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## A LIBERTARIAN THEORY OF THREAT

### The Libertarian Theory of Threat

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<sup>1</sup>. Its main thesis is the following claim: the concept of threat

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<sup>1</sup> 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

depends for its definition on the concept of natural rights<sup>2</sup> 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<sup>3</sup>. Both the subject-matter of the paper and the method deployed here unequivocally place our inquiries within the remit of political philosophy.

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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 compossible 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.

<sup>2</sup> 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.

<sup>3</sup> 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 Philosophical 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; Ł. Dominiak, *Metoda równowagi refleksyjnej [reflective equilibrium] w filozofii polityki*, “Athenaeum. Polskie Studia Politologiczne” 2012, no. 36, p. 143–156.

## 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 A 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 associated level of wellbeing) that would confront the recipient of the intervention were that intervention not to occur"<sup>4</sup>.

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

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<sup>4</sup> H. Steiner, *An Essay on Rights*, Blackwell, Oxford 1994, p. 24.

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 cardiourgeon) 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<sup>5</sup>. 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”<sup>6</sup>. For example in the case of broadly discussed problem of blackmail<sup>7</sup>,

<sup>5</sup> M. Rothbard, *The Ethics of Liberty*, p. 245.

<sup>6</sup> R. Nozick, *Anarchy, State, and Utopia*, Blackwell Publishers, Oxford 2014, p. 84

<sup>7</sup> 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, 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, p. 225–246; W. Block, *A Libertarian Theory of Blackmail: 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. 333–51; W. Block, *The Legalization of Blackmail: A Reply to Professor Gordon*, “Seton Hall Law Review”, vol. 30, no. 4, 2000, p. 1182–1223.

“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”<sup>8</sup>. 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 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

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<sup>8</sup> R. Nozick, *Anarchy...*, p. 85

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 passer-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<sup>9</sup>. 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 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,

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<sup>9</sup> 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.

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”<sup>10</sup>.

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 Philip 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 contradicts 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.

Perhaps Nozick’s theory could be saved at this point by saying that we should apply drop dead principle recursively<sup>11</sup>. In our case,

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<sup>10</sup> M. Rothbard, *The Ethics...*, p. 247.

<sup>11</sup> 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

that would be true that 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 innocents’ 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 well-being, 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 considers threats are actually offers). Then absolute decrement in the promisee’s well-being, 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 1’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 other future promisers dropped dead too. Yet even this adjustment would not save CAT. Imagine the

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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.

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 question "In what sense better off or worse off"? Is the concept of normalcy and 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 factuials 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”<sup>12</sup>. 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 t1:	Ann’s subjective value scale at t2:
1) not being raped by Mark	1) Mark being put to prison
2) not being battered by Mark	2) being battered by Mark
3) Mark being put to prison	3) being raped by Mark
4) being battered by Mark	4) not being raped by Mark
5) being raped by Mark	5) not being battered by Mark

Now, Mark says to Ann at t1: “Have sex with me 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 raped by Mark. If in turn Mark says to Ann at t2: “Have sex with me 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

<sup>12</sup> H. Steiner, *An Essay on Rights*, p. 22–23.

dead. We also know that Ann would not assent to the offer since it is better for her to be battered than raped 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"<sup>13</sup>. 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

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<sup>13</sup> L. von Mises, *Human Action: A Treatise on Economics*, Ludwig von Mises Institute, Auburn 2008, p. 94-95.

explain threats and respond to our considered judgements is a normative theory of natural law and natural rights, specifically libertarianism.

### 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)<sup>14</sup>. To have a duty on the other hand means that there is some action or omission that ought to take place and that not performing (or performing, respectively) of which would be unjust or unjustified<sup>15</sup>. 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<sup>16</sup>. 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

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<sup>14</sup> 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 Press, New York, 2011, p. 199.

<sup>15</sup> 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.

<sup>16</sup> 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.

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 retribute) 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; 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"<sup>17</sup>.

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

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<sup>17</sup> S. Kinsella, *New Rationalist Directions in Libertarian Rights Theory*, "Journal of Libertarian Studies" 1996, vol. 12, no. 2, p. 319.

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 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 delegating 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 – what 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.