

THE HUMAN BODY SWORD

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THE HUMAN BODY SHIELD PROBLEM is the following scenario. A criminal, holding your innocent neighbor in front of him, approaches you and begins shooting at you. You can stop him, but only by shooting through your neighbor and killing them both.

The apparent dilemma is that either a libertarian must admit that it is acceptable to aggress against an innocent individual or he must acknowledge a class of unstoppable super-villain against which no libertarian can stand.¹

How do libertarians deal with the problem of human body shields?² The same way they deal with every other ethical choice: by adhering to the non-aggression principle (NAP).

The NAP can be used to determine whether a libertarian may take any particular action. The human body shield case is interesting because it decouples the rights in conflict from responsibility for the conflict. This prevents us from relying on well established, libertarian analysis of two party cases, where one party is responsible for the conflict.

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¹ More on these types of criminals below.

² Several approaches have been tried. Walter E. Block, in “The Human Body Shield,” *J. Libertarian Stud.* (forthcoming), argues that a libertarian may shoot through a human shield. He justifies this with his “negative homesteading” theory. Carl Jakobsson disagreed in “[The Negative Homesteading Theory: Rejoinder to Walter Block on Human Body Shields](#),” *J. Libertarian Stud.* 22 (2010): 99–102. The present paper eschews negative homesteading theory in favor of exploring the consequences of the NAP.

In order to solve the human body shield problem, we must see how the NAP can be used to resolve conflicts between property rights. We must then examine how responsibility relates to the resolution of such conflicts. Thus equipped, we will tackle the human body shield problem and related examples.

I. Conflict Resolution

First, we must understand what the NAP is and implies. The NAP states that aggressive violence is prohibited. The NAP then implies that defensive violence is not prohibited. Therefore, the NAP implies a simple conflict resolution rule: when property rights conflict, antecedent rights prevail.³

In other words, conflicting property rights over invading property are surrendered. For example, normally your neighbor gets to decide how his finger is used, but if he pokes your body with it, then your right to determine how your body is used prevails over his right to determine how his finger is used. His finger was used to initiate the conflict and you would be justified in pushing it away.

Similarly, if your neighbor kicks his ball onto your land, then his right to determine how his ball is used might be in conflict with your right to determine how your land is used. You may not want the ball on your land and he may not want anyone to move his ball.⁴

The conflict resolution rule implies that because the ball was used to initiate the conflict, your conflicting rights in the land prevail over your neighbor's relevant rights in the ball. As a libertarian, you may remove the ball from your property, or leave it where it is, as you see fit. On the other hand, your neighbor would not be justified in going onto your land to retrieve his ball.

³ Murray Rothbard, "War, Peace and the State", *Egalitarianism as a Revolt Against Nature and Other Essays*, p. 116:

The fundamental axiom of libertarian theory is that no one may threaten or commit violence ("aggress") against another man's person or property. Violence may be employed only against the man who commits such violence; that is, only defensively against the aggressive violence of another. In short, no violence may be employed against a non-aggressor. Here is the fundamental rule from which can be deduced the entire corpus of libertarian theory.

⁴ Assume, for each example, that the individuals involved do not prefer others to use their property, i.e., there exists a conflict.

The situation is the same if the wind rolls your neighbor's ball onto your land. The ball is still the invading property, so the conflict of property rights resolves in the same way. Similarly, if a criminal kicks your neighbor's ball onto your land, then your rights over your land would prevail.

If, instead, you kick your neighbor's ball onto your land, then the situation is different. Though the same sets of rights may be in conflict, the way in which the conflict was initiated has changed. In this case, your land is used to initiate the conflict.⁵ Thus, your neighbor would be justified in walking onto your land against your will to retrieve his ball. He could also leave his ball on your land, and you would not be justified in moving it.

Only the rights of the invading property that are in conflict are suppressed.⁶ So, in the first situation you would not be justified in destroying the ball. However, suppose the ball is trapped under a rock, and the only way to remove it is to destroy it. Then your neighbor's right to determine whether the ball is destroyed is also in conflict, and you would be justified in destroying the ball in order to remove it.

Since the rights surrendered are only those in conflict and no others, overriding rights that are not in conflict necessarily creates new conflict. Also, there is no perfect method for determining which property is the invasive one in any conflict. That can only be determined, as Ludwig von Mises says, through understanding.⁷

⁵ If it is not clear why the rights over the land are invasive, consider an equivalent situation. You are floating in space near your neighbor and his piggy bank. Nearby is your gold coin. Your neighbor pushes you and the piggy bank towards the coin. From your perspective, your neighbor floats away and the coin floats into the piggy bank. Yet we understand that the piggy bank has actually surrounded the coin and was used to initiate the conflict.

⁶ Murray N. Rothbard, *The Ethics of Liberty* (1998), p. 80:

I propose another fundamental rule regarding crime: the criminal, or invader, loses his own right *to the extent* that he has deprived another man of his. If a man deprives another man of some of his self-ownership or its extension in physical property, to that extent does he lose his own rights.

⁷ Ludwig von Mises, *Human Action* (Scholar's Edition, 1998), p. 56:

The historian can enumerate all the factors which cooperated in bringing about a known effect and all the factors which worked against them and may have resulted in delaying and mitigating the final outcome. But he cannot coordinate, except by understanding, the various causative factors in a quantitative way to the effects produced. He cannot, except by understanding, assign to each of *n* factors its role in producing the effect *P*. Understanding is in the realm of history the equivalent, as it were, of quantitative analysis and measurement.

II. Responsibility

Responsibility means that an individual is an ultimate cause of some state of affairs, which for our purposes means a conflict between property rights. Responsibility is determined by tracing a chain of causality from any conflict to the ultimately responsible parties, those who violated the NAP.⁸ It is not ownership, but actual control of property that determines responsibility. So, while aggression leads to the surrender of rights, it also leads to the accrual of responsibility via the illicit control of another individual's property.

For example, when your neighbor kicks his ball onto your land, he has violated the NAP. His ball is in conflict with your land. His body caused the ball to go onto your land. He caused his body to kick the ball. The chain of control brands him with responsibility. He is the ultimate cause of the conflict.

When a criminal kicks your neighbor's ball onto your land, the proximate cause of the conflict is the ball. Yet, it is clear that the ultimate cause is the criminal. Even if the criminal used a stick to push your neighbor's ball onto your land, causation can still be traced back to him.

When the criminal kicks your neighbor's ball onto your land, is your neighbor responsible in some way for the violation of your rights because he owns the ball? No. Just because he had the right to control the ball does not mean that he in fact had any control over it. In this case, the criminal has assumed full responsibility by exercising unilateral control over the offending property.

Note that, in this case, your neighbor is completely innocent of any wrongdoing. Yet, his property rights are still superseded by your property rights because his were the invasive ones. The term innocent applies to an individual who is not ultimately responsible for a conflict, but we see that innocence does not necessarily shield his property rights when they are in conflict.⁹

⁸ Murray N. Rothbard, "Law, Property Rights, and Air Pollution", *Cato Journal* 2, no. 1 (Spring 1982) p. 65:

From a libertarian point of view, then, proper procedure calls for rational proof about the guilt or innocence of persons charged with tort or crime. Evidence must be probative in demonstrating a strict causal chain of acts of invasion of person or property.

⁹ Of course, innocence will be relevant when pursuing justice.

III. Examples

Consider the following situation. A criminal steals your neighbor's sword and attacks you with it. You can defend yourself, but in doing so you will necessarily damage the sword. As a libertarian, can you do so?

Your neighbor's right to determine whether or not you damage the sword is in conflict with your right to determine whether or not the sword damages your body. As the sword is being used to initiate the conflict, your right prevails. You would be justified in defending your body against the sword, even though you will damage the sword in the process.¹⁰

Now suppose that instead of swinging a stolen sword, the criminal picks up your neighbor by the legs and swings your neighbor at you. You can protect yourself, but in doing so you will necessarily damage his body.

It should be clear that your neighbor's body is his property just like his sword, so the NAP leads to the same resolution as the previous case. Your neighbor has the right to determine whether or not you damage his body and you have the right to determine whether or not his body damages your body. These rights are in conflict, but his body was used to initiate the conflict, so your right prevails.¹¹

It is important to recognize that even though your neighbor bears no responsibility for the aggression against you, it does not prevent his property rights from being suppressed when his property is used for aggressive purposes.

The situation is superficially different if, instead of attacking you with stolen property, the criminal instead shields himself with stolen property. For example, say the criminal wraps himself in your neighbor's quilt, approaches you and then begins shooting at you. As you take cover and draw your sidearm, your neighbor yells, "Don't shoot my quilt!" As a libertarian, must you respect the preference of your neighbor? Will stolen cars and tuxedos become the bane of libertarian police forces?

We can unravel the situation by determining which property rights are in conflict.

¹⁰ What matters is not the damage per se, but that your neighbor prefers not to have his sword damaged.

¹¹ Now, if the swinging is already in progress and you walk in the way, then you are the aggressor. Your neighbor has already homesteaded the space that he is swinging through and would be justified in attacking you to defend himself.

Your right to determine whether or not the criminal shoots you is in conflict with the criminal's right to determine whether or not you shoot him (among other rights). As the criminal is the aggressor, the criminal's right to determine whether or not you shoot him is suppressed when he attacks you. The same goes for his right to determine whether his shirt, pants, etc. are shot.

In addition, your right to determine whether or not you are shot is in conflict with your neighbor's right to determine whether or not his quilt is shot. Which right prevails? The aggressor brought the quilt into this situation, so it is apparent that your neighbor's right is the invasive one. Conflicting rights in the quilt must yield in favor of your rights.

As a libertarian, can your neighbor try to defend his quilt by attacking you? Suppose that his right to determine whether you shoot his quilt is in conflict with your right to determine whether your neighbor attacks you. Again, because the quilt is the invading property, your right prevails. He would not be justified in attacking you to save his quilt, even though he is not responsible for bringing the quilt into the situation. This is consistent with the previous analysis.

From the perspective of the NAP, there is no difference between a quilt and a human body. Violating property rights over either is forbidden. So, the human body shield problem must resolve in the same manner.

An equivalent situation would be if the attacking criminal had connected a device to your neighbor that would kill him if the criminal were to die. If you defend yourself against the criminal, then your neighbor will suffer. Yet, as in the previous case, your rights are antecedent to those of your neighbor. The aggressor brought his property into conflict. The violation of your neighbor's property rights occurs when the criminal connects the device to him, and when the criminal attacks you, not when you kill the criminal. Furthermore, your neighbor would not be justified in attacking you to try and prevent you from killing the criminal.

On the other hand, say that the criminal attacks you while your neighbor watches from his land. In this case, none of your neighbor's rights are in conflict with your rights. You would not be justified if you hurt your neighbor in the process of defending yourself from the criminal.¹²

¹² Murray Rothbard, "War, Peace and the State":

To be more concrete, if Jones finds that his property is being stolen by Smith, he has the right to repel him and try to catch him; but he has *no* right to repel him by bombing a building and murdering innocent people or to catch him by

Similarly, if the criminal said, “Kill your neighbor or I will kill you,” then the only conflict is between you and the criminal. Forcing your neighbor into the situation would be a violation of his rights and the NAP.

One final case that should be examined is the following. Suppose a vandal is about to mix your blue paint with your neighbor’s yellow paint, and the only way you can stop him is to spill your neighbor’s paint. Your right to determine if your neighbor’s paint is mixed with your paint is in conflict with your neighbor’s right to determine if his paint is spilled. In this case, the invasive action is the mixing of the two paints. The defensive action is the spilling of your neighbor’s paint. Thus, you would be justified in spilling his paint.

What makes this situation interesting is that it is symmetric, so your neighbor would also be justified in spilling your paint. We see that two properties can be in conflict with each other with certain rights yielding on both sides. Yet, individual conflicts can still be resolved by examining the particular rights in conflict.

Conclusion

The NAP implies a conflict resolution rule based on property rights and invasion thereof. It distinguishes between aggressive violence and defensive violence by giving precedence to defensive property rights. This simple rule allows libertarians to untangle seemingly difficult ethical questions by simply examining precisely which property rights are in conflict in any given situation.