

# The Justice and Prudence of War: Toward A Libertarian Analysis

Roderick T. Long  
Auburn University

## 1. Introduction

The morality of warfare is an issue that has long divided libertarians. The spectrum of libertarian opinion on the subject ranges all the way from Leonard Peikoff, who defends the use of nuclear weapons against civilian targets,<sup>1</sup> to Robert LeFevre, who denies the legitimacy of all violence, even in self-defense.<sup>2</sup> Needless to say, most libertarians fall at various points between these two extremes—though the divisions have become sharper since the 9/11 attacks. (One of the more ironic manifestations of these divisions is that French libertarians are far more likely to support current U.S. foreign policy than American libertarians are; perhaps anti-government thinkers tend to be more attracted to whatever position their *own* government opposes.)

What view of warfare is most consistent with libertarian principles? Here I shall distinguish between libertarianism as a normative ethical theory—a theory of justice—and libertarianism as a descriptive social theory. Libertarians disagree with one another as to the extent of the former's dependence on the latter; utilitarian libertarians profess to believe the dependence total, while natural-rights libertarians profess to believe it nonexistent, but in practice both groups tend to treat the dependence as *partial*, and so will I.<sup>3</sup>

## 2. Deontological Considerations

The non-consequentialist core of libertarian ethical theory is an *egalitarian* commitment; specifically, it is a commitment not to

---

<sup>1</sup> See articles written by Leonard Peikoff, available online at <http://www.peikoff.com/essays>; and endorsed by him, available online at <http://www.aynrand.org/medialink>.

<sup>2</sup> Such at any rate is LeFevre's reputation; I have not read enough of his work to confirm it.

<sup>3</sup> For a defense of this approach, see my "Why Does Justice Have Good Consequences?" available online at <http://www.Praxeology.net>.

socioeconomic equality, but to equality in *authority*. Indeed, libertarians' lack of enthusiasm for socioeconomic equality stems precisely from their concern that it can be achieved only at the cost of this, for libertarians, more fundamental form of equality.<sup>4</sup> The libertarian "non-aggression principle" expresses the conviction that forcibly to subordinate the person or property of another to one's own aims is to assume an unjustifiable inequality in authority between oneself and the other. And it is because this equality in authority likewise holds between private citizens and public officials that governments are forbidden to exercise any powers not available to people generally; libertarianism requires not just equality *before* the law, but also equality *with* the law. It follows that a consistent libertarian theory of warfare must apply the *same* prohibitions and permissions to governments and private individuals alike. In this respect it will be radically different from nonlibertarian theories, which typically grant government actors more latitude in the use of violence than private actors; a libertarian theory must be equally permissive—or equally restrictive—with both. A consistent libertarian cannot, for example, accept a mere apology as sufficient recompense when the U.S. military accidentally bombs the wrong target and kills fifteen children in Afghanistan,<sup>5</sup> unless she is prepared to be equally tolerant when Uncle Zeke's backyard bazooka target practice accidentally takes out a passing school bus. It can make no difference whether the perpetrator is or is not an agent of the government; nor can it make any difference whether the victims are or are not citizens of *that* government.

The non-aggression principle rules out the use of initiatory force, but says nothing about retaliatory force one way or the other. One might argue, then, that any and all positions on retaliatory force are equally compatible with libertarianism so long as they are applied consistently. Nevertheless, I believe that some of these positions cohere better with libertarianism than others.<sup>6</sup>

---

<sup>4</sup> See my "Equality: The Unknown Ideal," available online at <http://www.Praxeology.net>; and my "Why Libertarians Believe There Is Only One Right" (unpublished).

<sup>5</sup> I refer to incidents of public record occurring on December 5th and 6th, 2003.

<sup>6</sup> For fuller discussion of the points that follow, see my "Abortion, Abandonment, and Positive Rights: The Limits of Compulsory Altruism," *Social Philosophy and Policy* 10, no. 1 (Winter 1993), pp. 166-91; and my "The Irrelevance of Responsibility," *Social Philosophy and Policy* 16, no. 2 (Summer 1999), pp. 118-45. My analysis is also indebted to Murray N. Rothbard, *The Ethics of Liberty* (New York University Press, 1998).

## Reason Papers Vol. 28

Let's first consider whether force is justified in self-defense—or, more broadly, in defense of the victims of aggression, whether oneself or others or both. For pacifist libertarians, the answer is no; the non-aggression principle is seen as a specific application of a more general nonviolence principle. Let me point out some countervailing considerations.

Libertarians like to think of themselves as defenders of *rights*. But not all moral claims are rights; I have a moral claim against you that you not be rude to me during the question period, but I surely have no such *right*. What distinguishes rights from other moral claims is that rights are legitimately *enforceable*. But for the pacifist libertarian, *no* claims are legitimately enforceable; hence, a libertarian cannot recognize any such things as rights. I don't claim that this is a decisive consideration, but it is certainly awkward; libertarianism without rights does seem rather like *Hamlet* without the prince.

To put the point somewhat differently: It seems natural to think of the non-aggression principle as erecting boundaries around people. I have authority over what's in my boundary—namely, myself and my peacefully acquired possessions—but my sphere of authority stops where yours starts: I have no business extending my authority to your person or property except by your consent. In Overton's words, I "may write myself no more than myself . . . every man by nature being a king, priest and prophet in his own natural circuit and compass, whereof no second may partake but by deputation, commission, and free consent from him whose natural right and freedom it is."<sup>7</sup>

But then what happens when you aggressively invade my boundary? We might think of this as a case where you *enter* my sphere of authority and so through your invasion become, to that extent, subject to my authority; this would license defensive action. But the pacifist libertarian must instead think of this as a case where my authority *shrinks* in response to your invasion.

---

<sup>7</sup> Richard Overton, *An Arrow Against All Tyrants and Tyranny, Shot from the Prison of Newgate into the Prerogative Bowels of the Arbitrary House of Lords, and All Other Usurpers and Tyrants Whatsoever; Wherein the Original, Rise, Extent, and End of Magisterial Power, the Natural and National Rights, Freedoms and Properties of Mankind are Discovered and Undeniably Maintained; the Late Oppressions and Encroachments of the Lords over the Commons Legally (By the Fundamental Laws and Statutes of This Realm, As Also By a Memorable Extract Out of the Records of the Tower of London) Condemned; the Late Presbyterian Ordinance (Invented and Contrived by the Diviners, and By the Motion of Mr Bacon and Mr Tate Read in the House of Commons) Examined, Refuted, and Exploded, As Most Inhumane, Tyrannical and Barbarous*, by Richard Overton, *Prerogative Archer to the Arbitrary House of Lords, Their Prisoner in Newgate, for the Just and Legal Properties, Rights and Freedoms of the Commons of England* (1646).

## Reason Papers Vol. 28

Previously I was free to move my arm as I wished, but now that you have grabbed it, my freedom to move my arm is diminished, since I cannot control its movement without exerting force against your use of it, and the pacifist libertarian cannot countenance such a use of force. But there seems something deeply un-libertarian about attributing to an aggressor the moral power to decrease her victim's legitimate sphere of authority over her own person and property.

I conclude that libertarianism supports a right to use force in self-defense. From here it is not a far step to the conclusion that one may employ force in defense of *others*, assuming that (a) whatever one is morally free to do oneself one is *ceteris paribus* morally free to delegate to an agent, and (b) in emergency situations people in need of help may reasonably be assumed, until proven otherwise, to implicitly grant potential helpers the right to act as agents on their behalf.

If libertarianism justifies the defensive use of force, then to that extent it justifies defensive warfare. But this justification's scope remains to be determined. How far beyond direct defense may the use of force legitimately go? I think the additional use of force to secure *restitution* is permitted, since restitutive force counts as an *extension* of defensive force.

Consider the following three cases.

*Case 1: I break into your house.*

Here I am clearly trespassing on your property, and you have the right to use coercion to get me to leave, since your home falls within your sphere of authority.

*Case 2: I break into your house, and slip your radio into my knapsack.*

In this case, you may do more against me than simply kicking me out of your house, because I, by retaining an item of your property on my person, have failed to vacate your sphere of authority. Hence, you may use coercion to get the radio back. I remain under your authority until you recover your property.

*Case 3: I break into your house, and smash your radio with a hammer.*

The fact that your radio no longer exists does not alter the fact that I remain under your authority until the radio (or its equivalent in value) is restored to you. Thus, I may legitimately be coerced into compensating you for your loss.

Note that this justification of defensive coercion has nothing to do with the aggressor's responsibility for his or her actions. If I have been hypnotized into attacking you, you still have the

right to fight me off. If a wind blew me onto your property against my will, you still have the right to remove me. And likewise, if I accidentally destroy your property, I still owe you compensation. What matters is that I have entered your sphere of authority and so may be coerced into leaving it; whether I got into your sphere voluntarily or involuntarily is irrelevant. Thus it seems to me that a libertarian concept of rights favors a strict-liability approach: that is, people are liable for the damage they cause, regardless of whether they caused that damage deliberately or accidentally.<sup>8</sup>

The extent to which either defensive or restitutive uses of force should be supervised by or delegated to an impartial third party, in order to prevent the familiar Lockean problem of judgment in one's own case, will depend on the availability of such third parties and the urgency of the need for a forceful response. But whatever restrictions are appropriate here will have to apply to governments and private individuals equally; the notion that government, the wealthiest and most powerful organization in society, should be exempt from the prohibition on self-judgment that it imposes on others does not pass libertarian muster. Hence, the notion of a "highest authority" or "final arbiter" in society is un-libertarian; libertarian principles call rather for an egalitarian network of individuals and organizations serving as third-party arbiters for one another.

It seems doubtful, however, that retaliatory uses of force beyond defense and restitution can be justified on libertarian grounds. If a coercive response is justified only in response to invasion, then any coercive response that *exceeds* what is necessary to end the invasion departs from the spirit of the non-aggression principle; if what justifies my using force against you is that you have trespassed into my sphere of authority, then once I have successfully expelled you from my sphere of authority I have no warrant to continue further coercion against you. Hence, retributive punishment is unjustified. And so is deterrent punishment; one may imprison aggressors to deter *them* (this counts as defensive if the aggressor constitutes an ongoing threat), but not merely to deter *others*. (Using force against A to defend against aggression from B may count as defensive force against B, but it is aggression against A; we may call this the *privity of defense*.)

Not only are defensive and restitutive uses of force the only ones that can be justified, but even they are subject to a proportionality requirement. Suppose that for some reason the only way to prevent a toddler from treading

---

<sup>8</sup> See my "Punishment vs. Restitution: A Formulation," *Formulations* 1, no. 2 (Winter 1993-94), available online at <http://www.libertariannation.org/a>.

on my toe is to blow her away with my bazooka. (I'll leave the construction of such an example to readers.) A defensive response so grossly disproportionate to the severity of the threat seems to violate the spirit of the non-aggression principle, the whole point of which is to *balance* licit force against illicit force. Hence, any legitimate use of force must pass three tests: (a) it must be purely *defensive*, either directly or restitutively; (b) it must respect *privity* of defense; and (c) it must not be *disproportionate* to the moral seriousness of the aggression it counters.

What about violence against innocents? The privity-of-defense requirement rules out the direct targeting of innocents as a means of pressuring enemy governments, as in the bombing of Hiroshima and Dresden in World War II or the blockade of Iraq during the past decade. Defensive force against innocent threats, on the other hand, is *not* ruled out; if you invade my boundary because you've been hypnotized by Dr. Sivana into doing so, then the fact remains that you're in my sphere of authority and may be forcibly ejected. I would stress, however, that because threats from innocents and threats from non-innocents arguably differ in (one dimension of) moral seriousness, the proportionality requirement raises the bar somewhat for justifying force against innocent threats.

A more difficult question is the treatment of innocent shields, a category into which civilian casualties are often argued to fall. It's not obvious how to apply the privity-of-defense requirement here. I think the use of force can be justified against innocent shields—but, for proportionality reasons, not nearly so easily as defenders of the policy of “collateral damage” require.

Suppose Eric straps a baby to his chest and then starts shooting at me. I can't shoot him back without hitting the innocent baby. Yet although it's too bad about the baby, it seems plausible to say that I still have the right to defend myself against Eric, and if the baby gets killed, the blame should lie not with me but with Eric, for bringing the baby into the situation in the first place. By the same token, it is argued, innocent deaths that result as a byproduct from attacks on hostile targets should be blamed on the hostile targets, not on the attackers.

But the moral legitimacy of collateral damage in the Eric case seems to depend importantly on four factors: first, the relatively small extent of the collateral damage (just the one baby); second, the high probability that shooting at Eric will actually stop him; third, the great extent of the contribution (total, as described) that stopping Eric will make to ending the threat; and fourth, the absence of any alternative way of stopping Eric that would be less dangerous for the baby. The case for

## Reason Papers Vol. 28

collateral damage grows weaker as we alter any of these four variables. If Eric is shielded not just by one baby but by a whole city of babies; or if there's some doubt as to whether Eric is actually even in the city; or if Eric is just one cog in a military machine, his individual contribution to the total threat being fairly small; or if there are ways of taking Eric out without bombing the city—to the extent that any or all of these are true, the case for the legitimacy of collateral damage is correspondingly weakened. As these variables move away from the Eric paradigm, the moral difference between collateral damage and direct targeting of civilians becomes more tenuous—as does the case for treating the two as morally different. Since in most real-world cases of collateral damage in warfare, most or all of these variables are shifted pretty far away from the Eric paradigm, I conclude that a general military policy of comfort with collateral damage is without justification.<sup>9</sup>

[I should add that] my condition (1) is concerned with smallness of extent, not smallness of ratio. Not being a utilitarian, I don't think extent of badness can be ascertained by dividing lives lost by lives saved.<sup>10</sup>

To put the point another way: Numbers matter for proportionality of moral seriousness, but they're only one dimension of moral seriousness, not the whole deal.

A libertarian analysis of war must take into account not only the actual conduct of warfare, but also the means of supplying the war machine. Under libertarian equality, funding a military through taxation is ruled out, as is manning it with slave labor. Conscription is obviously incompatible with libertarian principles; but even ordinary military contracts violate the inalienable right to quit one's job at will.

So far I've focused on deontological rather than consequentialist considerations. But I've already admitted that consequences matter, even if they aren't all that matters. What happens when all of the deontological restrictions I've placed on the conduct of warfare are viewed through a consequentialist lens? Given the importance of defending liberty against foreign aggressors, don't governments need a freer hand in military matters?

---

<sup>9</sup> See my "Thinking Our Anger," *Formulations* no. 30 (Summer 2001), available online at <http://www.Praxeology.net>.

<sup>10</sup> See my blog entry for 11/16/2002, available online at <http://www.Praxeology.net>.

Don't consequentialist considerations tend, at least somewhat, to override the deontological niceties I've been describing?

### 3. Consequentialist Considerations

Here is where our focus must shift from libertarianism as a normative ethical theory to libertarianism as a descriptive and explanatory social theory. The central insight of libertarian social theory is that monopolistic coercive systems are at systematic disadvantage relative to decentralized competitive systems when it comes to solving the *informational* and *incentival* problems faced by such systems. The very prevalence of warfare can be laid at the door of the perverse incentives that characterize the State:

[G]overnments face different incentives from those faced by private individuals. Under a government, the people who make the decision to go to war are not the same people as those who bear the greatest burden of the costs of the war; and so governments are much more likely than private individuals to engage in aggression. Thus it's a mistake to model a nation-state as if it were a single individual weighing costs against benefits. It's more like a split personality, where the dominant personality reaps the benefits but somehow manages to make the repressed personality bear the costs.<sup>11</sup>

In weighing the costs of military intervention, a libertarian must include that system of interlocking political, economic, and cultural forces which the nineteenth-century industrial-radical libertarians called "militancy"<sup>12</sup> and which Randians today call "neofascism."<sup>13</sup> According to libertarian class analysis, which traditionally identifies capitalists as the chief

---

<sup>11</sup> See my "Defending a Free Nation," *Formulations* 2, no. 2 (Winter 1994-95), available online at <http://www.libertariannation.org/a>.

<sup>12</sup> The principal figures here include Benjamin Constant, Augustin Thierry, Charles Dunoyer, Charles Comte, Gustave de Molinari, and Herbert Spencer; see David Hart's essays on the industrial-radical tradition, available online at <http://www.homepage.mac.com/dmhart>. Cf. also William Graham Sumner's 1899 address "The Conquest of the United States by Spain," available online at <http://www.libertystory.net/LSDOCSUMNERCONQUESTUS.htm>.

<sup>13</sup> See Chris Matthew Sciabarra, "Understanding the Global Crisis: Reclaiming Rand's Radical Legacy," *Free Radical* 56 (May/June 2003), pp. 16-22, available at <http://www.solohq.com/Articles/Sciabarra>; and Arthur Silber, "I Accuse: To Those Who Pave the Way for the New Fascism," available online at [http://www.coldfury.com/reason/comments.php?id=P801\\_0\\_1\\_0](http://www.coldfury.com/reason/comments.php?id=P801_0_1_0).



enemies of capitalism, there is a mutually reinforcing dynamic between corporate pressure politics, foreign imperialism, and domestic oppression; the business lobby drives military adventurism, which leads at home to the mobilization and regimentation of society and the erosion of civil liberties, as government assumes emergency powers that are never fully undone after the emergency. As Herbert Spencer pointed out, “the exercise of mastery inevitably entails on the master himself some form of slavery,” since “unless he means to let his captive escape, he must continue to be fastened by keeping hold of the cord”<sup>14</sup>—as the U.S. is currently fastened down in Iraq.

Insulation from market competition not only gives governments the incentive to engage in an aggressive foreign policy, but also deprives them of the information they need to do so effectively. If top-down planning of domestic matters runs up against the Hayekian knowledge problem, it’s not surprising that top-down planning of foreign policy should face the same difficulty. Critics of a non-interventionist foreign policy often point to the “Lesson of Munich.” But as David Friedman points out, since the countries responsible for the failures of Munich all *had* interventionist foreign policies, an equally plausible moral is that governments cannot be relied on to manage their interventionist policies particularly well.<sup>15</sup> The fact that Manuel Noriega, Saddam Hussein, and Osama bin Laden are all former U.S. clients suggests that governments have not gotten any better at managing interventionist foreign policies since Munich.

Are the prohibitions on tax-funded militaries and most collateral damage intolerable constraints on a viable defense? Since a libertarian polity’s quarrel is with enemy *regimes*, not enemy *peoples*, it should adopt a strategy of covert operations and assassinations—as a *substitute* for, not a supplement to, conventional warfare. And if libertarian economic theory is right, then there is no “public goods problem,” and so the inability to fund military action through taxation is not a serious restriction, especially given the lower costs of a purely defensive military policy.

Ludwig von Mises used to argue that a market economy regulated by governmental intervention, hailed by many as a middle path between socialism and *laissez-faire*, is an inherently unstable system: each additional interference with private commerce distorts the price system, leading to economic dislocations that must be addressed either by repealing the first intervention or by adding a second, and so on *ad infinitum*.

---

<sup>14</sup> Herbert Spencer, *Facts and Comments* (D. Appleton, 1902), p. 158.

<sup>15</sup> David Friedman, “Is There a Libertarian Foreign Policy?” in *The Machinery of Freedom* (Open Court, 1989).

## Reason Papers Vol. 28

I'm reminded of Mises' argument every time the boosters of America's current rush to empire tell us: "Well sure, maybe you dovish types are right when you say that the 9/11 attacks could have been avoided if we'd pursued a less provocative Middle East policy. But it's too late to debate that issue now. We can't turn back the clock; we have to deal with the situation as it currently exists. Given the threat we face *now*, we have to pursue that threat and eliminate it."

The problem with this argument is that it's timeless. Hawks were saying things like this long before 9/11, about the threats that we faced *then*. Every time America goes off on one of its bombing or invading romps, resentment grows among the bombed and invaded. From this resentment sprout new threats to America's security. To protect against these threats, America engages in further bombing and invading, which creates still more resentment, which breeds still new threats, prompting still more bombing and invading, and so on *ad infinitum*.

Mises' insight that interventions breed more interventions is as true in foreign policy as it is in domestic economy. And just as the logical endpoint of the cycle of economic interventions is complete socialism, so the logical endpoint of the cycle of military interventions is world conquest. In both cases, the only way to avoid the goal is to stop the cycle.<sup>16</sup>

What, in any case, is a libertarian polity to do after it has defeated and conquered a foreign country in a conventional war? Abandoning the country after having wrecked its infrastructure seems both immoral (surely the innocent inhabitants are owed restitution) and imprudent (abandonment will encourage resentments to fester). But occupying the defeated country in order to rebuild it seems a bad bargain as well. Nation-building is the sort of central planning for which libertarian social theory predicts inevitable failure. And how are the exorbitant costs to be defrayed, if not from taxes, which—apart from the ethical objections libertarians have to them—counterproductively divert resources from the accountable and efficient to the unaccountable and inefficient sector? From a libertarian point of view, an interventionist foreign policy is a dead end, both on deontological and on consequentialist grounds; libertarians must continue to be economic and cultural internationalists, but political and military isolationists.

---

<sup>16</sup> See my blog entry for 10/10/2002, available online at <http://www.Praxeology.net>.