

Murder; Child and Animal Abuse

J. C. Lester

In reply to the following letter ...

Dear FREE LIFE

I have recently been introduced to libertarianism via Murray Rothbard's *For a New Liberty*. Although relatively comprehensive, it has inevitably left some questions unanswered and I would be interested to bear a libertarian response to my comments.

My first query is on the subject of law and order. Libertarian law apparently exists only to protect the property rights of the individual, including the right of control over one's own body. Legal actions are by those who have been aggressed against in order to extract recompense from their aggressors. I fail to see, however, how this principle could be upheld in the case of murder. The victim, being dead, would obviously be unable to take any action against the murderer. The alternatives, then, are that either the murderer remains unpunished or that the prosecution is carried out by someone else. The former possibility would clearly be unsatisfactory, yet the latter appears to conflict with libertarian principles for the following reasons:

Legal action, by anyone, would seem to imply that their property rights have been infringed, but the only crime that has been committed is against the body of the murder victim, which by libertarian principles no-one else can have any property rights over. It is possible that part of each person's law and order insurance could involve a commitment to prosecute on their behalf in the event of a murder, but then the question arises; who would a convicted murderer recompense as retribution, and what kind of 'punishment' could possibly be appropriate, particularly in the case where the murder victim has no living relatives.

My second query is also on the subject of

law and order, with regard to children this time. Under libertarian law, as I perceive it at any rate, a couple could decide that they no longer wish to support 'that parasite' their young baby. They eject it from their property leaving it naked outside one night, and before the morning, when it might be found by some benevolent charitable organisation, it is dead from exposure. This is effectively murder and yet no crime has been committed under libertarian law. More directly, suppose that they decide to murder their baby, either violently or by simply refusing to feed it. Since the couple could refuse entry to their property to anyone, nobody could ever find out, whatever they suspected, and even if they did the situation would simply be that of my first query, with no-one able to take any action. Basically I am asking what protection would babies and young children have from their parents in a libertarian society, since this type of abuse would undoubtedly occur in any realistic scenario.

Finally, on the subject of animals. Animals are not mentioned specifically, but Rothbard's book implies that they should be treated like any other property. The problem with this position is that animals are not inanimate objects, but living, sentient creatures. They are able to experience the vast majority of human emotions and in the wild they generally have complex, well developed social lives, which recent observations have shown to be far less dependent on simple instinct than was once thought. I would suggest that this shows that they ought to have some natural rights of their own, although obviously not exactly the same ones as humans. Given the current level of animal abuse (e.g. factory farming, vivisection, hunting, circuses etc) it can be seen that even the slightest recognition of natural rights for animals would have extremely wide-ranging ramifications, perhaps necessitating further fundamental changes in society. I am an animal rights campaigner but have as yet heard no clear libertarian statement on this issue.

Sean Fox

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A Reply by J. C. Lester

There is no fixed libertarian position on any of the issues raised by Sean Fox. The treatment of children and animals is an especially contentious area. Rothbard is not the first or last word on libertarianism and neither am I. I am an anarcho-capitalist - like Rothbard - whilst many a libertarian is a minimal statist, but I don't have much time for talk of natural rights - unlike Rothbard and many others. I am a libertarian out of a combination of a certain amount of natural human benevolence and a considerable amount of sheer self-interest. I think people, including myself, become better off (according to their own standards) the freer that society becomes. And I like the idea of this happening.

Libertarian law would primarily protect the individual from force (this includes theft) and fraud. On this I think we can all agree. Such aspects of common law existed prior to statutory law and will persist after it. These will be found in any advanced society for they are a necessary prop to civilisation. Discussing the likely types of law seems quite useful, but, as I said, within the framework of anarcho-capitalism *sans* natural rights. Though precisely which laws would evolve in a free market is impossible to say.

The Murderer and his Victim

Such laws might well protect the individual's interests after his death as they might were he unconscious or comatose. Ensuring that his last will and testament is adhered to rather than allowing his property to be seized would be an example of such protection.

It is obvious that a dead man cannot act. What happens after a man's death can still be the result of his action and he can be held responsible for it. A dying man might plant a time-bomb to kill a particular innocent person after his own death (maybe years

later). He would only become a murderer when the bomb goes off and kills his victim. Similarly someone can initiate a legal arrangement that would continue after his death. It would be the result of his action and he would be responsible for it. So the murder victim can already have taken appropriate action by insuring himself. His motive for taking such action would probably be deterrence. The insurance company would prosecute on behalf of its murdered client as arranged. Not to do so would be tantamount to accepting that their clients could be murdered with impunity. This might be bad for business.

But why does the murder victim have to initiate action for it to be legitimate? (When I use 'legitimate' I generally mean 'compatible with libertarianism'.) Charity is absolutely legitimate. Acting without payment on someone else's behalf to protect his interests from coercion is an act of charity. It seems legitimate to act in someone's interests either when he is alive and cannot protect himself or when he has been murdered. (For a person's interests can continue after his death as can the consequences of his actions. That people make wills is an example of this.)

One does not even need this motive to legitimately ensure that the murderer is taken care of. People will pay out of their own interests to see that murderers do not roam the streets - they might be the next terrorist victims. Pre-emptive measures for self-defence need not be anti-libertarian.

The murderer would recompense the beneficiaries of the victim's will. Otherwise his family and maybe his friends or even his favourite charity could automatically (through the courts) receive payment. Legal action is not merely for extracting restitution but also to punish. Restitution is important and much neglected by the state but it is certainly not the only legitimate function of legal redress. People usually want punishments that will act as deterrents first and only restitution (and possibly revenge) afterwards. The kind of punishment that is appropriate is best determined by the market. What the murderer gets will be what people are prepared to pay to see that the

punishment deters other potential murderers and satisfies their moral outrage.

The idea that revenge has a place in law is perhaps controversial. If people demand extreme punishments as the price for certain crimes that they regard as especially awful then that is as much up to them as setting a price for any goods they possess. If the would-be murderer, or whatever, wants to avoid paying the price he has only to avoid the crime in question. I accept the free market solution for I expect people to pay a lot to avoid coercion and thus cut down the number of murderers, whilst I expect no effective demand to stop victimless 'crimes' (such as watching 'nasty' videos).

If someone cannot or does not insure himself against murder and he is murdered and no one is prepared to catch the culprit I am not convinced that the murderer remaining unpunished always would 'clearly be unsatisfactory'. (We may seem to have this situation when we 'murder' other animals.) If people don't want to pay for this service are they to be taxed? If they prefer to take a risk if there is one - then let them.

One can also reject the assumption that libertarian principles preclude the possibility that one can have property rights (in a legitimate legal sense) over another's body. All contracts of employment cede some measure of property rights over oneself. Why shouldn't I sign a contract to sell a kidney? The extreme case is selling oneself into slavery. Inalienable natural rights lead to a traditional paradox here: if you can sell your freedom your rights aren't inalienable; if you can't then your personal freedom isn't complete. I can see no reason that slavery is necessarily incompatible with libertarianism. The freedom to end one's freedom by slavery seems just as much a necessary part of full personal freedom as is the freedom to end one's freedom by suicide. (Suicide would almost always be a much more drastic personal decision.) I don't think selling oneself into slavery will ever really catch on though. It would be as absurd to think slavery might become popular as it would be to think that hara-kiri might. Libertarianism only allows these possibilities. It does not follow that they will become acceptable and I certainly don't condone them.

Infanticide and Child Abuse

Murder is culpable killing. I do not think that killing a child that is totally dependent/parasitic on oneself is culpable any more than is abortion or 'wasting' sperm and ova. Paradoxically perhaps, I do find objectionable the idea of leaving the infant to die of starvation or exposure - but only because of the suffering that results. If we decide to withdraw our support then this is not an act of force or fraud. Having decided not to support the 'parasite' - maybe because it is deformed - if it is on our property and we don't wish that another should take it, then euthanasia would seem preferable - even a moral obligation - to being responsible for unnecessary suffering. This is common practice, I understand, in NHS hospitals (using injections). One is not aiming at death here, for that would come anyway without continued support.

In Britain mothers who do not want their children rarely abandon them in the street, let alone kill them. There is no reason to suppose that people will be more cold-hearted in a free society. Individual conscience and social disapproval will continue to be enough to prevent such things increasing. Adoption and fostering will remain popular alternatives. In fact statism positively encourages a government should do something' attitude which prevents such things becoming even more common.

Actual torture of innocent children is as anti-libertarian as torture of innocent adults. A libertarian society would not tolerate it if it were detected. People might pay to see that any child is protected from violence. It is no problem that it may be necessary to go on a criminal's property to prevent such acts. Infringing malefactors' normal liberties is necessary if there is to be any law and order. But forcing all parents to allow regular child inspectors into their homes just because abuse is a possibility could only do more harm than good. We have to accept that some child abuse will, as with murder, always exist.

On the reasonable assumption that children are not likely to be imprisoned by their parents they could also protect themselves. At two years old or so the maltreated child

may flee to the sanctuary of a neighbour or even a passer-by. Most people would help a child in distress. I doubt whether a protection agency would want to be seen returning a child to parents who abuse it. Unlike now the final say as to who to stay with would be the child's.

Abuse of Animals

I expect animals to be treated largely as property. I think many animal rightists anthropomorphize them considerably but I accept that many animals can feel intense physical and psychological pain and discomfort. I don't think animals have natural rights but then I don't think people do either - if these entail an 'objective' (independently existing, single, true) morality.

Like most human beings I find the torture of animals repugnant; I also find them very tasty (though I once went for three years without eating anybody). I do not like the rhetoric about us being persons whilst they are mere beasts and absolutely qualitatively different. There is an obvious continuum between the lowest animals and ourselves. Such a distinction may make some people feel happier but I believe it is dishonest. I think it preferable to admit that we have enslaved these sentient creatures for our own pleasures. However, if we didn't like various animal products there would probably be considerably fewer animals anyway; most other animals can't suffer the expectation of their eventual 'murder' and the indignity of 'slavery' as we could; and most cannot suffer if they lose a 'spouse' or 'friend'.

Gratuitous animal suffering is best tackled by consumer sovereignty. As people grow wealthier (thanks to industrialisation) they tend to become more humane and outward looking. Consumer agencies that report cruelties will be increasingly in demand - they already exist - and offending companies will be boycotted. This happens now over cosmetics, amongst other products. The companies themselves have begun to realise the value of such slogans as 'beauty without pain'.

The effect will increase the more people realise that they cannot pass the buck to the

state on such issues. Not that the state has ever done much to prevent cruelty to animals; far from it in many cases. The disgusting LDSO test (where the dose of some substance is continued until half the animals involved are dead) is used all the time. Yet the companies know that it is often useless and they would rather be testing reasonable doses on willing human subjects (many of whom might be terminally ill anyway) if only it were legal. The government also finances much useless animal experimentation in universities, defence establishments etc.

I have not attempted to make sense of limited statist or natural rightist approaches because I could not really say to what conclusions such ideas are supposed to lead or why.

Free Life