

## REJOINDER TO BORER ON THE NAP

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### Introduction

I AM HONORED BY THE PUBLICATION of Borer (2010). I welcome the publication of this essay, and thank this author for singling out my contributions to libertarian theory for comment. I am grateful to him, too, for this reply gives me the opportunity to delve deeper into the issues covered in Block (2009A, 2010). In the present rejoinder, I shall follow the pattern established by Hazlitt (2007) in his response to Keynes (1936): liberally quoting from Borer (2010), and then subjecting his views to criticism. For, despite my appreciation of this author's important contribution, I cannot say that I agree with most of it.

### The Non Aggression Principle

Borer (2010, 2) starts off on a high note, correctly defining the libertarian Non Aggression Principle (NAP) as follows: "The NAP states that property should be used in accordance with the owner's preferences." But then he (2010, p. 3, fn. 8) offers this challenge: "It cannot even be said that a 50% income tax is better than a 100% income tax from the perspective of the NAP. An individual might prefer to lose all of his money to better illustrate that the State is an evil institution."

In my view, in contrast, this most certainly can "be said." At least, there is the *presumption* that this is true. Yes, the presumption can sometimes be over ruled, if we adopt a God's eye view of full knowledge, but, back in the ordinary world, it would seem clear that a 100% tax is more of a violation than one pegged at 50%. Which is a greater violation of the NAP to be punched in the nose one or twice? It seems clear that the former is the lesser

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infringement. However, suppose the “victim” is a masochist, and secretly wishes to be punched many, many times. Then, of course, the presumption would be defeated. But, the law must be objective. It cannot levy greater punishments upon what are objectively lesser (one punch, in our case) transgressions. Surely, in the libertarian legal code, the penalty for murder must be far harsher than for shoplifting minor items. Yet, this too can be “defeated” by the “logic” employed by Borer. For suppose that the murder victim wanted to commit suicide, but lacked the courage to do so. Then, the ostensible “murderer” was actually a benefactor, and ought not to be punished at all. Then, one could say, with Borer “It cannot even be said that (shoplifting) is better than (murder) from the perspective of the NAP.” No, no, no, from the perspective of the libertarian NAP, murder is worse than shoplifting. It justifies a far harsher recompense. Period.

### **That Coke machine**

One of the greatest challenges to libertarian theory took place in the movie “Dr. Strangelove.” There, in order to save the world it was required for the actors to shoot a Coca Cola machine (don’t ask; see the movie: apart from this one scene it promotes libertarianism). We need not delve, Borer-like, into whether the owner of this dispensary would have, should have, might have, given permission for it to be shot. Instead, we posit, he would not have agreed to any such thing. Thus, our quandary in the movie, watched by millions of people, is a stark one: the NAP versus the survival of the entire human species. As carefully as I read his text on this, and I have read it more than several times, I am unable to discern Borer’s (2010, 3) take on the matter. Which will he jettison: the NAP or all persons on earth? However, in his footnote #13, he is crystal clear: “Once it is conceded that it is acceptable to violate the NAP, there is no logical limit to the violence that can be justified. The libertarian position is indefensible without it.” Well, I for one am not willing to so cavalierly jettison mankind. Some of its members are good friends of mine.

So, I concoct a theory out of the whole cloth: a reinterpretation of the NAP. Here, it does not mean so much that the initiation of violence against person (the recalcitrant machine owner) or property (his coke dispenser) is forbidden; rather, we interpret libertarianism as a punishment theory: what happens to people who push around or even kill property owners, and violate the integrity of their property (in order to save the entire human race, in this case). To put this in other words, I am striving mightily for us libertarians to have our cake, and eat it too. I want to defend at least *some* version of the NAP (the punishment version of it, it turns out), while not giving in to the

scenario where all human beings perish. Borer to the contrary notwithstanding, I see no reason to withdraw this attempt of mine.

I do so in the teeth of objections from, among other people Caplan (2010), who states:

My take: *All* absolute moral theories (except trivial theories like “Always do the right thing”) are vulnerable to [devastating counter-examples](#). Block himself quickly admits his punishment theory crumbles before a revised version of his Martian hypothetical.<sup>1</sup> So instead of adding his weird [epicycle](#) onto libertarian absolutism, why doesn’t Block just switch to my common-sense position that libertarianism is only a [presumption](#)?

The problem with presumptions is that they can be over ridden (see above). It is easy to see the case for over riding libertarianism when the lives of all of us are at stake. But, there is such a thing as a slippery slope. How about the entire human race minus one? Minus two? You see where we are going with this. Eventually, we violate the NAP for a whole host of “good” causes, and then libertarianism is no more. Finished, ended, kaput. No, if we are to cleave to one true philosophy in political economy, we must avoid the Caplan Scylla of “libertarianism is a mere presumption,” and, also, the Borer Carbides of “Let us save the NAP even if, literally, the entire heavens fall.” They don’t call me Walter Moderate Block for nothing.

### Libertarian Entrepreneurship?

Borer (2010, 4–6) then ties in the Austrian notion of uncertainty and hence, entrepreneurship, with the NAP. He offers a series of intriguing cases where the actor cannot be sure as to whether or not his choices are compatible, or not, with the NAP. I must say that I am of two minds on this initiative of Borer’s. On the one hand, it is unique in the literature, and very valuable on that score, alone. Then, it evidences great love for the subject; also creativity and intellectual brilliance. On the other hand, I cannot say that I am entirely sympathetic with this venture. It seems to me to be a proper subject matter for what might be called “advanced libertarian theory.” Yet, here we are, still down in the trenches, or, on the very bottom steps of what might be characterized as “introductory libertarian theory.” To wit, this author and I cannot even agree as to whether a 100% tax is a greater affront to libertarianism than is a 50% tax. My own preferred methodology in these matters is to entirely assume away all such uncertainty. I adopt, instead, *arguendo*, the assumption that the facts of the matter are not at all in dispute.

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<sup>1</sup> A word of explanation: here, the Martians are about to kill off all of us earthlings unless we kill one innocent one amongst us.

Then, it is far simpler to work our way out of the morass of challenges to libertarian theory. My point is, it is difficult enough to correctly apply libertarian theory to Coke machines, threats from the Martians, etc. To have to further complicate matters by resorting to uncertainty in these matters, while presenting a great intellectual challenge, to be sure, prevents us, likely, from attaining closure with regard to these already very complex issues.

### Government policy

Borer (2010, 7–9) raises some important questions in this section of his paper. He starts off as follows:

Government tends to compensate for its incompetence by applying the same policy to groups of individuals. Therefore, if you affect a government policy, the government will then change the way in which it coerces other individuals. How can you determine when such efforts violate the NAP? This is the same as trying to discern when you share responsibility for the criminal act of another individual. Since human interaction is a complex phenomenon, it can be difficult to determine whether your influence on the policy was a proximate or ultimate cause of any victim's misfortune.... We can put two conditions on whether influencing a government policy violates the NAP. First, the new policy must lead to greater rights violations for some victim. Second, the association between you and the victim must be voluntary on your part.

Borer (2010, 7–8) offers five cases to illustrate the principles he proposes. I confine myself to the first three of these.

First, if you are the only victim, then whatever policy you support, you cannot violate anyone's rights. You are merely choosing between two types of coercion for yourself, and the NAP leaves that decision up to you.

But this claim is subject to difficulties. Suppose Obama comes up with a new law: The death penalty will be imposed on all Jewish atheist Austro libertarians who are 69 years old, 5'8" tall, weighing 170 pounds, with a Ph.D. in economics from Columbia University in 1972, continuing to specify characteristics so as to apply only to me. First problem, for a skeptic like Borer who stresses Lachmanite (Lachmann, 1976A, 1976B, 1977A, 1977B, 1978) uncertainty and that "entrepreneurship" underlies all libertarian analysis,<sup>2</sup> we can never be absolutely *sure* that this applies only to me no matter *how* many specifications are offered. Therefore, it is uncertain whether,

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<sup>2</sup>For a better analysis of the relationship between libertarianism and entrepreneurship, see Smith (1979).

if and how Borer's principles can be applied to this case. Second, and more serious, this policy of executing me will cost *money*; given that there is a government, these funds will have been stolen from many people. Therefore, it would be necessarily illicit for the government to execute me *even if I were willing* to be put to death, and by them, specifically. The *only* case where Borer's principles would be applicable would be where the government levied a special tax on me personally, and then used the money to kill all persons described above (that is, me and only me), who had agreed to be done in by them. As such this insight amounts to little more than the tautology, albeit a welcome one to libertarians, that all completely voluntary actions are licit. But wait; I go too fast. We are all anarchists here. As such we maintain that the state is entirely illegitimate. Therefore, *any* act it undertakes is an improper one, given its financing, prohibition against legitimate competition, etc. And, this certainly includes the government that executes me, even if I am willing to die, and have voluntarily agreed to pay a special tax to defray the costs of my killing.<sup>3</sup> So much for this first example.

Here is our author's (Borer, 2010, 8) second case: "... if your neighbor is the only victim, then you can support whatever policy he prefers. This, by definition, would not violate his rights. However, advocating a different policy would force your preference over his on how his property is used. This would violate the NAP.

But suppose the neighbor is victimized by the drug law. He has heroin in his house, and is about to be arrested for that act. And, further, posit, that he *prefers* to be arrested for this "crime." It is not clear that if you "support whatever policy he prefers" you will end up on the right side of the NAP. Rather, to the contrary, it would appear that support for the NAP implies *opposition* to this arrest, no matter how much the neighbor yearns for such an eventuality. Apart from the fact that this drug bust of your neighbor will cost money,<sup>4</sup> drug prohibition is a paradigm case of a law incompatible with libertarianism. It is not at all clear why it is contrary to libertarianism to "force (my) preference over his on how his property is used" when what my preference consists of is that this miscreant not be allowed to utilize the apparatus of the state for his weird preferences (to be arrested for drug possession).

On to the next example (Borer, 2010, 8):

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<sup>3</sup>Of course, if this is *all* the entity does that executes me (namely, collect money from only me, on a voluntary basis, and then kills me with my permission), it would not be a government at all. We are now discussing, however, a *government* that, in addition to all the evil it perpetrates, engages in this one act, also, which as it happens does not violate libertarian principle, as Borer insightfully appreciates.

<sup>4</sup>See my objections to Borer's first example, immediately above.

Third, if there are many victims, but you are not one of them, then, in the same way as the previous case, you could support any policy that all of the victims would prefer. The trouble is that now you are in the position of a bureaucrat. Every victim will likely have a slightly different preference. It will be impossible for you to choose a policy for them, even if you know what each one wants

Utilizing Borer's criteria, he is exactly correct in this assessment. The problem here is that he has rendered libertarianism impotent. He has emasculated this very vibrant theory. It is now impossible to make *any* definitive statements about pretty much *anything*. For example, consider these before-Borer paradigmatic libertarian statements:

It is anti libertarian to pass a law stating that the first born of every family should be put to death. The minimum wage law, rent control, compulsory affirmative action and tariffs are all contrary to the NAP.

On traditional accounts of libertarianism, these are all non-debatable claims. No serious libertarian would object. Even libertarian fellow travelers such as Milton Friedman or Friedrich Hayek would presumably support them. But, on Borer's account, all such conclusions would be fraught with uncertainty. As he himself correctly sees, "Every victim will likely have a slightly different preference. It will be impossible for you to choose a policy for them." No, this is not libertarianism. This is the abnegation of liberty.

Borer's (2010, 9) radical Lachmannite skepticism continues to prevail when he addresses this very important question: "Does the NAP prohibit you from taking government benefits?<sup>5</sup> Need you resign yourself to death in your apartment for fear that using government roads will bring violence to others?"

But, his answer is unsatisfactory:

In this case, the State has created the conflict between your rights and those of others, so your association with any tax victims is involuntary. Therefore using roads does not necessarily violate the NAP. The "complex, measured" view of the use of government benefits is described by Rothbard<sup>6</sup> and shows that it can be compatible with the NAP.

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<sup>5</sup>I answer this question with a definitive "no" here: Block, 1972, 2002, 2004, 2006, 2007, 2009B, 2009C, Block and Arakaky, 2008, Block and Barnett, 2008, D'Amico and Block, 2007.

<sup>6</sup>At this point Borer (2010, 9, fn. 21) cites Rothbard (1987) seemingly in support of the position he adopts. I, however, do not see how this footnote supports, or is even relevant, to the point made in the text.

First of all, it is unclear to me how, at least under libertarianism, there can be any such thing as a conflict in rights. Surely, if there is a seeming conflict, the NAP can be brought to bear to sort it out. Second (emphasis added), “using roads does not *necessarily* violate the NAP”? This logically implies that *sometimes*, using roads *does* violate the NAP. I am tempted to ask for clarification; my fear, though, is that Borer will claim that this depends upon the desires and preferences of various people with regard to road use. Whereas, in contrast, a true libertarian analysis would place *rights* front and center, and maintain that, at least, all non ruling class members have a right to use statist roads.

### Block’s Examples

It is more than passing curious that in an article ostensibly dedicated to refuting my own views (Borer, 2010, does entitle his essay “Risking Aggression: Reply to Block”) it is not until his section IV. “Block’s examples”<sup>7</sup> that this author reaches the subject he is supposedly addressing. But, in this section, at least it can be said the he more than defends himself against possible charges of intellectual fraud (well, title mis-labeling).

Borer (2010, 9, material in parentheses added by present author) begins this section of his paper by first weighing in on the Laffer question, regarding “... a man (who) must choose between a higher tax rate and greater oppression from increased tax revenue.”<sup>8,9</sup>

Say what you will about this author, he sticks to his guns: “it is a choice between two types of coercion. The NAP implies that taxes and State funding are bad per se. However, the NAP does not imply that any particular combination of the two is better or worse. Individuals must decide on their own which choice they prefer. Libertarians who will be victimized by a government policy may oppose it without violating the NAP. Libertarians

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<sup>7</sup>Found on page 9 in a publication of only 13 pages.

<sup>8</sup>Bless Borer for seeing matters this way; for appreciating that increased tax revenue is tantamount to “greater oppression.” He is a magnificent libertarian theorist, right here at this point. But, this crucial insight is inconsistent with the remainder of his article, wherein he adopts the “you can never know anything about how to apply the NAP” philosophy. How does the Borer who wrote the rest of this essay (Borer, 2010), *know for sure* that there is “greater oppression from increased tax revenue”? Maybe, probably, no, certainly, there will be *some* people, nay, a *majority* of them, who will *welcome* more revenue in the hands of the politicians and bureaucrats. If so, the Borer who wrote this very provocative article cannot at all conclude that there is “greater oppression from increased tax revenue.”

<sup>9</sup>For an Austro libertarian analysis of the Laffer curve see Barnett and Block, 2005.

who exist outside the State matrix can only support victim-unanimous policies and policies of non-aggression.”

I find this answer most unsatisfactory. Leaving it up to “Individuals (to) decide on their own which choice they prefer” indeed. It precludes libertarians from answering *any* such question. For example, eliminating rent control promotes private property rights, and thus must be favored by libertarians, but also has the unsavory effect of adding to government coffers.<sup>10</sup> What of the prohibition of drugs? Ending the drug war is yet another paradigm case of implementing libertarianism. However, it cannot be denied, the state will then tax these substances, and thus be enabled to commit more mischief with the additional funds it garners from this source.

But, wait. Suppose the state apparatus uses the additional money it will mulct from the citizenry, subsequent to a repeal of rent control or drug prohibition, to do really bad things. Say, bomb the entire world into smithereens, as, unfortunately, all too often, appears to be its wont. Should libertarians then, horrors!, favor the retention of rent control or drug prohibition? My answer is, Not a bit of it. In any realistic scenario, the government is not going to move toward free enterprise with regard to rental housing or addictive substances as a means of carrying out their nefarious and evil plans of breaking up the planet. If they are going to bomb, they are going to bomb, and they will not rely upon freeing up the economy to do so. In any case, the likelihood is that if they implement private property rights and economic freedom, there will be *less* of a probability that they will engage in initiatory aggression.<sup>11</sup> Borer (2010, 10) quite properly warns of the “the

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<sup>10</sup>At constant tax rates, the greater real estate values consequent to a repeal of this pernicious legislation will increase their booty.

<sup>11</sup>Yes, yes, but, but, just suppose, *suppose*, that *all* that is standing in the way of the mad bomber government and their horrendous goal of the destruction of the earth is *just* that extra amount of money that will be forthcoming to them if real estate values rise, subsequent to a repeal of rent controls, or, if they can tax a now legalized cocaine, heroin, etc. My response to this is the same to the question of repealing the draft (good on anti slavery libertarian grounds) during the Viet Nam war (but bad on libertarian grounds in that it would enable the U.S. to more efficiently pursue its imperialist policy—see Block, forthcoming). The proper answer is to oppose *both* the draft and this war. My answer to the rent control/drug challenge is to favor the repeal of these laws *and* to oppose the scorching of the earth. But, but, my critic will say: that is no answer. *Given* that rent control/drug repeal logically implies the end of the earth, *stipulate* that repeal of the draft means more innocent killed abroad, namely, it is a *package deal* and we do not get to pick one or the other, what is your choice then? My answer is to *reduce* the violations of the NAP as much as possible, the views of other people, a la Borer, be damned. Since in my judgment, the end of the earth and all of its peoples is a far greater rights violation than continuing present drug/rent control policies, my claim is that the libertarian position is, paradoxically, to retain prohibitions of free market rents and drug sales. Since, in my

risk of attempting to direct the affairs of others.” But, repealing rent control or the drug war is the exact *opposite* of “direct(ing) the affairs of others.” If libertarians cannot take and defend a definitive position on issues such as rent control or the drug war, it ceases, forthwith, to be a distinct coherent political economic philosophy.

As to tax rates and tax revenues, the obvious libertarian answer is to *lower* the former. Yes, if we are on the upper section of the Laffer curve, this implies enhancement of government wealth, something, surely, to be greatly regretted. But any movement downward is, at least in the direction of the libertarian goal, zero tax rates, and zero government revenues. In contrast, Borer’s (2010, 9) take on this issue is a travesty of libertarianism:

So, if an individual blocks a desired tax reduction but is also a tax victim, then he has not violated the NAP. He may get a parade from those who agreed with him, but no libertarians will seek to punish him. If he is not a tax victim, and there is only one tax victim, then he will get a parade if the victim agrees with his decision, or punishment if the victim disagrees, not both. If there are many taxes victims, but he is not among them, then he will likely help to impose a policy that some victims will agree with and other victims will disagree with. Then he will get approbation from those victims who preferred his choice and indictment from the other victims. This is the way in which he can be both paraded and punished. If he is a libertarian, he will welcome his punishment, but curse his foolish hubris.

To the question, should tax rates be reduced, Borer (2010, 10) answers, it should “depend on the circumstances.” Indeed, he answers *every* question—whether to do with the draft, rent control, drug prohibition—in exactly the same manner. For taxes, his (2010, 11) answer is: “Most libertarians would probably agree that a 1% sales tax is a preferable crime to a 50% income tax. However, the NAP does not prescribe supporting one or the other. It leaves that choice up to the individual.” That seems like no answer at all to me.

Our author concludes his intriguing paper by answering a whole host of other interesting and crucially important questions—the “Martian” threat, shooting the Coke machine, pushing someone “out of the path of an onrushing truck,” returning the owner’s gun to him while he is “in a drunken

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assessment, the Viet Nam war was a worse rights violation than the U.S. draft, I would, reluctantly of course, favor the retention of the draft. At least, this is an attempt to forthrightly address these very vexing issues. Not for me to hide behind the notion of “the NAP does not imply that any particular combination of the two is better or worse.” If the NAP makes no such implication, in either direction, it is pretty much valueless as an indication of what is righteous; of what is libertarian.

rage,” not allowing a would-be suicide to jump off a bridge—in precisely the same manner. Namely, it all depends. Borer is nothing if not consistent. But, his answers are not consistently libertarian. They are not libertarian at all.

In my (libertarian) view in sharp contrast, let a hero kill the innocent person to keep the Martians off our backs, but then this savior must himself be put to death, after he is thanked. Similarly, shoot the bloody Coke machine to save the world, by all means, but, stand ready to compensate its owner. Yes, push the person out of the path of the truck, but, be willing to pay this person if you break his rib, and he insists. No, don’t return the gun until the owner sobers up, but acquiesce when he demands payment for (temporarily, and with no mens reas, stealing his property). By all means heroically grab up the suicide victim, but then do not object if he requires compensation for your temporary kidnapping of him. In that way we remain true to the NAP, and do not suffer from being wildly out of sync with utilitarian considerations, to say nothing of common sense. We can, as libertarians, make definitive statements about these sorts of challenges, without knowing, or, indeed, caring, about the views of other people.

Borer’s (2010, 11) philosophy allows him to make very dramatic statements: “From the perspective of the NAP, the choice between shooting a Coke machine and the end of the world is equivalent to a choice between torturing an innocent person or having your flower garden trampled.” These are denied to the libertarian, but, we can well do without them.

In one instance, Borer (2010, 11) is clearly at variance from the libertarian view, and not because of his radical skepticism. He asks: “Could someone who pushes another individual out of the path of an onrushing truck be both a hero and a criminal. If the push was non-consensual, say A was filming a movie stunt, then B has violated the NAP.” In my view, in this case the movie company would be responsible for the NAP violation, not the person who mistakenly, but without mens rea, pushes the actor out of the way of the truck. It is incumbent on the thespians to give notice that filming is taking place, and there is no real danger from the truck (Smith, 1979). If they fail to do so, they should not complain about would-be rescuers pushing their actors out of “danger.”

In the view of Borer (2010, 12): there would be “.... so many parades on the schedule...” Not at all, at least if this author is now discussing reality, as opposed to made up examples used to embarrass libertarian theory (shooting the coke machine, the Martians threatening that unless we kill an innocent earthling, they blow us all to smithereens), or actual real world examples contrived to reject libertarianism (the suicide jumping off the

bridge).<sup>12</sup> In the fully libertarian society, these episodes would be as rare as hen's teeth.<sup>13</sup> For example, under free enterprise, the bridge would be privately owned, as would the entire river below it. Presumably, these property owners would look askance at people plunging to their deaths on their terrain. Thus, it would *not* constitute an enslavement to grab up the person attempting suicide, which would have the salutary effect of (temporarily) preventing his death, at least via this means. For, he would be a trespasser, and could not properly object<sup>14</sup> to being manhandled, off to safety as would be the case.

## Conclusion

There are grave problems with Borer (2010) if it is intended to be an explication of the libertarian philosophy. It constitutes a recipe for reducing, eliminating, libertarian clarity; for emasculating this philosophy. It consists of super know nothingness; ultra skepticism. It not only opens the flood gates for relativism; it is already completely relativistic. Justice depends upon whether the decision maker is affected or not; upon what victims think. They will always disagree. Take Borer (2010) seriously, and we suffer the death knell of libertarianism.

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<sup>12</sup> See on this Friedman (1991). For rejoinders to Friedman (1991), see Kinsella (2009) and Block (unpublished).

<sup>13</sup>The Nazi threat to Jews (pick one of your number to be executed, and we leave the rest of you in peace) actually occurred, but would not have, in the fully libertarian society. In the fully libertarian society there would be no U.S. imperialism, such as our entry into World War I. (We would be limited to fighting *defensive* wars, against people who actually attacked or threatened to attack *us*. This did not at all apply in World War I. Rather, we entered since we held more British bonds than German ones—see Rothbard, 1972, 1989). Involving ourselves in this war lead to a clear victory for the Allied side (without U.S. participation, it is unlikely that that war, between very evenly matched sides, would have eventuated in anything but a draw), which lead to the Treaty of Versailles—very punitive to the Germans, which helped bring about the hyper inflation of 1923, which lead to the rise of Hitler and the National Socialists, which lead to our case in point.

<sup>14</sup>See Kinsella (1992) for the point that such a suicide is "estopped" from making any such objection.

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