

LIBERTARIAN PUNISHMENT THEORY: WORKING FOR, AND DONATING TO, THE STATE

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I. Introduction

This paper is an attempt to apply a libertarian analysis of punishment to statist and state-like activities. It assumes, and is predicated upon, broad agreement with libertarianism in general (Bergland, 1986; Friedman, 1989; Hoppe, 1993; Murray, 1997; Nozick, 1973; Rothbard, 1973, 1978, 1982; Woolridge, 1970), and its punishment theory in particular (Kinsella, 1996, 1997; Rothbard, 1977, Whitehead and Block, 2003).¹

In this view, it is neither a necessary nor a sufficient condition for guilt (e.g., a violation of libertarian principles) and thus justification for punishment by the libertarian Nuremberg trials (Alston and Block, 2007; Block, 2001, 2002A, 2003, 2004A, 2004B; Copley, 1999; Rockler, 1998–1999; Whitehead, Gould and Block, 2004), that a person be a state official.

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¹ States Rothbard (1998, p. 88, ft. 6): “It should be evident that our theory of proportional punishment—that people may be punished by losing their rights to the extent that they have invaded the rights of others—is frankly a *retributive* theory of punishment, a “tooth (or two teeth) for a tooth” theory. Retribution is in bad repute among philosophers, who generally dismiss the concept quickly as ‘primitive’ or ‘barbaric’ and then race on to a discussion of the two other major theories of punishment: deterrence and rehabilitation. But simply to dismiss a concept as ‘barbaric’ can hardly suffice; after all, it is possible that in this case, the ‘barbarians’ hit on a concept that was superior to the more modern creeds.” For more on “two teeth for a tooth,” see Block, 1999, 2002–2003, 2003, 2004A, 2004C, 2006, forthcoming B; Block, Barnett and Callahan, 2005; Gregory and Block, 2007; Olson, 1979; Rothbard, 1998, 88; Whitehead and Block, 2003.

However, there is a *presumption* that all government employees² are indeed guilty of a crime against humanity. This presumption can of course be rebutted in any number of ways, but, given that the unjust government is an organized institutional machine of aggression and initiatory violence,³ there is no doubt that any serious libertarian analysis ought to start out with this presumption as its basic premise.⁴

In section II we attempt to lay out the doctrine of criminal statism. We discuss a number of cases, and acts, that either fall on this side of that line or on the other. Section III is devoted to a listing of, and responses to, a series of objections to our thesis.

II. Criminal statism

State employment is not a sufficient condition to establish criminality since there are many ways to work for government, and still be able to rebut this presumption. For example, take the position of professor at a state-sponsored university working to promote liberty in the classroom, while still teaching the subject matter.

Nor need one labor in an institution that is not intrinsically evil, such as a university, which would of course exist in a free society. One could even take a job in a division of government which is per se contrary to libertarianism, and would not come into being under a regime of liberty. For example, consider the Fed. Alan Greenspan headed up that organization for many years. Thus, we establish the presumption of guilt on his part. What could he have done to rebut that premise? Simple. Had he strived mightily to *end* the Fed, the libertarian Nuremberg jurors would have no choice but to free him from the onus of guilt that would otherwise fall upon him. Greenspan could have acquitted himself in this regard in two ways: surreptitiously, or in an open and above board manner.⁵ In the latter case he would have testified before congress, given public speeches, published books and articles as Chairman of the Fed, attesting to its illegality, immorality,

² This only applies to unjust governments, such as those I will never visit or reside in. As to the ones I will live in, or tour, I consider them all justified, for purposes of this paper.

³ See Rothbard (1973, 57); Hoppe, 2008.

⁴ However, so as to not run afoul of the law, I am confining the scope of this paper to governments that by all accounts are illegitimate, such as those of North Korea, Cuba, Nazi Germany and the USSR. When specific Americans are named in the text, such as Alan Greenspan, Barbra Streisand, this must be interpreted as applying, only, to members of the aforesaid countries, e.g., to their equivalents in those nations.

⁵ In so doing, he would have acted compatibly with his earlier writings on the subject; see Greenspan, 1967.

inefficacy, and advocated, instead, the use of gold as money, and 100% reserve banking. In the former, he would have worked behind the scenes to throw a monkey wrench into the inner workings of the Fed; he would have functioned as a soldier behind enemy lines, metaphorically blowing up (e.g., financial) bridges, tearing down (monetary) telephone lines, etc.

Let us go even further. It is even possible to take a job as a concentration camp guard, charged with torturing and then murdering the inmates. How could a person guilty of such crimes come out of a libertarian Nuremberg trial relatively unscathed?⁶ Simple. All he need do is prove⁷ that he functioned as a sort of Schindler: he saved more people than would otherwise have escaped.⁸

⁶ But not fully unscathed. Our actor in this regard is still responsible for the unjustified murder of those he was forced to kill, in order to maintain his "cover." While it is to be hoped that the heirs of such people might forgive him, and thus he would go free, when the context in which he operated in was clarified, this need not necessarily be the case. Thus, such a person is *doubly* heroic. First, he must brave the wrath of the Nazis; second, he must risk the ire of those who have a right to punish him for his transgressions against their principals. Suppose the Martians beam down a message to us earthlings: "Kill innocent person Joe, or we blow up the entire earth." (Stipulate that they have the power to do this, and we are unable to stop them.) One would hope that a hero would arise to murder Joe, so as to save the planet. We would then hold a ticker tape parade in his honor. Afterwards, the heirs of Joe would have the right to exact full punishment against our hero. (But suppose the Martians then beamed down another message to the effect that if anyone touches hide or hair of our hero, then will renew their threat to pulverize the third planet. Then, and only then they will have established a clear break between libertarian theory on the one hand, and utilitarianism on the other. But all this establishes is that clever people can come up with theoretical examples to demonstrate such a bifurcation, in such an artificial manner. I owe this objection to Matthew Block.)

⁷ The burden of proof would rest with him. He would be found guilty *unless* he could establish his innocence. That is what a presumption of guilt means.

⁸ In the television miniseries *Roots* there was a white overseer who was actually on the side of the black slaves. He was forced, in order to keep his "cover," to whip some of the slaves. Was he guilty of assault and battery? Certainly not if the black "victim" was willing to take the beating from this fake overseer, on the ground that he and his fellow slaves would certainly be treated better in this way. But suppose the given victim had a very high time preference and was not willing to take this beating, even though he full well knew that only in this way could he ward off a much worse beating, later, and, also, save his fellow slaves from such mistreatment. Then, is the fake overseer guilty of a rights violation? A straightforward libertarian analysis would maintain that he is; after all, he initiated violence against an innocent person, without permission (if permission is given, this act becomes one of voluntary sado-masochism.) But, if the context is taken into account, a case can be made that this overseer is innocent of any libertarian crime. At the very least his stance would be taken as a mitigating circumstance at his trial.

State employment is not a necessary condition to establish criminality at the libertarian Nuremberg trial. Consider a top echelon executive at Messerschmitt, Krupp or the Bavarian Motor Works corporations in Germany in 1942.⁹ These businessmen are not *directly* involved in initiating violence against innocent people. But, *indirectly* that is precisely what they are doing. It is much the same with the get-away car driver of the gang that commits murder; he, specifically, does not pull any trigger. He “merely” drives. Yet, he is guilty of aiding and abetting the murderous activities of the gang. He is properly punished, typically *as* severely, or at least almost as severely, as those who do the actual murder. In similar manner, those who work in the “private sector,” but whose real function is to serve as a sort of get away driver for the criminal statist, are also culpable.

But state or “private enterprise” employment hardly exhausts the matter.

Consider the case of a long time libertarian professor who donated a large sum of money to a state university.¹⁰ We *begin* our analysis with the

A similar analysis applies to the concentration camp guard who murders, say, 10 inmates, so that 90 might go free. In his absence, we posit, that all 100 would have been done away with. A narrow interpretation would find him guilty of the murder of 10 innocents. One that took context into account would conclude that he wanted to save all 100, was not able to do so, and killed 10 in order to save 90. The same conclusion would follow if we assume, *arguendo*, that all 100 would have been murdered, and that our “good” concentration camp guard killed 99 in order to save just the one. If in his absence all 100 would have perished, then he has saved one life. To apply a bit of a Rawlsian (1971) analysis, suppose these 100 unfortunates were offered the choice between a certain death, with a different “legitimate” concentrate camp guard and a 90% (or 1%) chance of living. Which would they have chosen? It is difficult to avoid the conclusion that “our” guard would have been their preference.

I realize full well that allowing the murderer of 99 innocent people to go free, even giving him a medal for saving that one person, is rather an unusual stance for a libertarian to take. But note the *very* stringent conditions we are now contemplating. We are taking a God’s eye point of view as to the certain death of all 100 inmates; moreover, we are in effect assuming away all utilitarian considerations, such as copycat murders, etc.

However, these conclusions follow only subject to the qualifications mentioned in note 6, *supra*: if any of the heirs of these “murdered” concentration camp inmates objects to these heroic acts, then all bets are off: our hero will have to run yet this second gauntlet. The same applies to the “good” slave overseer; he, too, is still subject to the libertarian law if the “beaten” slave wishes to press charges.

⁹ Some might consider analogous cases as Boeing, Bechtel or Halliburton in the U.S. during the era of that country’s imperialistic wars. I would not, since I take the position that right or wrong, my own country is always right.

¹⁰ There is also a parallel case of a very wealthy person who once ran for high political office as a libertarian, and yet donated an even larger amount to a state theater. In

presumption that he is guilty of a crime against libertarian law. How could this be rebutted? One possibility is that if immediately after this was done, full freedom broke out in the entire world, and it was due to this monetary contribution. We do not inquire into the causal antecedents of such an occurrence; we merely stipulate it. But, if so, and if the donor knew or had good reason to expect that this would be the result of his charity,¹¹ he would declared innocent of any crime (indeed, he would deserve some sort of medal.)

But, back to the real world, even if money given to a state university initially helps to promote liberty, say, by setting up an institute to study¹² free enterprise economics, the academic institution, not the donor, would invariably pick the endowed chair professor to head up the organization. Possibly, the financial contributor would have some influence on the identity of this person, particularly if the college wanted to encourage further donations of that sort. However, what is likely to be the fate of this charitable contribution in the long run? Based on the experience¹³ of all too many cases,¹⁴ it is extremely likely that this chair and institute would eventually fall into the hands of a Marxist or feminist or left wing environmentalist who would indeed “study” free enterprise, and yet do everything within his power to undermine economic liberty. Donors know, or should know, of this danger. When and if they fall under the authority of the libertarian Nuremberg hearings, they will have a difficult time in rebutting their presumption of guilt.¹⁵

What of those people who use state currency, the Post office, roads, parks, libraries, etc. They, too, would have to face the presumption of guilt: they knowingly consorted with an utterly evil institution, the government.

order to protect the guilty, I do not mention their names, out of concern for the long number of years of faithful service each has contributed to the libertarian movement.

¹¹ If the donor did not purposefully intend this result, and expect it, he would be in the position of the rapist who claimed freedom on the ground that had he not exploited his victim in this manner, she would have been hit by a bus during that time period (we assume a God’s eye view perspective here again), and, that, as the woman we assume preferred rape to death, he actually did her a favor. No, despite the truth of all this, he is still a rapist, and deserves the full punishment for that crime.

¹² No university would likely accept a financial donation for an institute to *promote* economic freedom.

¹³ www.yalealumnimagazine.com/issues/95_07/bass.html.

¹⁴ The foundation world also provides examples of this. The Ford, Carnegie and Rockefeller Foundations were set up in order to promote business enterprise; they have all been taken over by those with the virtually opposite point of view.

¹⁵ This is particularly so when there are available alternative private institutions with a long record of supporting liberty, with boards of trustees committed to a continuation of such activities as alternative recipients of such largesse.

However, in all such cases, the presumption of guilt can easily be rebutted. Nearly *everyone* in the USSR, or in Nazi Germany, was “guilty” of such behavior. Are they *all* guilty of a crime against the libertarian legal code? This is a logical impossibility. Surely there have to be some *victims* of unjust government. We cannot *all* be guilty. If we *all* were, and thus there were *no* victims whatever, then there could be no perpetrators either. Rather, we would all be engaged in a sort of gigantic voluntary sado-masochistic act.

How then, can we separate the sheep from the goats? The libertarian insights concerning ruling class theory¹⁶ are perhaps the best guide for the future Nuremberg judges. In this view, guilt for statism is by no means confined to explicit membership in the state apparatus. Leading members of industry, the arts, education, who are complicit with dictators¹⁷ are certainly to be considered members of the ruling class. Does this definition reach lower order employees of the government? Not necessarily. The person who pushes a broom at the Fed would by no means be considered a member of the ruling class. Mere state employment will not suffice; one has to be sufficiently high up in the hierarchy to be categorized in such a manner.¹⁸

Should a libertarian such as Ron Paul apply for, or accept, matching funds from the government for his political campaign? Would he be justified in doing so? More generally, what is the libertarian position on anyone accepting any monies from the state for whatever reason?

Many libertarians argue that all such financing should be strictly eschewed. For is not government in general, and the U.S. version of this curious institution in particular, an organization simply incompatible with libertarian principles? Yes, this cannot be denied. Governments necessarily tax their victims, that is, rob from them. They also prevent others from supplying supposedly quintessential “governmental” services in competition with them, for example, army, police and adjudication offerings.

Further, the state receives all of its money from only three sources, all of which are entirely illegitimate: taxes, inflation and borrowing. Tax levies are blatant and outright theft. If you do not believe this, try not paying them and see what happens to you. Governmental printing up of money, whether directly through the printing press or indirectly via fractional reserve banking, is nothing less than counterfeiting, a form of fraud, which is equivalent to

¹⁶ See Domhoff, 1967, 1971, 1998; Hoppe, 1990; Kolko, 1963; Mises, 1978; Oppenheimer, 1975; Raico, 1977; Rockwell, 2001.

¹⁷ Whether elected under democratic procedures or not. On this see Hoppe, 2001.

¹⁸ Block (2004A, 2004B) argues that even the lowest ranked members of the state apparatus can properly be found guilty in this regard if their employment is heinous enough: for example, the floor sweeper at the concentration camp.

theft. And, as for borrowing, anyone who lends money to the state apparatus is complicit in its evil doings. When libertarianism supplants present institutional arrangements, these bonds will not be repaid.¹⁹

Given that this is true, accepting money from the government, it is argued, is indistinguishable from accepting stolen goods or merchandise. Perhaps this ought to be a crime, severely punished by some future libertarian Nuremberg court.

But wait; there are difficulties here. For the modern state is so involved in the lives of its citizens that it is the rare individual who does not accept *some* form of government largesse, whether in the form of money payments, services, or goods of one type or another.

For example, while not everyone goes to a public school or teaches there, it is the rare individual who does not: walk on statist sidewalks, drive on public roads, carry currency in his pocket, avail himself of the services of governmental libraries, museums, parks, stadiums, etc. Which of us has not entered the premises of the motor vehicle bureau, sued someone in court, posted a letter, attempted to attain a passport, or interacted with government in any of the thousand and one other ways it touches upon our lives? And this is to say nothing of seeking government permissions for commercial purposes, accepting social security payments, voting, taking an air flight (where we are forced to be “protected” by the statist security apparatus).

If it is per se illegitimate for a libertarian to accept anything of value from this evil institution, then there are very few people who act fully compatibly with this philosophy: maybe a hermit or two. The implication here is that *we are all* guilty of the crime of statism; under a regime of full, complete and impartial justice, we would *all* be in jail.

The error in this thinking stems from failing to view government as precisely the moral monstrosity it is. There is one fictional character who did not make this mistake: Ragnar Danneskjold, one of the heroes of Rand (1957). He knew full well and so should we, that the state (in Ragnar-Rand’s view, any government that exceeded its proper limited bounds) is a thief, and should forthwith be relieved of its ill gotten gains. Yes, one justification for using roads, a regulated bank, the post office, a public library or park, is that the money to build and administer these amenities was mulcted from the taxpayers, and therefore in utilizing them one is “only getting one’s money back.” We can go further, however. Even someone who came from Mars

¹⁹ For the case in favor of repudiation of public debt on libertarian grounds, see Chodorov, 1948; Nulle, 2004A, 2004B; Rothbard, 1962, 881-883; 1982, 184; 1992; 2004; Wagner, 1996.

yesterday, and thus paid not a single iota in taxes in the past, would *still* be justified in taking government wealth.

Why is it, if the Martian libertarian cannot rely upon the argument that he is merely reclaiming his (or his parents'²⁰) stolen wealth? This is because the state as thief simply has no right to this booty. Better that any non-statist possess this wealth than that the thieving state continue to do so. Yes, of course, there will arise the question of whether and to whom and how these monies are to be returned to their rightful owners.²¹ But this complication cannot be allowed to get in the way of appreciating the primordial moral fact that the state has no legitimate claim to this wealth.

May *anyone* properly seize state wealth in this perspective? No. *Only* non-statists may legitimately do so. Not Halliburton nor Bechtel; not Hillary Clinton nor John McCain, nor Barack Obama. They are all supporters of statism. They are all members in good standing in the ruling class.²² But Ron Paul, and also the average person in the street, may do so. They have no blood on their hands. Indeed, it is a positive mitzvah for people of this sort to relieve the government of its stolen property.

Would Congressman Paul be *wise* to accept government matching funds? No, despite the fact that he would be *justified* in doing so (Block, 2007). This would be a gigantic pragmatic mistake. First of all, these monies come replete with all sorts of strings attached. It is altogether likely that the gains would not be worth these costs. Second, and more important, there are very few libertarians who agree with this analysis. Most take the position that it is illegitimate to accept funding from the government. Why should Dr. Paul split his supporters at this particular point in time, and on such an abstract, abstruse and complicated issue? Third, and most important, one of the major benefits of this Texas Republican's candidacy is that so many people are now hearing about libertarianism for the first and only time from one of the best and most attractive spokesmen for this philosophy we have ever had. For him to accept government matching funds would confuse the message in the minds of these newcomers. This is a complex enough issue as to be divisive within the libertarian community; very few of those we now hope to attract to the movement for liberty will be able to appreciate the deontological points sketched out above.

²⁰ Which we assume he would have inherited.

²¹ For an analysis of these questions see Block, 2002B, 2004C, 2006, 2007, 2008, Forthcoming A, Forthcoming, B; for an analysis of reparations, see Alston and Block, 2007; Block, 2002A; Block and Yeatts, 1999–2000.

²² See note 16, *supra*.

To directly address the question posed at the outset: should Ron Paul accept government matching funds? He would be very unwise to do so, despite the fact that there is nothing in the libertarian legal philosophy that would be violated by such an action. Should the rest of us stop availing ourselves of government “services”? Not at all. The problem is not when the government returns wealth to us; the rights violation occurs when the state seizes *our* income.

Let us conclude this section with an overall view of the issue. What about donating money to the National Public Radio? The Public Broadcasting System? The *New York Times*?

The NPR and the PBS are as biased against economic freedom as is it possible to be. Possibly, they even outdo the venerable *New York Times* in this regard, although that is a tough call. However, it is my understanding that the “subsidy” received by the NPR and PBS from the government consists solely of a “tax subsidy.” That is, the state does not tax these organizations as it would a private firm in this industry. But a tax subsidy is no subsidy at all. Rather, it is a failure to tax. A tax subsidy would be a real subsidy if and only if the government was the legitimate owner of all the wealth in the economy. Leaving some of it in private hands would thus be a gift. However, since this is not true, there is no subsidy.

But suppose that government *did* subsidize NPR and PBS. Then, it would indeed be criminally improper for any libertarian to contribute to them. There is a three stage test I would employ in this regard. First, does an organization promote or oppose liberty? Here, the latter of the two choices is the clear answer. Second, is it a member of the ruling class? An affirmative response is the only possible one in this case. Third, does it receive stolen (tax) money from the government (or from any other private source, such as a private gang)? If so then it is a criminal organization, and a libertarian loses that credential to the extent he financially supports it. The *New York Times* qualifies in the first two regards (it opposes liberty, and is a member of the ruling class), but not the third. But posit that this newspaper qualified on all three grounds. Would it then be impermissible to purchase it? Not necessarily, although that would indeed be the presumption. However, it could be defeated if the purchaser could make the case that the reading of its contents, say, was important for promoting liberty. Would it be proper, under these assumptions, to *donate* money to the “newspaper of record?” I answer in the negative.

III. Objections and queries

Objection 1. “I gave a speech to a university audience in the wilds of Central Pennsylvania supporting the gold standard at a Penn State campus, midway between Pittsburgh and Philadelphia. The talk as sponsored by the Economics Club and the Student Libertarian Society. My student sponsors have just started a separate Austrian Economics Society which is to be financed by the university. Is that permitted under the notional libertarian law code you being espoused herein, or would they be prosecuted?”²³

Response 1. Permitted? Of course. Those students should get a *medal* for obtaining government funds and using them for such a good purpose. It is a particular *virtue* to use state funds to undermine the state and promote liberty.²⁴

Objection 2. This is based on Rothbard (2005):

What about working as a government employee? It is true that, other things being equal, it is far better, on libertarian as well as pragmatic grounds, to work for a private employer rather than government. But suppose that the government has monopolized, or virtually monopolized, your occupation, so that there is no practical alternative to working for the government?

Take, for example, the Soviet Union, where the government has, in effect, nationalized all occupations, and where there are no, or virtually no, private employers. Are we to condemn all Russians whatsoever as “criminals” because they are government employees? Is it the only moral act of every Russian to commit suicide? But that would be idiotic. Surely there are no moral systems that *require* people to be martyrs.

But the United States, while scarcely as far gone as Russia, has had many occupations virtually monopolized by the government. It is impossible to practice medicine without becoming part of a highly regulated and cartelized profession. If one’s vocation is university teaching, it is almost impossible to find a university that is not owned, economically if not legally, by the government. If one’s criterion of government ownership is the receipt of over 50% of one’s income from the government, then there are virtually no universities, and only one or two small colleges, that can be called “private.” During the riots of the late 1960’s, students at Columbia discovered that far more than 50% of the income of that allegedly “private” university came from the government. In such a situation,

²³ This question was posed by a long time prominent Austro-libertarian theorist.

²⁴ But see note 40, *infra*, where “salvage” is mentioned.

it is foolish and sectarian to condemn teachers for being located in a government university.

There is nothing wrong, and everything rational, then, about accepting the matrix in one's daily life. What's wrong is working to aggravate, to add to, the statist matrix. To give an example from my own career. For many years I taught at a "private" university (although I would not be surprised to find that more than half its income came from the government). The university has long teetered on the edge of bankruptcy, and years ago it tried to correct that condition by getting itself "statized" through merging with the State University of New York system, in those halcyon days rolling in dough. For a while, it looked as if this merger would occur, and there was a great deal of pressure on every member of the faculty to show up in Albany and lobby for merger into the State system. This I refused to do, since I believed it to be immoral to agitate to *add to* the statism around me.

Does that mean that all libertarians can cheerfully work for the government, apart from not lobbying for statism, and forget about conscience in this area? Certainly not. For here it is vital to distinguish between two kinds of State activities: (a) those actions that would be perfectly legitimate if performed by private firms on the market; and (b) those actions that are *per se* immoral and criminal, and that would be illicit in a libertarian society. The latter must not be performed by libertarians in any circumstances. Thus, a libertarian must not be: a concentration camp director or guard; an official of the IRS; an official of the Selective Service System; or a controller or regulator of society or the economy.

Let us take a concrete case, and see how our proffered criterion works. An old friend of mine, an anarcholibertarian and Austrian economist, accepted an important post as an economist in the Federal Reserve System. Licit or illicit? Moral or immoral? Well, what are the functions of the Fed? It is the monopoly counterfeiter, the creator of State money; it cartelizes, privileges and bails out banks; it regulates—or attempts to regulate—money and credit, price levels, and the economy itself. It should be abolished not simply because it is governmental, but also because its functions are *per se* immoral. It is not surprising, of course, that this fellow did not see the moral problem the same way.

It seems to me, then, that the criterion, the ground on which we must stand, to be moral and rational in a state-run world, is to: (1) work and agitate as best we can, in behalf of liberty; (2) while working in the matrix of our given world, to refuse to *add* to its statism; and (3) to refuse absolutely to participate in State activities that are immoral and criminal *per se*.

Response 2. While I am to a great degree sympathetic to most of Rothbard's conclusions, I part company with some of them; further, I cannot see my way clear to accepting all of his arguments. I shall comment on his points in the order he raises them.

First, I fully agree that it is not a per se violation of libertarianism to become a government employee.

Second, there *is* a "moral system... that (can) *require* people to be martyrs." It is libertarianism. Consider the following case. A sticks a gun in B's back, and tells B that unless he murders innocent person C, right in front of B, he, A, will murder B. B, for some reason, we stipulate, cannot turn around and shoot his attacker, A. His is a stark choice: murder C, or become a "martyr." It is my contention that the libertarian axiom against murder of innocents *requires* B to refuse to shoot C; B's only option, then, is to stand fast in his refusal, that is, act the part of the martyr.²⁵

Third, I cannot accept that the *reason* one is justified in working for a state university is because it is "almost impossible to find a university that is not owned, economically if not legally, by the government." Were this *absolutely* impossible, it would *still* not justify government employment, if this were contrary to libertarian principle, which it is not; one simply has no unencumbered right to pursue one's chosen profession. If my chosen profession is hit man for Murder Inc.,²⁶ it would still be improper for me to seek employment in that capacity.

Fourth, should Rothbard have joined the agitation to join his Brooklyn PolyTechnic to the State University of New York? He rejects this out of hand, as a *necessary* violation of libertarian principle, since he "believed it to be immoral to agitate to *add to* the statism around (him)." For me, this is a very sound judgment on his part, but an *empirical* one, not a matter of praxeology. For it is possible to imagine all sorts of scenarios where liberty would have been enhanced in this manner, not reduced, my own criterion. For example, Rothbard as a member of SUNY converts all and sundry to libertarianism; at one fell swoop we arrive at the free society. This additional money needed to absorb Brooklyn PolyTechnic into the State University of New York,

²⁵ Can we justify the concentration camp guard in killing 99 inmates in order to save one (assume otherwise that all 100 prisoners would be murdered)? Yes. Am I not contradicting myself, applying the non aggression axiom in a rather selective manner? I am not. The "justification" is a *very limited* one. It consists of holding a ticker tape parade for this "hero" and then visiting upon him the punishment for murder, assuming that any of the heirs of the 99 victims insist upon imposing this.

²⁶ I abstract from cases where I join this organization in order to shut it down.

moreover, emanates from taxes mulcted from New Yorkers who are all guilty of violations of the libertarian code (see point 4 below).²⁷

Fifth, I part company from Rothbard when he rejects as permissible on libertarian grounds “those actions that are *per se* immoral and criminal, and that would be illicit in a libertarian society.” He lists under this rubric working as concentration camp director or guar, for the IRS or Selective Service System; as a controller or regulator of society or the economy, for the Federal Reserve System. I make an exception for those who work in these capacities, so as to undermine them from the inside, and/or to save innocent lives.²⁸

In my view, it is entirely proper for a libertarian music or chemistry professor to work for a state university not because he uses his classes to promote liberty, and also *not* because if one wants to teach music or chemistry at the university level, one has virtually no choice but to work for a state-owned or state-subsidized institution. There is *always* a choice. He could commit suicide. No, my justification is entirely different. I think it is justified to work for the state if you are *taking* something from them, but *not* if you are *giving* something to them, on net balance. Now, of course, the libertarian music or chemistry professor is giving the state university something: music or chemistry lessons to the students. But, he is *also* giving them libertarianism, if only by “osmosis,” that is, “taking” something from them.

²⁷ Of course, I acknowledge that had Rothbard pursued this course of action, he would be liable, for theft, on a proportionate basis, to those from whom had been stolen the additional tax money in order to accommodate Brooklyn PolyTechnic into the State University of New York. This case is different than the one where the German citizen objects to Ragnar obliterating the Nazi tank, on the grounds that some of his money was embodied in that weapon of war. In that case, the tax money had already been stolen. The present case is more similar to this one. A’s clothes are on fire. B is watering his lawn nearby, but refuses to become a good Samaritan, and quench A’s flames. C seizes the garden hose out of B’s hands, and turns it on A, thus saving A’s life. (We pass over the possibility of A suing C for getting him wet, after which he catches a cold.) What is C’s status in libertarian law? He is a thief, who has commandeered B’s garden hose, and stolen water from him necessary to save A’s life. Suppose B demands \$20 million for this water of C? The determination of the value of the water stolen in this case would be in the hands of a private court, in the free society. One would have reason to doubt that any judge would level so severe a penalty on C. In like manner, the judiciary in a libertarian society would likely go easy on a Rothbard who freed us all from the control of the state by fomenting a tax increase in the manner described in the text.

²⁸ But this conclusion is, again, subject to the qualifications mentioned above: the “stealth” libertarian must still pay damages for rights violations he undertakes in promoting liberty; even his own life hangs in the balance, if he murders any innocents in this task.

Suppose there were a Marxist music or chemistry professor. Can he be justified in working for a state university? Not in my view. Neither he nor the university would be justified.

Now, suppose there were a libertarian music or chemistry professor who didn't mention a scintilla of libertarianism, not even thru "osmosis." Would he be justified in working for a state university? Yes, I say, he is still properly *taking* something from the state: his salary. True, he is giving lessons in behalf of the state, and thus, even if indirectly, supporting it. But, in my judgment, this is continuum problem, the former outweighs the latter.

Of course, when someone donates money to a state university, he is *getting* something from the government, namely the satisfaction of giving them the contribution, plus, maybe, recognition, a medal, whatever. But, given that this is an empirical issue we are discussing, it is not totally a matter of praxeology (except maybe for my claim that supporting statism is contrary to libertarianism), my judgment as a libertarian Nuremberger is that this is a punishable violation of justice.

Objection 3. I now see more clearly where we disagree. We are talking about different phenomena. You are saying that giving money to (or otherwise aiding and abetting) an organization that is state-owned or state-supported can be justified if this support helps to promote liberty. I am saying that while such circumstances may be *sufficient* to excuse the perpetrator under libertarian law, they may not be *necessary*.

Murray Rothbard's argument, as I understand it, is that a libertarian music or chemistry professor can be justified in working for a state university not because he uses his classes to promote liberty, but because if one wants to teach music or chemistry at the university level, one has virtually no choice but to work for a state-owned or state-subsidized institution. The justification is not that the professor is somehow working to undermine the state, but that this is the only way for him to practice his (legitimate) profession. Likewise, imagine that a libertarian loves Shakespeare, and that there are no privately owned or privately funded Shakespearian theaters in the world. Is it legitimate for the libertarian to contribute financially to a Shakespeare company, not as a means of undermining the state, but simply because he loves Shakespeare? If so, then the question is whether some forms of state support are so substantial that they make any participation with the state-connected organization illegitimate, regardless of the intrinsic merit of the organization's activity.

The question is whether giving money to an organization that is engaged in intrinsically legitimate, but heavily state-subsidized, activity like

education, art, music, science, etc. is a per se violation of libertarian principles. I don't think you've established that.

Response 3. I think I have established that this libertarian professor's act is incompatible with libertarian law. His employer, the XYZ University, is not just heavily state subsidized, it is a *state* organization. If we heed Murray Rothbard's analysis, state organizations are all illegitimate, even though, of course, education is far from being intrinsically evil; indeed, the very opposite is the case. In my view, Professor X has committed the libertarian crime of aiding and abetting the state. If a libertarian Nuremberg trial took place, he would be in the dock, and I would vote guilty. In my view, it is acceptable to *be* state subsidized, providing you are doing good, on net balance, again, from a libertarian point of view. This is why I supported Ron Paul taking government money for his campaign on deontological (but not utilitarian) grounds:

Don't think of it, I suggest, in terms of what the state subsidizes. For, it is legitimate for libertarians (*not* non-libertarians) to take money from the government. It is illicit for anyone to *give* money to abet statist evil.

If the Mises Institute were 99% state supported, I would still claim that donate to them would be lawful. State support is not the issue. Supporting good or evil is. If the American Nazi party were 100% privately supported, it would still be anti-libertarian to donate to them, since they support using violence against innocent people. Suppose we good guys somehow took over the Dallas fed. It is now an entirely owned subsidiary of the libertarian movement. It diverts funds to the libertarian movement, to the Paul campaign, etc. Then would I support donating money to the Dallas fed? Yes. It would be as if the Dallas fed (an otherwise intrinsically evil institution that wouldn't exist on the free market) were a spy, or a soldier behind enemy lines. Is XYZ University like that? To ask this is to answer it: of course not.

I sometimes used to dream that Ron Paul would become president of the US, and would appoint me secretary of the agriculture (fed, commerce, labor, whatever) department. Could I properly take that job? Yes. My goal would be to abolish these institutions, of course. But, this might take me a bit of time. Suppose it took me a month to abolish them. Would I be guilty of a libertarian crime during this period? No, I think not. Rather, I would be doing the Lord's work.²⁹ Should the libertarian Nuremberg trial put me in the dock? Of course. The presumption is that all high government officials are criminals. But this presumption can be defeated. So, they should try me, but

²⁹ Always subject to the proviso that such a person would be responsible for any crimes he committed in promoting the good.

then, they should let me go as an innocent, when they examine what I have actually *done*.

The litmus test, deontological, not utilitarian, is, am I supporting or undermining liberty? Secretary of labor Block, stipulate, would have been supporting liberty. XYZ College is not. Most of the professors there probably do not support freedom, at least not the libertarian variety. Stipulate that XYZ hires a free enterpriser with Prof X's money, and that he is doing good. But, also, reasonably, stipulate that his successor in 10 years or so will be appointed by the anti-market people then in control, and there will be another intellectual opponent of freedom in that endowed chair forever. It is hard to see how this supports liberty. I realize I am now treading on thin ice, given different time preferences, but it is my judgment that donating money to state universities, even most private ones (Grove City College may well be an exception) undermines liberty, rather than supports it.

In the view of Rothbard (1973, 84):

The distinctive feature of libertarians is that they coolly and uncompromisingly apply the general moral law to people acting in their roles as members of the State apparatus. Libertarians make no exceptions. For centuries, the State (or more strictly, individuals acting in their roles as "members of the government") has cloaked its criminal activity in high-sounding rhetoric. For centuries the State has committed mass murder and called it "war"; then ennobled the mass slaughter that "war" involves. For centuries the State has enslaved people into its armed battalions and called it "conscription" in the "national service." For centuries the State has robbed people at bayonet point and called it "taxation." In fact, if you wish to know how libertarians regard the State and any of its acts, simply think of the State as a criminal band, and all of the libertarian attitudes will logically fall into place.

All I am doing in criticizing X for donating money to XYZ, a State University, is trying to "*coolly and uncompromisingly apply the general moral law to people acting in their roles as members of the State apparatus.*" If the critics of this thesis would only "*simply think of [the minions of XYZ] as a criminal band, [then] all of the libertarian attitudes will logically fall into place.*" Namely, libertarian critics of my hypothesis would not be so forgiving of Prof. X. If someone donated, without being compelled to do so, a cool quarter of a million to the Nazis, or the Commies, or the KKK, no one would have any trouble characterizing this as non-libertarian. XYZ, and all other such universities in terms of what they advocate, differ only from these groups in terms of degree, not kind.

Objection 4. Sometime libertarian Robert Nozick resided in a rent-controlled apartment in Cambridge Massachusetts. Is this compatible with libertarianism?

Response 4. Although rent control legislations itself does not pass muster in this regard, occupying such premises does. So the answer to this question is Yes. States Rothbard (2005) on this matter:

[we must not] confuse accepting a situation none of your making, with actively making that situation worse. In short, there is nothing wrong with a libertarian living in a rent-controlled apartment, and therefore paying a rent below the market. Nozick (or myself) is not responsible for the rent-control law; he or we have to live within the matrix of such laws. So there is nothing wrong with him living in a rent-controlled apartment, just as there is nothing wrong with him walking on government streets, flying from government airports, eating price-supported bread, etc. None of this is of Nozick's (or our) making. It would be therefore foolish and martyrish for us to renounce such apartments if available, to refuse to eat any food grown under government regulation, to refuse to use the Post Office, etc. Our responsibility is to agitate and work to remove this statist situation; apart from that, that is all we can rationally do. I live in a rent-controlled apartment, but I have also written and agitated for many years against the rent-control system, and urged its repeal. That is not hypocrisy or betrayal, but simply rationality and good sense.

Nozick's moral error ... was to go much further than simply living under rent control. His immoral action was to *pursue* the landlord actively, to go to the State to agitate, time and again, to get the State to force his rent even lower. It seems to me that there is a world of difference between these actions. One is living your life within a State-created matrix, while trying to work against the system; the other is actively using the State to benefit yourself and screw your fellow man, which means initiating and abetting aggression and theft.

Further, the apartment would be rent controlled whether or not the libertarian became a tenant;³⁰ in doing so, he thus does not harm the landlord nor violate his rights. Nor is it legal to offer additional funds to make up for the reduced rent. Were this to occur, the property owner, as well as the tenant, would be in violation of the law, although only the former would likely be prosecuted for this.

³⁰ Query: would rent control laws be repealed if *all* tenants refused to occupy any of the covered apartments?

But Nozick did more than this. In addition, he sued his landlord so as to even further reduce the rent (Tucker, 1986; Rothbard, 2005). Is this acceptable? No, for this is acting in a manner complicit with this unjust legislation. Is there *any* possible justification for Nozick's action, on libertarian grounds? Yes, in my view. If the landlord had violated this philosopher's rights in some other unrelated manner (e.g., committed assault and battery on Nozick), but for some reason (lack of proof, evidence) could not be brought to justice. Then, the landlord would owe the tenant compensation, and this might be as good a way of obtaining it as any.

Objection 5. So, voting for candidates other than Ron Paul (for other than strategic reasons) would be criminal?

Response 5. The libertarian Nuremberg jury would look with askance at such a practice. If one were to vote for another candidate on the ground that Congressman Paul did not have a chance of being elected, that being the case voting for him would be wasted, this would not arouse their ire. This is a strategic issue, apart from axiomatic libertarianism. But, suppose that a citizen preferred Giuliani, or McCain, or Huckabee, or Romney to Paul in the Republican primary. It would appear difficult to square this behavior with a free pass from the jury.

Spooner (1966) is on record, and rightly so, for articulating the position that voting itself is permissible. It can be interpreted as a matter of self defense, and not supporting an evil government. We are here not discussing that issue. Rather, stipulating that a vote in a political election is not per se a rights violation, what are we to say about support for either a national socialist or an international socialist, when there is a Ron Paul also on the ballot? Remember, if someone has *anything* to do with the illegitimate government, the *presumption* is that one is guilty of a crime. This presumption, of course, can be defeated, but one can only be absolved from the guilt otherwise entailed by engaging in an explicitly libertarian act (e.g., burrowing from within at the IRS). A vote for Dr. Paul would certainly qualify.

Objection 6. What is the status of buying a concert ticket to a show at a state university? Or a ticket to a football game? Would this be banned by your version of libertarian law?

Response 6. This would be fine. As long as you get more out of it than you pay, which I assume is *always* true in the ex ante sense. What I object to is you going to a concert or show; they charge you nothing. Then, they ask you for a donation. I claim it is incompatible with libertarianism to give them money you don't *have* to give to them.

Objection 7. “I gave money to support the JCS Museum and wrote the check out to Auburn University and didn’t think twice about do so. Was X’s donation for an IRS training center? Of course not. Quite possibly, rather, it was to help train the accountants who will keep us free from the clutches of the IRS agents.”

Response 7. Auburn University is a public entity; it is therefore problematic to donate to them, per se, on libertarian grounds. Second, fewer than half of the professors there, far fewer than 50%, of those whose fields is relevant to liberty,³¹ promote this ideal. Most attack it to one degree or another. True, you wrote out a check for the Museum, and let us posit that this entity is irrelevant to liberty. But, still, it contributes to the overall mission of Auburn, and thus undermines libertarianism. I think it was a mistake to do this.

I, too, have been guilty of donating money to my own employer, Loyola University New Orleans. It is a private, not a public institution. Still, since most of its professors who discuss such matters undermine free enterprise and liberty, it is on net balance a force for evil, not good. However, I was able to direct my donation with pinpoint accuracy to one of the institutions that actually does some good: the economics club, of which I am faculty advisor.³² Moreover, these donations were on an annual basis, not in the form of an endowment which can be perverted, as was the case with Professor X. Nevertheless, I now regard this check writing behavior of mine as a mistake, and have not repeated this since the time I started writing this present article. The economics club at Loyola, just like the Auburn Museum, support the general mission of each of these overall institutions, which, on net balance, I claim, are negative regarding the promotion of liberty.³³

³¹ That is, economics, political science, history, sociology, etc., not music, mathematics, chemistry.

³² In recent years it has attracted to the Loyola campus outside speakers such as James Buchanan, Doug Casey, Tom DiLorenzo, Roger Garrison, Bob Higgs, Hans Hoppe, Guido Hülsmann, Fr. Robert Sirico, and Tom Woods. It has also been able to encourage several dozen students to attend Mises Institute functions.

³³ Of course, my own presence at Loyola University New Orleans can be interpreted in the same way as the Auburn Museum: as a support for the overall mission of the institution. But, there are relevant differences between the two cases. The Museum, by stipulation, plays a rather neutral role in the understanding of, and promotion of, liberty; they same, hopefully, cannot be said of me. In this as in so much else, I am guided by the words of Rothbard (2005) who says:

It seems to me that the most important concern is to avoid the twin, and equally destructive, traps: of ultra-purist sectarianism, where indeed we would not permit ourselves to walk on government-owned streets; and sellout opportunism, in which we could become supervisors of

Objection 8. I readily admit that you are correct: in most cases giving money to a state entity is a really bad idea. But I don't think you can make a blanket libertarian claim in this regard. I voluntarily give a few dollars to the fire department every year and they voluntarily accept it. Then, they turn around and use this money to give toys to poor kids at Christmas. What is wrong with that? Why is that incompatible with libertarianism?

Response 8. Promoting statist fire departments is not at all compatible with libertarianism. Why not, instead, support *private* fire departments? Why not give your money to kids at Christmas through private groups? What is wrong with the Salvation Army? Do not they give toys to poor kids?

Objection 9. It isn't the funding source per se that matters, but rather the intrinsic nature of the institution. So, if the institution is not per se evil, then it is okay to work there (to contribute to the institution's core mission, that is). Where we disagree is whether it is okay to donate time, effort, money, etc. to a per se legitimate institution that receives state subsidies. Consider this example. Suppose X didn't give any money to XYZ, but instead did his job particularly well. I.e., he works so hard and so well that his marginal revenue product far exceeds his wage. Would you say this is equivalent to giving money to thieves?

Response 9. This is a very powerful attempt at a reduction ad absurdum, but, I think, it fails. Working for state universities is only justified for libertarians!³⁴ If a statist worked for an institution of higher learning, or, indeed, for any public school, he would have to answer for this outrage at the libertarian Nuremberg trial. If X's marginal revenue product exceeded his wage, this would imply, of course, that he is making a "contribution to XYZ University. But, if his marginal revenue product consisted, mainly, of promoting liberty, then okay; no problem, from the libertarian perspective. But, if his productive contribution consisted of promoting state education, or was neutral (say, he taught chemistry or music), then there is a problem with the freedom philosophy. Then, he would just be promoting statism. Since

concentration camp while still claiming we were 'libertarians' in some far off, ideal world.

Opportunists are people who severely split theory from practice; whose ideals are tucked away in some closet or trophy room and have no bearing on their daily lives. Sectarians, on the other hand, suffer from what the Catholics would call the error of "scrupulosity," and are always in danger of boxing themselves in to become hermits and virtual martyrs.

³⁴ That is, for people who act consistently with the libertarian principles of non-invasion. It matters not whether they are card-carrying members of the Libertarian Party, or are associated with this political philosophy in any official capacity. Acts count, not beliefs, in this determination.

when can the promotion, the aiding and abetting of statism, a criminal activity if ever there was one, be reconciled with libertarianism? To repeat: seizing ill gotten gains from the state, or its minions, is justified on libertarian grounds. But, adding to the coffers of the state, whether in the form of money or productivity, is not. It is proper to take money from thieves. It is *not* acceptable in our philosophy to *give* money to them.

Objection 10. So working as a concentration camp guard is okay?

Response 10. Only if you save victims who would otherwise be killed, as did Schindler. Only on the assumption that if you must murder some as the price of saving others, that you take full responsibility, and make appropriate payment if need be. Otherwise, this is per se an evil government institution and thus unacceptable as an employment opportunity for a libertarian.

Objection 11. If it is legitimate to work for a state university, library, museum, pool, etc., why is it illegitimate to volunteer for, give money to, skill for, etc. that same institution? Is it a function of the percentage of the budget that's state funded? If so, then wouldn't the same rule apply to being employed there?

Response 11. It is acceptable for a libertarian to be an employee of a state university, library, museum, swimming pool, etc., if and only if he *gains* thereby, since it is licit for a person to *take from* a thief. Given that employment is a voluntary act, and couple that with the Austrian insight that all parties to transaction gain from it at least in an ex ante sense, the employee is a *beneficiary* of the transaction. So that is legitimate. But when one "volunteer(s) for, give(s) money to, skill(s) for, etc. that same (state) institution" this is illicit, since now the person not taking from the government, but rather giving to it.

Objection 12. But *both* parties to a transaction gain from it, at least in the ex ante sense. That means that the state, too, *gains* from employing a libertarian. Is this not verboten?

Response 12. Yes, of course, the state, too, gains from such transactions, in the ex ante sense. Both parties to *every* trade must necessarily benefit from it, otherwise they would not engage in it. But let us examine precisely what goes on here when the libertarian takes a job as a professor in a state or state supported institution of higher learning. First, consider the fields of relevance to our philosophy: economics, history, political science, philosophy, sociology, biology,³⁵ etc. Here, the libertarian intellectual, if he is to do a good job, must acquaint his students with all shades of opinion apart from his own.

³⁵ Biology is relevant. It discusses environmentalism, sociobiology, etc.

In economics, this would include Marxism, Keynesianism, Classical economics, Supply side, Public Choice, etc. This is pretty much what most professors will do. But, in addition, the libertarian can *also* expound on the philosophies of libertarianism and Austrian economics, something rarely done by other professors.³⁶

What of the fields that are irrelevant to our particular callings, such as music, mathematics, physics, and astronomy. Well, at least, here, the libertarian professor is not going to be continually calling for state subsidies of these activities. But more often, the libertarian professor teaching an irrelevant subject such as these can still promote libertarianism in other ways. Taking part in campus wide debates, serving as a faculty advisor to a libertarian student organization, making radio and tv appearances, inviting libertarian speakers from off campus, etc.

I could hardly support libertarians taking employment in statist universities if I utilized the criterion that it would be illegitimate to do so if the government gained *in any way*, as they must necessarily do in such cases. No, rather, the criterion is, does the libertarian promote liberty on net balance (admittedly, an empirical issue). And, as I have taken pains to claim, he most certainly can. As long as liberty is increasing, the act is compatible with libertarianism. And, presumably, when a libertarian promotes liberty in a state university, freedom is higher than it would otherwise be.

Objection 13. I agree (with caveats—I'm guessing that XYZ never got 100% of its funding from taxes, because students paid tuition). But I was talking about the other dimension, the legitimate vs. illegitimate activity dimension. You're talking exclusively here about the percentage-funding-from-the-state dimension.

I'm thinking of Rothbard's publication³⁷ on working for Brooklyn Poly Technic Institute or UNLV. He didn't say its propriety depended on the percentage of the school's budget that came from the state, did he? Wasn't his view that because education is a legitimate activity—and the same would presumably apply to libraries, parks, museums, swimming pools, etc.—working there is okay? Not for the reasons you mentioned before—because

³⁶ This was true many years ago, when I first entered academia. Nary a mention of anything not in the mainstream tradition, apart from Marxism, was ever undertaken. Nowadays, however, thanks to our success in the past few decades, this must be amended to acknowledge that at least sometimes non-Austro-libertarian professors do mention these views. But, they typically mischaracterize them, sneer at them, etc. The usual reaction is to dismiss them as “cultism.” Well, I suppose that a mention, however misconceived, is better than complete avoidance.

³⁷ This appears, *supra*, as Objection 2.

it's a way to drain state coffers, to engage in subterfuge, etc.—but because the service provided by the institution was legitimate but had unfortunately been (largely) nationalized.

1. Say XYZ gets \$50m from the State. You say giving money to XYZ is donating money to the state.

2. Suppose XYZ were a private college but received \$50m in state subsidy. Is donating money to it also donating money to the state?

3. If so, what is the dollar threshold of state funding? If a private college receives even \$1 in government funding, is giving money to the college illegitimate?

I say that if XYZ is a concentration camp, then giving it money is illegitimate, whether it is wholly state owned, partially state owned, or purely private. But if it is a university, then giving it money isn't necessarily illegitimate, even if it's a state-supported university. (Of course, that doesn't mean giving it money is prudent, but that is an entirely different matter.)

Response 13. I think there is a continuum.³⁸ XYZ is a State University. At one time, 100% of its funding came from taxes (apart from tuition). Now, a bit less, since people like X now contribute to it. But, the same is true for pretty much *any* government institution. Probably even the IRS attracts *some* private donations. So does every public park, museum, library, swimming pool. But surely it is not compatible with libertarianism to donate to such statist enterprises. Of course not, even if there is a continuum, where some public park, museum, library, swimming pools start off private, and get more and more state money.

I realize that some ostensibly private universities like Stanford can get more and more state money, and some universities that started out as public universities can get more and more private money and less state money. So, there is a gray area between “public” and “private” universities. But that is not my major focus. Instead, this concerns whether or not freedom increases or decreases when a libertarian takes on a university post. And my presumption is that the former is the case.

I go further. There is *nothing* unique about the government. There is *no* real important distinction to be drawn between the state and any run of the mill “private” criminal gang. The only difference is better public relations on the part of the former; *Both* are organized criminal gangs; one has public legitimacy, the other does not. So, that distinction could hardly be definitive in the present case. No, the issue, here, is whether or not liberty is being

³⁸ See Block and Barnett, 2008.

promoted or denigrated. Suppose X gave money to Murder Inc., or to the *private* Nazi party, or to the *private* Mafia, the *private* Sopranos gang, the *private* Blood or the *private* Crips gangs. He would still be aiding and abetting coercion against innocents, and would be in the dock of the libertarian court. On the other hand, if he donated money to a completely private college that was promoting Marxism, or communism, or Nazi-ism, without a scintilla of government (coercive tax payer) money, he would be totally innocent of any crime against libertarianism.

But, I insist, XYZ College is a criminal institution in that some of its funds come to it as a result of coercion; moreover, this institution is a cooperator, a member of the ruling class³⁹ in this regard. It is not merely getting some of its own money back, nor can it be fit into the Ragnar Danneskjold model. If it is completely private, donating money to it is akin to engaging in charity with regard to Murder Inc., or the *private* Nazi part. If it is partially private, and thus partially dependent upon state funds, or, if it is as public as the IRS, the Fed or the “Defense” Department, then, again, it is incompatible with libertarian principles to voluntarily support it.

Objection 14. What is your view on buying state run lottery tickets? I would warrant that there are many libertarians who engage in purchases of this sort.

Response 14. My position is that it is incompatible with libertarianism to engage in the purchase of a state run lottery ticket, assuming that the expected value of the ticket is less than the purchase price. If that is the case, is it easy to see that on net balance that this is a win for the state, and, therefore, a loss for liberty. Suppose that libertarians purchased *all* the tickets in a given lottery, and that there were one million of us. This would mean, necessarily, that a libertarian would win the prize. But, if the expected value of a ticket that cost \$1.00 is less than that amount, then the winner would come away with *less* than \$1 million. So, a loss for libertarians, and a gain for the state, ex post.

³⁹ States Rothbard (1998, 176-177): “As John C. Calhoun trenchantly pointed out in the early nineteenth century, the very *existence* of taxation negates any possibility of such neutrality. For, given any level of taxation, the least that will happen will be the creation of two antagonistic social classes: the “ruling” classes who gain by and live off taxation, and the “ruled” classes who pay the taxes. In short, conflicting classes of net tax-payers and net tax-consumers. At the very least, the government bureaucrats will necessarily be net tax-consumers; other such will be those persons and groups subsidized by the inevitable expenditures of government.” In my own view, in contrast, Calhounism is a good first approximation, but it is only an approximation, to libertarian ruling class theory. For, we can imagine a Ragnar, freshly come to the earth from Mars, who, after seizing government money, becomes a person who “gains by” taxation.

There is one exception to this rule, however. Some lotteries are orchestrated so that if there is no winner in initial drawings, the prize gets bigger and bigger. If so, then the expected value of a ticket for \$1.00 will become to be worth *more* than that amount. If so, then it would be appropriate to enter into this market, assuming away peripheral benefits to the state in bringing to us its financial circus.

Objection 15. The distinction is the Rothbardian one between an activity like education that is inherently legitimate but has been effectively nationalized, and an activity like tax collecting that is inherently illegitimate. You seem to imply that receiving money from the state, under any circumstances, is undermining it. If I take a job as a concentration-camp guard and spend my income on private goods and services, am I helping smash the state? Surely not.

Response 15. I fully agree with the Rothbardian distinction between things that the state does that are inherently evil (killing innocents) and things that are entirely legitimate (education). I do not at *all* think that receiving money from the state is undermining it. Indeed, I have taken great pains in my writings to support *taking* money from the state. My problem with X is *not* that he is *taking* money from the state, for which I would applaud him. My problem with him is that he is *giving* money to the government, without being compelled to do so. That is, he is *donating* money to the state, a criminal gang, surely a problem for libertarians.

Objection 16. While I certainly agree that one should not give money to the state, the case is a little more complicated with state universities. Giving money to a state-supported university isn't quite the same as giving money to the IRS, just as working for a state-supported university isn't quite the same as working for the IRS (I hope). Indeed, the massive state intervention in higher education is such that the public-private distinction is not so meaningful anymore (with the exception of places like Grove City). Many nominally private universities receive as much of their total budgets from federal and state sources as do state-supported universities. The University of Missouri, for example, receives about 19% of its budget from the state of Missouri, 15% from federal and state grants and contracts, 23% from tuition and fees, 36% from sales and services (housing, books, sports events), and 7% from private gifts. Stanford, by contrast, gets about 40% of its budget from federal and state grants and contracts (and about the same percentage as Missouri, 23%, from tuition and fees). So Stanford, a supposedly private university, is more reliant on state funding than Missouri, a supposedly public university!

Response 16. I see matters very differently. In my view, the two things, working for a state university (or a private one that receives lots of tax money) and donating money to them are *entirely* different matters. I certainly support libertarians being employed by them. Indeed, I myself have worked for the following public universities: Stony Brook, SUNY, Baruch, CUNY, Rutgers Newark, and the University of Central Arkansas. But giving them money is entirely different. In the former case, you are also *taking* something from the state (undermining them); in the latter case you are not; you are giving wealth to them. Barbra Streisand donates money to the government. The libertarian Nuremberg trial will find her guilty. X too.

I don't think your views toward the state are radical enough. I can conceive of cases where if you give the government money, it will somehow redound to their harm. For example, if you give a bribe to a state official and then he is put in jail for accepting it. But the straightforward giving of money to government parks, museums, libraries, schools, is a shonda (a disgrace) for a libertarian. All that the state does is not per se evil. There will be parks, museums, schools in the free society. Private ones. But X gave money to a *government* institution.

The biggest fights I have with my non-libertarian friends is when we go to a museum together, and they ask for a donation. It really ticks me off when they donate. But, it is their money, and they are not libertarians. But, I'll be damned (I mean this literally) if I ever knowingly aid and abet evil in such fashion. It is okay to *take* money from thieves. It is *not* acceptable to *give* money to them.

How about returning the money to its rightful owner, after relieving the thief of his ill-gotten gains? Yes, that is a virtue. But, in libertarianism, there are no positive obligations to find the victim, and return these monies to him. However, if the victim shows up at the front door of the liberator, and can prove that he is now in possession of property stolen from him, then the liberator has an obligation to compensate him (minus one third⁴⁰ of the value of this property.)

*Objection 17.*⁴¹

The libertarian teacher is taking loot from the state. The taking is legitimate for two reasons. First, because as a libertarian he is entitled to restitution and thus entitled to the loot than the state. Second, this deprives the state of assets it could use to harm people. He is also giving the government something—his services. But as you point out, he is also “giving” libertarianism, at least by osmosis.

⁴⁰ Based on the laws of salvage determined by private maritime courts.

⁴¹ I owe this objection to Stephan Kinsella.

It seems to me that it could be that the ‘giving’ is a net positive all by itself—that is, it is not justified just because it is balanced by the taking. For example, suppose the state offers to pay you *nothing* to teach. Would it be justified to accept such a “job”? I would say yes, if you explore libertarianism along with the mundane subject matter—the good done by spreading liberty ideas justifies the minor evil done by doing a service for the state. Now take the Marxist: his problem is two-fold. First, as a Marxist, he is *not* entitled to restitution from the state. If he takes money from the government, this might be a slight net good since he is less dangerous with these assets than the state is, but the good from restitution is missing. And the giving is a net bad, because he is not spreading libertarianism; he is just doing a service for the state, which is bad (aiding and abetting, etc.).

Response 17. Nothing said above precludes me from accepting this brilliant insight. I agree, and enthusiastically so, that *both* presenting free enterprise principles to students, *and* relieving the state of its ill gotten gains, are positives.

As to the Marxist, I am not so sure. Yes, he is guilty of reducing knowledge, not increasing it, when he teaches. But the “aiding and abetting” does not necessarily follow, *if* he is a professor in a completely private school, such as New York City’s Alternate U. All bets are off in this regard, however, concerning his innocence, when he takes a position at a public school.

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