

## An Individual Libertarian's Reply

David Ramsay Steele

Lyth does a good job of summarizing some of the most common objections to libertarianism. He covers a lot of ground, and doesn't develop any argument very far, so I will merely indicate briefly why libertarians don't find some of his arguments as instantly compelling as he does. It might be fruitful if Lyth would pick one or two specific points and expound his views on these in greater detail.

### Natural Rights

Like Lyth and most libertarians, I'm not entirely in agreement with Rothbard's account of 'natural rights', though I think Lyth's treatment of this topic is hasty. Mathematics, for example, is 'invented by people', yet for all that, a new mathematical concept may genuinely be 'discovered'. Discoveries may also be made in chess, logic, or any other theoretical (Kari Popper's World Three) realm created by humans. It may therefore make sense to talk about the discovery of the best system of rights. On the other hand, Rothbard appears to believe that the evaluation of rights can completely disregard consequences for human well-being, and I think that must be wrong. I find all the usual 'natural rights' arguments inadequate, but surely the comparison is with, say, 'optimal growing conditions for bluebells' rather than 'gravity'. There is an obvious sense in which optimal growing conditions for bluebells do indeed 'exist in nature'.

### First Acquisition of Land

Two of the issues raised by Lyth are initial acquisition (how land first becomes someone's property) and admissible pollution (how much you can affect someone else without their permission). Both of these raise fascinating, sometimes difficult, conceptual problems, but in each case, I don't think they raise serious practical difficulties for a workable libertarian society.

My own defence of unrestricted private property in land is along the following lines. First, I establish that some system of property is inevitable in any society. Second, I compare different systems of property - both different historical systems and different imaginary systems, analysing and evaluating the consequences of these. From these two stages, it is quite easy to show, third, the great desirability of private property in all resources, in an approximate sense of private property. Indeed, the predominance of private property in all or most factors of production is indispensable for the existence of any system of advanced industry, and therefore for any society which can support living standards at least as high as now prevail in the industrialized countries. The fourth stage of the argument would be to show that precisely private property, with complete absence of government regulation, is best for land. This requires comparison of such a system with some other candidate property system, but Lyth doesn't outline any alternative system, so I can't take that very far. By way of a few hints, I would say that for economic efficiency it's necessary that land be treated exactly like any other capital asset, that people be able to capture the benefits and bear the harms consequent upon their decisions anent the use of their land, and that people be free to speculate in land, and to hold unused land off the market as they please.

Government regulation of land use is always and everywhere harmful (except in the special case where some government regulation equals out the harm done by some other government interference). This is what we find when we look at specific cases, and this is what we ought to expect, given the nature of government.

Thus, I don't try to defend private property in land by the justice of the first acquisition. I defend private property in land as an institution vital to human welfare. It follows from private property in land that there has to be, some system of first acquisition.

None of the proposed systems of initial acquisition (mixing one's labour and staking a claim are the two best known) seem to be entirely persuasive, and I think there is much

mileage here for philosophical discussion, but I don't see any practical obstacle to a functioning libertarian legal system. (In much the same way, there are numerous well-nigh insoluble riddles concerning the proper scope of government, but these don't show that some form of functioning government cannot exist.)

First, only a very small fraction of wealth is nature-given. Second, of the contending acquisition systems which are least implausible, most of them lead to the same designated owner in the majority of cases. For instance, if a man goes into the wilderness, fences an acre of land, farms it for 10 years, and tells his friends it is his land, almost any respectable first-acquisition theory will say that the man owns at least farming rights in that land in perpetuity. (A few would say that he could lose that right by subsequently neglecting the land, but I think it can be shown that the implementation of this principle would play havoc with real estate, markets and seriously hurt the general welfare. Otherwise, it would be worth considering.)

Third, there is room in any reasonable legal system for different local traditions to exist side by side. For example, in the US, rights to ground water vary from region to region according to historical circumstances, and this in itself creates no problem. Different communities can have, different internal rules, and they can be respected by other communities.

Fourth, some legal decisions are like the size and shape of electrical plugs, or which side of the road to drive on. It's advantageous to make a single definite choice, at least within a sizeable geographical area, but the actual choice made is of little importance, and once a choice is made, it's too much bother to change. In such cases, we would expect standard rules to emerge in the market, much as the standard size and design of cassette tapes and compact disks emerged, without compulsion, because of mutually-beneficial economies of standardization.

Even where there seems to be a theoretical impasse, there's no reason to think the system would be paralysed. A piece of property is worth less if title is unclear, so

there's an incentive to resolve ambiguities, and decide an issue, if anything important hangs on it.

Lyth has missed something of the flexibility of Rothbard's view of land acquisition: problems like the displaced aboriginals and the chequered history of many pieces of land are easily dealt with. Claimants who want to unseat the existing possessor have to prove their historical case with evidence, in court, and where this can be done, their claim should be upheld. This approach flows from the first-use principle, since uncertainty about past ownership puts the land back into the commons, so that the current user becomes the first user. Ignorance about the distant past of a piece of land makes the practical task easier, not harder. (Rothbard has addressed some of these questions at greater length in his other works, such as *The Ethics of Liberty*.)

Aboriginals should be compensated, where it can be shown that their ancestors lost rights in the land due to invasive force. No special problems are raised by the fact that these ancestors used the land unintensively, so that they did not need a fully developed conception of land ownership (though this means the compensation should be less). Today many people have similar limited rights to use the oceans, but tomorrow the oceans will have to be turned into full private property. When that happens, the preexisting, partial rights (such as fishing rights) ought to be recognised and incorporated into the new system of full private ownership.

I agree that Rothbard's self-ownership argument doesn't work, but I'm puzzled by Lyth's rejection of 'absolute ownership of property' in favour of 'a more pragmatic approach'. It's precisely pragmatic or practical considerations which support – 'absolute' property rights (the old Roman principle that you may use or abuse what is yours in any way that you wish). But then, Lyth's alternative to private property is unspecified and difficult to guess.

It's not clear in what sense any modification of the property system would be less 'absolute' than what preceded it. The law can say that you are free to light a bonfire in your

garden and annoy your neighbours with the smoke, or that you may not do so without your neighbour's consent (either of these would be cases of private property), or that whatever you and your neighbour decide, the government is going to impose on both of you a wholesome system of rules and regulations devised by sagacious politicians for the ennoblement of your character. Any of these (or any of an infinity of others that may be imagined) are 'absolute'.

It's possible that Lyth means no more than that it is morally acceptable to infringe property rights for purposes of taxation. I agree that if it could be shown that a decent standard of life could not be maintained without taxation, this would be a strong argument for taxation, but I have never seen it convincingly argued. Lyth's argument is that 'common procedures' are required for the courts and the police, and this is agreed. But it is a big jump from common procedures to - a monopoly of power over a given area'.

Both Lyth and I speak English, but I don't recognize any authority as competent to determine the rules of English grammar for Lyth and me. Litigation occurs between citizens of different countries with different legal systems - here there is no monopoly of power. (There is some good discussion of what would happen under anarchist legal rules in David Friedman's *The Machinery of Freedom*.)

Another possibility is that by non-absolute property rights, Lyth merely means some system in which the nominal owner of a piece of land can be second-guessed by the authorities. But if a person cannot act freely to dispose of any asset in the way he thinks fit (consistent with respecting the absolute property rights of others) then the market in such assets will not function optimally and resources will be, misallocated, leading to impoverishment.

## **The Economy**

Lyth claims that some welfare schemes 'can even increase wealth creation', but gives no examples. He defends redistribution so long as an individual is better off if he earns more gross income. But this condition is not enough to avoid misdirection and

inefficiency. Any amount of state welfare payment will increase unemployment at the expense of the employed, who are losing twice over: by paying taxes to support the unemployed, and by the effects of the consequent loss of output.

Surely we can agree that with state intervention swept away, the number of genuinely needy and deserving cases will be small. Why not permit them to be taken care of by ordinary compassion and voluntary generosity? Why erect a formidable apparatus to take from millions of people by force, in order to create a permanent class of state dependents discouraged from seeking to become self-supporting? Why this oh-so-casual resort to compulsion?

In the nineteenth century railways were often subject to intense competition. Governments have almost always intervened to prop up railways hard hit by competition. This points to a weakness of Lyth's approach: He attacks voluntary co-operation on the market for failing to meet some hypothetical standard, but does not subject coercive government intervention to the same test. (On alleged 'natural monopoly', see Harold Demsetz, *'Why Regulate Utilities?'*, *Journal of Law and Economics*, 11, 1968.)

If one is going to advocate government intervention, it is only realistic to acknowledge that government intervention has its own logic, and will probably not follow one's own wishes or recommendations. Government is a promoter of monopoly. All serious monopoly problems are due to government. Is it wise to appoint the fox to guard the chickens?

A railway line may face competition from another line, or from roads, rivers, canals, airlines, or hovercraft. Except in a few unusual cases, free-market transport would be highly competitive. In any case, commercial and industrial centres would probably subsidize transportation to encourage trade, as occasionally happens in a small way today (with some shops providing free bus rides to Oxford Street on certain days of the year, for example). This topic is worth more discussion, but Lyth doesn't reveal his own proposal for the railways. Presumably, there are two possibilities:

government ownership or government regulation. Lyth doesn't say which of these he prefers, or how it would improve matters. Lyth's statements about the dangers of collusion and the need for coercive anti-monopoly policies are not borne out by theory or experience. Both tend to show that attempted cartels without government support are fragile and nearly always collapse quickly. (For a brief, classic treatment of monopoly problems in the market, see Chapter VIII of *Milton Friedman's Capitalism and Freedom*, 1962. For a recent, more wide-ranging discussion see Yale Brozen, *Concentration, Mergers, and Public Policy*, 1982.)

Although I don't entirely agree with all of Rothbard's criticisms of Keynes, it's only fair to say that Rothbard has frequently written on macro-economic policy elsewhere (for instance, in his books, *America's Great Depression* and *Man, Economy, and State*). And, leaving aside the details of Rothbard's analysis, a great many economists agree that there would be little or no involuntary unemployment in a free market. Actually, the bulk of unemployment today or in the 1930s is fully voluntary - it is a predictable response to government welfare. Unemployment is also promoted by minimum wages ('wages councils' in the UK), rent control, taxation, and trade union action.

### **Information**

If consumers really want lists of ingredients on food packages (want them enough to pay the small additional cost of providing them), then food producers will supply such lists, but Lyth does not explain why the government should force this upon people who have chosen not to have it. Lyth apparently holds that where people are ignorant, it follows that the government should use the tax money it has extracted from them in order to reduce their ignorance (although the individuals concerned would prefer to keep their money and use it for other purposes, perhaps reducing their ignorance in different directions). On this principle then, individuals should not be free to choose their own level of ignorance, but this must be chosen for them by the state. I can't tell whether Lyth believes that there should be a law compelling everyone to

attend night school and take examinations in dietetics, aesthetics, or comparative religion, and if not, why not. Maybe he vaguely supposes that food labels without lists of ingredients is a situation that just dropped from the sky. But no - it is (always assuming that there would be no such lists in the absence of government compulsion) the result of people's free choices. Why should the judgement of the government, consisting of fallible individuals, ultimately owing their position to the votes of the very individuals they are pushing around, be automatically considered superior to the judgements of the individuals themselves?

The notion that competition is improved by such compulsion is a typical confusion arising from too great emphasis on the expository device of 'perfect competition'. Consumers decide for themselves how well-informed they wish to be, at the prevailing price of information.

### **National Defence**

Lyth's appeal to national defence is his strongest argument, but it is not quite as open-and-shut as he thinks. This is one of the questions which libertarians recognize to be problematic and spend a lot of time arguing about. It leads some of them to advocate a minimal state (Not all libertarians are anarchists).

It's not enough to show that the free market would undersupply 'national' (regional) defence. This has to be shown in such a way that it's compatible with the government's predictably doing better. For example, if a lot of people care enough about national defence to put themselves out, there will be enough national defence under anarchy or a government. If no one cares, there will be no national defence under either.

People would purchase some defence on the market. The problem is that a service like retaliatory ICBMs can be provided only all-or-nothing to a large geographical area. There's no way to selectively exclude those who omit to pay, so (current theory predicts) the service will be undersupplied. The problem is discussed in Chapter 34 of David Friedman's *Machinery of Freedom*, and further analysed from an anarchist stand-

point by Jeffrey Rogers Hummel in his article, '*National Goods Versus Public Goods: Defense, Disarmament, and Free Riders*', Review of Austrian Economics, Vol.4, 1990.

### **The Environment**

It's unclear how something can be 'the concern of us all' if in fact its destruction affects no one but the owner. Setting that aside, Lyth's point here well illustrates the cavalier way in which anti-libertarians habitually argue. If a private owner of a whole rain forest is free to destroy it, there is the hypothetical possibility that he might do so, and that we might all agree that this was unfortunate. Furthermore, it is even conceivable that a single individual might own an entire rain forest. However, if the government has the ultimate say in what happens to a rain forest, there is the possibility that the government might destroy it, or encourage private individuals to destroy it. Immediately we consider this possibility, we see that it is fairly likely. Governments have shorter time-horizons than individuals and therefore tend to ignore long-term destruction of assets. Governments represent a concentration of power that enables brutal large-scale policies to be conducted, unthinkable in a voluntary system. Government administration of natural treasures has a poor record, compared with that of private, voluntary organizations like the National Trust. (On a related issue, see Robert J. Smith, '*Private Solutions to Conservation Problems*', in *The Theory of Market Failure*, edited by Tyler Cowen, 1988.)

Lyth's argument about permissible radiation raises fascinating and difficult conceptual issues (See Chapter 41 of *The Machinery of Freedom* for an introductory discussion) but - once again - I don't see any practical difficulty. Courts can come up with workable rules of thumb that embody a kind of consistency and that permit normal life to go on while discouraging serious dangers and nuisances.

### **What Lyth has to Show**

Lyth tends to suppose that his own incredulity is a good argument: he finds it 'truly astonishing' and 'scarcely credible' that

the free market is always more efficient than government intervention. Amid the relentless torrents of statist indoctrination, the idea does take a bit of getting used to, but I have never heard a refutation of it. This isn't to say that one can't describe imaginary situations in which the government could do better than the free market. But after doing that one has to show 2. that such imaginary situations have real-life counterparts; 3. that the government will do better (that the government will in practice know enough to do the more efficient thing, and be motivated to do it); 4. that the gain from government intervention will outweigh the costs of government intervention (such as taxation and my hurt feelings); and 5. that the government will not also do other things, damaging to people's welfare, which outweigh the good it has done by improving on the market in the specific instance. Only when these five conditions have been shown to be plausible will the beginnings of a *prima facie* case for government interference in our lives have been made out.

### **Free Life**