid Megger. His incisive remark related to what I acknowledged at the very beginning of my paper; that is, that I operate *only within the universe of voluntary exchanges*, which was informed by Nozick's conception of rights as *side-constraints*. Although I was first keen on treating it as a virtue rather than a vice, I immediately realized how

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[20] It was Dawid Megger who drew my attention to this point.

[21] Obviously, by welfare-enhancing exchanges we mean only Pareto-superior moves, whereas by welfare-diminishing exchanges we mean only Pareto-inferior moves, thus satisfying the Austrian ban on interpersonal comparisons of utility.

[22] But now I can see.

anemic my entire agenda was. Megger's point was that I still failed to divorce economics from ethics. Instead, he believed that I allegedly rendered economics *immersed* in ethics. And, alas, he had a point. Why did not the fact that on my account measuring social utility cannot even get off the ground unless the exchanges under consideration are market exchanges give me pause? Granted, the question of market inefficiencies is still open. However, by (too) tightly subscribing to the Nozickian vision of the relation between rights and utility I willy-nilly committed myself to the view of lexical priority of justice over efficiency. And since Nozickian rights are *absolute libertarian deontological* rights, the question of utility maximization *does not even arise* unless *libertarian* justice is *first* given its due. Less technically speaking, my paper was in effect bound to study (in)efficiencies *only on the free market*. True, productivity may be indeed viewed as a *descriptive* property of exchanges constitutive of their welfare-enhancing character. However, if I were to find instances of unproductivity (or of productivity for that matter), these would be *necessarily* confined to the free market. Although I was expressly content with leaving the question of market inefficiencies open, it is indeed a strange sort of welfare economics – as Megger kindly pointed out – that is *conceptually* pre-destined to study variation in social welfare *only on the free market*. Paradoxically enough, my most recent position predicted that it is misguided to ask whether exchanges under socialism are productive or unproductive – the most unwelcome result.

Still, Megger's criticism made me probe the relation between justice and efficiency further. It seemed to me that I should take a stand on it. At this point, I have still little to offer as my position on the said problem has not yet crystalized. However, it looks as though there are two possible stances, given Austro-libertarianism – the paradigm within which I am working. First, we might construe Pareto-superior or inferior exchanges as simply *presupposing* justice. This means that no exchange can count as Pareto-superior or inferior unless it has *first* satisfied a condition of being a just exchange. This view was actually adhered to by Dworkin (1990) in his *Justice and the Good Life*. Applying Dworkin's view to the entire Austro-libertarian research programme should bring about the following consequence. Since we established that it is actual preference satisfaction (or the expectation thereof) that is constitutive of *welfare*, preference satisfaction would have literally *no* independent normative force unless the libertarian prong of Austro-libertarianism is first satisfied; that is, property rights are first respected. It is only *then* that actual preference satisfaction starts to morally matter.

On the other hand, we may simply adopt the lexical priority of justice over welfare[23]. This view seems distinct from the one discussed above. For what is characteristic of the lexical priority of justice over welfare is that this view allows for welfare to contribute independently to the overall good of a given outcome. That is, even if rights are violated, some actual preference satisfaction may still exert its normative force[24], which is to say that even though some rights were violated, the world was still rendered *better as far overall welfare goes*[25]. Note that welfare contributing independently of justice to the overall good of an outcome is impossible on Dworkin's *presupposition view*[26]. Whatever the merits of these two positions construing the relation between justice and welfare, too little time passed for me to make up my mind. However, reflecting back on my (2021, unpublished) paper, I am surprised that I contented myself with *merely partially* divorcing economics from ethics. After all, my ulterior intellectual desire was to elaborate such instruments of economic analysis that would allow me to determine beyond a reasonable doubt that the free market is the most efficient regime. But such an enterprise would take a notion of efficiency that would be completely independent of *any* principles of justice. Disappointingly enough, my improvement (if there was any) of the Nozickian account of (un)productivity was a far cry from the above-stated ideal.

However, the major shortcomings of my paper were revealed by Łukasz Dominiak in his most critical moments, that is during our philosophical strolls in the forest. I will now review his indictments in what I take to be an ascending order of importance. So, first, he drew my attention to a rather unwelcome fact that my allegedly improved account of unproductivity depends for its mean-

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[23] This position was most famously defended by Rawls (1971). Among rights absolutists (i.e. the ones for whom justice weighs infinitely more than welfare), we also have e.g. Nozick 1974; Rothbard [1982] 2002; Block 2015b. Block's position was criticized by more moderately inclined Hudik (2015), who envisaged trade-offs between justice and welfare as *at least* possible. Additionally, the concept of *rights* as *absolute* side constraints was subject to withering criticism by Huemer (2010). Moreover, deontological position does not have to be so radical. *Threshold deontology* has it that there is indeed *some point* of morality at which consequentialist considerations might as well override deontological rights. For *threshold deontology*, see: e.g. Moore 2009, 2019; Arneson 2019; Cole 2019; Alexander 2019.

[24] For this view, see: e.g. Cooter 1989; Sheinman 2005.

[25] Luckily, this possibility does not necessarily rest on interpersonal comparisons of utility. Just recall our imaginary scenario with an affluent owner of innumerable packages of medications.

[26] Dworkin's view on the relation between justice and efficiency is probably best expressed in Dworkin (1980).

ingfulness (i.e. non-triviality) on the interpretation of the second condition in *ex post* terms. But then again, Dominiak charged, Austrians are not bothered with being rendered worse off *ex post*. After all, uninterestingly, the free market abounds in all sorts of mistakes made by economic actors. These are simply to be expected as long as humans are fallible. Investors make entrepreneurial mistakes, consumers choose A over B only to realize *ex post* they would have been better off had they bought B instead etc. These non-systematic errors are part and parcel of being a human person. But still, it is hard to deny that entrepreneurs acting voluntarily benefit *ex ante* by doing what they do and the same remark applies to consumers. Therefore, the question arises: what is so special about losing *ex post* (when many market transactions beneficial in expectation ultimately bring about a decrease in a person's welfare) and why should Austrians bother? So, Dominiak effectively shifted the burden of proof on me. It is now my business to show some *relevant difference* between typically human mistakes resulting in a decrease in their respective welfare such as malinvestments or consumers' false expectations etc. *and* buying off an entrepreneurial blackmailer. Austrians would have no trouble agreeing that in both cases the actors involved benefit *ex ante* but lose *ex post*. So, there is indeed something alarmingly suspicious about my insistence on interpreting the second condition *only* in *ex post* terms – a kind of analysis Rothbard and his followers explicitly rejects. To reiterate then, if Austrian welfare theorists do not take heed of occasional entrepreneurial and consumer errors, they should bother even less with rare instances of entrepreneurial blackmail.

Additionally, Dominiak called into question my qualifications of the original Nozickian drop-dead condition, thus claiming that my alleged improvement thereof does not pass muster just yet and that more work is required. Specifically, he objected that – even when qualified – my drop-dead condition is still not sufficiently fine-grained to capture the nature of offers (or threats for that matter). As the careful reader remembers, I contended that the non-satisfaction of the drop-dead condition is a sufficient condition for productivity and it is plain market offers that are such that we would not like the persons making them to drop dead. Yet, as Dominiak brilliantly pointed out, a complicating factor of this account is that it makes a proposer a part of the proposal. Consider the following possibility:

A)

Person A (a man) is madly in love with person B (a woman). A believes that B is the only woman meant for him. Let us also stipulate that A would experience the most tragic decrease of utility if B dropped dead *whatever the nature of actual dealings between the two.* That is, *whatever* proposals B makes towards A, A would never ever like B to drop dead on any of these occasions[27] and the sole reason is that it is B (as opposed to anybody else) making the said proposals. Indeed, B can make all sorts of horrible proposals (normally classified as threats) which would count as offers by A's lights. The reason for that is that it is B as a person that matters alone to B, and not what she says. My purportedly improved drop-dead condition, when applied to our imaginary scenario under consideration, makes the most counterintuitive prediction that all proposals made by B are offers (as assessed by A). But then again, as Dominiak charged, any reasonable attempt at yet another reconstruction of Austrian welfare economics should be aimed at capturing the nature of *proposals themselves*, in abstraction from the proposers making them.

But the story is not over yet. To put a final nail in the coffin, Dominiak presented a hilarious mirror-image of the above scenario. Indeed, one can easily *define* such a person who allergically reacts to another person whatever the latter's proposals. Consider the following imaginary case:

B)

Person C despises D (his neighbor). C's very thought of D makes him recoil. Worse, sometimes C is forced to interact with D, which C finds literally sickening. C would love D to drop dead. He would even "help" him to drop dead but for his innate cowardice. It is only an anticipated vision of imprisonment that prevents C from taking necessary steps. Given that, C prefers (everything considered) biting the bullet to running the risk of imprisonment. However, as C cannot (psychologically) mitigate his ceaseless aversion to his neighbor, it holds true that *on any occasion* D makes a proposal (whatever its nature) C wants him to drop dead[28]. Now suppose that the other day D approaches C saying: "Would you mind if I mowed your lawn or is it okay?". Note that *the*

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[27] And that is why my qualification (time-indexation) of the drop-dead condition fails in the light of Dominiak's powerful criticism.

[28] As, of course, C believes he would be better off if D dropped dead.

proposal itself is by all means freedom-enhancing. The neighbor even implies that in case C's lawn does not need trimming, he will do nothing. This ensures that this proposal leaves C *no worse off* compared to the lack of that proposal. But bear in mind that C was *defined* as the person feeling distaste towards his neighbor. Given that, however otherwise attractive D's proposals might be, C would rather D dropped dead (together with her proposals). But if so, then my *merely apparently* improved drop-dead condition most awkwardly predicts that there is a possible person C and a possible person D such that *whatever* D proposes might just as well foreshadow unproductivity[29]. And then again, counterfactually speaking, if the above proposal was made towards C not by D but by somebody else (or maybe even by anybody else), he would *automatically* regard it as an offer, as the drop-dead condition would not be satisfied. So, the problem recurs: my drop-dead condition fails to distinguish between a proposal and a proposer.

After this powerful criticism, I realized that my project in the end failed. It seems obvious that plain market offers remain offers regardless of who makes them. It is indeed *a content of the proposal* (in abstraction of the *person* who makes it) on which the distinction between welfare-enhancing and welfare-diminishing exchanges should rest. Instead, my elaboration of Nozick's drop-dead condition proved to be still too coarse-grained as it failed to draw the above-mentioned relevant distinction.

To be honest, I have not yet tried to remedy this shortcoming. But if I were to ever embark on such a project, should I start treating persons making proposals as indistinguishable featureless blobs, which would effectively render proposals the only relevant factors? Or should I isolate persons from proposals but treat both of them as important variables welfare is a function of? Or should I change my paradigm altogether in the face of this crisis? On these questions I have no firm view.

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[29] Note that Dominiak's thought experiment tackled only the first condition of unproductivity (viz. the drop-dead condition), which still leaves the question open of whether the neighbor's proposal is unproductive or not. However, anybody with the right mind would without hesitation classify the neighbor's *proposal* (in abstraction from the person making it) as an offer, whereas my purportedly improved account still remains (not having considered whether the second condition of unproductive exchanges is satisfied) agnostic, which is already a major embarrassment for it.

Appendix

A LIBERTARIAN THEORY OF THREAT[1]

Łukasz Dominiak, Igor Wysocki

This politico-philosophical paper presents the libertarian theory of threat. It is claimed that the concept of threat is logically dependent on the concept of natural property rights. First of all, the common account of threat, according to which the difference between threats and offers depends on decrements and increments in the subjective well-being of an individual, is dismissed as untenable. The authors demonstrate, in a logical and deductive manner, that threat and property rights or, more specifically, violation of these impact each other logically and therefore the libertarian theory of threat or, more broadly, the natural rights account of threat is the only possible consistent theory of threat. The second section presents the so-called common account of threat (CAT) and the third section criticizes CAT as counterintuitive and based on an unsound background theory. The fourth section characterizes the so-called libertarian account of threat (LAT) and shows that it matches our considered moral judgements better than CAT. The theory of natural property rights is identified as the background theory of LAT and it is demonstrated that LAT is the only consistent account of threat.

These investigations are conducted using the method of reflective equilibrium.

INTRODUCTION

The present paper develops what we call a libertarian theory of threat[2]. Its main thesis is the following claim: the concept of threat depends for its definition on the concept of natural rights[3] and cannot be cogently explained without the reference to the latter; any account of threat that wants to abstract from the normative question of natural property rights is beset by a plethora of politico-philosophical problems and eventually doomed to failure. Our investigation commences with a presentation and a subsequent criticism of what is deemed a common account of threat (CAT) – which occasionally is employed also by some libertarian thinkers – and then proceeds to a libertarian account of threat (LAT). The research method employed in the present paper is a method of wide reflective equilibrium, which examines theoretical background of the concept of threat as well as its implications for our considered politico-philosophical moral judgements[4]. Both the subject-matter of the

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[2] We call the account presented in this paper a libertarian theory of threat although one has to be aware of two caveats connected with such a name. First, there is more than one account of threat that can be extracted from libertarian writings – two of them are discussed here under the names CAT and LAT. Still, our paper is not a study in the history of ideas or hermeneutics, neither a lesson in taxonomy of ideological streams but a true politico-philosophical investigation. Therefore we present here what we claim to be a proper and coherent libertarian account of threat or an account that is the most libertarian one amongst other accounts; by the phrase "the most libertarian" we mean an account that is based on natural rights of private property to the highest degree. Second, account presented here, i.e. LAT, has a broader application than just libertarianism. We believe that this account and arguments supporting it would be operative and valid within many natural rights theories, not only libertarian one. We could have then presented a *natural rights account of threat* (NRAT). We did not because we believe that only a system of natural rights construed as natural property rights is a composible system of rights (the only rational system). In other words, we believe that a consistent *private-property-rights libertarianism* is the purest and the most coherent account of natural rights available and we decided to present such a hard-core version of our claims.

[3] Because we present here a hard-core, libertarian version of natural rights theory, from this moment on – as we indicated in the above footnote – we will talk not about natural rights as such but specifically about natural *property rights* in accordance with the libertarian claim that *all rights are property rights.* The thesis that all rights are property rights see *inter alia:* M. Rothbard, *The Ethics of Liberty,* New York University Press, New York 1998, p. 113; J. Narveson, *The Libertarian Idea,* Broadview Press, Peterborough 2001, p. 71.

[4] On the method of reflective equilibrium see *inter alia:* N. Daniels, *Wide Reflective Equilibrium and Theory Acceptance in Ethics,* "The Journal of Philosophy" 1979, vol. 76, no. 5, p. 256–282; D.W. Haslett, *What Is Wrong With Reflective Equilibria?,* "Philosophical Quarterly" 1987, no. 37/148, p. 305–311; J. Rawls, *Outline of a Decision Procedure for Ethics,* "The Phil-

paper and the method deployed here unequivocally place our inquiries within the remit of political philosophy.

CAT

Let's consider the most common instance of threat. A says to B: "Money or your life". What makes this promise a threat rather than an offer? According to CAT, A's promise is a threat because it diminishes B's well-being. If B assents to A's promise, he will be worse off than he would have been if A had not uttered the words (but B will be better off than he would have been if he had not assented to A's promise). To boot, if B does not assent to A's promise, he will be worse off even more since he will lose his life. On the other hand, when A says to B "I will give you 100$ if you want", his promise is an offer rather than a threat. What makes it an offer is according to CAT the fact that if B assents to A's promise, he will be better off than he would have been if A had not uttered the words (and A will be better off than he would have been if he had not assented to A's promise). Moreover, if B does not assent to A's promise, he will not be worse off than he would have been if A had not made his promise. Hence, according to CAT a promise is a threat if it makes the promisee worse off than he would have been if the promise had not been made; CAT compares therefore actual line of events with a counterfactual line of events. As Hillel Steiner points out, such an account of threat "presupposes a conception of normalcy into which the threatening of offering action is taken to be an extraneous intrusion (...) To establish the distinction between offers and threats it's therefore necessary to suppose that the accession-consequences of the former, and the non-accession-consequences of the latter, respectively promise not merely relative increments and decrements in wellbeing but absolute ones. And this entails a baseline or norm from which such consequences are deemed to be departures. In the literature, the conception of this norm is the description of the normal and predictable course of events: that is, the course of events (and

osophical Review" 1951, vol. 60, no. 2, p. 177–197; J.D. Arras, *The Way We Reason Now: Reflective Equilibrium in Bioethics,* in: B. Steinbock (ed.), *The Oxford Handbook of Bioethics,* Oxford University Press, New York 2007, p. 46–71; N. Daniels, *Reflective Equilibrium,* in *The Stanford Encyclopedia of Philosophy,* Spring 2011; J. Rawls, *A Theory of Justice,* Cambridge University Press, Cambridge 1971, p. 17–18; R. Dworkin, *Taking Rights Seriously,* Bloomsbury Academic, London 2013, p. 185–222; L. Dominiak, *Metoda rownowagi refleksyjnej [reflective equilibrium] w filozofii polityki,* "Athenaeum. Polskie Studia Politologiczne" 2012, no. 36, p. 143–156

associated level of wellbeing) that would confront the recipient of the intervention were that intervention not to occur"[5].

It is crucial for CAT that decrements in well-being of a threatened person were absolute and not just relative because otherwise it would be impossible to satisfactorily distinguish between a threat and an offer. In purely relative terms if A promises B "If you do not give me your money I will kill you" (or more analytically: "I will not kill you if you give me your money"), B is better off thanks to A's promise than he would have been if A had simply killed him. Then in relative terms a threat looks like an offer: A offers B continuation of B's life in exchange for B's money; more or less the same as in a case in which A says to sick B "I will perform a surgery on your heart that will save your life if you give me your money". In both cases agreeing to promised conditions makes B, in relative terms, better off than not agreeing to them: assenting means continuation of B's life minus money and not assenting means death plus money. Therefore in relative terms threats look like offers and the other way around; but in absolute terms it is not so. If in the first case A (a would-be murderer) had not made his promise at all (i.e. would not bother B at all), B would have been better off. On the other hand, if in the second case A (a cardiosurgeon) had not made his promise at all, B would have been worse off.

In the libertarian literature this way of distinguishing between threats and offers by making counterfactual comparisons in absolute terms has become to be known as a drop dead principle[6]. According to the drop dead principle a promise is unproductive and therefore should be prohibited (with or without a compensation to the would-be promiser) if the promisee would be better off if the promiser dropped dead. As Robert Nozick points out, a nonproductive exchange takes place whenever "if I pay you for not harming me, I gain nothing from you that I wouldn't possess if either you didn't exist at all or existed without having anything to do with me"[7]. For example in the case of broadly discussed problem of blackmail[8], "though people value a blackmailer's silence,

    [5] H. Steiner, *An Essay on Rights,* Blackwell, Oxford 1994, p. 24.

    [6] M. Rothbard, *The Ethics of Liberty*, p. 245.

    [7] R. Nozick, *Anarchy, State, and Utopia,* Blackwell Publishers, Oxford 2014, p. 84

    [8] On the libertarian theory of blackmail see *inter alia*: W. Block, *Toward a Libertarian Theory of Blackmail*, "Journal of Libertarian Studies", vol. 15, no. 2, 2001, p. 55–88; W. Block, *The Blackmailer as Hero*, "Libertarian Forum", December 1972, p. 1–4; W. Block, *Trading Money for Silence*, "University of Hawaii Law Review", vol. 8, no. 1, 1986, p. 57–73; W. Block, *The Case for De-Criminalizing Blackmail: A Reply to Lindgren and Campbell*, "Western State University Law Review", vol. 24, no. 2, 1997, p. 225–246; W. Block, *A Libertarian Theory of Blackmail:*

and pay for it, his being silent is not a productive activity. His victims would be as well off if the blackmailer did not exist at all, and so wasn't threatening them"[9]. Hence, what the drop dead principle informs us about, besides that blackmail is a form of threat, is that a promise is a threat if the promisee would be better off if the promiser dropped dead.

To analytically sum up what we hitherto said, it is important to underline the following features of CAT: 1) it bases the concept of threat on the concept (theory) of individual's well-being (or benefit, fulfilment of wants, gain, profit etc.) – the latter being a background theory of the CAT; 2) it makes comparisons in absolute terms in accordance with the drop dead principle.

CRITICISM OF CAT

Let's now consider Nozick's criterion of threat, which is the above-mentioned drop dead principle and point to what is wrong with it. Still, before proceeding with the critique, some words of explanation are due at this point. The use of the word criterion is all in order here for we should distinguish between a threat itself and a criterion thereof. Nozick obviously would not identify a threat with drop dead situations since the latter contain a merely counterfactual consideration (or, more sharply: a comparison between the factual and the counterfactual). So, if anything, something real (a threat is real once it occurs) cannot be identical with something which is (at least partly) counterfactual. Therefore, drop dead principle is simply a criterion apparently enabling us to test whether a threat occurred or not. This very fact lets our assumed reflective equilibrium work in the other direction than towards CAT's background theory. There is Nozick's criterion, from which we can infer specific conclusions and then judge them critically in the light of our considered judgements. After

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Reply to Leo Katz's 'Blackmail and Other Forms of Arm-Twisting', "Irish Jurist", vol. 33, 1998, p. 280–310; W. Block, *The Crime of Blackmail: A Libertarian Critique*, "Criminal Justice Ethics", vol. 18, no. 2, 1999, p. 3–10; W. Block, *Replies to Levin and Kipnis on Blackmail*, "Criminal Justice Ethics", vol. 18, no. 2, 1999, p. 23–28; W. Block, *Blackmailing for Mutual Good: A Reply to Russell Hardin*, "Vermont Law Review", vol. 24, no. 1, 1999, p. 121–41; W. Block, *Blackmail and 'Economic' Analysis*, "Thomas Jefferson Law Review", vol. 21, no. 2, 1999, p. 165–92; W. Block, *Threats, Blackmail, Extortion, Robbery, and Other Bad Things*, "University of Tulsa Law Journal", vol. 35, no. 2, 2000, p. 333–351; W. Block, *The Legalization of Blackmail: A Reply to Professor Gordon*, "Seton Hall Law Review", vol. 30, no. 4, 2000, p. 1182–1223.

  [9] R. Nozick, *Anarchy…*, p. 85

this methodological proviso, we can examine whether this criterion yields an accurate account of threats; crucially, if its predictions are co-extensive with threats as conceived of intuitively or as grasped by our considered judgements.

Drop dead principle basically says that, as already hinted at, we deal with a threat when a party which is allegedly under threat would be better off if the threatening party did not exist at all or at least did not interact with us in the first place. We claim that this criterion is both too broad and too narrow at the same time, and therefore fundamentally wrong. At first glance, it predicts far too much in that it would rule out many productive exchanges and incorrectly classify them as threats. Let's consider some imaginary scenarios.

There is some public park that a given man (let's now dub him Paul) particularly likes. Additionally, Paul is introverted and he enjoys walking in the park only if solitary. The very view of other people is highly repugnant to Paul. So, he decides to hire an agent whose task is to make the potential visitors to the park an unrejectable offer: every person who is about to enter the park will be paid 100$ just not to enter it. Not surprisingly, the passers-by agree to it and since Paul decided to pay and passers-by decided not to enter the park, everybody is better off. Let's notice, Paul was not pressurized to come up with this sort of proposal to any potential visitors. After all, he was not presented with the alternative by a passers-by: "Paul, give me 100$ or I will enter the park". Yet, Nozick would regard passers-by as a threat to Paul since Paul would be better off if there were no passers-by at all. He would enjoy walking alone and he wouldn't have to spend a single penny. However, passers-by do exist and both *ex hypothesi* (the thought experiment involves a public park after all) and on the basis of our considered judgement they may enter the place, i.e. they ought not to be prohibited from doing so[10]. Their entering or not entering the park is to take their liberty to do as they please and in the face of the above reasons cannot constitute a threat to Paul.

Second of all, drop dead criterion would predict that any potential market competition is a threat to the businessmen already operating in a given industry for they would be always better off without any marginal competitor that competes with him or her. Yet, the free entrance to business does not have a hint of threat to it; nor is it viewed as a prohibitable threat by our considered

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[10] Let's disregard the complications connected with the fact that the spot is a public park. Certainly, the very existence of any public property may come about only by the violation of individual rights.

moral judgements. Let's imagine Tom is a wealthy tobacco producer. One day an unknown gentleman comes to him with the proposal: "I won't enter tobacco business if you pay me 1.000.000$". Obviously Tom would be better off without any such proposals but it does not matter. The unknown gentleman may legally enter tobacco business; therefore, his proposal is a plain offer and not a threat at all. Yet on CAT such a promise would be considered an instance of unproductive exchange and a threat. In the same way Rothbard points out: "Nozick has not at all considered the manifold implications of his "drop dead" principle. If he is saying, as he seems to, that A is illegitimately "coercing" B if B is better off should A drop dead, then consider the following case: Brown and Green are competing at auction for the same painting which they desire. They are the last two customers left. Wouldn't Green be better off if Brown dropped dead? Isn't Brown therefore illegally coercing Green in some way, and therefore shouldn't Brown's participation in the auction be outlawed? Or, *per contra*, isn't Green coercing Brown in the same manner and shouldn't Green's participation in the auction be outlawed? If not, why not? Or, suppose that Brown and Green are competing for the hand of the same girl; wouldn't each be better off if the other dropped dead, and shouldn't either or both's participation in the courtship therefore be outlawed? The ramifications are virtually endless"[11].

To further support Rothbard's conclusion, let's consider yet another imaginary example of a real estate tycoon, call him Philip, who boasts plenty of houses. Unfortunately, Philip is harassed by a racketeer (let's call him Racketeer 1). To boot, there are also Racketeer 2 and Racketeer 3 "successfully" operating in that area. Furthermore, both Racketeer 2 and Racketeer 3 are more nasty than Racketeer 1. Racketeer 1, whose hands Philip is in, says to Philip: "If you don't pay me 500.000$, I will set fire to one of your houses chosen at random". We also know that if Philips were in the hands of either Racketeer 2 or Racketeer 3, he would have pay 1.000.000$ or 1.500.000 respectively. So, would Nozick say that because Philip would be worse off without Racketeer 1 (because he would be harassed by either Racketeer 2 or Racketeer 3) than with him, therefore Racketeer 1 offers a productive exchange to Paul and does not constitute a threat at all? That would plainly contradict our considered judgements. Strangely enough then, drop dead criterion seems to be too narrow in that it fails to predict a threat when there is obviously one.

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[11] M. Rothbard, *The Ethics*…, p. 247.

Perhaps Nozick's theory could be saved at this point by saying that we should apply drop dead principle recursively[12]. In our case, that would be true only if we apply drop dead principle *thrice*, all the threats would be filtered out. In other words, if all three racketeers are gone at the same time, Philip would finally heave a sigh of relief and Nozick would succeed in explaining the threats posed by all three racketeers. Unfortunately for CAT, this strategy would not do either. First of all, such an "improved" version of drop dead principle would err on the innocent side. For instance, in our public park thought experiment, it would incorrectly predict that all the potential visitors to the public park pose a threat to a solitary Paul and therefore should be prohibited from abstaining from entering the park in exchange for Paul's money.

Second of all, resorting to a recursive drop dead principle casts doubt on the very distinction between relative comparisons and absolute comparisons that CAT hinges upon. According to CAT what constitutes a threat is an absolute decrement in the promisee's wellbeing, not a decrement or an increment that is relative or internal to the promise. For in relative terms assenting to a threat is always beneficial for the promisee in comparison with not assenting (what would predict that promises that we commonly consider threats are actually offers). Then absolute decrement in the promisee's wellbeing, and the difference between threats and offers that is based upon it, is and must be assessed by comparing a promise and its effects with a counterfactual normalcy or what would normally happen if the promiser dropped dead. But then the question arises: What is normalcy? Should Racketeer 2 and 3 be included in the concept of normalcy or not? If yes, then according to CAT Racketeer l's promise would be an offer what would glaringly contradict our considered moral judgements. If not, then first of all that would be really stretching the concept of normalcy. (Would not that mean that CAT include within the concept of normalcy only such conditions which always yield desirable theory of threat no matter what?) CAT's original concept of normalcy according to which normalcy is the course of events that would take place if the promiser dropped dead would evolve into the adjusted concept of normalcy according to which normalcy is the course of events that would take place if the promiser dropped dead and all

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[12] Nozick is reluctant to follow this argument. As he says in the case of a blackmailer: "if he didn't exist, mightn't another have stumbled on the unique piece of information and asked a higher price for silence? If this would have occurred, isn't the victim better off because his actual blackmailer exists? To state the point exactly in order to exclude such complications is not worth the effort it would require". Or is it? See: R. Nozick, *Anarchy…*, p. 85.

other future promisers dropped dead too. Yet even this adjustment would not save CAT. Imagine the following scenario. Mark is about to walk to the shop to purchase a fancy phone for all his money which is, let's say, 900$. Now Racketeer 1 promises Mark: "Give me 800$ or I will break your leg". It seems that Mark would be better off if Racketeer 1 dropped dead since only then he would be able to purchase the phone (he neither can do it being whacked nor with a broken leg). Not so, not so. For there is Racketeer 2 counterfactually lurking behind Racketeer 1 who is just ready to promise Mark even more, that is: "Give me 900$ or I will break your two legs". If then Racketeer 1 does not drop dead and proceeds with his promise, Racketeer 2 will have nothing to do here; if in turn Racketeer 1 drops dead, Racketeer 2 will take his chance to personally rip Mark off. Then Mark would be relatively better off if Racketeer 1 did not drop dead. But in absolute terms the adjusted CAT would seem to yield a conclusion that both Racketeer 1 and Racketeer 2's promises were threats since Mark would be better off if both racketeers dropped dead. Unfortunately, this is a non sequitur. An answer to the question whether Mark would be better off if both racketeers dropped dead depends on what awaits Mark in his normal, counterfactual future. Imagine that what awaits Mark is an accidental death on his way to the shop. Could CAT then say that Mark would be better off if both racketeers dropped dead? Obviously not since he would be unambiguously worse off dead than alive with broken legs, let alone with perfect health but no money (given common value scale). This argument does not show of course that Racketeer 1 and Racketeer 2's promises are offers; it just indicates that CAT is untenable.

Finally, CAT owes us an answer to the questions "In what sense better off or worse off"? Is the concept of well-being construed objectively or subjectively? No doubt it would be strange enough if CAT employed an objective theory of value, particularly so far as CAT is endorsed by libertarian thinkers. Suggesting for instance that, excuse us, 900$ is objectively less valuable for Mark than unbroken leg would be no more than bad economics and bad philosophy. It can perfectly be objectively more valuable and if Mark thinks otherwise he can simply be wrong but then CAT owes us some theory of good life or moral rights and not just background account of benefit, gain, profit or fulfilment of wants. The problem is that it does not provide us with anything of this sort. Quite to the contrary, instead of explaining threats and offers in terms of natural rights or natural law, it explains them in a so-called value-free vernacular of factuals and counterfactuals. If so, then either subjective theory of value or

really bad economics. Exactly such a subjectivist twist is hinted at by Hillel Steiner when he says that offers and threats "are intended by their authors to influence how their recipients act, by altering the extent to which they actually desire to do a particular action (...). If the interveners are correct in their assessment of the recipients' desires and if they have designed their interventions accordingly, they necessarily succeed in bringing about the intended alternation in those desires"[13]. Unfortunately, a problem with defining the concept of threat in terms of subjective theory of value is that whereas praxeology or catallactics with its subjective theory of value focuses on the form of human action, the aim of political and legal theory of crime, tort and threat is to deliver a substantive criterion that would be able to distinguish between licit and illicit human actions. How could a formal, subjectivist criterion of threat be operative in legal or politico-philosophical investigations? Any time one suspected that a threat took place, one would have to consult subjective value scale of an alleged victim; what is more, two events having exactly the same external descriptions would have to be classified differently depending on subjective value scales of the same person at two different moments in time or of different persons at the same or different moments. To illustrate this, let's consider the following example.

Ann's subjective value scale at tl:
1) not being robbed by Mark
2) not being battered by Mark
3) Mark being put to prison
4) being battered by Mark
5) being robbed by Mark

Ann's subjective value scale at t2:
1) Mark being put to prison
2) being battered by Mark
3) being robbed by Mark
4) not being robbed by Mark
5) not being battered by Mark

Now, Mark says to Ann at tl: "Give me your money or I will hit you". Judging from Ann's value scale CAT proponent would conclude that Mark's promise is a threat because Ann would be better off if Mark dropped dead. We know also that Ann would not assent to the threat since it is "better" for her to be battered than robbed by Mark. If in turn Mark says to Ann at t2: "Give me your money or I will hit you", CAT proponent would conclude that Mark's promise is an offer because now Ann would be worse off if Mark dropped dead. We also know that Ann would not assent to the offer since it is better for her to be

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[13] H. Steiner, *An Essay on Rights*, p. 22–23.

battered than robbed by Mark. So, two events having exactly the same external descriptions would be classified by CAT proponent differently depending on subjective value scales of the same person at two different moments. But then how could such a criterion be operative in legal and politico-philosophical investigations? Subjective value scales are, as suggested by the very name, subjective. CAT proponent does not have any means to get to know subjective value scales that are in the human mind which is not accessible for him.

CAT proponent could answer that the subjective theory of value does not deal with subjective value scales that are in the mind of a man but with values and preferences that are demonstrated in action, which in turn is always available for objective examination. As Ludwig von Mises points out: "one must not forget that the scale of values and wants manifests itself only in the reality of action. These scales have no independent existence apart from the actual behaviour of individuals. The only source from which our knowledge concerning these scales is derived is the observation of a man's actions. Every action is always in perfect agreement with the scale of values or wants"[14]. This obviously correct claim of Mises would yet not help CAT proponent in his business. If CAT proponent depsychologized his theory of subjective value scales and focused on demonstrated preferences or values, to wit on human actions, he would end up with nothing else than two undistinguishable events. See that in our imaginary case there is not a single action that differs between our two cases. Even saying that if Mark really threatened Ann, she would report the crime whereas if he made her an offer, she would not do it – thereby demonstrating in action her real subjective value scales – would not help CAT proponent at all. For what directly follows from aforementioned value scales, Ann would report a crime in both cases.

As our line of argument showed so far, CAT in many points does not stand criticism. A threat is a normative, politico-philosophical or legal category, not a descriptive, psychological or praxeological concept. Therefore, threats cannot be rationally explained in terms of profits, benefits, value scales, preferences, economic or utilitarian calculations. The only background theory that is able to properly explain threats and respond to our considered judgements is a normative theory of natural law and natural rights, specifically libertarianism.

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[14] L. von Mises, *Human Action: A Treatise on Economics*, Ludwig von Mises Institute, Auburn 2008, p. 94–95.

LAT

It seems clear that we demonstrated above, particularly with Ann's value scales, that the concept of threat is independent of the question whether the threatened person is better off or worse off as a result of a threat. Our main thesis in turn says that the concept of threat depends for its definition on the concept of natural property rights and cannot be cogently explained without the reference to the latter. (Strictly speaking, our main thesis deals with what are illegal or punishable threats; unpunishable or legal threats are defined by the reference to the theory of natural law and we do not elaborate on it further in this place; therefore any time we say "threat" we mean illegal or punishable threat.) To show these two things (dependence on property rights and independence from decrements and increments in well-being), let's conduct another thought experiment.

Imagine Peter with the following value scales:

1) being robbed by Mark, provided Mark goes to jail
2) being battered by Mark, provided Mark goes to jail
3) being left undisturbed

Now Mark says to Peter: "Your money or I will hit you". First of all, it is uncontroversial to conclude that according to our considered moral judgements Mark's action is a threat and to boot a punishable one. What is more, it is probably one of the most typical, textbook examples of a threat. Any account of threat that would deny the status of a threat to the Mark's action would not only strongly contradict our considered moral judgements but also would fail to stand philosophical examination (we write about this inability below in our main deductive argument). There is then no doubt that Mark's action constitutes a typical instance of a threat. But lo and behold, Peter would be worse off if Mark dropped dead; or in other words, even though Mark threatens Peter with battery, it makes Peter better off because it means that Mark will end up in prison (we assume perfect crime detection) what Peter desires the most. It clearly demonstrates that what constitutes a threat is not dependent on the question whether the victim is worse off or better off.

Therefore it is now justified to say that the concept of threat must be dependent on something else than decrements and increments in subjective well-being of a given individual. It is dependent on property rights and violation thereof. Let's first consider the following thoughts experiments:

1) A promise of random violence

Let's imagine you are roaming around the city and somebody who has apparently gone on the rampage comes up to you and says: "If you do not pay me 10\$ now, I am going to demolish this very shop window" and he "threateningly" points to a random window you both have happened to be standing at.

2) An ill-tempered neighbour

Now, let's imagine you are engaged in an emotionally charged dispute over political beliefs with your neighbours who is reputedly extremely ill-tempered. Emotions are flying high. Your neighbour is a hot-head and he starts showering invectives on you. Because his anger is not vented in this fashion, he all of a sudden grabs your telephone and says: "If you don't stop arguing, I will smash your telephone into pieces".

Intuitively speaking, we are inclined to think that it is scenario 2 that contains a threat towards you, whereas 1 does not. Why so? What is the distinguishing factor? It can be immediately spotted that scenario 1 does not involve the violation of your property rights (although it involves the violation of the shop owner's property rights), whereas 2 does. The rampant person in 1 is merely exercising random violence and the shop window at stake is something you do not have a right to or more strictly, something you do not own or do not have property rights to. One simply intuitively grasps the idea that one cannot be threatened with anything one has no property right to. On the other hand, in 2 the promise that the ill-tempered neighbour is issuing is directed at something you do have a property right to, that is your own mobile. Therefore, LAT would maintain – and it does not in the last clash with our considered moral judgements – that a threat is a preview of rights violation, specifically property rights violation, be it a direct promise of the said violation or presenting a threatened party with the alternative. The former would be best illustrated with the following propositional function: "I will do X for you", where X refers to a scenario containing property rights violation, while the latter assumes the following generic form: "I will do X to you if you don't do Y to me", where X contains property rights violation and Y contains some benefit to a threatening party and the threatening party believes that a threatened party would find it better to agree to Y rather than to X. All in all, a sufficient condition is still the preview of property rights violation and the form of it is more or less irrelevant.

How would, on the other hand, CAT deal with those two scenarios? We believe that CAT would get lost in the maze of complications. In 1 it would have to resolve the issue whether you would be subjectively better off or worse off depending on whether the rampant person drops dead or not. If you are of a similarly violent disposition, you would welcome the person and relish in the perspective of the demolition. Thus, CAT would conclude that there is an offer in 1, whereas if you are of a more peaceful nature and you would feel much more comfortable if the man "drops dead", he would be therefore, conclusively, threatening you, which is a sheer absurd. On the face of it, these subjective considerations related to your well-being are strictly irrelevant and what matters is the property rights violation, which is perfectly mirrored in our moral considered judgement. By the same token, in the scenario 2 CAT would identify a threat or an offer depending on the subjective valuation that the owner attaches to his mobile while in the actual fact scenario 2 constitutes a paradigmatic example of a threat (both logically and as far as our considered judgements are concerned).

Now, however convincing the previous reflections can be, they are mainly intuitive and therefore their epistemological status is relatively weak. Even if one adds to them the aforementioned criticism of CAT (concerned both with CAT's counterintuitive implications and, what is more important, CAT's untenable background theory of calculating subjective well-being), they cannot be considered conclusive. Happily, there is still a stronger argument in store. Its strength is derived from its purely deductive, logical nature. The central concept employed is *natural property rights*. The following reasons are therefore aimed at demonstrating that, logically speaking, threat and the property rights violation imply each other, that is there cannot be either without the other. In this sense, these two concepts are like two sides of the same coin. We are hence fortunate enough to present the strongest possible argument in favour of LAT, to wit a logical-deductive one. But before we go to the heart of the issue it is in order first to elaborate concisely on the crucial logical elements of the concept of right.

What does it mean to have a right? As one knows from the well-established scholarly consensus on the matter, by saying that A has a right to X it is meant that B, C, D... etc. have a duty not to interfere with X (or alternatively to provide A with X)[15]. To have a duty on the other hand means that there is some

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[15]   W.N. Hohfeld, *Fundamental Legal Concepts as Applied in Judicial Reasoning,* "Faculty Scholarship Series", 1917, p. 710; J. Finnis, *Natural Law and Natural Rights,* Oxford University 1980.

action or omission that ought to take place and that not performing (or performing, respectively) of which would be unjust or unjustified[16]. For instance, if A has a right to walk in his backyard, then B, C, D... have a duty not to prevent A from doing it; in other words, if B prevented or attempted to prevent A from walking in A's backyard, that action on the part of B would be unjust and unjustified (let's call such an action an aggressive action). By the same token, if B attempted to act in an unjustified way towards A, then A's action to prevent B's unjustified action (let's call such an action a defensive action) would be as a matter of pure verbal logic a justified action. Notice what is the crucial logical consequence of this line of reasoning. If A's defensive action were unjustified and therefore morally or legally unavailable to A, then we could not say that A really has a right to walk in his backyard because B might prevent A from doing it and A (or police or A's agent etc.) might not defend himself[17]. What B might not therefore do would only be to effectively oppose the legal consequences (restitution to A, compensation to A or retribution) that would ensue his preventing A from walking in the backyard. But that in turn would mean that what A has a right to is not his walk in the background but restitution or compensation for him being prevented from walking by B. Therefore, to say that one has a right to X is to say that one has a right to defend X if someone interferes with X; and if one did not have a right to defend X, that would mean that he does not have a right to X but at most to the compensation, restitution or retribution for him being interfered with within the remit of X. By the same token, to say that B's aggressive action is unjustified can mean to different things: either that B can be prevented from performing his aggressive action or that B may perform his aggressive action but he might be punished (or forced to compensate or restitute) for doing so. Only the former meaning of an unjustified action is specific for rights. As Stephan Kinsella puts it: "If any right at all exists, it is a right of A to have or do X without B's preventing it;

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[16] On the connection between the concept of natural right and justification see *inter alia* R. Barnett, *The Structure of Liberty,* Oxford University Press, New York 2000, p. 19; A. Buchanan, *Secession: The Morality of Political Divorce from Fort Sumpter to Lithuania and Quebec,* Westview Press, Boulder 1991, p. 151.

[17] On the necessary connection between the concept of right and its justified enforceability see *inter alia*: H.L.A. Hart, *Are There Any Natural Rights?,* „The Philosophical Review", vol. 64, nr 2, 1955, p. 177; D. Rasmussen, D. Den Uyl, *Liberty and Nature: An Aristotelian Defense of Liberal Order,* Open Court, La Salle 1991, p. 81; A. Rand, *The Virtue of Selfishness: A New Concept of Egoism,* Signet, New York 1964, p. 110; H.-H. Hoppe, *Introduction,* in: M. Rothbard, *The Ethics of Liberty,* New York University Press, New York 1998, p. xvi–xx.

and, therefore, A can legitimately use force against B to enforce the right. A is concerned with the enforceability of his right to X, and this enforceability is all that A requires in order to be secure in his right to X. (...) what it means to have a right is to be able to legitimately enforce it"[18].

Now we are ready to go straight to the heart of the matter. Libertarian account of threat holds that whenever a given action is illegal (violates property rights), the threat thereof would be illegal too. On the other hand, if a given threat is illegal, its illegality is derived from the illegality of the threatened action. Hence, there cannot be such actions that would be legal but the threat thereof would be illegal. What's more, there cannot be such actions that the threat thereof would be legal while the very actions would be illegal. The argument illustrating the point is purely deductive and derivative of the normative concept of property rights. Let's consider the two impossible scenarios, that is, (a) the action is illegal but the threat thereof is legal; and (b) the action is legal but the threat thereof is illegal. Let's start with (a). If we assume that the action is illegal, we mean by that that it contains property rights violation. So, the threatened party has a property right to a given tangible object that the threatening party is about to violate (the issued preview serves as the anticipation of it); say, the threatening party is lifting the TV-set owned by the threatened party and is threatening to smash it against the floor. If now the threatened party, once the threat has been issued, does not have a right to defend his property rights to the TV-set, he or she is simply bound to wait until the calamity befalls, TV-set is smashed and the property right is violated. It would, in turn, imply that the threatened party does not have a property right to the TV-set but only and at most to a compensation, restitution or retribution. If a threatened party is doomed to wait until the property rights are violated, it means that his or her property rights are non-existent , that this party does not really have property rights – what would be at odds with our original assumption that the threatened party does have property rights in a given tangible object. There is then a contradiction between the assumption and the conclusion. Therefore, we have demonstrated by *reductio ad absurdum* (or more specifically, by the indirect proof) that if we only assume that a given party has property rights in a given tangible object, the promise of the violation of these property rights cannot be legal and may be opposed on the spot. This argument shows

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[18] S. Kinsella, *New Rationalist Directions in Libertarian Rights Theory,* "Journal of Libertarian Studies" 1996, vol. 12, no. 2, p. 319.

also that the apparently "threatening" preview can be legal only when there is no property rights violation that is at stake. This is just a matter of changing assumptions. In our scenario, when property rights were assumed the threat proved logically to be illegal. But if we change the assumption and stipulate that a given party does not have any property rights in the TV-set, then any promise relating to the very TV-set cannot violate any property rights of the party who does not have any property rights in that TV-set; therefore, at least that party is not threatened at all. The illustration of this point would be the following thought experiment debunking scenario (b): A (let's for the sake of diligence articulate an obvious assumption that is implicit in this and former examples, namely that A – as any other person – has a property right to his body) is now lifting the TV-set with an intention to destroy it and there is B who is not the owner of that very TV-set (for the sake of the clarity of demonstration let's assume that B is not acting as an agent of the possible owner of the TV-set). When A says: "I am going to break that TV-set into pieces", B may not prevent A from doing it because A has a property right to his body and therefore B preventing A from smashing a TV-set that is not B's property would violate A's property right to his body and would therefore be an unjustified action on the part of B. It would mean that B initiates violence against A simply because *ex hypothesi* B does not have any property rights neither in the very TV-set being at stake here nor in A's body. Hence B's behaviour would not be a defensive but aggressive action. Therefore delegalising A's preview or, in other words, treating it as an illegal threat would mean that A's defending of his body against B's aggressive actions is unjustified and therefore that A does not have a right to defend himself or to defend his body against B's aggressive actions and hence that A does not have a property right to his body –since to have a property right to X is to have a right to defend X against aggressive interference – which is inconsistent with our starting assumptions. There is then again a contradiction between the assumption and the conclusion. Therefore, we have demonstrated by *reductio ad absurdum* (or more specifically, by the indirect proof) that if we only assume that a given party does not have property rights in a given tangible object, the promise of the interference with this object cannot be a threat and may not be opposed on the spot nor afterwards.

The general conclusion that follows from the above investigations is that there cannot be one without the other – if an action is illegal, then and only then there can be a threat thereof. If we assume that A has a property right to his body and that he promises to interfere with a resource X that B does not

have a property right to, then this promise cannot be a threat towards B on pain of contradicting the assumption that A has a property right to his body. If on the other hand we assume that A promises to interfere with a resource X that B has a property right to, then this promise cannot not be a threat on pains of contradicting the assumption that B has a property right to X. Therefore the concept of threat is dependent on the concept of natural rights, specifically property rights, *quod erat demonstrandum.*

CONCLUSIONS

In the present paper we:
1) characterised CAT as an account of threat that is based on the concept of subjective well-being;
2) criticised CAT as an account that is counterintuitive and which background theory is untenable, mainly because of the impossibility of making interpersonal comparisons of utility, strong subjectivism of psychological subjective theory of value and unserviceability of praxeological subjective theory of value for CAT's purposes;
3) we characterised LAT as an account of threat that is based on the concept of natural property rights;
4) showed that LAT explains well our considered moral judgements;
5) presented a deductive-logical demonstration that threat and the property rights violation imply each other logically and therefore that LAT is the only possible consistent account of threat.

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