

# PETER SCHWARTZ'S *LIBERTARIANISM: THE PERVERSION OF LIBERTY:* A RESTRICTED CRITIQUE



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In his essay, *Libertarianism: The Perversion of Liberty*,<sup>1</sup> Peter Schwartz mounts a withering critique of libertarianism, from an Objectivist<sup>2</sup> perspective. Surprisingly, in view of Objectivism's advocacy of minimal statism in politics, and libertarianism's espousal of anarchism, the focus of Schwartz's criticisms are not primarily directed at anarchism. This is because, first, he recognises that libertarianism includes both anarchism and minimal statism, not just anarchism. And second, if all libertarians were minimal statist he would still oppose libertarianism.

From the thrust of his criticisms he undoubtedly holds the view that anarchism is the *consistent* libertarian position because the major difference he cites between Objectivism and libertarianism is that Objectivism is *anti-statist* while libertarianism is *anti-state*. Objectivism opposes the initiation of force by the state but not its retaliatory use. Libertarianism opposes the state, as such, and tends to condemn all actions of the state, regardless of whether force is used aggressively or defensively. Schwartz notes that, in practice, libertarianism's "noninterventionism" is directed against foreign rather than domestic intervention. It is primarily the militaristic actions of the state rather than its police actions which libertarianism condemns.

In this essay I shall not attempt an exhaustive analysis of Schwartz's arguments. One reason for this is that Schwartz quotes extensively from diverse American libertarian sources with which I am not familiar. Instead, I shall focus on, and criticize, a few of Schwartz's arguments which I find to be especially wrong-headed.

## FOREIGN POLICY IS NOT STRAIGHTFORWARD

Schwartz holds that to advocate either unilateral nuclear disarmament or a nuclear freeze is to strip innocent Americans of their means of self-defence. He creates the impression that libertarianism rejects defence altogether, even though the quotes he cites refer to "nuclear disarmament", "nuclear freeze" and "disarmament down

to police levels" (p. 2). Undoubtedly, Schwartz thinks that any of these proposals would be ineffective for defending the United States but he ought perhaps to have provided some reasons for his views.

On foreign policy, interventionism does usually seem to be counter-productive. Viewed solely from the point of view of national self-interest, there is hardly ever any foreign development which is a direct threat to the US which their interference does not make worse. There might be some case for the US taking an interest in what happens in neighbouring countries but the US is so much more militarily and economically powerful than these countries that it really should not be so paranoid about them. Often the US, in its foreign policy, sowed the seeds of anti-Americanism by propping up Third World dictators, which action then generated and encouraged sundry Marxist guerilla movements.

From my reading of Rand's books I had the impression that she was a non-interventionist, which is different from what Schwartz seems to be. She talks of "[America's] grotesquely futile policy of supporting former allies and enemies ...".<sup>3</sup> Yet Schwartz creates the impression that Objectivism advocates more of an interventionist foreign policy than Rand suggested.

Nevertheless, Schwartz does make some thought-provoking criticisms of libertarianism's predominant non-interventionist stance on foreign policy. The main point he makes is that libertarians make no distinction between *initiatory* intervention and retaliatory intervention. That the state intervenes is seen as enough to merit condemnation. However, there is a more subtle feature to the libertarian view which Schwartz overlooks here, though Murray Rothbard does allude to it in *For a New Liberty*.<sup>4</sup>

We start from the assumption (shared by Objectivism) that the retaliatory use of force is justified only against those who initiate it. Modern weapons of mass destruction, conventional as well as nuclear, cannot be targeted solely at combatants. Therefore, the lives of non-combatants are inevitably lost in contemporary conflicts. It is virtually impossible for external wars to avoid the loss of civilian life, so when states intervene they invariably cannot target their retaliatory force solely at the initiators of force.

People can oppose nuclear weapons on moral grounds, simply because they cannot be targeted at combatants without harming innocent civilians, even though, personally, they may be extremely hostile to the [former] Soviet Union. I have met people who fall into this category. And they are not all Trotskyists.

Of course, it is possible to argue that the deterrent value of nuclear weapons overrides the fact that they cannot be targeted solely at combatants and that their possession results in a better outcome (less lives lost), simply because wars cannot start between the nuclear powers. This is certainly an argument Schwartz could make,



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but so eager is he to brand libertarianism in the darkest possible colours that he is reluctant to consider the possibility that there might be a sincere argument against nuclear weapons.

Another issue on which Schwartz blunders is that of negotiation with foreign governments (p. 32). He thinks that negotiation necessarily implies the concession of moral legitimacy. But it surely depends on what one is negotiating about and the context in which one is negotiating. For example, negotiation of multilateral nuclear weapons reduction is to the interest of the respective parties on cost grounds alone. Yet this need not imply that either party grants the other moral legitimacy. Similarly, a weaker country may find it preferable to negotiate with a stronger enemy, if that is an option, rather than go to war. Again, the concession of moral legitimacy is not implied.

### **LIBERTARIANISM DOES NOT IMPLY “ANYTHING GOES”**

Schwartz is good in his criticisms of the broad-front approach, where that leads some libertarians to form dubious associations and make ludicrous claims about the pro-freedom stance of sundry political outfits. However, he tends to run into trouble when he tries to draw broader conclusions from, sometimes, pertinent observations.

For example, on page 7 he writes: “Libertarianism believes that liberty can be upheld without reference to any particular moral viewpoint. It regards liberty ... as compatible with all moralities.” This is false. Libertarianism is not compatible with moralities which advocate the initiation of force. It is, however, compatible with all moralities which do not advocate the initiation of force.

Schwartz says that libertarianism has no underlying philosophy, which is true in the sense of its having no unique underlying philosophy. But it does have principles, namely, the logical consequences of the “non-aggression” axiom or the “non-initiation of force” axiom.

A general theme running through Schwartz’s arguments is that libertarianism’s advocacy of freedom reflects nothing more than the desire to be free from the constraints of reality. But, given a social system in which only voluntary exchanges are permissible, it is quite clear that there are constraints on what you can do. You are free to act in what Objectivism calls “irrational” ways but you are not free to avoid the costs. For example, you have no right to anyone’s approval and any values you desire you must earn, either through persuasion (charity) or productive work. If you choose to adopt a lifestyle which is generally regarded as undesirable you must be prepared to accept the risk that people will choose not to associate with you or employ you. If you wish to “drop out” you must first earn the means which will enable you to do that. For example, you must buy or rent the land on which you wish to drop out. You are not allowed to drop out at someone else’s expense.

### **ROTHBARD AND MORALITY**

Schwartz spends a lot of time attacking Rothbard and his discussion of morality is a case in point.

Rothbard’s remarks on virtuous actions necessarily being free ones (pp. 7-8) are mostly right but partly wrong. He is right in claiming that you *cannot* act morally unless you are free to do so. You are not acting morally if someone is forcing you to.

Suppose the government seizes my hi-fi set to give to my neighbour. I cannot be said to act morally or virtuously as a result. My “choice” is made for me. As Rand, herself, says: “Morality ends where a gun begins.”

However, Rothbard’s remark that: “Freedom is necessary to, and integral with, the achievement of *any* of man’s ends” is false. One of my ends could be that my neighbour be in possession of my stereo. If the government takes it from me by force to give to my neighbour, my end is achieved even though my freedom is diminished. It might even be cheaper for me to have the government remove it by force since then I don’t have to expend the physical effort in transporting it.

Schwartz claims that “under most moral codes virtue is incompatible with freedom”. This is true but does not contradict what I said earlier, if it is sufficiently clarified. Most moral codes result in a state of affairs in which people are not free. But what happens is that the *practitioners* of the code, by their actions, reduce freedom for others. For example, the IRA’s moral code includes the planting of bombs as a virtuous activity. This activity reduces the freedom of their victims but it remains true that the IRA members are only virtuous (by their code of morality) if they freely adopt this code.

Schwartz claims that “if the good is a world that heeds God’s will ... then it is virtuous to prevent — by force, if necessary — the distribution of pornography or the drinking of alcohol or the preaching of atheism.” Why is this? It is not clear why it *necessarily* follows that this be done by force. Admittedly, it does not necessarily follow that people should be free to do God’s will voluntarily either. Schwartz asks why *shouldn’t* one be compelled to go through the motions? But why *should* one either?

Objectivism holds that pornography and the consumption of drugs (except tobacco and moderate quantities of alcohol) are *objectively* evil, yet does not advocate their prohibition. Why not? I don’t see that Objectivism is on any stronger ground than Christianity if Schwartz’s remarks are valid.

### **ABSENCE OF PROOF IS NOT ABSENCE OF SINCERITY**

Schwartz also holds the peculiar view that if we cannot justify a particular concept we cannot be said to believe in it. For example, since libertarians cannot justify liberty, or are indifferent to its justification, they cannot believe in it (p. 11). But this is false, since we all believe in things we cannot justify. We do believe in things for *some* reasons but we do not always have a full validation for our beliefs. For example, most people who have done some physics believe in the law of conservation of momentum but how many of us could derive it from Newton’s laws of motion? Similarly, most people who have done some physics believe in the law that nothing can travel faster than light. But how many of us could validate it?

We believe such things because we have read or heard about the work done by others more knowledgeable than ourselves on these matters. Those are our “reasons”. But they are hardly justifications.

Contrary to Schwartz’s claims it *is* possible for someone to believe in liberty, or understand what liberty is, without being able to validate it, just as it is possible for someone to believe in, or understand, the claim that nothing can travel faster than light, without being able to prove it.

### **ANARCHO-CAPITALISM VERSUS MINIMAL STATISM**

Schwartz asks (p. 12) what people could possibly be in agreement on if they disagree on the issue of the legitimacy of the state. The answer is: quite a lot. Libertarians, like Objectivists, all oppose the initiation of force. This means that they all oppose the initiation of force by states. Therefore, they will all be in agreement, in *principle*, on matters in which the state initiates force. In *practice* they may disagree over what activities constitute the initiation of force by states.

Now, minimal-state libertarians and Objectivists hold that as long as the state sticks to the retaliatory use of force it has legitimacy. But anarchist libertarians hold that, since the state claims a monopoly on the use of force within a given geographical area, it must initiate force in preventing the emergence of competitors to it in the retaliatory use of force. Clearly this is a significant difference between the anarchists and the minimalists. But since the domain over which states *currently* exercise force far exceeds that required for policing and defence functions, the matters on which minimalists and anarchists agree, in principle, is huge.

### **ANARCHO-CAPITALISM AND THE ENFORCEMENT OF JUSTICE**

Concerning the legitimacy of the state, there has been lots of theoretical and historical work done on stateless law and law enforcement. Morris and Linda Tannehill actually use Objectivism to argue

for anarcho-capitalism in their *The Market For Liberty*<sup>5</sup> and, at a theoretical level, they do consider the possible objections in some detail. Bruce Benson, in *The Enterprise of Law*,<sup>6</sup> provides a historical and economic analysis of both state and non-state law and the former does not emerge from his investigations with flying colours. Both of these books, together, address all the major objections to stateless law using theoretical, economic, empirical and historical arguments. Yet these two books are just a drop in the ocean of the literature on stateless law.

I believe that the libertarian investigations of stateless law have actually generated lots of useful and practical ideas *even if*, in the end, it is considered that the state should remain. But Objectivists do not really demonstrate that they have paid any attention to the thousands of pages which have been written on stateless systems of law and order. For example, Rand's analysis in *The Virtue of Selfishness*<sup>7</sup> is just not good enough. A much better argument in support of minimal statism can be found in John Hospers's pamphlet, *Anarchy or Limited Government?*<sup>8</sup> It is at just the sort of level needed to provide a minimal critique of the anarchist position. It is the sort of argument I would have expected Objectivists to advance. Perhaps they have done so, but I have seen no evidence of it to date.

I think one of the things which frightens Objectivists is that anarchy might lead to vastly differing systems of law, many of which might not uphold private property and individual rights. However, Benson's historical investigations lead him to conclude that, what he calls customary (i.e., non-governmental) law tends to consist of:

- 1) Rules characterised by a predominant concern for individual rights and private property.
- 2) Standard adjudicative procedures established in order to avoid violent forms of dispute resolution.
- 3) Offences treated as torts and punishable by economic restitution from the offender to the victim. (Therefore, no "victimless" crime laws.)
- 4) Strong incentives to yield to prescribed punishment due to the reciprocally established threat of social ostracism.

Schwartz seems to disapprove of the idea of criminals being made to pay restitution to their victims as punishment. But he can hardly consider penal institutions, as they are currently constituted, to be without blemish. Imprisonment often further brutalises criminals and frequently fails to rehabilitate them.<sup>9</sup> Now obviously Schwartz could insist on tougher sentences, such as real life imprisonment or the death penalty for murderers, but would he want this for the average criminal? Presumably, after serving a finite sentence, the criminal should have benefited from the experience and be fit to serve as a civilised member of society again. Frequently, this does not happen. In any case, whatever else one may say about the justice system, morally, the criminal *does* owe restitution to the victim, as far as is humanly possible. And, historically this is what tended to happen until governments monopolised law and order.

One of the things which puts people off the idea of fines as punishment is that it seems too soft. However, restitution does not merely consist of the criminal being made to return the equivalent of his stolen goods to his victim. Firstly, he must pay additionally for the trauma and/or secondary losses which accrue to the victim and possibly to the victim's relatives, friends or business associates. Secondly, depending on how much is involved in police and court time in bringing the criminal to justice, he must pay for these as well. It is implicit that, depending on the nature of the crime and the criminal, he might have to be subjected to some degree of confinement while repaying his debt. If, in order to repay his debt, the criminal required education and job-training, he would have to pay for the costs of these as well. If the criminal refused to cooperate with such a procedure he could be left to starve until he cooperated. There should be no requirement for the penal institution, insurance company or anyone else to bear more costs than are necessary for the upkeep of a willingly uncooperative individual.

It can thus be seen that the cost to a criminal under a restitution-based system of justice would be very high. It would be high if he

complied with his punishment and even higher if he did not. But it would offer him incentives towards moral behaviour. The more cooperative the criminal the more quickly he would be able to repay his debt and, if necessary, escape confinement. How much confinement there would be, in addition to restitution, could be settled in the market, in terms of how effective it was and what consumers (subscribers to protection agencies) desired. It is apparent that, under such a system, many prison sentences would be longer than is the case under the current system of justice.<sup>10</sup> But, unlike in the present system, there would be a mechanism where, as far as possible, criminals were forced to bear the costs of their own imprisonment, on the principle that, morally, aggressors should assume the full costs of their aggression.

Two questions immediately spring to mind. What if criminals either could not pay off their debts (especially restitution to the victim) quickly enough? Or what if, due to intellectual ineptitude, or the size of their debts, they could not pay them off at all?

Most modern theories of stateless law and order envisage that individuals would contract not only with protection insurance agencies (for police protection) but with restitution insurance agencies (for guaranteeing restitution). In practice, the two might be offered as a single package. Then, when someone became a victim of crime, his insurers would pay him the restitution immediately, in lieu of the criminal paying.<sup>11</sup> The protection agency would pursue the criminal and recover its costs (or as much of them as possible) from him. Notice that this would make such insurance agencies either *more* profitable than, or at least as profitable as, ordinary insurance companies. Unlike ordinary insurance companies, who lose the entire sum of any money they pay out, restitution insurance agencies could expect to recover much of what they pay out.

Incidentally, the possibility of buying restitution insurance also provides a way out of the "free rider" problem. Certain people could decide not to pay for police protection on the grounds that the fact that others in the vicinity were paying for it would, in itself, reduce the crime rate. However, if someone with no insurance were to become the victim of crime he would have to rely on the ability of the criminal to pay him restitution and this might either take a long time or be impossible for the criminal to do. Such an eventuality would give the uninsured an incentive to, at least, purchase restitution insurance, if that were available as a separate option. But, in order to be offered a policy, the restitution insurance company would require that he purchase *protection* insurance as well, so as to reduce the possibility of his becoming a victim of crime and to increase the likelihood of any criminal being caught and being made to recompense the insurance company.

Given the potential profitability of restitution insurance it seems virtually certain that it would develop. (As indeed it did, historically.) On the demand side, people would value a service which reimbursed them in full. On the supply side, entrepreneurs would offer such a service because they would be able to recoup a substantial proportion of any payouts they made. Also, restitution insurance agencies would have a self-interest in researching into, and furnishing, better and/or cheaper means for preventing the occurrence of aggression against their subscribers, so as to minimise the likelihood of, and size of, payouts in the first place.

Schwartz makes a seemingly damning criticism of Rothbard's view that suspected criminals should not be arrested and imprisoned prior to trial (p. 39). However, later in *For a New Liberty*, Rothbard talks of a suspect being served with a *voluntary* subpoena. Should he fail to appear in court he would be tried *in absentia*. Then, if the court decided that he were guilty, force would be used to seize the criminal and subject him to the decreed punishment. Again, this has historical precedent.

Another idea Schwartz objects to is the possibility of criminals not being pursued (due to crimes being considered only as torts) because the victim wishes not to press charges. But firstly, criminals would not be likely to encounter many such victims. In a climate where punishment takes the form of restitution to the victim, rather than imprisonment for its own sake, victims would be less likely not to want to press charges. Secondly, Schwartz's argument pres-

opposes that it would be generally known that such criminals had aggressed against non-complaining victims. And private protection agencies would be likely to keep lists, similar to credit ratings, on untrustworthy individuals. So criminals would still suffer the punishment of boycott and social ostracism. People would refuse to deal with them, deny them access to their property, etc. The moment such criminals failed to comply with people's wishes they would either be shot (by the private police) or be seized and made to pay restitution to *complaining* victims.

There are lots of fascinating ideas and arguments in the anarcho-capitalist literature and many of these ideas have historical precedent for them. Objectivists would do well to take them more seriously.

## LIBERTY AND ITS FOUNDATIONS: A BRIEF LOGICAL ANALYSIS

Schwartz thinks that libertarianism has pinched the political basis of Objectivism (non-initiation of force) while rejecting everything else (pp. 53-55). Well, this principle is not unique to Objectivism. It is a commonplace of classical liberalism. For example, Frederic Bastiat subscribed to it and one might speculate that Rand picked it up from there. She does cite Bastiat in the bibliography to *Capitalism: The Unknown Ideal*. I'm not holding this against Rand, incidentally. Everyone has influences. David Kelley, in his *Truth and Toleration*,<sup>12</sup> holds that several of the key Objectivist ideas are not unique but that the *integration* of them into a system is.

Again (p. 48), Schwartz blunders in holding that an idea (the non-initiation of force principle) must be "meaningless" if the subscriber does not hold to its correct validation.

Schwartz, in a section criticising Tibor R. Machan (pp. 49-50), disputes the thesis that the same conclusions can be derived from different sets of premises. However, this thesis is a well-known result in logic. Consider the following argument.

- (1) All swans are white.
- (2) All white things are animals.
- (3) Therefore, all swans are animals.

This is a perfectly valid logical argument. (3) is true and follows logically from (1) and (2). But (1) and (2) are false. Thus one can derive true conclusions from false premises, contrary to Schwartz. However, it does not immediately follow that the conflicting arguments put forth by libertarians are all valid *as a matter of fact*. All of their arguments could be false. Nevertheless, suppose that at least some of them are valid. What follows? Since the different sets of premises are in contradiction with each other only one set at most can be true. Thus Schwartz is right in that there can only be one argument that is totally in accordance with the facts, in that both its premises and conclusions are true. (It is possible that there can be different formulations of arguments but, to be totally true, they must be inter-translatable. An analogy from physics is the inter-translatability of the matrix and wave formulations of quantum mechanics.)

But where Schwartz is wrong is that someone could genuinely conclude, from mistaken premises, that liberty is the right conclusion. It would not follow that such a person were deluded about liberty or were unable to define it. It does not follow that if someone holds mistaken premises all else is invalid. Objectivism holds the Austrian economists, Ludwig von Mises and Henry Hazlitt, to be philosophically mistaken but does not dispute their economic arguments, nor does it condemn them as nihilists.

Let us assume that Objectivism is a true representation of reality. That is, that both its premises and conclusions are true. One of those true conclusions will be Liberty.

Let the set of premises for any non-Objectivist argument for Liberty be denoted by P. Let the conclusion, Liberty, be denoted by L. Then any non-Objectivist argument for Liberty can assume the following forms:

- (1) The logical argument is true, that is, P implies L. But P is false (by assumption).

(2) The logical argument is false, that is, P does not imply L. (P is still false.)

(2a) As a sub-case of (2), part of the logical argument is true. That is, there is an argument from P to Q to L where the sub-argument, "Q implies L", is true but "P implies Q" is false and Q is true while P is false. It is also possible that P is neglected entirely and only the valid argument "Q implies L" is offered.

If the foregoing seems a bit abstruse do not be fooled. In my experience, libertarians are typically characterised by (2a). For example, they might simply start from the non-aggression axiom and use the argument "Q (non-aggression) implies L (Liberty)". Disputes then rest on how this non-aggression axiom is established. Does it follow from natural law or natural rights? Or is it simply required by utilitarian or consequentialist considerations, etc?

To the question of whether someone is or is not a genuine advocate of liberty we can note that, as with most extreme political ideologies (and Objectivism is not immune), libertarianism attracts its fair share of crackpots, and I am in sympathy with Schwartz's evaluation of many of the statements he quotes (though I would like to see the full context).

But, in general, the assessment of someone's credentials for liberty requires careful scrutiny, more than Schwartz seems willing to allow. We cannot simply conclude from various mistaken premises and sub-arguments that a person does not genuinely value liberty.

## NOTES

1. Peter Schwartz, *Libertarianism: The Perversion of Liberty*, The Intellectual Activist, New York, 1986.
2. "Objectivism" is the name used by Ayn Rand to describe her philosophical system. Its political ideal is laissez-faire capitalism with a limited government for the provision of police, armed forces and the administration of justice.
3. Ayn Rand, "The Roots of War" in *Capitalism: The Unknown Ideal*, Signet, New York, 1967.
4. Murray N. Rothbard, *For A New Liberty*, Libertarian Review Foundation, New York, 1985. (See Chapter 14, "War and Foreign Policy".)
5. Morris and Linda Tannehill, *The Market For Liberty*, Laissez-Faire Books, New York, 1984.
6. Bruce L. Benson, *The Enterprise of Law: Justice Without the State*, Pacific Research Institute for Public Policy, San Francisco, California, 1990.
7. Ayn Rand, *The Virtue of Selfishness*, Signet, New York, 1964. See the essay "The Nature of Government", pp. 112-113.
8. John Hospers, *Anarchy or Limited Government?*, The Gutenberg Press, San Francisco, 1982 (1976).
9. One could argue that the purpose of prisons is to punish and that rehabilitation is an optional issue. However, unless the criminal is a murderer, or other serious felon, in which case we would be dealing with the death penalty or life imprisonment, criminals are going to be released into society after a finite jail sentence. If their recidivism rate is high then not only are more innocent people forced to be their victims than otherwise, but the taxpayer must pay for their additional imprisonment. So, from both an economic and an efficacy perspective, a justice system which is more successful at rehabilitation is a better system provided that it also effective at deterrence. What is required is a system that is effective at both deterring crime in the first place and in preventing its reoccurrence by the same persons. Obviously, as we are dealing with human free will here, we can never hope to be 100% successful. However, we can hope to design a system which gives the right, or better, signals. In regard to deterrence, although the nature of a criminal's punishment is important, the probability of being caught appears to weigh more heavily in most criminals' minds. One would expect this probability of being caught to be higher in a laissez-faire society, where all property was privately-owned, and private police forces were available. (We could envision this even under limited government conditions.)
10. One major difference between a libertarian, or Objectivist, society and the present is that there would be no "victimless" crime laws. Such laws (against the production and consumption of hard drugs, prostitution, pornography, gambling etc.) are responsible for the majority of all current criminal offences and, of course, are the principal reason for the existence of organised crime. If these laws were scrapped the quantity of crime would drop drastically in the short term.
11. In many cases, victims would find this a more congenial arrangement, even if the criminal were in a position to pay immediately. The last thing many victims would want would be to be forced to deal directly with the criminal.
12. David Kelley, *Truth and Toleration*, Institute for Objectivist Studies, Verbank, New York, 1990.