From Defiant Egoist to Submissive Citizen

Is There a Bridge? Why the Hell Is There a Bridge?

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ABSTRACT: The author reviews *Foundations of a Free Society: Reflections on Ayn Rand's Political Philosophy*, edited by Gregory Salmieri and Robert Mayhew, and finds it to be a rich and provocative anthology. However, the author is unpersuaded by the arguments, from a number of the contributors, for separating the prohibition on initiatory force as an *ethical* principle, from individual rights as a *political* principle—a separation that, on the ethical side, unduly discards the Aristotelean ethical approach with which Randian ethics claims affiliation, and on the political side, is employed to ground an unconvincing case for the legitimacy of the state.

KEYWORDS: Ayn Rand, egoism, rights, force, Aristoteleanism, libertarianism, anarchism, Mill, Locke

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Foundations of a Free Society: Reflections on Ayn Rand's Political Philosophy (hereinafter *FOAFS*) is the third in a series of anthologies from the Ayn Rand

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Society focusing on some aspect of Rand's thought; this one, on Rand's political philosophy, follows a volume on ethics (Gotthelf and Lennox 2011) and one on epistemology (Gotthelf and Lennox 2013). The contributors variously defend, develop, or criticize Rand's ideas while drawing interesting comparisons between her thought and that of such figures as John Locke, Adam Smith, Thomas Jefferson, James Mill, John Stuart Mill, Carl Menger, Ludwig von Mises, Friedrich Hayek, Murray Rothbard, Robert Nozick, Israel Kirzner, and Czeslaw Milosz.

Part I, on "Reason, Force, and the Foundations of Politics," consists of three chapters, all by Darryl Wright, forming a continuous argument of about a hundred pages in explication and defense of Rand's theory of rights and its relation to the non-initiation-of-force principle, and seemingly yearning to become a self-standing book.

Part II, on "Rights and Government," by multiple authors, some Objectivist and some not, is partly a continuation of the same subject as Part I, and partly a discussion of Rand's case for limited government and critique of anarchism. The authors here are Fred D. Miller Jr., Adam Mossoff, Matt Zwolinski, Gregory Salmieri, Lester H. Hunt, Onkar Ghate, Harry Binswanger, and Michael Huemer.

Part III, on "Rand and the Classical Liberal Tradition on Intellectual Freedom," is the shortest, with just two essays, one by Onkar Ghate and one by Robert Garmong, both considering Rand in relation to earlier classical liberal thinkers on religious toleration and freedom of thought.

Finally Part IV, on "The Nature and Foundations of Economic Freedom (and Its Opposite)," considers Rand in relation to two contemporary traditions in free-market economics: the Austrian School (in the contributions from Robert Tarr, Peter J. Boettke, and Robert Garmong) and the Public Choice School (in the contribution from Steve Simpson).

The contributions (with one exception) are of high quality, with the essays by Wright and Salmieri being particular highlights of the volume.

The reference to "foundations" in the title is accurate; the contributions remain at a fairly high level of abstraction, and the first half of the volume is at least as much about ethics as about politics. It should be noted that this is not a book about either public policy or constitutional design. In particular, apart from the anarchism debate, the book has almost nothing to say about policy issues on which the libertarian community is divided, such as abortion, immigration, intellectual property, punishment and restitution, federalism and secession, or the entire area of foreign policy.

Lacking world enough and time to comment on every aspect of this rich and provocative volume as fully as it deserves, I'll focus on some issues that are longstanding bees in my bonnet, mostly from parts I and II.

Flourishing and Force

Why should an ethical egoist respect the non-initiation-of-force principle (henceforth NIOFP)? Although, as we'll see, the official Randian position, as represented in this volume, is that this is an *ethical* question, in contradistinction to the *political* question of the justification of rights, the contributors nevertheless devote a good many pages to it.

Huemer suggests that appealing to ethical egoism to support a libertarian ethic is a bad argumentative strategy because most people find ethical egoism less plausible than the conclusions it's being invoked to sustain ("Defending Liberty: The Commonsense Approach" in *FOAFS*, 246). But this strikes me as an oddly straitened conception of the purpose of philosophy, which traditionally aims not merely to convince people *that* certain conclusions are true (for which purpose the requirement that the premises be more plausible than the conclusions would be reasonable enough) but to explain *why* they're true. Before Isaac Newton published his *Principia*, the fact that apples fall and the moon doesn't was not exactly breaking news; the point of deriving the familiar behavior of apple and moon from unfamiliar and difficult laws of motion was to show not merely *that*, but *why*, these objects behave as they do.

In any case, the version of egoism that Huemer critiques as unable to generate robust obligations to others is a version stripped of all the Aristotelean elements that separate Rand from, say, Hobbes. Furthermore, Huemer claims to be mystified by Rand's view that an organism's life is its sole standard of value; but whether one agrees with Rand's position or not, it's not that mysterious. If one thinks that values are not simply basic, irreducible features of the world but must somehow be metaphysically grounded in further facts, then life is a natural candidate. If a pebble rolls off my roof and into my patio, it makes no sense to say that the pebble *succeeds* in getting off the roof (nor, on the other hand, to say that its descent represents a *failure* to maintain its previous position). If we break the pebble in two, we have no more reason for saying it's been harmed (oh no, we killed it!) than for saying it's been benefited (hurray, we helped it reproduce!). Nothing counts as good or bad for a pebble. But it makes perfect sense to speak of a plant's succeeding or failing to maintain its existence, or to say that fresh water is good for geraniums and salt water bad for them (because one helps, while the other hinders, the geranium's self-maintenance processes). This gives Rand's position an advantage over, say, J. S. Mill's view that pleasure and pain are the natural facts in which value is grounded, since Mill cannot explain how a plant could be benefited or harmed. The advantage of an organism's life-maintenance as its standard of value is that it represents a natural phenomenon upon which the concepts of success and failure, benefit and harm, can get purchase.[1]

But this still leaves unexplained the relation between the requirements of life-maintenance and the requirements of moral virtue—in this case, the virtuous requirement of NIOFP. Obviously one can survive, in a thin sense, without being virtuous—though perhaps not in the thicker, more Aristotelean (and Stoic)[2] sense of surviving as a flourishing, fully realized example of the human kind.[3]

A familiar dilemma—call it Glaucon's dilemma, from its similarity to Glaucon's challenge in book II of Plato's *Republic*—presents itself (see Mack 2003; Long [2000] 2010; 2010; cf. Badhwar [2001] 2010): if the goal is thin survival, then virtuous conduct is at best merely a *strategy*, an instrumental means, toward this goal, in which case exceptions to the strategy will present themselves more readily than Rand suggests; the fact that my GPS *usually* shows me the fastest route to my goal is no reason to follow its directions in cases where I can see a quicker route (a recently opened street, perhaps) that my GPS has missed. On the other hand, if the goal is thick survival, then virtuous conduct is arguably an indispensable *part*, a constitutive rather than merely instrumental means—connected *conceptually* rather than causally to the end—in which case, while the requirements of virtue will be appropriately robust, Rand's case for life-maintenance as the ultimate end will fall short of sustaining those requirements, since that case seems to reach only to thin survival, not to thick survival. (Salmieri dismisses the conceptual/causal distinction as a variant of the analytic/synthetic dichotomy, which he takes Rand to have disposed of ["Selfish Regard for the Rights of Others: Continuing a Discussion with Zwolinski, Miller, and Mossoff" in *FOAFS*, 184 n. 27]. But as I've argued elsewhere [Long 2005a; 2005b; 2006a; cf. Long 2004], there is a version of that dichotomy, albeit not in its classical form, to which Rand is committed.)

I think there is a way out of Glaucon's dilemma, and it is one that finds an echo in Rand—but Rand is too committed to the causal model to fully develop it. On the Aristotelean and Stoic view, the humanness of a life is a property that comes in *degrees*; the bridge between thin survival and thick survival is that once we identify living a *human* life as our ultimate end, we will see that a *more* human life, one that more fully exercises our distinctively explanatory human capacities (above all, our capacity for reason) has *more* claim to be our end. As I've written elsewhere:

> Natural ends can be rank-ordered according to centrality and importance, which in turn are functions of teleological explanatory power. If A and B are both natural ends of mine, but A explains more about me than B does, or if the facts A explains about me are more central and essential to me then the facts B explains, then A is *more* my end than B is. Thus, for example, the capacity for reasoning explains a

> greater number of a human being's characteristics than the capacity for tuning pianos. . . . The primary natural end of a human being is . . . to live one's life as a human being. But some lives—namely, the lives that more fully express the characteristics most fundamental and essential to being human—are more human than others. . . .
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> Isn't being human an all-or-nothing condition, rather than a matter of degree? Well, I would reply that humanness is like size. In one sense, size is an all-or-nothing condition; either something has size or it doesn't. Still, among things that do have size, some have greater size than others. By the same token, in one sense being human is an all-or-nothing condition; either a life is human (i.e., if it is the life of a human being) or it isn't—but among human lives, some lives exemplify that humanness to a greater extent than others. . . .
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> Since reason is a human being's most explanatory feature, a life is more human (and thus, more one's end) to the extent that it expresses reason, and so the life of reason is a human being's overriding natural end. (In particular, the *rationality* of a life is more important than the *length* of that life; longevity is only one value among others, and can be overridden.) . . .
>
> A life that exemplifies reason only in the means one chooses to achieve one's ends is not as human as one that exemplifies reason not only in the means to one's ends but in those ends themselves. Thus, whenever we choose to let our personal lives be guided by blind emotion rather than by thoughtful reflection, we are choosing a less human life over a more human one. And likewise, whenever we choose to deal with other people through violence or intimidation rather than by reason and persuasion, we are once again choosing a less human life over a more human one. In either case, we are defeating our own desire for our objective good. Hence our natural end commits us to preferring the life of reason and cooperation. . . .
>
> If we subordinate other people to our own purposes, treating them as prey or objects of manipulation rather than as equal partners to be dealt with through persuasion, we are choosing a life that is inferior by our own standards. Thus we are obligated to choose peaceful relations whenever peaceful relations are available; we are obligated not to impose our will on other people. (Long 1997a; cf. 1997b; 1999; [2000] 20 10)

Notice, however, that the bridge between thin survival and thick survival here is *conceptual, not strategic*. The idea is not that a more thickly human life is *more likely to ensure* the continuation of survival in the thin sense; its claim on us is rather that it represents a richer, fuller exemplification of the goods that thin

survival exemplifies only minimally. (Hunt, in his chapter, suggests a different solution to the Glauconian dilemma: the utility, to a society of egoists seeking mutually beneficial cooperation, of cultivating an attitude that regards the individual as *sacred*, as a semi-divine source of value ["Ayn Rand and Robert Nozick on Rights" in *FOAFS*, 201–3]. But this seems to me to have the same drawback as any other form of indirect consequentialism—it may work in practice, but it doesn't work in theory.[4] In any case, none of the other contributors takes him up on it.)

In Salmieri's contribution to the volume, he challenges the Aristotelean distinction between instrumental and constitutive means:

> Photosynthesizing is only good for the plant because it produces chemical energy, which the plant needs to survive, and so we might see the process as valuable instrumentally. However, what it is for the plant to survive is for it to continue carrying on a set of activities that include photosynthesis, and this might lead us to think of photosynthesis as an intrinsically valuable constituent of the life to which the plant's instrumental values are mere means. And yet, photosynthesis is a constituent of the life that is the plant's ultimate end precisely because of the causal contribution it makes to sustaining this life. . . . The actions are not valuable as means to anything wholly distinct from themselves, nor are they valuable apart from their effects. Instead, each is valuable *as a causally contributing member of a self-sustaining whole*. ("Selfish Regard for the Rights of Others: Continuing a Discussion with Zwolinski, Miller, and Mossoff" in *FOAFS*, 171)

Salmieri thinks that he (or Rand) has hereby identified a category of value that transcends the traditional categories of instrumental and constitutive;[5] but as far as I can see, the values he describes are straightforwardly constitutive means, very much of the sort that Aristotle describes.

Salmieri takes the photosynthesis example to block the Glauconian dilemma that I've been urging. Salmieri quotes me (Long 2016): "If virtues are constitutive elements of the ultimate end *because* of their causal contribution to that end, then their instrumental role must be logically prior to their constitutive role. . . . Hence the life to which virtues are *constitutive* means must be a more richly and thickly characterized version of life than the life to which virtues are initially identified as *instrumental* means" (173). Salmieri replies by suggesting that it would be absurd to make the parallel claim that "the life of which photosynthesis is a *constitutive* means must be a more richly and thickly characterized version of life than the life to which photosynthesis is initially identified as [an] *instrumental* means" (174).

But the two cases do not seem parallel. Photosynthesis is an essential part of a plant's thin survival; if it does not photosynthesize, it does not survive at all (as Salmieri himself seems to admit; 174). But virtuous conduct, such as respect for NIOFP, while it may be constitutive to *thick* survival, is *not* an essential part of *thin* survival; that is, a human being does not literally cease to exist if she fails to respect NIOFP. So it is still unclear how Rand's argument, which turns on an organism's *continued existence* being conditional on its successful activities, can encompass the requirements of virtue. Salmieri's account thus leaves the link between life and NIOFP unexplained.

Salmieri could point in response to Wright's essay ("The Scope and Justification of Rand's Non-Initiation of Force Principle" in *FOAFS*), which has interesting things to say about how the use or threat of force induces cognitive paralysis in the person against whom force is used;[6] but from an egoist perspective what matters, presumably, is what the use of force does to the *user*. (Wright also says that force from other people is *unlike* merely natural constraints—except those present in emergencies—in interfering with one's ability to "concentrate directly on advancing long-term goals" [87], but doesn't explain how it's different in this respect from, for example, illness, poverty, and economic dependence, all of which Rand considers nonemergencies.[7] If I'm frantically trying to figure out how to pay my upcoming tax bill, or if I'm frantically trying to figure out how to pay my upcoming rent, in either case my ability to "concentrate directly on advancing long-term goals" seems compromised.)

Wright's essay does offer a potential way forward in addressing Glaucon's dilemma, by arguing, again in a manner reminiscent of Stoicism, that our ultimate end is *constructed* via practical deliberation in a process of *specification* of a *generic* starting-point; for Wright, we "conceive of our lives first . . . by reference to the abstractly formulated requirements of man's life as such," and then "fill in specifics" in a way "shaped by innate aptitudes and accidental facts," so that "your life is something you have to design by selecting the values that constitute it" (102).[8] But what I'd want to add is that in order to get from generically human life-maintenance to virtue, the process of specification must also rely on those conceptual relations that Randians seem willing to invoke as metaphors but continually shy away from actually endorsing.

Moreover, while Wright appears to agree with me that the precise contours of NIOFP are subject to determination through social circumstances and practical deliberation, he seems to regard those contours as elastic to (what seems to me) a fantastic degree. For example: although Rand favors voluntary financing of government, it is, Wright thinks, a reasonable implication of her views that if "no such voluntary system were workable," then "a citizen's refusal to contribute within her means to the financing of the government's legitimate operations would deserve to be classified as an initiation of force," since such

a refusal would "constitute a material impediment to the effective functioning of a proper government and, thus, a threat to the rights of all" (90). Treating the mere *failure to render positive assistance* to the state as an *initiation of force* strikes me as a dangerously Orwellian extension of the concept—and it seems to open the door to unlimited further statism. If declining to contribute to the state is an initiation of force that merits a forcible response, then why not say the same about declining to contribute to education, or food production, or infrastructure provision, or any other service vital to social functioning? After all, the state can't operate if no one is growing food or repairing bridges or teaching people to read, either. Reading Wright's assertion makes me feel like responding: "I came here to say that I do not recognize anyone's right to one minute of my life. Nor to any part of my energy. Nor to any achievement of mine. No matter who makes the claim, how large their number or how great their need" (Rand [1943] 1994, 717).

Rights: Ethical or Political?

One of the recurring themes in the volume is the relation between NIOFP and individual rights. Libertarians often treat these as virtually interchangeable; but many of the contributors stress that on Rand's view NIOFP is a principle of interpersonal *ethics* while individual rights are *political* principles for shaping a legal system and do not apply outside of that context. Thus when Rand defines rights as principles applying in a "social context," Wright notes that "social" here marks an "organized society" with an "institution of government" ("The Scope and Justification of Rand's Non-Initiation of Force Principle" in *FOAFS*, 80–81) and not merely, as the Lockean would have it, interaction with other people per se.[9] Thus while the scope of NIOFP is "wider than politics," applying "not only to the actions of government and the organization of societies but also, and equally, to the actions of individuals and groups both inside and outside of organized societies" (Wright, "The Place of the Non-Initiation of Force Principle in Ayn Rand's Philosophy" in *FOAFS*, 15–16), *rights* for Rand are "*inherently political*" and so cannot be "reached or grasped" in a state of nature (Ghate, "Rand (contra Nozick) on Individual Rights and the Emergence and Justification of Government" in *FOAFS*, 211);[10] and "the concept of individual rights is not derived from the principle prohibiting the initiation of force but, rather, is derived from the same facts and moral concepts" (Miller and Mossoff, "Ayn Rand's Theory of Rights: An Exposition and Response to Critics" in *FOAFS*, 125).

Two important issues, one ethical and one political, depend on the question of whether rights do or do not apply prior to the political level. The ethical issue is a variant of that raised by the original version of Glaucon's challenge in Plato's

formulation: do we have any reason to respect others' rights[11] if we are living in a social milieu where our own rights are not respected in turn? The consensus in the broad Socratic tradition (including Platonists, Aristoteleans, and Stoics), a tradition to which Rand claims some affiliation, is that we do; but if rights are principles applying only at the level of social systems, then it seems as though justifying *to the individual* a concern for rights could only take the Protagorean form of pointing out the attractions of living in a society where rights are generally respected—which would offer the individual no incentive to respect rights in a less favorable milieu. When Randians talk about NIOFP, they sound like Socratics; when they talk about rights, they sound like Protagoreans. Yet on its face this is a hard distinction to maintain. Rand stresses that agents of the state enjoy no exemption from NIOFP, so it's difficult to see how the rights that the state is committed to enforcing and respecting could differ in content from what NIOFP requires anyway. As I've written elsewhere:

> On Rand's view, "rights can be violated only by physical force." Thus, *non-initiation of force* and *respecting people's rights* seem to come to the same thing, and so respecting rights *is* a matter of interpersonal ethics rather than of social organization. The question of social organization concerns the mechanism for *protecting* people's rights; this goes beyond interpersonal ethics, because individuals are under no general obligation to *protect* one another's rights. Thus rights-protection is a matter of politics, not interpersonal ethics. But *respect* for rights *is* required of individuals, since it comes to the same thing as non-initiation of force. . . . I do not have to rescue every victim of assault, but I have a responsibility not to commit any assaults myself. (Long [2000] 2010, 107)

The political issue is the challenge raised by the anarchist: namely that rights exist prior to the state, can be specified and defended independent of state action, and in fact serve as a bar to establishing a state in the first place. The Randian contributors to this volume seek to deflect the anarchist challenge by denying that rights apply outside "organized society"; but if (as argued above) NIOFP applies outside "organized society" and has essentially the same content as Randian rights, this reply to the anarchist will fail.

Salmieri offers a neo-Lockean account of property rights that, at least on its face, might appear to ground them rather directly in NIOFP. A "chipmunk's store of nuts," he tells us, plays a "role in the chipmunk's life . . . analogous to the role played in bears' lives by the fat they grow during the fall to sustain them through the winter," inasmuch as chipmunks and bears alike "find food when it is readily available and store it for later use"; while a "chipmunk's store is external to its body, whereas a bear's is internal," this difference "does not make

the store any less part of the chipmunk's life" ("Selfish Regard for the Rights of Others" in *FOAFS*, 185). Similarly, a car is "a non-bodily part of the owner," so that "[d]riving off with the owner's car is like breaking his legs" (187). While Salmieri is "skeptical that philosophy can provide uniform abstract answers" to every question about the precise contours of property rights, he is confident that it can generate principles that "each society must intelligently tailor to its own circumstances" (188).

All of that seems right to me. Three comments, however. First, this account has an implication that not all Randians would welcome, namely, that social and legal convention plays a role in determining the contours of the self. Second, the fact that social and legal convention is needed to limn the contours of property rights is not going to draw a useful line between the purportedly *ethical* NIOFP and the purportedly *political* principle of property rights, so long as Randians hold to the Randian dictum that only force can violate property rights; if rights and NIOFP straddle the ethical/political divide, they straddle it *together*. Third, to demonstrate a necessary role for social and legal convention is not ipso facto to demonstrate a necessary role for the *state*. (About this last, more below.)

Switching authors (Salmieri to Wright) while keeping topics (the relation between external property and NIOFP): Rand's NIOFP and the libertarian nonaggression principle (henceforth NAP) are often regarded as interchangeable; but Wright contrasts them, arguing for example that NIOFP can rule out fraud while NAP cannot. (Huemer, in his chapter, likewise argues that NAP cannot rule out fraud ["Defending Liberty: The Commonsense Approach" in *FOAFS*, 247–48], though he does not distinguish between NAP and NIOFP.) But it seems to me that drawing such a distinction can secure differential results with regard to fraud only via a double standard, applying very different degrees of interpretive charity to the two principles.

While Wright pays some attention to Murray Rothbard's attempt to show how fraud is a form of indirect theft, he is dismissive of the title-transfer account of contract (Evers 1977) on which Rothbard relies—or, more precisely (since Wright seems to recognize ["The Scope of Justification of Rand's Non-Initiation of Force Principle" in *FOAFS*, 112]that Rand herself held something like the same view), of Rothbard's being entitled to such an account. (Here I have to add that for Wright to complain that treating fraud as a form of theft is a bridge too far, when he has just countenanced the possibility of treating refusal to surrender one's property to the state as an initiation of force, seems like straining at gnats while swallowing camels.)

Wright contrasts the Rothbardian view, according to which property rights are an extension of self-ownership, so that whether a given trade has properly gone through or not must be analyzed in terms of whether a consensual

separation of a given physical object from the self has been accomplished, with the Randian view, according to which the "conception of trade is a normative one," which "explain[s] what trade is by explaining what it needs to be in order to play a certain necessary role in human life" (111)But I take this to be a false alternative.

Wright is right to reject Rothbard's seeming commitment to the "*autonomy of political philosophy*," that is, the view that "political principles must be independent of broader moral principles" (107). But this does not mean he can fairly dismiss the Rothbardian view of trade so quickly. Self-ownership, properly understood, is a thesis no ethical individualist can easily deny; and once self-ownership is granted, it's hard to see how there could be any rights *other* than those stemming from self-ownership, since rights are legitimately enforceable claims, and any use of force looks to be a violation of the self-ownership of the recipient unless it is a response to a parallel violation on the recipient's part.[12] Hence Rothbard is right: legitimate trade, trade that both respects and transfers the relevant rights, must be understood in terms of connection and disconnection of external items to and from the self. But Rand is also right: hiving off political norms from the totality of other norms is dialectically and praxeologically untenable, and so the contours of legitimate trade must be shaped and specified by broader ethical considerations. The way to resolve this antinomy is to see that *the contours of the self must likewise be shaped and specified by broader ethical considerations*. As I've noted elsewhere: "[I]f we take the boundaries of the person to be determined by one's projects rather than simply one's physical body . . . then limning the contours of the self will in part be a matter of practical and not merely theoretical reason" (Long 2019b, 249).

Wright grants that what most people would call property rights—namely, legitimate claims to exclusive control of certain material possessions—can exist outside a legal system, though he refuses to call them *rights*:

> [E]ven prior to the formation of an organized society and the introduction of rights, we can conceive of a state in which, say, nomadic peoples utilize resources drawn from nature for their own sustenance. They would not have property rights in these resources, in Rand's view, but it seems to me that her views imply that they would (generally speaking) have another sort of moral claim on them. . . . Specifically, goods under one's active physical control, appropriated for use directly from nature, would be legitimately possessed, and it would be morally wrong for anyone else to obtain those goods by direct force or threat of such. ("The Scope of Justification of Rand's Non-Initiation of Force Principle" in *FOAFS*, 77)

Nevertheless, "stable, extendable, and identifiable property rights" beyond immediate personal possession cannot exist "independently of a legal framework," because the "link to one's needs and survival would be more tenuous." Property rights have, however, an "objective foundation" *indirectly*, because there are "objective moral principles by which to construct" a legal framework (78). This occurs as "self-preservation comes to be understood more abstractly, in terms of a long-range practice centered on the conception and production of material values through specialization and trade, rather than in terms of a relatively short-range, minimally cooperative satisfaction of immediate needs" (81).

This is all a *bit* more generous toward nomadic peoples than Rand herself seems to have been (see Campbell n.d.-a; n.d.-b), but that of course is a low bar. One would be hard-pressed to find many (any?) historical examples of nomadic peoples without a *legal framework* (or, again, of ones whose economic life was genuinely limited to a "short-range, minimally cooperative satisfaction of immediate needs"), though there have certainly been nomadic peoples without a *state*; Randian authors tend to rely on the package deal *organized society* = *legal framework* = *monopoly state*, in defiance of actual history, anthropology, and legal theory. Moreover, most nomadic peoples have engaged in transformative labor on their environment even if they did not farm it;[13] and even were this not so, it's hard to see why using land to regularly *traverse* it might not generate at least an easement right.

In any case, it's not clear why the connection between the self and property rights beyond personal possession is too "tenuous" to sustain rights in a state of nature, but not too "tenuous" to sustain rights under a government. We know from the study of actual historical examples that sophisticated nonstate legal systems offering reliable methods of dispute resolution over property rights can flourish, whether in the absence of the state or in defiance of the state (Anderson 1992; Bell 1992; Benson [1990] 2011; Berman 1983; Friedman, Leeson, and Skarbek 2019; Hasnas [2008] 2016; Leeson 2014; Loan 1992; Stringham [2007] 2017; 2015; Tucker and de Bellis 2015); and that other successful nonstate methods of dispute resolution over property rights existed without even rising to the level of formal legal systems at all (Ellickson 1991).

Hunt, in his chapter, contrasting Rand with Nozick, makes a point similar to Wright's:

> [S]uppose that in a state of nature you have domesticated a pig. A person from a neighboring tribe then takes your pig and eats it. Can you, morally, kill the perpetrator? Can you seize something from him in compensation? Everything of his? . . . Nozick seems to treat such . . . questions as having definite answers in the state of nature; for Rand, this

> distorts the truth. Indeed, what projecting a state of nature helps one appreciate is how unclear the boundaries . . . are of morally proper and improper interaction and the vital need to define, politically, the sphere of action within which the individual is sovereign. ("Ayn Rand and Nozick on Rights" in *FOAFS*, 218)

While I see more determinacy in the pre-legal requirements of rectificatory justice than Hunt does (see, for example, Long 1999), I agree that they are not completely determinate. But it does not follow that a *monopoly state* is needed to specify them. As economists and legal theorists—from Adam Smith[14] to Friedrich Hayek (2012) and beyond (see, for example, Leoni 1991; Hasnas 2005a; 2005b; Benson [1990] 2011;Barnett 2014)—have noted, *judicial competition* (both within states, and in stateless contexts), through its ability to apply favorable incentives, to marshal dispersed knowledge, and to check abuses of power, has proven itself as effective a discovery procedure in the legal market as other forms of competition have in other markets.

Thy Hand, Great Anarch!

Although I have in effect been talking about the anarchism debate all along, let me now turn to the two contributors who present most directly the Randian case against anarchism: Ghate and Binswanger. Ghate engages anarchism primarily in the course of arguing for the superiority of Rand's case against anarchism over Locke's and Nozick's.[15] Ghate stresses—as though it were a feature, not a bug—that Rand's case for government differs from Locke's and Nozick's by treating the alternative to government as the absence of organized society; this allows Ghate to slide from the need for *social organization* to specify the precise contours of rights to the alleged need for a *monopolistic agency*, the state, to do so.

Ghate claims that an examination of "actual stateless periods of human existence" (such as Native American tribal society prior to European colonization) shows that people living in a stateless condition lack—indeed *necessarily* lack—sophisticated legal concepts of rights ("Rand (contra Nozick) on Individual Rights and the Emergence and Justification of Government" in *FOAFS*, 218). But this is just wildly contrary to the actual historical record (see Anderson 1992; Bell 1992; Benson [1990] 2011;Berman 1983; Friedman, Leeson, and Skarbek 2019; Hasnas [2008] 2016; Leeson 2014; Loan 1992; Scott 2009; Stringham [2007] 2017; Tucker and de Bellis 2015).

Indeed, our present-day sophisticated legal concepts of rights are largely *inherited from* nonstate legal systems. And if the state is a territorial monopoly, as Rand defines it, then states are the *exception*, not the rule, in European

history.[16] The reluctance of Randians to engage with the literature on nonstate legal systems is reminiscent of the reported refusal of the Churchmen to look at the night sky through Galileo's telescope because they "already knew" that the phenomena he reported could not exist. Randians keep asking us to "try to imagine" or "try to project" what a stateless, polycentric legal order would be like, always with the implication that the answer must be chaos and violence. (Any attempt to justify competitive legal systems "collapses at the first attempt to concretize what it would mean in reality," Binswanger tells us in his essay, "Anarchism versus Objectivism" in *FOAFS*, 230.) But we don't have to imagine or project; we have economic theory on the one hand (monopolies are subject to incentival and informational perversities, which competition tends to overcome; the familiar laws of economics are not suddenly suspended when a government appears on the scene) and the facts of history on the other.

Are any of these historical examples of nonstate legal systems ideal, from a free-market anarchist point of view? No. But they were generally successful at maintaining peace, cooperation, trade, and a fair bit of individual autonomy. And no historical example of a state is ideal from a free-market minarchist point of view, either.

Randians often point to the United States in the nineteenth century as some sort of approximation to a limited government. But even if we leave aside, as we shouldn't, the fact that women and nonwhites—that is, the majority of the population—were largely excluded from full participation in the economy (with most blacks actually being enslaved through the majority of the period), nineteenth-century America was never remotely a bastion of laissez-faire; it was, from the start, heavily encumbered by cronyist interventions, massive governmental land theft, intrusive censorship and moral legislation, violent suppression of the working class, and perpetual warfare. The philosophical ideals invoked in the country's founding documents may have had a strong libertarian flavor; but the reality was rather different.

In similar spirit to Ghate, Binswanger points to such examples as Mafiosi, and the American Civil War, as evidence of the undesirability of competing jurisdictions within the same territory ("Egoism, Force, and the Need for Government: A Response to Huemer" in *FOAFS*, 275)—dropping the context that both of these were the products (one indirect, one direct) of monopoly states. Moreover, even if these *were* genuine examples of competitive legal orders, it would be tendentious to focus solely on these and ignore all the more positive examples. I could just as easily "prove" the undesirability of government by pointing to the worst cases, like Nazi Germany or North Korea.

In the Randian vision, individuals are required to delegate their right of self-defense rather than exercise it themselves. Even assuming this to be true, it's no argument for monopoly government; to reason from *everyone should*

delegate their right of self-defense to some neutral agency to *there should be a single neutral agency to which everyone delegates their right of self-defense* is to commit a fallacy of composition, analogous to reasoning from *everyone has a father* to *someone is everyone's father* (see Long [2008] 2016).

Ghate claims that the right to self-defense gives one only the right to "make use of the principles and legal apparatus that has [*sic*] been set up in the name of defining, securing, and protecting the rights of the individual" ("Rand (contra Nozick) on Individual Rights and the Emergence and Justification of Government" in *FOAFS*, 221). Binswanger, in his chapter mistitled "Anarchism versus Objectivism,"[17] likewise maintains:

> A proper government is restricted to the protection of individual rights [and] functions according to objective, philosophically validated procedures. . . . Once such a government, or anything approaching it, has been established, there is no such thing as a "right" to "compete" with the government. . . . (228–29)

Both Ghate and Binswanger in effect hold fixed, as an out-of-context abstraction, the idea of an agency reliably devoted to the protection of individual rights, and then argue that because it has those characteristics, it should be granted monopoly power. One might as well assume the high quality, low prices, and reliable service of the State Bread Company on the way to arguing that competing providers of bread are unnecessary and should be prohibited.[18] In both cases, what is missed is that it is the *existence of competition* that provides both the informational and the incentival context for the reliable provision of high-quality goods and services at reasonable prices. The goal is being treated as a substitute for the means of maintaining it.

Randians, after all, generally admire the checks and balances and division of powers in the American constitutional system; but what are these if not (somewhat half-hearted) efforts at moderating the state's monopoly by introducing a competitive element? And what is free-market anarchism if not simply allowing full free entry into the checking-and-balancing business? Presumably, they wouldn't say that once a proper government is in place, checks and balances and division of powers are no longer necessary.

Or would they? In response to the idea of market forces keeping political actors in check, Binswanger claims that what keeps (or fails to keep) political institutions in check is not market forces but philosophical ideas: "It is men's *ideas* that rule their actions and their politics. . . . The power lust of politicians would be impotent in a society whose citizenry—and intellectuals—understood the Objectivist political philosophy" (234). In that case, *why not* dispense with all constitutional checks and balances and just install a democratically elected dictator with unlimited powers but subject

to democratic recall? Once the culture is converted to Objectivism, won't all checks and balances be otiose, on Binswanger's view? (Of course, for the free-market anarchist, competition serves not only an incentival but also an informational function. But perhaps Binswanger thinks competition's role as a discovery procedure magically stops as soon as we move to the field of government.)

As an antidote to the idea that competitive checks on power are no longer necessary once the correct views are enthroned, I might point to J. S. Mill's *On Liberty*—or, alternatively, to the following remarks from one of Wright's contributions to this volume:

> When an orthodoxy is being imposed by force, the decisions of the authorities necessarily become the criterion of orthodoxy; what is orthodox is whatever they regard as such. This is true regardless of the orthodoxy's content, since it requires judgment to interpret any proposed criterion (even, say, the principles of Newtonian physics), but the point of an imposed orthodoxy is to deny anyone besides the authorities standing to settle its interpretation. The availability of objective criteria of interpretation (as in the case of Newtonian physics) would be of no avail, since those criteria must still be applied by somebody, and disagreements among interpreters are always possible. Unless the decision of the authorities is final, the orthodoxy has the status of a suggestion. Socially, the coercive imposition of an orthodoxy serves precisely to release the authorities from the requirements of objective thinking; they stand under no obligation to justify their decrees to those outside their ranks. ("Force and Mind" in *FOAFS*, 62)

While Wright in this passage is certainly not intending to make a case for anarchism, he inadvertently shows how mistaken it is to suppose that legal objectivity requires, or is even compatible with, a territorial monopoly of force or a final arbiter.

Binswanger thinks competing providers of security services would inevitably resort to bloodshed. In response to Huemer's citing of David Friedman's *Machinery of Freedom* (Friedman 1989) to the contrary, Binswanger admits he hasn't read the book, but relying on his memory of decades-old conversations with Friedman, he notes that Friedman thinks disputes among competing security agencies would tend to be resolved peacefully, via contracts and arbitration, because violent conflict is too costly. Binswanger ridicules this notion by pointing to the "long, hopeless record of the UN's attempts to bring peace through intergovernmental arbitration and agreement," and asks: "By whom or what would interagency agreements be *enforced*?" ("Anarchism versus Objectivism" in *FOAFS*, 276).

If Binswanger had taken the trouble to read the book, or if he had remembered the likely content of his conversations with Friedman more clearly, he would have known the answer to his question. Territorial states have a captive customer base, and so can externalize the costs of war onto their populations; competing security agencies tend to lose customers if they choose costlier methods of dispute resolution over cheaper ones. (Of course, if agencies' customers are sufficiently fanatical and bloodthirsty, they may be willing to shoulder the higher costs of violence in their monthly premiums. But in that case they will be even *readier*, if they are instead citizens of a state, to shoulder the *much lower* costs—particularly, lower opportunity costs—of merely *voting* for violent politicians and/or policies; so this possibility offers no clear win for the advocate of government.)

In further replying to Huemer, Binswanger says, staggeringly: "Huemer advances a new (at least to me) idea on behalf on anarchism," namely that "if it is right that the government wield retaliatory force, it cannot be wrong for [others] to do so" (277). That Binswanger has by his own report been arguing against free-market anarchism for the past half century and has never before encountered *the* main ethical argument for the position is hard to believe; he sounds a bit like a creationist who has spent his career arguing against Darwinism, and then suddenly claims to have only just heard of the concept of natural selection.

Binswanger further attributes to free-market anarchists a view that they do not hold—namely, that no one has a right to be subjected to retaliatory force to which she has not consented—and proceeds to conclude with great fanfare that the anarchist is committed to absolute pacifism (233). The fact that he thinks *this* is a telling objection shows, once again, that he hasn't taken the care to do even minimal research on the theories he is opposing. Not only is Binswanger's research sloppy and inadequate, but the unprofessionally insulting, sneering tone he takes toward his opponents contrasts sharply with the generally civilized and professional demeanor of the other contributors to the volume. Binswanger even recycles the charge that libertarians "plagiarize Ayn Rand's principle that no man may initiate the use of physical force" (230), as though that principle had not been a long-established fixture of libertarian thought well before Rand's birth[19] (and as though "plagiarism" were a concept applicable to the adoption of ethical and political principles anyway). Binswanger's contributions are unfortunately an embarrassment in an otherwise excellent volume.

Dark Satanic Mill?

Rand and J. S. Mill have much in common. Both attempted to combine ancient Greek eudaimonist ethics, romantic self-realizationist individualism, and a classical liberal approach to politics—and both (in my view) spoiled an

otherwise promising mixture by attempting to cram it into a consequentialist framework too narrow to contain it without distortion. An exploration of these similarities would be a valuable contribution; but that's not quite what we get.

Garmong's chapter ("The Arc of Liberalism: Locke, Mill, and Rand") is devoted to contrasting Mill's contributions to classical liberalism unfavorably with those of Locke and Rand. There's a fair bit of Mill-bashing on the right these days (an echo of the Spencer-bashing that occurs on the left—somewhat ironically, given how much Mill and Spencer have in common)—and Garmong embraces the standard Mill-bashing narrative (though thankfully not in the extreme form that we find in Cowling [1963] 1990, Hamburger 2001, or Raeder 2002).

Garmong blames Mill for extending the critique of oppression and intolerance from government to the private sphere. But how is this any different from what Rand does in *The Fountainhead*? As I have written (with Charles Johnson) elsewhere:

> Although its political implications are fairly clear, **The Fountainhead** pays relatively little attention to governmental oppression per se; its main focus is on social pressures that encourage conformity and penalize independence. Rand traces how such pressures operate through predominantly *non-governmental* and (in the libertarian sense) *non-coercive* means, in the business world, the media, and society generally. Some of the novel's characters give in, swiftly or slowly, and sell their souls for social advancement; others resist but end up marginalized, impoverished, and psychologically debilitated as a result. Only the novel's hero succeeds, eventually, in achieving worldly success without sacrificing his integrity—but only after a painful and *superhuman* struggle. . . . Toohey's malign influence is mainly exercised through rhetorical and social means rather than by legal force. (Long and Johnson 2005)

To be sure, Mill does, regrettably, invoke government involvement on behalf of educational institutions to promote a more enlightened and tolerant cultural atmosphere, but as Garmong himself notes ("The Arc of Liberalism: Locke, Mill, and Rand" in *FOAFS*, 312),in this respect, he does not differ markedly from his predecessors. The popular idea that Mill is the crucial figure in turning classical liberalism away from pure laissez-faire exaggerates how many earlier classical liberals were devotees of pure laissez-faire in the first place. And while Mill envisioned a broader role for economic regulation than would a libertarian, it is worth bearing in mind that his support for "socialism" was primarily a matter of support for workers' cooperatives in lieu of hierarchical firms, rather than state control (another point of agreement between Mill and Spencer). Garmong also maintains that Mill failed to consider that "the free market is an epistemological tool for discovering information about goods and services

or about ideas" (313)—a jaw-dropping assertion, given that the idea of competition as a discovery procedure is one of the central themes of both *On Liberty* and *The Subjection of Women*.[20]

Garmong passes in the space of two pages from telling us that Mill had little to say about the extent to which governmental intervention is justified in order to combat nonforcible forms of oppression (317) to stating confidently that Mill would approve of contemporary antidiscrimination laws (319). How can we know that? After all, Mill regarded Mormon polygamy as a serious form of private oppression against women—but he was adamantly opposed to government interference with the institution, on the grounds that women were not literally being forced into it (Mill 1859, pt. 4). So clearly Mill was not *automatically* inclined to favor state action whenever private oppression was in view.

Garmong thinks that Mill expanded the supposed scope of liberty from Locke's narrow focus on physical coercion in such a way as to represent an "interruption" in the arc of liberalism from Locke to Rand. But Locke explicitly embraced rights to positive assistance, on the grounds that disparities of wealth enabled unwarranted relations of private dependence:

> But we know God hath not left one Man so to the Mercy of another, that he may starve him if he please: God the Lord and Father of all has given no one of his Children such a Property, in his peculiar Portion of the things of this World, but that he has given his needy Brother a Right to the Surplusage of his goods; so that it cannot justly be denyed him, when his pressing Wants call for it. . . . [A] Man can no more justly make use of another's necessity, to force him to become his Vassal, by with-holding that Relief, God requires him to afford to the wants of his Brother, than he that has more strength can seize upon a weaker, master him to his Obedience, and with a Dagger at his Throat offer him Death or Slavery. (*First Treatise of Government* 4.42; in Locke [1690] 1988, 188)

And Rand—if Wright is correct—would have been prepared to regard declining to contribute to the state as a form of initiation of force. So the narrative of the narrowly constrained Lockean and Randian conceptions of liberty and coercion against the dangerously elastic Millian one seems overstated.[21]

Miscellany

Let me close with just a few quick remarks about some miscellaneous matters.

- Wright writes: "Since Rand's views in the philosophy of mind diverge sharply from the behavioristic tendencies of the later Wittgenstein, she would not be bothered by Wittgensteinian rule-following considerations,

which might seem to be a source of difficulty for her claims about principles" ("The Scope and Justification of Rand's Non-Initiation of Force Principle in *FOAFS*, 86 n. 8). Wright doesn't elaborate as to what the apparent (but nonactual) source of difficulties is supposed to be; but for what it's worth, I don't think the later Wittgenstein is properly regarded as in any way behavioristic, and indeed I see his thought—on rule-following in particular—as having important affinities with Rand's philosophy of mind (Long 2006b; 2014).

- Ghate says that Locke, in his *Letter on Toleration*, "believed that the Pope was, uniquely among religious leaders, also a political leader who ruled a foreign country," and on this ground concluded that "Catholics could not be loyal to an English monarch" ("The Arc of Liberalism: Locke, Mill, and Rand" in *FOAFS*, 307 n. 2). Locke surely did not think the Pope was *unique* in this regard, since while Locke may have had Catholics in mind, the passage that Ghate is quoting does not mention them and is instead explicitly about Muslims who take themselves to owe a religious allegiance to the Ottoman Empire (Locke [1689] 1983, 50). Also, Locke's view seems to have been not that Catholics (or Muslims?) *as such* were beyond the pale of toleration, but only that those who put their foreign loyalty above their domestic loyalty were so—without necessarily assuming that they all must do so. At any rate, examples involving Catholics show up throughout the *Letter* with no hint that he regards them differently from other cases; and Locke also leans toward tolerating them, so long as they subject themselves to the civil law, in his early, recently rediscovered manuscript *Reasons for Tolerating Papists Equally with Others* (Walmsley and Waldmann 2019).
- Huemer argues for using moral rather than economic arguments on the grounds that moral arguments are more persuasive. This seems like a false dichotomy. Yes, people will be reluctant to accept economic arguments for policies they find morally repugnant; but they will also be reluctant to accept moral arguments for policies they think will cause economic disaster. There is really no substitute for using both. He also notes that critics of capitalism find it "*unfair* that some people—who appear not greatly superior to other men—should wind up holding vast wealth while others have barely enough to eat" ("Defending Liberty: The Commonsense Approach" in *FOAFS*, 240)—the implication being that advocates of liberty should try to convince people that such a situation is fair after all. But as applied to *actually existing* capitalism, such inequality *is* unfair, since it results primarily from unjust state intervention (see Long 2012). So, rather than trying to get people to stop worrying and love gross inequality, why not focus on showing them how such inequality results from the systematic violation of libertarian rights?

- Huemer also argues that NIOFP (or NAP; he doesn't distinguish them) is "uncontroversially false," since theft, contract violation, threats of force, and defamation do not involve force, yet "almost everyone, Objectivists and libertarians included, agrees" that these violate rights ("Defending Liberty: The Commonsense Approach" in *FOAFS*, 247–49). Of course this is *not* true with regard to defamation, which many libertarians (myself included) regard as within the legitimate bounds of free speech (so long as it is not accessory to a rights violation, as giving false testimony against someone on trial would be). Binswanger, in his reply, argues persuasively that the first three do involve force but waves his hands vaguely over the fourth ("Egoism, Force, and the Need for Government: A Response to Huemer" in *FOAFS*, 273–74), noting simply that *Rand* thought one could have property in one's reputation but offering no argument as to how one could own something whose existence consists in states of other people's minds. I wonder whether Binswanger's reticence over the fourth example indicates, dare one suppose, a disagreement with Rand?
- With regard to Tarr's chapter ("Economic Theory and Conceptions of Value: Rand and Austrians versus the Mainstream") investigating whether Randian value-objectivism and Austrian value-subjectivism are compatible, I can't resist recommending my own essays (Long 2005a; 2006c).
- Boettke lists among "important free-market economic principles" Milton Friedman's notorious claim that "the social responsibility of business is to earn profits" ("Mises, Rand, and the Twentieth Century" in *FOAFS*, 395). I don't see how that can be a free-market economic principle at all; first, it's not an economic claim, it's a moral one, and second, as a moral claim it's obviously false. Any decent moral agent is concerned with the possible negative impact of her actions on other people even when that impact is not rights violating. (Boettke is also, to my mind, far too generous to the nineteenth century, and also far too willing to accept the Randian package deal that treats the actual history of capitalism as some sort of approximation to the free market.)
- In his chapter contrasting Rand's approach to cronyism with that of the Public Choice school, Simpson ("The Aristocracy of Pull: An Objectivist Analysis of Cronyism") notes that to distinguish impermissible cronyism from legitimate state action that merely has a differential economic impact, one must have a theory of correct state action. Fair enough; but one must also consider whether a state that limits itself to correct action according to Randian theory, despite all the informational and incentival perversities to which monopolies are predictably subject, is a coherent possibility or simply a floating abstraction.

In conclusion—despite my many criticisms, this is a fascinating, first-rate anthology, which I highly recommend.

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NOTES

1. Strictly speaking, self-maintenance is also found in physical systems we do not ordinarily consider living—such as a star, which maintains itself in existence through an ongoing equilibration between the inward pressure of its mass and the outward force that pressure generates; so perhaps teleological concepts could apply to such cases as well. By this standard, the amount of teleology in the universe might actually be quite enormous. Your mileage may vary as to whether this is a bug or a feature.

2. Compare the Stoic author Seneca: "A living being has an attachment to itself, for there must be a standard by which all other things are judged. . . . Since I treat my own welfare as the standard for all my actions, I am concerned for myself above everything else. . . . Every living thing has an initial attachment to its own constitution; but a human being's constitution is a rational one, and so a human being's attachment is to himself not *qua* living being but *qua* rational being. For he is dear to himself in respect of what makes him human" (Lucius Annaeus Seneca, *Letters to Lucilius* 121, translation mine; for the original Greek text plus an alternative English translation, see Gummere 1925).

3. In my monograph *Reason and Value: Aristotle versus Rand* (Long [2000] 2010), I originally used the terms "thin survival" and "thick survival"; these were changed by the editors to "bare survival" and "flourishing survival."

4. By this I mean that even if in practice it succeeds in securing cooperation, it (a) secures it for the wrong reasons and consequently (b) fails to support the correct counterfactuals. (This is a familiar Platonic point, as per *Republic* II.)

5. In his reply to Zwolinski's chapter, Salmieri takes Rand's critique of intrinsic value (in the sense of value without a valuer or beneficiary) to apply also to intrinsic value in

the more familiar (to Aristoteleans) sense of value as an end rather than a means ("Selfish Regard for the Rights of Others: Continuing a Discussion with Zwolinski, Miller, and Mossoff" in *FOAFS*, 169). Salmieri thus describes constitutive means as *agent-relative intrinsic values* (unlike Miller and Mossoff, who in their chapter ["Ayn Rand's Theory of Rights: An Exposition and Response to Critics" in *FOAFS*, 148 n. 50] take agent-relative value to align with *objective* rather than intrinsic value), and (again unlike Miller and Mossoff) actually denies their existence.

6. I note in passing that Wright also applies the concept of cognitive paralysis to what looks like a critique of the cultish aspects of the Objectivist movement itself: "Although we are interested primarily in cognitive paralysis under force, Rand's writings make clear that the concept is not restricted to these contexts. . . . [I]nvesting any criterion with final authority over one's thinking, other than that of *one's own most conscientious application of objective epistemic norms*, necessarily paralyzes one's thought processes. [T]he criterion of 'what so and so would say . . .' . . . has no firm criteria of interpretation. . . . Even an otherwise contentful criterion . . . will become problematic if one's aim is to apply it *as so-and-so would*, since accessing its content relies on one's own application of proper epistemic methods" ("Force and the Mind" in *FOAFS*, 58–63).

7. Zwolinski makes a similar point in his chapter.

8. I've offered a similar interpretation of Rand elsewhere: "[O]ur rational philosophical judgments should set the *constraints* or *parameters* that determine which sets of value-judgments are permissible, while allowing variation from person to person within those constraints. . . . Rand regards multiple styles of living as consistent with rationality, in contrast to [Gus diZerega's] claim that for Rand reason reduces the good life to a single scalar. One might say that on Rand's view, a sense of life represents an evaluation of existence in relation (not just to humanity as such but) to *oneself*, with one's own particular history, talents, and proclivities" (Long 2019c, 146–47; cf. Cicero 2008, 37–41).

9. One is reminded of the debate over the Virginia Declaration of Rights, which, in a compromise to appease the proslavery faction in the legislature, was amended so as to qualify its claims of universal natural rights with "when they enter into a state of society," a bit of weasel language that the proslavery faction could interpret as "when they achieve European-style civilization" and the antislavery faction could interpret as "when they get together in groups" (Broadwater 2006, 82–84).

10. Ghate ("Rand [contra Nozick] on Individual Rights and the Emergence and Justification of Government") describes a "state of nature" as a condition "outside of society" (211),but he takes this as equivalent to a condition of statelessness. This is of course very different from how Locke and Nozick (let alone the anarchists) view the matter. For Nozick, the state of nature is the absence of a monopoly state, not the absence of society; for Locke, it is the absence of *civil society*, by which he means a political community united by a legitimate social contract. Hence, by Lockean standards *we are living in a state of nature right now*, since no currently existing government rests on such a social contract. In any case, while Nozick and Locke both differ from the anarchist in seeing a stateless condition as subject to various problems that only a state can solve, they agree with the anarchist—and with history—in seeing statelessness as compatible with fairly robust social cooperation. (And compare Thomas Paine's remarks at the beginning of Part II of *Rights of Man*.)

11. Some scholars regard talk of "rights" in the ancient Greek context as anachronistic; but see, for example, Miller 2015.

12. For an extended defense of these claims, see Long 2019a.

13. For example: "Native Americans had used seasonal burning for many purposes, including hunting, clearing trails, managing crops, stimulating new plant growth, and fireproofing areas around their settlements. The North American 'wilderness' encountered by white explorers and early settlers was in many cases already a heavily managed, deliberately diversified landscape" (Finnegan 2018).

14. Adam Smith ([1776] 1937) writes:

> The fees of court seem originally to have been the principal support of the different courts of justice in England. Each court endeavoured to draw to itself as much business as it could, and was, upon that account, willing to take cognizance of many suits which were not originally intended to fall under its jurisdiction. The court of king's bench instituted for the trial of criminal causes only, took cognizance of civil suits; the plaintiff pretending that the defendant, in not doing him justice, had been guilty of some trespass or misdemeanor. The court of exchequer, instituted for the levying of the king's revenue, and for enforcing the payment of such debts only as were due to the king, took cognizance of all other contract debts; the plaintiff alleging that he could not pay the king, because the defendant would not pay him. In consequence of such fictions it came, in many case, to depend altogether upon the parties before what court they would chuse to have their cause tried; and each court endeavoured, by superior dispatch and impartiality, to draw to itself as many causes as it could. The present admirable constitution of the courts of justice in England was, perhaps, originally in a great measure, formed by this emulation, which anciently took place between their respective judges; each judge endeavouring to give, in his own court, the speediest and most effectual remedy, which the law would admit, for every sort of injustice. (679)

15. Ghate describes Nozick as "answering objections from the individual [*sic*, for "individualist"] anarchist" ("Rand [contra Nozick] on Individual Rights and the Emergence and Justification of Government" in *FOAFS*, 207); but while an *individualist* anarchist may be contrasted with, for example, a communist anarchist, an *individual* anarchist is simply contrasted with a *group* of anarchists. Every anarchist is an individual anarchist. (Ghate also criticizes Nozick for resting his premises on appeal to undefended intuitions; Hunt's chapter, by contrast, argues convincingly that Nozick does no such thing.)

16. "Perhaps the most distinctive characteristic of the Western legal tradition is the coexistence and competition within the same community of diverse jurisdictions and diverse legal systems. . . . The pluralism of Western law [was] a source of freedom. A serf might run to the town court for protection against his master. A vassal might run to the king's court for protection against his lord. A cleric might run to the ecclesiastical court for protection against the king" (Berman 1983, 10).

17. Given the chapter's content, its title should rather be "Objectivism versus Anarchism." Of course, Binswanger is not alone in this kind of mistake. Herbert Spencer, who understood the difference, gave the eleventh and twelfth chapters of his *Principles*

of Ethics (Spencer [1897] 1978, 217–48) the titles, respectively, "Egoism *versus* Altruism" and "Altruism *versus* Egoism." I've occasionally asked my students what the difference in titles signifies; sometimes even my prelaw students don't get the point.

18. Or, to take an example from Rand herself, one might as well say that if there've been no fires when anti-fire safety protocols are in place, the safety protocols must not be necessary—an attitude Rand herself denounced as evincing a "loathsomely evil" mentality (Rand 1984, 123).

19. To pick just one example: the nineteenth-century individualist anarchist Benjamin Tucker (1893) writes: "Anarchism justifies the application of force to invasive men and condemns force only when applied to non-invasive men" (81).

20. One is reminded of Gunnar Myrdal's notorious claim that Hayek had never troubled himself about epistemological issues—which is a bit like saying that Karl Marx had never given much attention to the critique of capitalism.

21. Miller and Mossoff also have much to say about Locke. I see far more internal consistency in Locke's theory than Miller and Mossoff do, and find some of their interpretations of Locke puzzling or unduly uncharitable—but pursuing that point would take me too far astray.

REFERENCES

Anderson, Terry L., ed. 1992. *Property Rights and Indian Economies*. New York: Rowman & Littlefield.

Badhwar, Neera. [2001] 2010. *Is Virtue Only a Means to Happiness? An Analysis of Virtue and Happiness in Ayn Rand's Writings*. Washington, D.C.: The Atlas Society. Online at: https://atlassociety.org/sites/default/files/Virtue_and_Happiness.pdf.

Barnett, Randy E. 2014. *The Structure of Liberty: Justice and The Rule of Law*. 2nd edition. Oxford: Oxford University Press.

Bell, Tom W. 1992. Polycentric law. *Humane Studies Review* 7, no. 1 (Winter). Online at: https://theihs.org/w91issues/.

Benson, Bruce L. [1990] 2011. *The Enterprise of Law: Justice without the State*. Oakland: Independent Institute.

Berman, Harold J. 1983. *Law and Revolution: The Formation of the Western Legal Tradition*. Cambridge, Massachusetts: Harvard University Press.

Broadwater, Jeff. 2006. *George Mason, Forgotten Founder*. Chapel Hill: University of North Carolina Press.

Campbell, Robert L., transcriber. n.d.-a. Rand's answers to questions after her address at West Point, "Philosophy: Who Needs It" (6 March 1974): 09:27 through 23:01.

———. n.d.-b. Rand's answers to questions after her Boston, Ford Hall Forum lecture, "The Moral Factor" (1976). [18]: 27:58 hrough 35:29.

Cicero, Marcus Tullius. 2008. *On Obligations*. Translated by P. G. Walsh. Oxford: Oxford University Press.

Cowling, Maurice. [1963] 1990. *Mill and Liberalism*. Cambridge: Cambridge University Press.

Ellickson, Robert C. 1991. *Order without Law: How Neighbors Settle Disputes*. Cambridge, Massachusetts: Harvard University Press.

Evers, Williamson. 1977. Toward a reformulation of the law of contracts. *Journal of Libertarian Studies* 1, no. 1: 3–13. Online at: https://cdn.mises.org/1_1_2_0.pdf.

Finnegan, William. 2018. California burning. *New York Review of Books* (16 August). Online at: https://www.nybooks.com/articles/2018/08/16/wildfires-california-burning/.

Friedman, David D. 1989. *The Machinery of Freedom: Guide to a Radical Capitalism*. 2nd edition. La Salle, Illinois: Open Court.

Friedman, David, Peter T. Leeson, and David Skarbek. 2019. *Legal Systems Very Different from Ours*. Independently published.

Gotthelf, Allan and James G. Lennox, eds. 2011. *Metaethics, Egoism, and Virtue: Studies in Ayn Rand's Normative Theory*. Pittsburgh: University of Pittsburgh Press.

———, eds. 2013. *Concepts and Their Role in Knowledge: Reflections on Objectivist Epistemology*. Pittsburgh: University of Pittsburgh Press.

Gummere, Richard M., ed. and trans. 1925. *Seneca, Vol. VI: Epistles 93–124*. Cambridge, Massachusetts: Harvard University Press.

Hamburger, Joseph. 2001. *John Stuart Mill on Liberty and Control*. Princeton: Princeton University Press.

Hasnas, John. 2005a. Toward a theory of empirical natural rights. *Social Philosophy and Policy* 22, no. 1: 111–74.

———. 2005b. Hayek, the common law, and fluid drive. *New York University Journal of Law & Liberty* 1: 79–110.

———. [2008] 2016. The obviousness of anarchy. In Long and Machan 2016, 111–31.

Hayek, Friedrich A. 2012. *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy*. New York: Routledge.

Leeson, Peter T. 2014. *Anarchy Unbound: Why Self-Governance Works Better Than You Think*. Cambridge: Cambridge University Press.

Leoni, Bruno. 1991. *Freedom and the Law*. Expanded 3rd edition. Indianapolis: Liberty Fund.

Loan, Albert. 1992. Institutional bases of the spontaneous order: Surety and assurance. *Humane Studies Review* 7, no. 1 (Winter). Online at: https://www.researchgate.net/publication/235899483_Institutional_Bases_of_the_Spontaneous_Order_Surety_and_Assurance.

Locke, John. [1689] 1983. *A Letter Concerning Toleration*. Edited by James H. Tully. Indianapolis: Hackett.

———. [1690] 1988. *Two Treatises of Government: A Critical Edition with an Introduction and Apparatus Criticus*. 2nd edition. Edited by Peter Laslett. Cambridge: Cambridge University Press.

Long, Roderick T. 1997a. The nature of law, part IV: The basis of natural law. *Formulations* 4, no. 2 (Winter). Online at: http://freenation.org/a/f42l1.html#4.1.

———. 1997b. In defense of archetypes: A response. *Formulations* 4, no. 2 (Spring). Online at: http://freenation.org/a/f43h4.html#Long.

———. 1999. The irrelevance of responsibility. *Social Philosophy and Policy* 16, no. 2 (Summer): 118–45. Online at: http://praxeology.net/RTL-irrelevance.pdf.

———. [2000] 2010. *Reason and Value: Aristotle versus Rand*. Washington, D.C.: The Atlas Society. Online at: https://atlassociety.org/sites/default/files/Reason_Value.pdf.

———. 2004. Anti-psychologism in economics: Wittgenstein and Mises. *Review of Austrian Economics* 17, no. 4: 345–69. Online at: http://praxeology.net/antipsych.pdf.
———. 2005a. Praxeology: Who needs it. *The Journal of Ayn Rand Studies* 6, no. 2 (Spring): 299–316.
———. 2005b. Reference and necessity: A Rand-Kripke synthesis? *The Journal of Ayn Rand Studies* 7, no. 1 (Fall): 209–28.
———. 2006a. A beauty contest for dichotomies: Browne's terminological revolutions. *The Journal of Ayn Rand Studies* 8.1 (Fall): 143–62.
———. 2006b. Rule-following, praxeology, and anarchy. *New Perspectives on Political Economy* 2, no. 1: 36–46. Online at: http://praxeology.net/RTL-rule-following.pdf.
———. 2006c. Economics and its ethical assumptions. *Mises Daily* (20 May). Online at: https://mises.org/library/economics-and-its-ethical-assumptions.
———. [2008] 2016. Market anarchism as constitutionalism. In Long and Machan 2016, 133–54. Online at: http://praxeology.net/Anarconst2.pdf.
———. 2010. Can we all get along? *Cato Unbound* (29 January). Online at: https://www.cato-unbound.org/2010/01/29/roderick-t-long/can-we-all-get-along.
———. 2012. Left-libertarianism, market anarchism, class conflict and historical theories of distributive justice. *Griffith Law Review* 21, no. 2: 413–41. Online at: http://praxeology.net/historical-justice-GLR-proofs.pdf.
———. 2014. Wittgenstein on rule-following. In *Wittgenstein: Key Concepts*. Edited by Kelly Dean Jolley. Abingdon, U.K.: Routledge: 81–91.Online: http://praxeology.net/RTL-wiggy-rules-KDJKC.pdf.
———. 2016. The winnowing of Ayn Rand. In *Cato Unbound: A Journal of Debate*. Online at: https://www.cato-unbound.org/2010/01/20/roderick-t-long/winnowing-ayn-rand.
———. 2019a. Getting self-ownership in view. Working paper. Online at: http://praxeology.net/RTL-self-ownership-PPE2019.pdf.
———. 2019b. Why libertarians should be social justice warriors. In *The Dialectics of Liberty: Exploring the Context of Human Freedom*. Edited by Roger E. Bissell, Chris Matthew Sciabarra, and Edward W. Younkins. Lanham, Maryland: Lexington, 235–49.
———. 2019c. It ain't necessarily so: A response to Gus diZerega. *Molinari Review* 1, no. 2 (Autumn): 103–77.
Long, Roderick T. and Charles Johnson. 2005. Libertarian feminism: Can this marriage be saved? Working paper. Online at: http://charleswjohnson.name/essays/libertarian-feminism/.
Long, Roderick T. and Tibor R. Machan, eds. 2016. *Anarchism/Minarchism: Is a Government Part of a Free Country?* New York: Routledge.
Mack, Eric. 2003. Problematic arguments in Randian ethics. *The Journal of Ayn Rand Studies* 5, no. 1 (Fall): 1–66.
Mill, John Stuart. 1859. *On Liberty*. London: John W. Parker & Son.
Miller, Fred D., Jr. 2015. Did Plato and Aristotle recognize human rights? In *New Perspectives on Aristotelianism and Its Critics*. Edited by Miira Tuominen, Sara Heinämaa, and Virpi Mäkinen. Leiden: Brill, 95–110.

Raeder, Linda C. 2002. *John Stuart Mill and the Religion of Humanity*. Columbia: University of Missouri Press.

Rand, Ayn. [1943] 1994. *The Fountainhead*. New York: Plume.

———. 1984. Egalitarianism and inflation. In *Philosophy: Who Needs It*. By Ayn Rand. New York: New American Library, 120–36.

Scott, James C. 2009. *The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia*. New Haven, Connecticut: Yale University Press.

Smith, Adam. [1776] 1937. *An Inquiry into the Nature and Causes of the Wealth of Nations*. Edited by Edwin Cannan. New York: Modern Library.

Spencer, Herbert. [1897] 1978. *The Principles of Ethics*. Volume 1. Indianapolis: Liberty Fund.

Stringham, Edward Peter, ed. [2007] 2017. *Anarchy and the Law: The Political Economy of Choice*. New York: Routledge.

———. 2015. *Private Governance: Creating Order in Economic and Social Life*. Oxford: Oxford University Press.

Tucker, Aviezer and Gian Piero de Bellis, eds. 2015. *Panarchy: Political Theories of Non-territorial States*. New York: Routledge.

Tucker, Benjamin R. 1893. *Instead of a Book, by a Man Too Busy to Write One: A Fragmentary Exposition of Philosophical Anarchism*. New York: B. Tucker.

Walmsley, J. C. and Felix Waldmann. 2019. John Locke and the toleration of Catholics: A new manuscript. *Historical Journal* 62, no. 4 (December): 1093–115.