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## LIBERTARIAN LAW AND MILITARY DEFENSE

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### 1. Introduction

IN A PROVOCATIVE recent article in this journal, Joseph Michael Newhard (2017) claims libertarians in an anarchist society would put themselves in great danger if they dogmatically adhered to the nonaggression principle (NAP) in the face of a potential foreign invasion. Newhard classifies strict adherence to the NAP as a military posture of “minimum deterrence,” and then offers various arguments that “minimum deterrence” is inadequate in the context of modern state warfare. Newhard concludes:

[T]otal commitment to the nonaggression principle, as embodied by the minimum-deterrence posture and unilateral nuclear disarmament, will gravely compromise the effective defense of anarchist territory. This leaves anarchists with a difficult choice: (1) decline to extend the NAP to those outside the voluntary defense network in the name of self-preservation, or (2) extend the NAP even to their enemies, and be vanquished... If the NAP really does compromise defense and private defense agencies accept the NAP constraint on themselves regardless, they may lose enough strength and security that they fail to survive. This may be a price anarchists are willing to pay, but they should do so with eyes wide open: there

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may be no solution allowing market anarchists to preserve their society while extending the NAP to statist. (Newhard 2017, p. 73)

I wholeheartedly deny Newhard's thesis. As a matter of principle, jettisoning the NAP in the context of military readiness would undermine respect for it in other areas as well; Newhard's paper is tantamount to a rejection of the NAP, period. Furthermore, I disagree with Newhard's specific claims about the alleged disadvantages faced by libertarian anarchists in repelling foreign invasion while applying their legal code impartially to all parties. Far from crippling the members of a free society, their adherence to property rights and the rule of law would be the source of their strength.

The structure of this paper is as follows: Section 2 sketches a vision of the free society so that we have something concrete in mind when evaluating Newhard's arguments. Section 3 rebuts Newhard's specific claims about military effectiveness under the constraint of obeying the NAP. Section 4 reminds readers of the ultimate source of state power, and applies these insights to the present discussion of military defense. Section 5 concludes.

## 2. A Vision of the Free Society

In his article, Newhard uses the term "anarchist territory" to denote a region inhabited by proponents of the NAP (although Newhard would advise them not to extend the NAP to foreign statists). In contrast, in this article I will use the term "free society," which I define to be a very large group of people living in the same region who largely (though not unanimously) respect a body of commonly understood property rights. Under this definition, the inhabitants of a free society might suffer from the occasional murder, carjacking, or investment scam, but nonetheless they would enjoy a day-to-day life with no systematic (let alone institutional) violations of property boundaries.<sup>1</sup> Naturally, such a world rules out the existence of a state.

To be sure, my definition as such does not solve any of the potential problems raised against libertarian anarchy, either by Newhard or other critics. One could argue that my "free society" is unattainable from today's world, and/or that even if a group of people did achieve it, they would soon

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<sup>1</sup> Currently people use the terms "radical libertarian," "anarcho-capitalist," "market anarchist," and "voluntaryist" to denote this idea. But it is the simple extension of everyday morality to all people in society, including law enforcement, judges, and the military.

fall prey to internal criminals and/or external invaders.<sup>2</sup> Even so, this rhetorical adjustment will serve to clarify my arguments in the paper.

My choice of terminology is partly driven by aesthetics—most people naturally want to live in a free society but recoil from the word “anarchy”—but is mostly due to a desire for precision. Strictly speaking, statelessness (i.e., political anarchy)<sup>3</sup> is a necessary, but not sufficient, condition for a society of the type propounded in the classic libertarian-anarchist works such as Linda and Morris Tannehill (1970), Murray Rothbard (1973, 1982), and David Friedman (1973). As the critics like to point out, Somalia was genuinely stateless, at least for a brief period, but it hardly epitomized the libertarian vision.<sup>4</sup> In my usage, all free societies are anarchist, but not all anarchist societies are free.

For the balance of this article I will assume that the culture of the hypothetical free society we are considering is similar to that of modern nations in the real world. I am not assuming a population of New Libertarian Men and Women. The one important difference is that the overwhelming majority of people in our hypothetical free society do not think it is ever appropriate to use violence against, or steal from, an innocent person, whereas most people in the real world today deem it acceptable for the leaders of their states to employ agents with guns in order to (say) enforce conscription and collect taxes.

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<sup>2</sup> In this literature, some representative objections to the possibility or at least stability of “anarcho-capitalism” or “market anarchism” are Nozick (1974), Holcombe (2004), and Cowen and Sutter (2005). Stringham (2007) is an excellent collection including these objections and responses from anarchist theorists.

<sup>3</sup> In this literature, most writers use the terms “government” and “state” interchangeably. I deliberately refrain from doing so, in order to minimize potential confusion among readers. For example, in his classic work *Our Enemy, the State*, Albert J. Nock (1935) uses “government” to mean the social mechanism of the codification and enforcement of law. Thus, Nock’s enemy is (famously) the state, but not government. More generally, I have found in casual conversation that many people use the term “government” to refer to any type of hierarchical authority, including the “government” of parents over their children, or of church elders over members.

<sup>4</sup> Even here, proponents of libertarian anarchy can make a strong case that stateless Somalia, bad as it was, was demonstrably preferable to Somalia with a state. See Powell, Ford, and Nowrasteh (2008).

*Private Law*

Although this article concerns military defense, at times the discussion necessarily involves considerations of the legal structure of a free society. In this subsection I will summarize my vision of a private legal system, which is similar to the exposition in Murphy ([2002] 2010) and Murphy (2005).

By stipulation, the vast majority of people living in a free society would share a basic understanding of property rights. Yet even though most people would be of goodwill and have a general desire to refrain from involuntary violence and theft, nonetheless humans are notoriously biased and self-serving. Although most disputes would be settled between the parties themselves, there would still be a market for private judges.

A judge is someone who renders an opinion on a particular case brought to him or her. To give their perspective the best possible consideration, each side in the dispute may wish to hire a lawyer who, like the judge, is also trained in the law, in order to present arguments that might resonate with the judge. But ultimately, the judge considers the facts and renders an opinion on what (the relevant portion of) the law says about the case.

The law (in contrast to legislation) is an example of a spontaneous order, as famously described by Hayek (1973): it is the result of human action but not of human design. At any given moment, the law is an accumulation of shared customs, principles, and (in modern times) precedents from prior cases. Individual judges contribute to the evolution of the law, but there are principles and feedback mechanisms at work in the whole system beyond the control of any one person or even any large group (Leoni 1961). Furthermore, to the extent that we believe there are timeless features of the human condition and social life on this earth, we would expect the objective characteristics of the “natural law” to be reflected in the spontaneous body of law produced cumulatively through the decisions of private judges.

Just as virtually everyone in society today knows that  $2+2=4$ , in a free society virtually everyone would know basic legal principles such as “It is a crime to walk up to a stranger and shoot him in the head.” For harder cases where average people disagreed about what the law said, the community would have a general consensus on the “hierarchy” of legal expertise, which would be conditioned (but not determined) by performance in law school and perhaps the passing of other certification tests issued by reputable organizations. (In the same way, people today can agree on who the authorities are when it comes to calculus.) Textbooks and other reference guides would codify the principles and relevant cases for various fields in the law. There might be schools of thought, and experts would disagree on

cutting-edge issues such as ownership claims to the atmosphere or intellectual property. And of course, one judge might agree to hear an appeal of a colleague's opinion, and might even write a new opinion that overturns the original.

As with mathematics, the body of law itself would evolve over time. Every time parties willingly submitted their dispute to a judge, his or her opinion on the case would be incorporated into the body of case-law precedent. Even so, the free society would enjoy the rule of law, as the term is understood in the Western tradition. To repeat, everybody would know that walking up to a stranger in the park and shooting him in the head was murder, and everybody would know the procedure for determining who was the lawful owner of the house located at 32 Oak Street.

In such a society, it is unlikely that a rogue group of judges could branch off and begin issuing rulings designed to serve a powerful clientele in the way critics of "private law" often allege. Presumably, there would always be a huge majority of honest judges and other legal authorities who would publicly eviscerate bogus legal claims so that even the layperson would have no doubt about which judicial opinions were faithful to the law and which perverted it.

### *Law Enforcement*

In contrast to the visions of other writers in this tradition (e.g., Friedman 1973 and Rothbard 1973), I predict that in a free society, the production of judicial opinions on the one hand and property-rights enforcement on the other would be distinct—both conceptually and in terms of the companies selling such services. The private enforcement agencies themselves would be companies operating lawfully under the same general code applicable to everyone else in society.

In my view, when a crime occurs—say, Jones steals Smith's car—Smith will not first call his private enforcement agency to exact some justice. Rather, when Jones steals Smith's car, Smith *first* goes to a judge to get an opinion on the case. If the judge rules that yes indeed, Jones stole Smith's car (and there would be evidentiary procedures and other safeguards in place to ensure a fair trial so that the community would respect this particular judge's opinion on such matters), *then* Smith could go to any of a number of competing enforcement agencies to retrieve his property. The employees of the enforcement agency working on Smith's case would want to know that he really did have a solid legal opinion backing him up, because otherwise *they* might be viewed as criminals in the eyes of the community when they entered Jones's property to retrieve the car.

*The Role of Insurance Companies*

Even if the official legal remedy for a particular violation of property rights allowed for the taking of tangible property, I suspect that in practice most plaintiffs would agree to relinquish their claims in exchange for money. Consequently, I expect that in a free society most people would need to get some type of insurance coverage pledging to the community at large indemnification for various types of court judgments.

To be sure, I am not denying that insurance companies would also offer policies to compensate the holder of the policy in the event of a crime. This is the model traditionally proposed in the anarcho-capitalist literature. I am simply arguing that the other type of policy would also be prevalent, such that most people in a free society would have a large, reputable agency vouching for them. Premiums of course would adjust accordingly, in light of the behavior of the individuals purchasing such coverage.

*Military Defense*

After our summary of the framework for the judicial system and law enforcement in a free society, the topic of military defense is surprisingly easy. Every member of the free society would still be bound by the law, even when acting to repel foreign invaders. (In the next section, we will address the specific difficulties Newhard claims this might pose.)

Libertarians appreciate the superiority of decentralized market provision over top-down central planning when it comes to computers and cars, and so the only real stumbling block with private military defense is the issue of payment. In a *wealthy* free society (with skyscrapers, banks with large sums of gold in the vaults, etc.), large-scale property owners would carry large insurance policies on their assets. This would probably include indemnification in the event of a foreign military attack/confiscation. Thus it would be enormous insurance companies who would “internalize the externalities” of military defense.

Beyond obvious measures such as funding the deployment and maintenance of an antiballistic missile system, these insurance companies might also post bounties for various targets in the event of a foreign invasion. For example, Granite Insurance Co. might have issued policies covering all types of damage to a group of shopping malls located in the interior of a city. If thousands of foreign troops landed on the outskirts, Granite would realize it was in danger of paying out (the local-currency equivalent of) billions of

dollars' worth of claims to its policyholders.<sup>5</sup> To reduce the likelihood of this occurring, Granite might announce to the community, "We will pay [the equivalent of] \$1,000 for every confirmed casualty inflicted on the invading forces, \$50,000 for every confirmed tank taken out of commission, and \$80,000 for every confirmed helicopter knock-down."<sup>6</sup>

With posted market prices for the desired services, competing individuals and firms would scramble to provide them. However, just like in other industries, here too they would have to respect property rights and act lawfully while catering to their customers (in this case, Granite Insurance Co.).

### 3. Principles Are Pragmatic: A Response to Newhard

Now that we have reviewed my conception of the institutional structure of a free society, I can offer my objections to Newhard's thesis.

#### *Selective Violation of the NAP Is Arbitrary and Untenable*

Newhard is not arguing that a libertarian-anarchist society is doomed. Rather, he is merely advising people in such a society to restrict the NAP to internal applications:

Market anarchism is most likely to emerge and thrive if its adherents adopt the convention that they need not extend the NAP to statists, broadly defined as those who live outside the voluntary defense

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<sup>5</sup> To reassure policyholders that they would in fact be compensated, Granite would presumably have made arrangements to move its assets offshore in the event of an impending invasion. The rich property owners could then also flee, and receive compensation if their property (back home in the free society) had been damaged or confiscated during a foreign invasion.

<sup>6</sup> Economists in particular might question my description because of the free-rider problem. It is true that if dozens of large insurance companies were on the hook for the damages accruing from a foreign invasion, then some of them might strategically offer no or small bounties, thinking their peers would post enough to motivate an adequate defense operation. Thus perhaps we would have an equilibrium where (say) ten insurers each post a bounty of fifty dollars for every confirmed enemy casualty. Even so, that means the entire free society would mobilize its resources to earn a total of five hundred dollars per enemy-soldier casualty. This might not qualify as Pareto optimal, but in my opinion it would be more than enough to fend off invasions in the real world. It certainly would not be an equilibrium outcome for a rich city to do very little in the face of an invasion because of transaction costs or the absence of a pure-strategy Nash equilibrium.

network... Supplanting the NAP in matters of foreign affairs, while ruthlessly enforcing the NAP within the network, is the best chance anarchists have to enjoy civilization on their own while defending themselves from the great mass of statist in a Darwinian world. (Newhard 2017, pp. 57–58)

However, things are not so simple. To see why, consider an analogy with drugs. Suppose someone argued, “Market anarchists must realize that complete respect for the NAP will undermine their social structure. If too many people become heroin addicts, society collapses. That is why market anarchists must adopt the convention that they need not extend the NAP to the heroin market.”

Now one response to such a hypothetical argument is to deny the empirical claim. But even supposing it were true that a market-anarchist society were vulnerable to implosion from widespread heroin addiction, it is difficult to see how its members could simply adopt the convention that it would be illegal to use heroin, while retaining the rest of what we mean by “market anarchism.”

Likewise with Newhard’s suggestion concerning military defense. The legal system in a free society would be decentralized. There is no way to flip a switch and “turn off” the NAP for outside statist. If practical considerations were enough to invalidate otherwise legal property claims held by outsiders, then why would it stop there? Could not the market-anarchist judges then adopt the convention that the NAP should not be applied to, say, home-grown crime organizations? After all, what if a domestic terrorist group has planted bombs around the city? Should not the anarcho-capitalist police forces be able to arrest the families and friends of the terrorists, and threaten to kill them unless the bombs are deactivated? To do otherwise would seem to place the anarchists at the mercy of terrorists.

As a final consideration from a purely legal perspective, even if we grant Newhard’s basic premise, he still does not get his desired result. Even if we stipulate that, say, an anarchist defense agency is legally allowed to launch a first-strike nuclear attack on a foreign city populated by statist, in practice that would not be enough. Surely a nuclear attack would also kill many foreign infants and even market anarchists themselves who were visiting the region as tourists or for other reasons. Thus some of Newhard’s more aggressive military recommendations would violate the NAP, even if the NAP were restricted the way Newhard suggests.

In the end, Newhard is effectively arguing that in a time of war, the people of a free society should throw the law out the window. As he writes:



[T]he anarchists may find that taking the battle to the invader's home country is preferable, the NAP be damned... [T]hey should consider discarding the ethics of proportionality in war and become willing to escalate any conflict initiated by the state to a much greater level of violence. (Newhard 2017, p. 64)

On this point I strongly disagree. To reiterate, the free society derives its strength from its respect for property rights. Furthermore, I am not merely making a “slippery slope” argument. Rather, I am claiming that the rule of law in a free society would rest upon the decentralized process of private judges rendering opinions on countless cases over decades. It is not really possible to ask the judges to apply this elegant body of principles to all legal disputes *except* those involving military defense. That would be akin to the (common) perspective today where writers generally praise the fruits of capitalism *except* income inequality. The problem with such a stance is not simply that we might think income inequality is not so bad after all, but more fundamentally that it is impossible for the market to “do its job” if we are going to rule out certain outcomes we dislike.

Before leaving this topic, I should mention one possibility that may help to bridge the gap between my position and Newhard's. Depending on the standing of foreign states in the free society's court system, we might see private defense agencies purchasing the legal ability to inflict a certain amount of damage “preemptively” on hostile forces.

For example, suppose a US or British military invasion of a hypothetical free society is imminent, but the commanders of these forces are cleverly positioning them in ways that technically do not violate the NAP as defined in the free society's court system. The defenders would like to take some preemptive measures, such as shooting down surveillance drones or military satellites, and even after the invasion proper has begun, perhaps the defenders would like to strike a knock-out punch without waiting for the invaders to first destroy (one-half)<sup>7</sup> the corresponding amount of the defenders' forces. In such a scenario, it might work for the private defense agencies to approach clear-cut victims of US or British aggression—whether foreign war refugees or even the American and British taxpayers—and say to them, “In our court system, you have legal claims against the offending governments. However, we both know they are never going to pay you, regardless of what our private judges rule. So we will buy your claims at a large discount.” Then, after acquiring these claims for pennies on the dollar,

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<sup>7</sup> I write “one-half” as a nod to Rothbard's (1982) retributive principle of “two teeth for a tooth.”

the private defense agencies could use them to offset any net compensation that their court system rules they owe the owners of the invading forces.

*Freedom (and Prosperity) under the Law*

Before reviewing some of Newhard's other specific arguments, it is useful to remind ourselves why there is a presumption in favor of a society bound by the rule of law in the first place. The answer is that only here is there true freedom and, as a happy by-product, much more prosperity as well.

If a socialist says, "When it comes to frivolous items like TVs and sports cars, we can let the market produce them, but for important things like health care and food, we need collective ownership," then most readers of this journal would see the fallacy involved. It would be dangerous and foolish to give political authorities the power to meddle in the provision of the necessities of life. Even if such authorities had good intentions, they would produce inferior health care and food "outcomes" compared to the decentralized market with private property. And why in the world would we trust such authorities to have good intentions?

Likewise, a free society under threat of military invasion would mobilize its available resources in the most efficient manner humanly possible by relying on decentralized, competing firms (including "sole proprietors" acting as individual guerillas/saboteurs/propagandists/etc.) who all operated within a system of private property rights. Maybe it would make great sense to, say, blow up a key bridge to slow the enemy's incursion. If so, the individual or group blowing up the bridge would have to compensate the owner, just as surely as if a private airliner accidentally crashed into the bridge. Yes, a modern society "needs" planes to be able to fly around, even though they might occasionally smash a bridge, but when that happens, the airline has to compensate the owner. And the reason for this insistence is not simply a matter of fairness or justice: if we let private judges absolve airlines of their responsibility to compensate bridge owners in such cases, then we would no longer be operating in a capitalist system and the judges would be quasi central planners.

As Ludwig von Mises taught, the market price for a particular unit of a productive resource (including labor hours) is a signal showing how valuable that factor is in some entrepreneur's operation. That is why the entrepreneur is willing to pay the going price. To allow some firms to arbitrarily seize resources and use them without paying the market price does not make society richer. It merely ensures that those resources will go to less valuable purposes.

For example, consider the military draft. Most military writers take it for granted that if one society is facing an invasion from a large army of conscripts, then the first country has no choice but to engage in reciprocal conscription. (Thus, the other European powers “had to” draft their own men in response to Napoleon.) Yet this argument would be nonsense in any other context. If China relies on slave labor in some of its factories, that hardly means American firms must do the same in order to raise US GDP.<sup>8</sup>

And even in purely military operations, it is undeniable that the US military is dominant today, even though it relies on a volunteer force. Furthermore, consider the foolishness of the Confederate forces in the Civil War, which surely could have lasted much longer by relying on guerrilla tactics (as the colonists often employed during the American Revolution), but instead marched their own (outnumbered) men into Union cannons.<sup>9</sup>

When it comes to military operations, we must avoid what Harold Demsetz called in a more conventional economic context the “nirvana fallacy.” We must not imagine omniscient central planners who knock out just the right “innocent” enemy civilians and who violate just the right set of property bundles at home in order to fend off an invasion. No, we have to compare apples to apples. How would real people operating under a decentralized system of property rights and market prices organize themselves spontaneously to repel an invasion? Contrast that with the real-world response of a smaller group of “experts” given the authority to override property rights and impose their own vision of the best defense.

Finally, just as in health care or food production, when it comes to military defense it would be foolish to trust the intentions of a single group given extraordinary legal powers. If we granted anarchist defense agencies the tools of mass terror, standing armies,<sup>10</sup> and the legal ability to launch nuclear first strikes, as Newhard recommends, it is difficult to see what would

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<sup>8</sup> An anonymous referee also notes that (other things equal) we would expect soldiers voluntarily defending their homes to fight more valiantly than conscripts being forced to invade.

<sup>9</sup> On the South’s decision to eschew guerrilla tactics and embrace the method of “gentlemanly” warfare taught at West Point, see Jeffrey Rogers Hummel (1996, pp. 178–79).

<sup>10</sup> Although a large peacetime standing army would not violate any principles of a free society, I do not predict that it would be profitable. I expect the companies providing military defense in a free society would rely heavily on capital equipment, so that especially during peacetime the fraction of the population employed in this industry would be fairly low.

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prevent those agencies from turning their weapons inward to subjugate their erstwhile customers. When critics of anarcho-capitalism say such a system is untenable and would devolve into statism, they could invoke a scenario like Newhard's vision as the first step.<sup>11</sup>

*Is War Inevitable?*

Early in his article, Newhard quickly claims that a free society would be vulnerable to state invasion:

States are particularly formidable opponents due to their massive armies, facilitated by government's prowess in acquiring and mobilizing resources. Coupling government's capabilities and its natural propensity for violence, state invasion of anarchist territory should be considered inevitable. (Newhard 2017, p. 58)

I object that such a claim is far from obvious, and in any event surely takes more than the two sentences Newhard thinks adequate to establish the conclusion. This is all the more true when we consider that the state is horrible at "mobilizing resources." That's why socialism does not work.

It is a widely held myth—even among many anarcho-capitalists—that the state is "good at killing people." But as we must always ask in economics: compared to what? The reason it appears that the state is "good at killing people" is that the state is the institutional means by which evil people historically have implemented their desire for mass slaughter. If for some reason it became profitable for Fortune 500 companies to engage in mass slaughter, then it would be crystal clear how much better the market economy is at killing people.

To repeat, it is simply a myth that the state—which is horrible at mobilizing workers and other resources toward the ends of producing pizzas or computers or schools or health care—is good at mobilizing troops and other resources for the purpose of defeating a foreign military. Consider the analysis of Ludwig von Mises, who was not only an exquisite economist but also a student of history and a veteran of the First World War:

Not government decrees and the paper work of hosts of people on the government's payroll, but the efforts of private enterprise produced those goods which enabled the American armed forces to win the [second world] war and to provide all the material

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<sup>11</sup> After all, if it is acceptable to violate the NAP to stave off a foreign invasion, then why not implement a small amount of taxation in the event that the population does not contribute enough to the defense effort voluntarily?

equipment its allies needed for their cooperation. The economist does not infer anything from these historical facts. But it is expedient to mention them as the interventionists would have us believe that a decree prohibiting the employment of steel for the construction of apartment houses automatically produces airplanes and battleships...

It may be admitted that it is not “fair” that war enhances the profits of those entrepreneurs who contribute best to the equipment of the fighting forces. But it would be foolish to deny that the profit system produces the best weapons. It was not socialist Russia that aided capitalist America with lend-lease; the Russians were lamentably defeated before American-made bombs fell on Germany and before they got the arms manufactured by American big business...

Of course, in the long run war and the preservation of the market economy are incompatible. Capitalism is essentially a scheme for peaceful nations. But this does not mean that a nation which is forced to repel foreign aggressors must substitute government control for private enterprise. If it were to do this, it would deprive itself of the most efficient means of defense. There is no record of a socialist nation which defeated a capitalist nation. In spite of their much glorified war socialism, the Germans were defeated in both World Wars. (Mises [1949] 1998, pp. 823–24)<sup>12</sup>

On a related note, Newhard inexplicably disagrees with Roderick Long (2007), who writes that because it would not be an imperialist power, a free society would have a smaller military budget than a comparable state. Newhard replies that defense would be “almost as costly as offense” because “anarchists will need to assume the large fixed costs of assembling a comparable military force, and will save only the relatively minor marginal costs of routinely deploying them abroad as global policemen” (Newhard 2017, p. 60, fn. 6).

At this point it may be helpful to imagine a concrete scenario, to contrast Long’s and my view from Newhard’s. Suppose there is a free society located on a small island in the Pacific. What possible threat does it pose to any states?

I submit that the only threat is ideological, in the sense that a vibrant, free society would (eventually) prove embarrassing to the political authorities covering the globe. They could no longer tell their people that massive

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<sup>12</sup> To be clear, Mises himself was not an anarcho-capitalist. But I hope it is clear enough how Mises’s perspective in this quotation makes my point vis-à-vis Newhard.

taxation, monopoly police forces, pothole-filled roads, and horrible “public” schools were vital to civilization, if there were a glaring counterexample in the Pacific growing exponentially in terms of both population and economy.

To be sure, our island might be a lucrative target because of its wealth, but most governments that had the power to conquer the island would need to “sell” an invasion to their public (and other powers) by casting the anarchist island as a danger. Yet so long as the members of a free society reject Newhard’s advice and do not start building intercontinental ballistic missiles, long-range nuclear subs, aircraft carriers, and so on, there will be no obvious physical threat posed by such people to the world’s states. In fact, some states might find the anarchist island very useful for (say) conducting financial transactions and performing banking services. One coalition of global powers might “adopt and protect” the anarchist island from rival powers, the way the Soviet Union was allied with Cuba during the Cold War. To be sure, there would be no official state controlling the free society that could strike deals on behalf of the whole island, but presumably at least some powerful states around the world might strongly object if (say) the United States decided to bomb and invade an island in the Pacific doing nothing bothersome except “pirating” movies and laundering untaxed money.

Finally, even if the United States and “coalition” forces decided to take a stand against the anarchist island, the relevant metrics would not be the entire US military budget versus the funds spent by the private defense agencies. The US government has operations all over the planet. It would not devote all its forces to knocking over a single island that at worst posed a PR problem. Furthermore, as the Afghan repulsion of the Soviet invasion illustrated, defenders can use fairly cheap missiles to knock down very expensive hardware. The members of a free society do not need to spend \$20 billion on their own aircraft carrier battle group, but instead could spend (say) \$500 million developing state-of-the-art mines, land-based cruise missiles, and surface-to-air-missile sites, as well as a small fleet of ships that could deploy hundreds of small autonomous submersibles to seek out and cover the lower hulls of nearby vessels with explosives. If instead of mujahideen we imagine a modern Western society operating under total *laissez-faire*, the efficacy of their military effort per dollar spent would be much higher. This would be “guerrilla warfare” in the same sense that Silicon Valley is “guerrilla computing.”

### *Newhard Would Give a Pretext for Invasion*

In addition to disagreeing fundamentally with his ethical perspective, I also reject Newhard’s strategic analysis. For example, he writes:

If anarchist weapons systems are capable of serving the dual role of offense and defense, their tactical options against enemy forces are increased and the ability of the enemy to prepare for every battle contingency is reduced. These advantages may be further enhanced through a policy of massive retaliation against civilian population centers in enemy territory. Such a policy promises the destruction of a target that the state greatly values, even if only as a tax base, while also motivating the population to exert political pressure on the rulers to refrain from attacking anarchists. By ruling out many targets that would serve to deter an invasion in the first place, anarchists make such an invasion more likely. (Newhard 2017, pp. 71–72)

On the contrary, I claim that the development of such weapons of terror would be the pretext a powerful state would need to justify to its own people (and world opinion) why it was bombing/invading the free society.

If Newhard were right, then the discovery that the USSR had placed ICBMs on Cuban soil should have reduced the likelihood that the United States would attack the Soviet Union. But I think most observers agree that this aggressive act by the Soviets took the two powers to the brink of nuclear war.

#### *Counterespionage and Counterterrorism*

In detailing a specific vulnerability of adherence to the NAP, Newhard argues: “The ability of enemy forces to exploit the freedom of anarchist territory by purchasing land there to secretly plant bombs, launch attacks, and conduct espionage and sabotage prior to an invasion should also not be discounted” (p. 63).

Here again I remind readers that in a free society, every parcel of land would be privately owned, and there would be no anti-discrimination laws as prevail under modern states. If, say, various Americans with past ties to the CIA tried to buy a house near the cruise-missile factory on our hypothetical anarchist island, the owners could simply turn them down. There would be no violation of the NAP required. The free society might still rely on counterespionage/counterterrorism tactics to keep tabs on potential invaders and uncover secret plots. My point is that any scenario in which Newhard could argue, “We need to violate the NAP to kick these people out (or deny them entry in the first place),” could be handled with no NAP violations simply by the relevant property owners in question exercising their legal rights.

More generally, to the extent that the reader agrees with my vision of the free society in which people would need some type of third party to

“vouch” for them before being allowed entry onto busy streets or into commercial buildings, then the mechanisms Newhard imagines would be allowed to operate in vetting newcomers, yet in a way perfectly consistent with the rule of law.

Similarly, I would expect foreigners to be unable to (legally) assemble munitions depots throughout a free society, because they would not be able to get adequate insurance coverage. If any business in a free society wanted to stockpile equipment that could conceivably kill thousands of people, then third-party insurers would be very careful before issuing a policy that would compensate the potential victims. If we are talking about a nuclear power plant that was built to impeccable safety standards and staffed by experts, the insurer might sign off on it. But if instead we are talking about twenty “former” Navy SEALs who decided to “quit” their old jobs to open a sarin-gas boutique in the downtown of the anarchist island, the insurance companies would balk.

### *Nuclear Deterrent*

Newhard argues for the libertarian-anarchist society to develop a sophisticated suite of nuclear weapons:

A nuclear arsenal may be most useful if it is designed to strike deep into enemy territory, which may be a great distance away... [A]narchists will need the ability to strike back at missile bases, air bases, command-and-control facilities, and other valuable facilities on the far side of the world when invaded by land and sea by distant empires. (Newhard 2017, p. 68)

Moreover, Newhard suggests that any free society not availing itself of nuclear weapons would be a sitting duck: “It is worthwhile to consider that the United States... has in the last century waged war only on countries not possessing intercontinental ballistic missiles” (p. 73).

Yet in contrast to Newhard, we should also consider that currently the world has 196 countries, and only 9 of them possess nuclear weapons. We can certainly argue about the degree of hegemony exercised by the United States and other nuclear powers over their non-nuclear peers, but it is simply not true that a modern society needs nuclear weapons in order to avoid invasion or large-scale bombing. Public opinion was stirred when President Trump recently dropped the non-nuclear “MOAB” in Afghanistan, allegedly to attack ISIS forces that routinely claim responsibility for killing civilians. It would be inconceivable that a nuclear power in today’s world could launch a nuclear attack on a free society that had not provoked it.



#### 4. The Source of State Power: A Plea for Nonviolence

I have spent the bulk of this paper writing as an economist describing the likely pattern of market-provided military defense if a “Western” culture from today suddenly became very fastidious about property rights. Most people think it not only just but also essential that an armed invasion be repelled with violence, and this is likely to happen in practice.

However, I personally believe a policy of nonviolence would be better still. In this brief section, I will outline my position. For an analogy, if I were writing a paper explaining how drug legalization would work, and if I knew that 95 percent of the readers were eager to become regular cocaine users, I would mention why I thought that was a bad idea, even though it would be perfectly legal in a free society.

In the first place, I ask the skeptical reader to consider the state of this article thus far. Newhard has claimed that a free society needs the ability to violate the NAP, or else it will fall prey to hostile outsiders who have no such scruples. If I have convinced you that Newhard is wrong, then I likewise ask you to consider the possibility that a free society does not need to use bombs and missiles to avoid falling prey to outsiders using such tools.

Just as libertarians have a literature dealing with the “tough cases” such as traffic signals, communicable diseases, and foreign invasion, so too is there an academic literature on the theory and history of nonviolent resistance, even in the case of military invasion. An excellent overview is Caplan (1994). There are several examples of successful “resistance to power” through nonviolent means, including the early Christian church, Gandhi’s expulsion of the British from India, the American civil rights movement, and the fall of the Soviet Union.

It is true that history records pacifists being slaughtered by states. Yet history also records state-based armies being slaughtered by more powerful rivals. The French relied on conventional military thinking and were conquered by Nazi Germany, yet few people take this historical example to mean that states are incapable of providing military defense.

Return to our hypothetical example of Granite Insurance Co., which stands to lose (say) \$3 billion if a foreign army pillages its clients’ shopping malls. Rather than spending hundreds of millions of dollars amassing a defensive force, it might be cheaper for Granite to cut a deal with the foreign despot. Just as the libertarian literature is quite certain that large-scale war between private defense agencies (whose clients accuse each other of crimes) would be rare because it would be so ridiculously wasteful, by the same token I would expect large-scale war between a state and a free society to also be

unlikely. In other words, anarcho-capitalist readers currently believe that two private armies would almost never go to war with each other (because it is so wasteful and both sides bear the full costs), and that two state-controlled armies frequently go to war with each other (because neither side bears the costs). So should not we expect that a private army and a state-controlled army should only sometimes go to war (because one side does bear the full costs)?

Even in the event of an invasion, consider that the free society could presumably tell the invading troops: “Lay down your arms, and come over to our society. After a suitable vetting period, you will gradually be allowed greater movement in our society, eventually earning ten times your current income.”

As a final consideration, recall these stirring words from La Boétie:

[Y]ou can deliver yourselves [from tyranny] if you try, not by taking action, but merely by willing to be free. Resolve to serve no more, and you are at once freed. I do not ask that you place hands upon the tyrant to topple him over, but simply that you support him no longer; then you will behold him, like a great Colossus whose pedestal has been pulled away, fall of his own weight and break into pieces. (Quoted in Caplan 1994, p. 12)

If we agree that a domestic tyranny can be defeated simply by widespread withdrawal of consent, then how much more easily can a free people repulse attempts by distant foreigners to conquer them? A free society does not need bombs or bullets, but merely the spirit of resistance and the refusal to submit.

## 5. Conclusion

Joseph Newhard (2017) argues that libertarian anarchists will effectively be fighting with one hand tied behind their backs if they insist on extending the NAP to foreign statist. He goes so far as to recommend the development of long-range nuclear weapons and the credible threat to use them against foreign cities.

In contrast, I have argued that it would be impossible for the free society’s legal apparatus to “turn off” the NAP out of pragmatic concerns when it comes to foreign statist (as valid as those concerns might be). If the system were to allow that, then we would no longer have the commitment to property rights and the rule of law that is the whole goal in the first place.

Furthermore, I have argued that this principled stance of a free society would be its strength, not its downfall. When decentralized individuals and

firms make decisions that collectively form the defense of a free society, they will perform better under widespread respect for property rights and the accurate prices such a stance fosters. Both theory and history lead us to conclude that a free society will be far more defensible than a state-controlled analog, and by its very nature may avoid military conflict altogether because peaceful solutions are much more efficient.

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