

STEALING FROM THIEVES

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ABSTRACT: The libertarian nonaggression principle (NAP) enjoins us from messing with other people or their property. This means that theft (removing owned items from the control of their proper owners) is not acceptable. 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). This paper argues against this position.

THE QUESTION

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.)

WALTER BLOCK'S ANSWER

In recent blog entries Walter Block has posted a couple of exchanges that he has had with students regarding the moral status of appropriating items from individuals who have already stolen those same items from their rightful owners (See Block 2018a and 2018b).

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The discussions veer into more complex issues, such as what to do if the original thief is the government, and how to bring the stolen items back to their rightful owners when much time (possibly generations) has passed since the original theft, but they also touch on simple cases of individuals stealing from each other. One correspondent formulates his understanding of libertarian theory as, “[O]nce the original theft happens, you’re not really committing violations of the NAP by ‘stealing’ from the thief.” (Block 2018b) Another quotes Block as saying that “stealing from a thief is good since it’s not his legitimate property,” and Block does not correct him. Instead he says that the case of “liberating” a confiscated truck from a government impound lot would not be theft, since “you can only steal from the rightful owner” (Block 2018a).

This second correspondent demurs, however: “I believe you CAN steal from a thief. Just because the thief stole from an innocent person does not give me, an unaffected third party, a right to steal from the thief, since he didn’t take anything that was rightly mine” (Block 2018a).

Block’s response was surprising.¹ My intuition is to hold with the latter sentiment! (And, on a matter of terminology, if it is morally right to appropriate stolen items from a thief, this secondary action should probably be referred to by a different word than “stealing.”)

MURRAY ROTHBARD’S ANSWER

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. Here is what Rothbard (1969) wrote:

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.

¹ He states that if he ‘liberates’ my truck from the police impound lot, and then is required to give the truck to me, that would make the NAP a “suicide pact”!

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. I am at a loss to understand Rothbard’s notion that there are degrees of “justly holding” property that is not in fact in the hands of the rightful owner!

THE NAP AND PROPERTY

In order to sort out what the NAP might have to say about variations on the notion of theft, a basic theory of property is needed. An attempt will be made to provide various categories of property, in order to help clarify our applications of NAP.

Step 1. All existing entities in the universe can be sorted into two broad categories:

1. (Potential) property owners
2. (Potential) property

In the first category, we put human beings. That may be a fairly “speciesist” thing to do and, in galactic terms, possibly imperialistic. But, for now, as a first cut, the category of potential property owners includes only living earthly entities that are sapient, sentient, and lacking in instincts for how to survive in the wild.² Should it be discovered that other earthly species fit this description, rights might have to be extended to them.³ And, of course, if aliens in spaceships were to drop in for tea one day, they would presumably also belong to this category. But for now, human beings it is.

That leaves everything else in the category of potential property.

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! I also note that this way of dividing all existents on Earth into two categories accords well

² The reader will recognize these as Ayn Rand’s criteria for granting individual rights. She assigns rights to humans for being potentially sapient and sentient, without denying rights for human individuals who are neither at the moment. See her articles “The Objectivist Ethics” and “Man’s Rights” in Rand (1964).

³ As Edwin Locke humorously noted in a talk on animal rights many years ago, “Animals will be granted rights when they come ask for them.”

with the Christian view that God gave over the rest of Creation for Man to manage.

Step 2. All the items in the potential property category can be further subdivided in accordance with how they are owned (seen from each potential property owner's subjective point of view):

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

So, what does the NAP say that an individual is entitled to do with items from those three categories?

Regarding property that is unowned, all is clear: it can be used in whatever manner an individual wishes, as long as nobody complains or disputes his use. Or an individual can put down stakes and "mix his labor with the land" to make it his in an act of Lockean homesteading. As an example, if the woods near my house are unowned, I can take Sunday walks there along with others without necessarily wanting to fence off part of the forest for myself.

Regarding property owned by me, all is also clear: an individual can do whatever he wishes with stuff that he owns. That includes using it, giving it away, bartering it or selling it, renting it out, trashing it, or leaving it fallow and unused. Anything at all, as long as the individual does not violate the rights of others in the process.

It should be noted that in libertarian theory an individual is the rightful owner of property if he has homesteaded previously unowned property, if he has created the property himself out of resources he owned, or if he received the property from a previous rightful owner as a gift, a bequest, or through a sale or act of barter.

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.

Let us not forget that a major point of having a rule such as the NAP is to reduce interpersonal conflict as much as possible.⁴ To say that the minute a piece of property is no longer in the hands of its rightful owner it is legally and morally up for grabs is to invite a melee of thieves stealing from each other! Not exactly a peaceful solution.

RESTORING STOLEN PROPERTY

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.

In Rothbard’s horse thief example, an unrelated third party who knows who owns the horse, and realizes that the current rider must have stolen it, could (acting on his own) decide to “liberate” the stolen horse from the thief with the intention of returning it to its rightful owner. But if on the way that person encounters the police or a defense agency while riding the stolen horse, he is likely to become their prime suspect, and he would have to talk fast indeed to get out of the jam he has put himself in!

What happens to the third party in such a case is one of the many questions which the NAP does not directly address, and which therefore would be handled differently in different societies or jurisdictions. 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 do is call the owner, his agent, or the police and let them know what he has observed. (Though the NAP itself, being concerned solely with negative rights, does not *require* him to do so.)

⁴ Another justification for the NAP used, e.g., by Tara Smith (2006), is to maximize individual human flourishing.

If a stolen item is found in the possession of the original thief, providing justice is straightforward: the stolen item is returned to its proper owner, and the thief is made to pay compensation to the owner for violating his ownership rights and for any direct expenses incurred by him as a consequence of the stolen item being unavailable for his use. However, if the stolen item is now in the possession of a person other than the original thief, things become more complicated. The stolen item needs to be returned to the owner, of course, to the detriment of the current possessor. But the defense agency or police then need to unravel the chain of custody of the stolen item, from the current possessor back to the original thief, in order to determine who needs to be punished and/or made to pay restitution. The knowledge and intentions of each party will be important.

GROUP OWNERSHIP

In the division of owned things above, a distinction was made between things owned by individuals and things owned by organizations or groups. This was done only because some people may wish to dispute whether groups (your chess club, your personally held firm, a corporation) can own property at all, and if so whether the rules for such group-owned property differ from the rules for property held by individuals.

At a minimum, groups that own property need to have their own internal rules for who among their members or employees are entitled to use the property and in what manner; also, the group needs to make clear which individuals are to be held responsible (i.e., legally liable) if such property is used in a manner that causes harm to others.

As for myself, the previously stated rule applies: if a piece of property is not mine, I should leave it alone. This applies to property owned by groups of which I am not a member as well.

GOVERNMENT OWNERSHIP

There is one type of organization which has a special status in libertarian theory, namely governments. These claim all manner of authority vis-à-vis their citizens, and they own property (according to their own laws of property). In a Rothbardian world, of course, governments would not exist, and in a Randian world they would be limited to their “proper” functions only (defense of

individual rights). But this leads to the need to add an additional category of ownership in the list above:

Step 3. Further potential property

2c. Property owned by a government

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. But, as many have pointed out, the likelihood that a “proper” Randian limited government will ever be observed in the wild is vanishingly small.

Instead, what does exist are governments that steal people’s stuff via civil forfeiture, condemnation proceedings, eminent domain, and innumerable taxes and fees. Voluntary contributions to contemporary governments are small enough to be irrelevant for purposes of this discussion.

RECOVERING PROPERTY TODAY

Then the 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. Stealing from the government becomes a virtuous act in this view.

In the alternative view put forth above, the answer would have to be no. Stealing from a thief is not acceptable under the NAP, and it certainly is not virtuous. Under a reasonable interpretation of the NAP, the only acceptable actions would be for original owners to recover stolen property directly from the thief, either by themselves or via designated agents.

So, no, random citizens cannot enter city hall and appropriate for themselves whatever office supplies they might find there. Let us not forget that the point of the NAP is to limit conflict—and such action on the part of random citizens would certainly cause conflict! (Uniformed men with guns would appear in short order....)

The same reasoning applies to taxes in general, in that the funds all go into a big pot and the individual taxpayer cannot disentangle his money from other people's money (since money is fungible).

On the other hand, 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. Whether attempting to do so at present would be a wise move is another question! (And, *contra* Block, I maintain that if I were to "liberate" your stolen vehicle from the impound lot, I would be morally obligated to give it back to you as the rightful owner.)

RECOVERING PROPERTY ON LIQUIDATION OR DEFAULT

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 return all stolen property to its original rightful owners. For specific items (such as cars in the police impound lot) or pieces of real estate held for failure to pay property taxes, this should be straightforward. But what of bank accounts holding general tax receipts, or real estate and other assets purchased with tax funds?

It is not clear that the NAP alone gives us the answer. 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.

FACTS AND BELIEFS

There is sometimes a difference between what a person believes to be true, and what is actually the case. Nobody is omniscient! But everyone has to act, and so each person acts on what he believes to be true, which opens the possibility that someone may end up violating the rights of others without intending to. As Walter Block

points out, *mens rea* matters. What is important in this discussion of crime is not just what is actually true, but also what the suspected criminal thought he was doing. So, to the above “metaphysical” categories of ownership, at least two “epistemological” categories need to be added:

Step 4. Potential property

4. Property whose status is *unknown* in that I do not know whether it is owned or unowned
5. Property whose status is *uncertain* in that I do not know if the person currently using or possessing the item is its rightful owner

In the first case, a person might tentatively act on the assumption that the property is unowned and proceed to use it or even to homestead it. But, if the actual owner shows up, the current user must be ready to vacate the premises immediately. And he may possibly need to pay restitution for his uninvited use, if the owner should wish to press charges. To what extent the nonowner’s belief, or lack of knowledge, regarding the ownership status of the property is taken into account at a trial is one of those factors that will be specific to the local justice system. To me, the safest rule would seem to be to leave alone any property that I do not know for certain is currently unowned.

The second case bears on the horse thief situation. Does Rothbard’s evaluation of the virtuousness of *C*’s actions change depending on what *C* thought he was doing? On the one hand, if *C* knows for a fact that the horse belongs to *B* and that *A* must have stolen it, that is one thing—he may be justified in grabbing the horse from *A* in order to give it back to *B*. But what if he does *not* know this, and is only stealing the horse from what he believes to be the legitimate owner? In the latter case, is he still virtuous? Even from a Rothbardian point of view, it could only be so if we take a God’s-eye view of things (As in, “*C* is doing a good thing, even though he did not know it and in fact had no intention of doing so.”).

The situation (second case) also leaves open the possibility that *C* has simply misunderstood the situation: perhaps *A* is riding the horse with *B*’s permission, so that no theft has occurred. In this case, *C*’s theft of the horse from *A* cannot be counted as virtuous, no matter what he believed. As the rightful owner, *B* would surely have a case against *C*.

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.

In conclusion, the conflict-reducing and justice-preserving solution in accordance with the NAP would be for everyone to follow the rule that one leaves alone any property that one does not own oneself, no matter what one may believe about who actually owns it. Stealing can never be virtuous.

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APPENDIX

Here is a summary of the categories of property used in this paper:

All existing entities in the universe can be sorted into two broad categories:

1. (Potential) property owners
2. (Potential) property

All the items in the potential property category can be further subdivided in accordance with how they are owned (as seen from each agent's subjective point of view):

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

Property with uncertain status:

4. Property whose status is *unknown* in that I do not know whether it is owned or unowned
5. Property whose status is *uncertain* in that I do not know if the person currently using or possessing the item is its rightful owner