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RUNAWAY CHILDREN AND STARVATION

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Abstract

In this paper, we argue that Rothbard's version of the non-aggression principle, in conjunction with his account of self-ownership, is flawed. He interprets several acts that should be considered legal as criminal. First, he allows a three-year child to run away from his non-abusive parents and criminalizes the latter if they forcibly prevent this. Second, this author prohibits parents from forcing their two-year-old child to eat and drink, or have his diaper changed, when the baby refuses. We do not at all oppose the non-aggression principle. On the contrary, we reject Rothbard's interpretation of it when he applies it to children. Our main criticism is that this author is contradictory with regards to the legal status of the relationship children/parents. First, he argues that parents, despite several limitations, own their children. Second, he states that children are self-owners. If this is the case, every aggression against them should be considered a criminal act. However, since parents stand in a special legal relationship with their children, certain forms of aggression committed by them are legally permissible and, in certain cases, compulsory.

Keywords: *Libertarianism; the non-aggression principle; children's rights; parental rights; homesteading*

1 INTRODUCTION

We acknowledge Rothbard as one of the pre-eminent libertarian theoreticians. It is not for nothing that he is commonly referred to as "Mr. Libertarian." At the very core of this philosophy is the NAP, which he has done more than any other scholar to develop. We think he applies this insight brilliantly to many different and difficult issues. However, when it comes to children and their rights, and the rights of their parents or guardians, we think him in error. In section II of this paper, we begin with some comments on the NAP and self-ownership. Section III is devoted to our claim that regarding the legal status of children Rothbard contradicts himself. The focus of section IV is on runaway children. May guardians prevent underage tots from starving themselves? We answer strongly in the positive on this matter in section V. Section VI is our conclusion.

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2 SOME COMMENTS ON THE NAP AND SELF-OWNERSHIP

Murray Rothbard is widely and appropriately credited with the formulation of the definitive version of the principle of non-aggression: "The libertarian creed rests upon one central axiom: that no man or group of men may aggress against the person or property of anyone else." (Rothbard, 1973, p. 27) Aggression is understood as "the initiation of the use or threat of physical violence against the person or property of anyone else." (Rothbard, 1973, p. 27) Therefore, according to Rothbard, a criminal "is anyone who initiates violence against another man and his property" (Rothbard, 1973, p. 51).

Rothbard's version of the principle of non-aggression appears to be without exception or absolute[1]. In other words, it seems to us that he thinks aggressing against an innocent individual is a legal wrong regardless of the person, the time and/or the circumstances[2]. This passage, referring to self-ownership, appears to confirm our hypothesis: "The right to self-ownership asserts the absolute right of each man, by virtue of his (or her) being a human being, to 'own' his or her own body; that is, to control that body free of coercive interference." (Rothbard, 1973, p. 34) [3] If everyone has an absolute right to the control and ownership of his own body, then undesired aggression is legally wrong everywhere, every time and against every person.

3 THE LEGAL STATUS OF CHILDREN: ROTHBARD'S CONTRADICTION

Are children self-owners? What is the legal nature of the relationship with their caretakers? According to Rothbard, parents are the legitimate owners of their children, having created them (Rothbard, 1998, p. 100): "Suppose now that the baby has been born. So, what? First, we may say that the parents – or rather the mother, who is the only certain and visible parent – as the creators of its baby become its owners. A newborn baby cannot be an existent self-owner in any sense." However, he thinks that their ownership *is justified* albeit limited in time and in kind. There are actions that parents cannot legitimately do with their children, e.g., torturing or murdering them (Rothbard, 1998, p. 100). As Rothbard put it, "the parental ownership is not absolute but of a "trustee" or guardianship kind*."* (Rothbard, 1998, p. 100) However, later, strangely enough, Rothbard goes on to argue that children are self-owners: *"*every baby … possesses the right of self-ownership by virtue of being a separate entity and a potential adult*."* (Rothbard, 1998, p. 100) Therefore, in virtue of self-ownership, children are protected from every form of aggression.

Rothbard, first argues that parents own, despite several restrictions, their children. Later, however, he states that children are self-owners. By Rothbard's definition, then, if children are self-owners, then they have the absolute legal right[4] not to be aggressed against. Since every right implies a correlative duty, the others, including their parents, have the duty not to aggress against them[5]. In a nutshell, Rothbard arrives at two different conclusions on two different occasions:

1. Parents own, although with several restrictions, their children
2. Children own themselves

1 and 2 are contradictory. In fact, it is self-evident that children's self-ownership, at least following Rothbard's definition of absolute self-ownership, is incompatible with parental guardianship.

One way to reconcile 1 with 2 would be to simply follow our intuitions. As far as the legal relationship between children and parents is concerned, common sense tells us, in Block's (et al) words, that "some degree of aggression is unavoidable. And not only unavoidable but also justified. Young children are unable to care for themselves. Caretakers must necessarily exercise a certain

[1] For versions of the principle of non-aggression supportive of Rothbard's, see: Hoppe (1989, 1993) and Kinsella (1992).

[2] In other words, a right is absolute if and only if is "conclusively valid without any exceptions". See Gewirth (1981).

[3] See also (Rothbard, 1998, p. 60)

[4] Rights are understood as claims against others. See Feinberg (1970) and Hohfeld (1913, 1917).

[5] For an exposition and/or a defence of the thesis of the correlativity of rights and duties, see Feinberg (1966); Hohfeld (1913, 1917), Lyons (1970), Ross (1930, pp. 48-56), and Wenar (2005).

amount of 'aggression' for the child's benefit: carrying, feeding, and nurturing the child without his consent." (Block, Smith & Reel, 2014)[6] If some degree of coercion is acceptable and intuitively plausible, then children's self-ownership is *not* absolute. In other words, we can reconcile 1 with 2 by saying that children are not self-owners *tout court*. Parents, as caretakers, stand in a *special relationship* with them[7]. They have the right to violate their children's self-ownership to care for them. Our argument has the form of a *modus tollens*:

1. If children are absolute self-owners, then their caretakers cannot aggress them.
2. However, a certain degree of aggression from their caretakers is legitimate.
3. Therefore, children are not absolute self-owners.

The point is, a guardian is supposed to, wait for it, *guard.* But good guardianship means, pre-eminently that the custodian acts within the child's best interest, whether or not the latter agrees. The ward would not be a ward if he could properly take care of himself. But the four-year-old child is not yet mature enough for that. If he wants to "play in traffic" the guardian well within his rights to prohibit such a dangerous activity. If he did not, then he would be renouncing his responsibility. He would be guilty of child abuse by omission.

4 RUNAWAY CHILDREN

Suppose that a three-year child wants to eat an entire bag of marshmallows and his parents, worried about his health, prevent him from doing so. The child, then, decides to run away from home. According to Rothbard, this spoiled child is a self-owner. Accordingly, if his parents try to prevent him from running away, or, failing that, attempted to take him back against his will, they would be aggressing against him, thus violating his basic rights. As Rothbard put it: "Regardless of his age, we must grant to every child the absolute right to run away … Parents may try to persuade the runaway child to return, but it is totally impermissible enslavement and an aggression upon his right of self-ownership for them to use force to compel him to return." (Rothbard, 1998, p. 103) Therefore, according to Rothbard, these parents would be *criminal* and legally punishable for forcibly preventing him from running away or taking back home through physical force their four-year-old child, who ran away for a bag of marshmallows. Bringing Rothbard's argument to its logical conclusions, these parents could be charged with-kidnapping.

Our theory offers a more plausible explanation of this scenario. This spoiled child is *not* an absolute self-owner. His parents, as caretakers, stand in a special relationship with him. Therefore, they could aggress him, albeit only for his benefit. Accordingly, taking him back is a perfectly legitimate action.

Suppose, now, that this child runs away not for being balked about a bag of marshmallows, but because his parents tortured him. According to Rothbard's theory, every form of torture is an aggression. Since every form of aggression is illegal, his parents are criminal. Their child, then, has the right to run away from them and his parents have the duty not to forcibly refrain him from doing so, in the same way, that a victim has the right to run away from his perpetrator.

Our theory arrives at the same (plausible) conclusion but for different reasons. In fact, the child has the right to run away and not to be stopped by his parents *not* because his parents aggressed against him, but because their aggression was *illegitimate.* His parents, having tortured him, did something that was *not* for his benefit, but, rather, the very opposite. Therefore, they gave up the role of caretakers. So, they no longer stood in a special relationship with their child. Therefore, they have now the duty *not* to aggress their child. They, in turn, are criminals of perhaps the worst sort, and ought to be dealt with to the full extent of the very draconian libertarian law.[8]

There is a third option, an intermediary one: childhood emancipation. (Wikipedia, 2018) Here, there is no child abuse, and it usually applies to children a bit older than we have been considering,

[6] For further discussion, see Lipson & Vallentyne (1991).

[7] It is obvious that if a child has no parents, his caretakers, whoever they are, stand in a special relationship with him.

[8] See on this Kinsella (1996, 1997), and Whitehead & Block (2003).

although this is by no means required. Often, the cases involved are child actors or musicians, those who financially earn enough to support themselves, this is not necessary either. What is mandatory is that one, there be some other guardians willing to mentor this child, two that a competent court supervises the proceedings and approve of the transfer, and that the child is old enough (ten years old?) to understand precisely what is going on. If the present authors were the judges involved, we would stipulate that a trial period of perhaps a month or so be conducted, so that the child would be able to change his mind if unhappy.

Bill and Melinda Gates, presumably, have more to offer most children than their parents. They can make available to them the finest quality of all products and services. May they seize, through a court order, the children of ordinary middle-class parents who love and care for their children on this ground? Of course not. The latter do not own their children, but they are the legitimate owners of the guardianship rights over them. As long as they continue to "homestead" these rights through good care, these cannot be taken away from them. However, if a twelve-year-old wants to leave home and has another guardian willing to take on this responsibility, and if a court approves, then this would be legitimate. So, we take an intermediate position between that of Rothbard, for whom parental guardianship rights do not stretch so far as to use force to protect them, and a utilitarian position in which the Gates' of the world can commandeer children.

5 STARVATION

Now, suppose that a three-year-old child has not eaten for an entire day. Thei~~r~~ parents, seriously worried about his health, force him to eat some food to save his life. According to Rothbard's theory, their action is a form of unjustified aggression. They would be considered criminal for feeding their starving child.

The child, as a self-owner, has the absolute right to control and use his body as he thinks fit. Therefore, ~~t~~he has the right to let himself die free of coercive interference. In Rothbard's view, letting the child die is legitimate for two reasons: first, parents have not the right to aggress their children; second, even in case the child wanted to eat, parents would not have the legal obligation to fulfill his request[9]. Indeed, having the legal obligation to feed one's child amounts to an illegitimate compulsion: "Applying our theory to parents and children, this means that a parent does not have the right to aggress against his children, but also that the parent should not have a legal obligation to feed, clothe or educate his children, since such obligations would entail positive acts coerced upon the parent and depriving the parent of his rights. … But the parent should have the legal right not to feed the child, i.e., to allow it to die. The law, therefore, may not properly compel the parent to feed a child or keep it alive." (Rothbard, 1998, p.100)

Our theory, once again, arrives at more plausible and desirable conclusions. The starving child's parents, as his caretakers, can legitimately force their child to eat.

But, may that starve their progeny, claiming they have no obligation to feed them? We acquiesce to the notion that there are no positive obligations, and that therefore parents should not be legally required to do so. However, we also take the position that they are criminals if they do not take their spurned child to an orphanage, a hospital, a police station, a religious organization, where they will be fed and otherwise cared for.

But would this not be a positive obligation, contrary to basic libertarian theory? In a word, no. This requirement stems not from any positive obligation. Rather, it may logically be deduced from homesteading[10] theory.

Let us explain. No one may properly control land he has not homesteaded. However, suppose someone mixes his labor with land in the format of a bagel or a donut. Suppose that is, that he

[9] According to libertarians, there are no positive rights. See, for example, Gordon, 2004; Long 2010.

[10] Block (1990, 2002A, 2002B), Block & Edelstein (2012), Block & Nelson (2015), Block & Yeatts (1999-2000), Block vs Epstein (2005), Bylund (2005, 2012), Grotius (1625), Hoppe (1993, 2011), Kinsella (2003, 2006, 2009A, 2009B, 2009C), Locke (1948), Paul (1987), Pufendorf (1673), Rothbard (1969, 1973), Rozeff (2005), Watner (1982).

homesteads nine square miles in a circular pattern but leaves vacant the one square mile in the midst of his otherwise legitimate holdings. Posit that there are no bridges nor tunnels, not helicopters nor airplanes available. Then, this homesteader controls that land in the middle of his property, in that he can preclude anyone else from accessing that left-over terrain. He would guilty of the crime of forestalling or precluding. He is preventing others from homesteading virgin land, a criminal act.

In like manner, if parents starve their children, without notifying anyone else of their decision, they are precluding, or preventing, others from homesteading not their progeny, but, rather, the right to homestead this "virgin material" the children. For, no one can own a child, in our view, but we can own the right to be this child's guardian. This is attained by giving birth to the baby but can only be kept by continuous "homesteading" of this young human being, namely, caring for him. The moment so much as one meal is missed[11] the parents lose their guardianship rights. If they do not notify others of their decision they are guilty of a crime akin to the one committed by the donut homesteader.[12]

6 CONCLUSION

Rothbard's theory of absolute self-ownership, applied to children, leads to highly questionable conclusions. On the contrary, our theory, by accommodating the legal intuition that the caretakers of a child are legitimated to exercise a certain amount of aggression, can satisfactorily account for cases that Rothbard's theory cannot deal with properly.

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[11] We exaggerate here. There might be extenuating circumstances.

[12] For more on this see: Block (1977, 2001, 2003, 2004, 2008, 2010A, 2010B, 2011, 2016), Block & Whitehead (2005), and Epstein vs Block (2005).

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