

REJOINDER TO THOMMESEN ON “STEALING” FROM THIEVES

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ABSTRACT: Is it possible to “steal” from a thief? Rothbard (1969) and Block (2018a, 2018b) maintain this to be an utter impossibility. In their view, one can only “liberate” the ill-gotten gains of the robber. In contrast, one can indeed steal, but only from the rightful owner of the property in question. Thommesen (2020) defends the opposite point of view; that one can indeed steal from a thief. He uses this perspective in criticism of Rothbard and Block. The present paper is an attempt to refute Thommesen’s critique of these two other authors.

A enslaves B; C comes along and liberates B from A’s unjust control. According to Thommesen, this is compatible with libertarianism if and only if it is the police¹ who play the role of liberator. However, if C is a total stranger to the situation, he simply has no right to “steal” B from A; after all, A is now the owner of B, and if C engages in this nefarious act, he should be considered a thief. I find this to be a very problematic understanding of the libertarian philosophy.²

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¹ Private for the anarcho-capitalist Rothbardian; public for the minarchist, limited government Randian.

² I shall in this rejoinder be criticizing this scholar on this issue. However, I must start off with great thanks to Mr. Thommesen for writing this: “Major libertarian writers (Murray Rothbard, Walter Block) have however opined that if an item is currently held by someone other than the proper owner, then it is permissible to grab the item (i.e. stealing from a thief).” To be called a “major libertarian writer” is heady praise and I am thankful for it. But to be linked in this way with the father of our philosophy, Murray Rothbard, is if anything excessive. I am exceedingly

According to the old aphorism if you try to kill the king,³ you had better succeed. Thommesen has attempted to do so. I cannot think he has succeeded.⁴ Let us consider his attack on libertarian theory in some detail.

Our author starts off on the wrong foot as follows:

The libertarian nonaggression principle (NAP) forbids aggression against other persons or their property, which means theft is not allowed. That is, appropriating property from its rightful owner is frowned upon. But what if the property you are appropriating is not in the hands of the rightful owner because the current possessor has himself stolen it from the rightful owner? What then? Is it morally acceptable to *steal* from a thief? (We are asking here about the appropriateness of re-*stealing* previously stolen property—not about *stealing* other property properly belonging to the thief.) (p. 423; emphasis added).

The difficulty here is that this scholar is arguing in a circle. He is assuming that his interpretation is correct, right at the outset, without demonstrating its truth. It is unjustified to call such an act "stealing." That is the claim to be proven, not assumed to be true. A more accurate morally neutral characterization of such behavior would be "taking," or "transferring." In that way, we would be able to argue the case in point without implying the correctness of his viewpoint in an unwarranted manner.

Thommesen commits his second error what he writes this: "As it turns out, Block is not the only libertarian to take the position that it is morally acceptable (and hence not a violation of the NAP) to steal from a thief." (p. 424)

But moral acceptability is not to be conflated with lack of NAP violations as per this scholar. There are numerous acts that are not morally acceptable, and yet do not come within the proverbial million miles of constituting a NAP violation. For example, according to

grateful to Thommesen for putting matters thusly, even though I do not deserve such high praise.

³ Rothbard, not me!

⁴ Thommesen criticizes only Block (2018a, 2018b). But the latter author has a far longer paper trail on this issue: Block (1972, 2002b, 2002c, 2004a, 2006b, 2007c, 2008, 2009a, 2009b, 2009c, 2009d, 2010, 2011a, 2011b, 2011c, 2011d, 2012, 2016, 2018a, 2018b), Block and Arakaky (2008), Block and Barnett (2008), D'Amico and Block (2007), Gress and Block (2020).

traditional morality⁵ it is improper to commit suicide, to engage in perverse sexual acts between consenting adults, to utilize addictive drugs, to get drunk, etc. And yet none of these constitute a violation of the NAP.

Let us try this the other way around. Are there any acts that are widely seen as morally acceptable, and yet are an egregious violation of libertarian principles? The late non-lamented Indian practice of suttee would appear to fit this bill. It was for a long time widely seen as moral in the sub-continent. And yet if there is anything incompatible with libertarianism this would appear to be it. Slavery, too, would apply. It was also deemed highly moral years ago in most societies, and nowadays in some, albeit, happily, many fewer. But this “curious institution” is practically the paradigm case of a NAP violation.

Nor need we resort to such extreme examples. Husbands spanking wives, too, was seen as highly moral in many quarters, years ago, and this assessment survives, happily far less so, in the modern era.⁶ In some societies, the husband could not be found guilty of the crime of rape for forcing himself on his wife. Evidently, this was seen as a moral act, yet it lies 180 degrees in the opposite direction from the libertarian NAP.

Next, consider this sally of our author:

Rothbard really doubles down on the you-can't-steal-from-a thief position, calling subsequent thefts “virtuous.” Now, when Rothbard refers to the “private sector” and the “criminal sector,” it can be surmised that he really has in mind a discussion of what to do with government-held property. But his chosen example is focused on individuals stealing from other individuals, and in this case it is difficult to agree with his position. (p. 425)

Here, Thommesen’s error has nothing to do with libertarianism. Rather, it concerns Austrian economics in general, and methodological individualism in particular. Precisely what does “government” consist of, if not “individuals”? Yes, to be sure, there are also groups out there. But if all the individuals are subtracted

⁵ A referee of the JLS suggests the substitution of “Christian values” for this phrase in the text.

⁶ We are not here talking about voluntary sexual activity between consenting adults. We are discussing assault and battery.

from the group, there remains nothing. That is to say, the group, whether government or not, consists of nothing more than individual people. Thus it is difficult to see why Thommesen should change his analysis of his "stealing," my "liberation," when we move from individuals to groups. There is no relevant difference between an individual criminal and a group of them acting in concert. His way of looking at this matter is thus a violation of one of the Austrian foundations, methodological individualism.

This error can be seen in this categorization of his:

1. Property owned by me
2. Property owned by others
 - a. Property owned by individuals
 - b. Property owned by groups or organizations
3. Potential property owned by nobody (p. 426)

For the libertarian, there is no distinction, none whatsoever, between 2a and 2b. The rights thereof are the same. They are identical.⁷

What are we to make of this statement of our author's: "Note that in this categorization, potential property owners are not also included in the category of potential property, thus ruling out chattel slavery by definitional fiat!" (p. 425)

I would not go so far as to characterize this as an outright error. Rather, an omission. There is an important debate in libertarian circles of which Thommesen as a libertarian scholar can hardly be unaware. Of course, "chattel" slavery may properly be dismissed from the libertarian universe as anathema; one of the most serious instances of the evil man perpetrates on man. But what about voluntary slavery? Our author blithely slides past the libertarian arguments in favor of such voluntary contracts, as if they do not exist, by claiming that people cannot be "included in the category of potential property..." (p. 425)⁸

⁷ In saying this we abstract from intra-group ownership disputes. Yes, two or more partners in an enterprise can disagree with one another in a way precluded by individual ownership.

⁸ In the view of Boldrin and Levine (2008, 254):

Take the case of slavery. Why should people not be allowed to sign private contracts binding them to slavery? In fact economists have consistently

The core error in this publication is Thommesen's improper critique of this brilliant statement of Rothbard's (1969):

Suppose, for example, that A steals B's horse. Then C comes along and takes the horse from A. Can C be called a thief? Certainly not, for we cannot call a man a criminal for stealing goods from a thief. [Any goods, or just previously stolen goods?] On the contrary, C is performing a virtuous act of confiscation, for he is depriving thief A of the fruits of his crime of aggression, and he is at least returning the horse to the innocent "private" sector and out of the "criminal" sector. C has done a noble act and should be applauded. Of course, it would be still better if he returned the horse to B, the original victim. But even if he does not, the horse is far more justly in C's hands than it is in the hands of A, the thief and criminal.

Here is Thommesen's 'refutation':

Now, getting to the stealing-from-thieves question, what can a person legitimately do with property that is owned by someone else? Here the NAP is clear: he cannot legitimately do ANYTHING with such property. The basic rule is: do not mess with other people's stuff! So, in Rothbard's example, the fact that the horse now being ridden by A actually belongs to B is of no consequence: since the horse is not mine, I have no legitimate claim to it. For me to appropriate the horse from A is no more or less defensible than if I had stolen it directly from B. (p. 426)

This is highly problematic. If we extrapolate from this statement, then it follows that *no one* else, apart from B himself may properly deprive A of the horse he stole from B. B may not hire a private guard to recapture his property for him. The government may not do so either, because to do so would be to "mess with other people's stuff!" Contrary to Thommesen, the NAP mandates that it should be a crime for anyone to steal anything from anyone else. And what should be done to the criminal, pray tell, if B is old and feeble and unable to inaugurate a do-it-yourself recollection of this

argued against slavery—during the 19th century David Ricardo and John Stuart Mill engaged in a heated public debate with literary luminaries such as Charles Dickens, with the economists opposing slavery, and the literary giants arguing in favor.

For more in this vein see: Andersson (2007), Block (1969, 1979, 1988, 1999, 2001, 2002A, 2003, 2004b, 2005, 2006a, 2007a, 2007b, 2009a, 2009b, 2013, 2014a, 2015), Boldrin and Levine (2008), Frederick (2014), Kershner (2003), Lester (2000), Mosquito (2014), Nozick (1974, 58, 283, 331), Philmore (1982), Steiner (1994, 232–33; 2013, 230–44), Thomson (1990, 283–84).

horse? This criminal should be left alone? This is libertarianism? No, this is legal chaos.⁹

Fischer (2021) poses "A simple question: If someone murders you and seizes your home, do your kids have a right to take it back? Or do the murdering interlopers get to keep it?" The answer to this question emanating from Thommesen would appear to be that your kids have absolutely no right to seize back what you would have bequeathed to them. However, they can indeed own this property if and only if an official, such as a policeman, does this in their behalf.¹⁰ There is seemingly no room for "self-help" in the Thommesenian version of libertarianism. But if a servant, or an agent, may do X in behalf of his boss, it is difficult to understand why the employer may not fire them, and accomplish this task on his own. It is even more of a violation of libertarian principles to maintain, as does this author, that the only legitimate intermediation between the victim and the marauder would be a statist court or policeman.

Happily for Thommesen, he then engages in a downright logical contradiction. Remember, he just got finished telling all and sundry that the *only* person who would be justified in seizing this stolen horse from C is the owner, B himself. To repeat: "The basic rule is: do not mess with other people's stuff!" Whereupon he takes it all back:

Under a libertarian theory of justice, following an act of theft the justice system has two key tasks: to restore the stolen property to its rightful owner and to punish the perpetrator. The only person who has a right to "steal from the thief" is the rightful owner, who is entitled to recover his stolen property. This he can do himself, or the government (in a Randian world) or his designated agents (in a Rothbardian world) can do it for him. (p. 427)

Why "happily?" Ordinarily, when a writer contradicts himself, this is anything but a "happy" occasion. But here we have an exception to this general rule. Because, here, Thommesen regains

⁹ A referee of this journal opines as follows: "It seems, then, that Rothbard and Thommesen alike employ a morally neutral concept of stealing: stealing as, say, 'taking against the current holder's will,' not necessarily 'taking illegitimately.' My impression here is that Block's criticism is sort of uncharitable."

¹⁰ But this too is a difficulty for Thommesen. For the police do not own the horse either. If everyone is limited to dealing with their "own stuff" how is it valid in the Thommesenian world for them to intervene?

his senses, and acknowledges that yes, someone else may indeed help A get his property back.¹¹

However, Thommesen totally ignores Rothbard's insightful challenge: the horse is far more justly¹² in C's hands than it is in the hands of A, the thief and criminal. So I ask Thommesen: given that it would be impossible for the horse to be returned to B, the rightful owner, which is more compatible with libertarianism: that A the outright thief keeps this animal? Or that C, who stole nothing from the rightful owner B, keeps it? Anyone with even a shred of justice in his bones would choose C over A. But not our author. It is bad enough that he all but refuses to answer this question. Even worse,

¹¹ In the view of this author: "As for myself, the previously stated rule applies: if a piece of property is not mine, I should leave it alone." (p. 428) That means he can never hire himself out as a detective, to find stolen property and return it to its rightful owner, his client. Since, presumably, he is here speaking in behalf of overall libertarianism, not only in his own behalf, this means he thinks that the detective profession is per se contrary to libertarianism, at least insofar as bringing stolen property back to its rightful owner. It is difficult to see how this author ends up with such a convoluted anti-libertarian stance.

¹² An anonymous referee of this journal objects to my implicit claim here, to the effect that acts can be more or less just. He does so on the following grounds:

[W]hat begs the question here is the underlying assumption that (in)justice is a matter of degree. Under a number of contemporary and historical theories it perhaps is. But is this also the case on the libertarian theory? If justice comes down to the respect for (legitimately acquired) property rights, then how can an action be more or less (un)just? It appears that ownership rights are either honored or violated, period. To anticipate the author's possible reply: yes, of course, infringements might be more or less severe (subjectively, morally, etc.), yet this is not the same thing as rights being more or less infringed upon. Furthermore, as long as the property in question is not restored to the legitimate owner, the victim's rights are violated in exactly the same way. How, then, could the stolen item just switching hands be a less unjust state of affairs? Is that because the first thief no longer reaps the benefits of the theft? But how is the other one's reaping them any better...?

I think the referee is in error, here. Surely, it is more unjust to engage in mass murder than enslavement, and it is more unjust to enslave someone than to rob him of \$100, and it is more unjust to steal \$100 from him than \$5. To return to our horse thief example, the only fully just situation is for A, the initial and rightful owner to get back his horse. But which is more just? That B keep the horse, or C? My answer, I think the obvious and correct one, is that it would be more just, but not fully just (that is when A gets his horse back) for C to keep this horse, rather than B. After all, B stole the horse from its rightful owner, A. Say what you will about C, he cannot be charged with that particular crime. At worst, he can be charged with having property not rightfully his own, in his possession. Surely, that is a lesser injustice.

if he apply his ‘logic,’ he would have to inveigh in favor of A the criminal keeping the horse, since it is now in C’s possession, and no one should “mess” with any property not strictly belonging to them.

Here is Thommesen’s next error:¹³

Now, Rothbardians would have it that (in the current state of affairs) a government is simply not a legitimate owner of any property since all their funds are stolen funds to begin with.

Some might quibble with this: the claim is not necessarily completely true, since a Randian government that supports itself entirely by voluntary means (contributions, lotteries, etc.) would in fact be operating with non-stolen funds! The fact that this government may illegitimately (from a Rothbardian point of view) claim a monopoly on the use of force in some circumstances does not mean that voluntarily donated funds are tainted. (p. 429)

There are several howlers embedded in this statement. First, why would a Randian government have a competitive advantage over private enterprise in the provision of any service, let alone such an important one? Second, this author fails to take into account devastating critiques of the Randian government; he writes as if they do not so much as exist. But there is indeed in existence a large literature repudiating this idea.¹⁴ Most egregious, Thommesen maintains that the Randian government is not “tainted” by the fact that it will use initiatory violence to prevent any competitors within what it regards as its proper territory. What happened to this author’s much celebrated NAP? If this will not “taint” the Randian government, it is difficult to see what will do so.

Nor can we let pass without critical comment this statement:

The third party’s knowledge (did he know the horse was stolen, and if so, from whom?) and intentions (did he plan to return the horse to its owner, or was he going to sell it) will play a role.

It *follows*, then, that contra Rothbard, it is neither acceptable nor virtuous to ‘steal from the thief.’ If someone recognizes that an item must be stolen, and he knows the rightful owner, the neighborly thing for him to

¹³ Why am I so intent on uncovering, exposing, and refuting his mistakes? This is because his essay appeared in the flagship publication of the libertarian movement, the *Journal of Libertarian Studies*. It is important that error that appears anywhere should be corrected. Even more so in this apex of scholarly libertarianism.

¹⁴ See in this regard Block (2002b, 2007c, 2007d, 2014b), Childs (1969), Dykes (2007), Friedman (1989), Garner (2009), Gordon (2014), Long (1998, 2004, 2013, 2020), Oliver (2014), Sechrest (1999, 2000), Wollstein ([1969] 2010).

do is call the owner, his agent, or the police and let them know what he has observed. (p. 427, emphasis added)

None of this is relevant to the one and only issue that this author continually ignores: given that the horse cannot possibly be returned to its rightful owner, B, which situation is more just? That A, the thief keep it? Or that C, the third party, the liberator, be its new owner? Anyone with a modicum of libertarian theory deeply embedded in him must agree that C would be the more proper owner. Indeed, anyone else on the entire planet, D, E, F... would be more deserving of that horse than A. A is the only one who actually *stole* that horse from B, the rightful owner. No one else perpetrated this dastardly deed. Nor are we at all interested, *qua* libertarians, as to what the “neighborly” thing to do would be. Of course Thommesen is correct in this surmise of his, but libertarianism should be sharply distinguished from “neighborliness.” Even Thommesen himself acquiesces in this distinction when he concludes the above quote with this statement: “(Though the NAP itself, being concerned solely with negative rights, does not require him to do so.)”

Thommesen leaves the libertarian reservation once again when he says of evil governments: “Voluntary contributions to contemporary governments are small enough to be irrelevant for purposes of this discussion.” (p. 429) For one thing, the size of donations to a stipulated evil state are irrelevant. One penny should be considered a criminal offense.¹⁵ Thus, they are anything but “irrelevant” to a discussion of statism, libertarianism, the NAP.

The next *faux pas* of this author occurs when he writes as follows:

[T]he question, as raised by both Rothbard and Block, becomes: If property currently held by entities calling themselves ‘government’ is not to be considered theirs because it is stolen (or was purchased with stolen funds), is it acceptable for random citizens to ‘liberate’ such government property for their own use?

Block and Rothbard both answer this question in the affirmative, putting the government in the role of the original horse thief...

So, no, random citizens cannot¹⁶ enter city hall and appropriate for themselves whatever office supplies they might find there. (pp. 429, 430)

¹⁵ How would the libertarian Nuremberg trial deal with those who contributed a small amount of money to the Nazi government? This is just a metaphorical question.

¹⁶ Typo: I think he means “may not” here.

His minor error consists of the assumption that Rothbard and I agree on this issue; that is merely a matter of the history of thought. Rothbard and I have never discussed office supplies, but we have diverged over whether or not it would be proper to kick the proverbial bum out of the public library; his presence was making it impossible for anyone else to enjoy this public service. Rothbard took the “kick the bum out of the library” position. My perspective was the very opposite.¹⁷

Thommesen’s major error is that he agrees with what I regard as the fallacious position of his and Rothbard’s. Let me put my position in the best light possible. A good German in 1943 breaks into the Nazi military warehouse and “steals” what he can carry and burns the rest. He is a random citizen, not content with destroying and liberating mere office supplies of the Third Reich. Is this man a hero? Not according to what I regard as the mistaken view of Thommesen and Rothbard.¹⁸

Thommesen continues his misunderstanding of libertarian theory with the following statement: “Let us not forget that the point of the NAP is to limit conflict— and such action on the part of random citizens¹⁹ would certainly cause conflict! (Uniformed men with guns would appear in short order...)” (p. 430)

No, no, no, a thousand times no. The “point” of the NAP is not to limit conflict, it is, rather, to promote, explain, account for, liberty; it is, along with the libertarian view of property rights, the very embodiment of justice. This incorrect interpretation of the NAP would require pacifism, since, let us stipulate, such a stance would reduce conflict. Now, to be sure, pacifism is compatible with the NAP. No one is required by libertarian law to use violence, even the defensive variety thereof. But to require pacifism is a total mischaracterization of the freedom philosophy.

Now consider this statement of our author’s:

A special case arises if a government entity is going out of business (being liquidated). In such a case, the governing principle would be to

¹⁷ See Block (2020) on a related matter.

¹⁸ Of course, I am not equating the evil of the Nazi regime with the U.S. government. I am instead maintaining that from the perspective of anarcho-capitalism, both violate the NAP.

¹⁹ Taking office supplies from government coffers.

return all stolen property to its original rightful owners... But what of bank accounts holding general tax receipts, or real estate and other assets purchased with tax funds?...

I would say, liquidate the organization the way you would any other defunct firm: sell off all general assets, pay off all debts (though some libertarians would say to repudiate all debt), and then distribute any remaining funds among the taxpayer-citizens according to some reasonable, acceptable scheme. (p. 430)

Here, Thommesen takes the position that the government should not repudiate its debts. In sharp contrast is Rothbard's (1998, 184) brilliant analysis of this issue:

Many libertarians fall into confusion on specific relations with the State, even when they concede the general immorality or criminality of State actions or interventions. Thus, there is the question of default, or more widely, repudiation of government debt. Many libertarians assert that the government is morally bound to pay its debts, and that therefore default or repudiation must be avoided. The problem here is that these libertarians are analogizing from the perfectly proper thesis that private persons or institutions should keep their contracts and pay their debts. But government has no money of its own, and payment of its debt means that the taxpayers are further coerced into paying bondholders. Such coercion can never be licit from the libertarian point of view. For not only does increased taxation mean increased coercion and aggression against private property, but the seemingly innocent bondholder appears in a very different light when we consider that the purchase of a government bond is simply making an investment in the future loot from the robbery of taxation. As an eager investor in future robbery, then, the bondholder appears in a very different moral light from what is usually assumed.

Thommesen rejects this analysis. Does he indicate his objections to it? Given his pattern, to ask this is to answer it: he does not. But it seems incumbent upon an author who is waxing eloquent about libertarian theory, upon mentioning a viewpoint contrary to the one he is adumbrating, to at least give a hint in defense of his own position. Enquiring minds want to know why Thommesen rejects this splendid statement of Rothbard's.

Consider one last difficulty I have with the paper we are considering. Thommesen states this:

As a final comment on Rothbard's position, I would claim that the stolen horse is not brought back into the "innocent private sector" when re-stolen by C. That only happens when the horse is restored to its proper owner, B. Until then, the horse is in the "criminal sector," whether currently in the possession of A or C, and regardless of any misunderstandings or misidentifications by either. (p. 432)

This is a mischaracterization of Rothbard's and my views of the matter. Thommesen places quotation marks around this phrase, "innocent private sector," presumably attributing the view to both Rothbard and myself that if C keeps the horse, all is well with the situation. Justice now fully prevails. But this author fails to provide any source for such a claim. I cannot of course speak for Rothbard on this or any other matter, but I strongly suspect he would fully agree with me when I deny that full justice has been achieved with C's possession of the stolen horse. Rather, it is my view that it is *closer* to justice if C keeps the horse, since he never stole it from an honest person, the rightful owner, B,²⁰ rather than if A is allowed to keep it, since A is indeed a crook, since he did indeed *steal* this animal from B.

This rejoinder of mine has been highly critical of Thommesen's viewpoint. Let me end on a positive note. This author also offers important and not fully appreciated insights into libertarian theory. For example, he maintains: "... if someone's car has been seized under 'civil forfeiture' in a roadside stop, he would be justified under the NAP in recovering his vehicle from the police impound lot." That alone is worth more than the entire price of admission to this essay. I congratulate Thommesen on the courage and wisdom it takes to make this claim.

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²⁰ He only *liberated* it!

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