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the method he proposed for dealing with social problems would have its proper context only in such a society.

I can imagine that my remarks in this section might be taken as nothing other than the liberties of thought when one asks oneself fancifully; What might the best of societies, most pleasing to imagination, be like? Particularly might one expect this response because I make various assumptions about achieved social habits of cooperation, about recognition of the personhood of others, and so on, that represent a condition far removed from the existing. Professor Rothbard, by comparison, can appeal to self-interest of the sort with which we are familiar, and he is no more "utopian" than to suggest extending to the political realm the principles of the economic realm. Unfortunately, I do not see much justice in this latter society. As concerns the more usual anarchist vision of a free society, this is redeemed from the realm of fanciful speculation to the extent that there is strength in the thesis that what stands between us and some approximation of a free society is the prevalence of relations and institutions of power, dominance, hierarchy, "slavery," many of which — for example, the patterns of male-female relations, of parent-child relations, of teacher-student relations — have only recently and partially come to recognition as crucially supportive aspects of the networks of power to which every generation, in each of its members, is obliged to adapt. The anarchists' radical analysis of the state has hardly been given serious consideration by many even of those who count themselves as radical. If the anarchist analysis of power is fundamentally sound, it will tell, at the least, what would have to be resolved before a free society, in the strong anarchist sense of the term, could be achieved; and it might also tell something about the way.

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custom might have a role. But in saying "one would imagine" I mean to say that one could state only very tentatively what might be useful and within the anarchist moral spectrum.

In lieu of further discussion of the character that anarchist justice might in practice assume, I will try to suggest what might be its core. In writing above that "they would take one problem at a time" and "try to find out how . . . they could restore the wholeness of social existence," I was consciously adopting the problem-solving conception that was central in John Dewey's ethics. In societies of power, of castes and classes, of collectivities that are noncom-munitarian, Dewey's method degenerates into a technocracy of social-scientific experts. There is no common "we," for example, in terms of which to solve the problems of an American city, and no common "we" in terms of which to consider the problems of a youth lost in the slums of a city. But if an anarchist society is one in which people have, by and large, a sense of living and working in circumstances of mutual aid and voluntary agreement, then it does not make sense (it seems to me) to ask what is abstractly right or what is to the interest of the greatest number, or to proceed individualistically to solve a problem affecting many. It makes sense to ask "What can we do about this problem we have here?" Acts of imagination are called for, then, to rectify injustice, to resolve conflict, just as acts of imagination are called for in the "normal" creation of ongoing life.

It may seem ironical to take Dewey, the conscious theorist of democracy, so negative toward "utopian" thinking, as a kind of prophet of the ethics of an anarchist society. The truth, I believe, is that Dewey was, until late in life, exceedingly unrealistic and idealizing, in the manner of nineteenth-century evolutionary optimism, about the immediate potentialities of American society and about the ongoing force of older New England traditions; even in his later pessimism he did not take cognizance nearly adequately of the realities of economic and racial oppression — that is, of the fractured character of American society. As a liberal he expected conciliation of conflicts, as if there could be common ground for conciliation so long as the various relations of caste, class, and power remained in place. The values that Dewey hoped to be realized in a democracy, I suggest, are realizable only in something approaching anarchy, and

definite idea, and do not know how one could have, of what would be done, case by case; for a "case" is some distinct individual person, and some other individual person, and the next and the next, involved in some mess, some plight, some folly, some self-destruction, some misunderstanding. I imagine people having to face up, not often but sometimes, to hard and even terrible alternatives. To take the hardest possible case, and the hardest possible solution, I can even imagine that, in extremis, the persons in such a society might decide that someone had to die, a solution that at the very best is a lesser evil: done not as "punishment" but from despair that no way could be found of living at peace with this person. But if they did not somehow atone for that act and that choice, if they did not suffer for it and suffer terribly, I would fear for them.

If one asks whether there could be, in an anarchist society, either prison or other detention, or punitive deprivations, or denial of social and economic privileges, or banishment, the answer would be in these terms: insofar as the society were unable to respond to wrongs in a mode of nonretaliation, of nonviolence on a Gandhian or similar model, with willingness to make sacrifices in order to restore a healthy peace, with unqualified respect for the humanity of offenders, that society would fall short of the moral ideal of anarchism, and if the people of the society were not concerned with moving as near as practical to that ideal, the society would be lacking in commitment to an anarchist morality. On this view, anarchism represents, finally, not a specific social design but a moral commitment. (Rothbard's anarchism I take to be diametrically opposite.) Stated as an abstract ideal, anarchism would exclude all forms of coercion; societies which could be properly described as anarchist would not necessarily actualize that ideal but they would seek to actualize it. In such societies it is hard to imagine the existence of prisons, for these, as we know them, are instances of what I have called slavery. One would imagine an emphasis upon reparation, where reparation would not always be exclusively a demand made upon a "guilty" person but a task for the community concurrently. One would imagine that the withholding of social privileges from persons who obstruct and are uncooperative or irresponsible need not be dehumanizing. One would imagine that something like older common law or tribal

> No matter how valuable law may be to protect your property, even to keep soul and body together, if it do not keep you and humanity together.
> — Henry Thoreau

Such terms as "socialism," "democracy," and "anarchism" have been appropriated for diverse and conflicting uses. Professor Rothbard's association of anarchism with capitalism — a conjunction usually called anarcho-capitalism — results in a conception that is entirely outside the mainstream of anarchist theoretical writings or social movements. To some of us who regard ourselves as anarchists, this conjunction is a self-contradiction. Rothbard's definition of "anarchist society" as a society in which there is "no legal possibility for coercive aggression against the person or property of any individual" may by its minimalism avoid formal contradiction. After a preliminary discussion of this point, brief and inconclusive as it must be, I shall proceed to analysis of his theory of "defense systems" in a society without a state. Finally, since this is a symposium on anarchism and not on a single variant of it, I shall feel free to discuss certain views of justice that derive from the main traditions of anarchism.

I admit to not being sure what "no legal possibility" for coercive aggression means. We are not to suppose, if I understand the latter part of Rothbard's paper, that there will be no laws and hence (vacuously) no legal possibility, for Rothbard proposes a "law code" that would prohibit coercive aggression and that would no doubt specify, among other things, what would count as acts of aggression and as appropriate punishments. He does not seek to eliminate law and judicial procedures but to eliminate aggressions that he believes are built into existing law codes and political constitutions, namely taxation and the arrogation of "defense services" by a monopolistic political authority. I think I am on safe ground in saying that he seeks to save law from the state.

The nature of a law code that is not integrated with a coercive political authority is not, however, easy to conceive. I take it that it must be more than a moral code; I doubt that Rothbard would accept the translation of "legally impossible" as "morally impossible" or "ethically impossible," both because it would be hard to make

sense of the latter terms and because he consistently avoids moral terminology. Given that he allows every individual to act, at his or her own risk, as policeman, judge, and executioner, and perhaps jailer too, I think he means that everyone is a legal authority but that all "would have to" (p. 205) conform to the same legal code. The most favorable meaning I can give to "would have to" is as stipulating a necessary condition that would be guaranteed by the forceful action of adherents to the code against those who flout it. In that sense I shall construe him as attempting to articulate the principles of a "libertarian law code." But the basic question remains doubtful: Can there be the rule of law and yet no state, even on Professor Rothbard's minimal definition of the latter?

We are not given nearly enough material to allow pursuit of this question to the end; I have already had to supply propositions to which Professor Rothbard might not assent. It does *seem*, however, that in his system *there would stand over against every individual the legal authority of all the others.* An individual who did not recognize private property as legitimate would surely perceive this as a tyranny of law, a tyranny of the majority or of the most powerful — in short, a hydra-headed state. If the law code is itself unitary, then this multiple state might be said to have properly a single head — the law. The system would differ from the existing American system in that it would lack taxation, the economy would be unregulated by government (although property rights would be enforced), the present partial decentralization of legal authority under a rule of law would be maximized, and the enforcement of personal morality would be outlawed as aggression. But it looks as though one might still call this "a state," under Rothbard's definition, by its satisfying *de facto* one of his pair of sufficient conditions: "It asserts and usually obtains a coerced monopoly of the provision of defense service (police and courts) over a given territorial area" (p. 191, definition of "the state"). Hobbes's individual sovereign would seem to have become many sovereigns — with but one law, however, and in truth, therefore, a single sovereign in Hobbes's more important sense of the latter term. One might better, and less confusingly, call this a libertarian state than an anarchy.

antisocial behavior, but that the price is enormous when the price is reckoned to include all the "disutilities" associated with (for example) imprisonment; and as to reprisal for its own sake ("vengeance"), this is hard to make sense of at all outside certain religious contexts. But on the other hand an ethical society cannot ignore, cannot let pass, the occurrence of injuries, abuses, and the like, or the threat of conflicts that promise to eventuate in serious harm.

We are premising a society in which people have stopped living in fear of one another, in which gross violence, hatred, and contempt for life have become uncommon, in which alienation of person from person seldom reaches the malignant extremes to which we are accustomed. We are premising a society in which the absence of economic monopolies, and of many other familiar incentives for seeking advantage at the expense of others, should allow social decisions to be made more easily on a rational basis, that is, through discovery of a resolution in which there are no losers. This is an essentially humanized society, not without friction, not without suffering, not without anguish and pain; but it is not pervaded with the radical evil of power, of systematized manipulation, deceit, indifference. (If this were not the case, then I do not see how "the abolition of the state" could be other than a fiction that masked the reintroduction, or even the continuance, of political institutions called [now] by euphonious libertarian names.) One could not know, from where we stand, what specific procedures would be followed in dealing with real conflict, obdurate people, madness, violence, unwillingness to keep the peace. Nor could one know the "philosophy" in terms of which these problems would be resolved. My way of thinking of it is this:

We can imagine that in this society people would try, together, to confront and deal with failures of their community, and breakdowns of human peace and normal cooperation, with all the sympathy, love, and wisdom that they possessed. I imagine that they would take one problem at a time — if the "docket" were crowded, that would have to be taken as a sign that the society was in danger. They would try to find out how, in terms of what they value most deeply, they could restore the wholeness of social existence, a project that bears no relation to the project of "dealing with the criminal." I have no

believe that such minimalization is not an absurd goal. But of course the causes of alienation and violence may be more complex than we understand them to be — we do not understand very well the ways in which the newborn becomes a human being. Conceivably, the freedom envisaged in an anarchist society might create serious tensions, although it would not be a freedom of constant opting among infinite alternatives but a freedom of social continuity in which persons make commitments and agreements and are involved in numerous patterns of ongoing cooperation.

Recognition of the *presence* of injustice would not, I think, be a problem of the magnitude it attains in our society. One assumes a generally shared will to realize and preserve the principles of voluntary agreement, of nonabuse of others, of noninvasive mutual aid, not as abstract ideas but as expressions of the life lived. Living in societies in which these are so very far from being the norm, we wonder how it is possible to decide what is just. If one grants that such norms have become realized, as the life that is lived, we have what I would call a "spirit of justice," and I do not see how recognition that the basic norms have been violated or disrupted would involve a tortuous decision. Rape, assault, homicide, "rip-off," fraud, and the like are in clear contradiction to the principle of voluntary cooperation and peace. More generally, the abuse of persons, and anything that tends toward creation of patterns of "enslavement" or that hinders the realization and continuity of free cooperation, is a wrong in such a society.

But if it would seem not so hard to define "injury," either personal or social, the labeling of an action as unjust, or the determination that some person or persons are responsible for an injury, raises deeper questions. I have suggested earlier that these are terms more appropriate in the context of moral education than in the context of dealing with injustice and injuries. For the latter purpose, they are appropriate perhaps for a society that believes that it must take reprisal upon wrongdoers, for their own good as well as for its own sake and also in order to deter others. Our long historical experience with many types of reprisals seems to indicate, almost beyond doubt, that they surely do not benefit the "criminal;" that reprisal may, in a society based in good part on fear, deter certain kinds of

Against such criticism Rothbard's "anarchism" might be defended on the ground that the "defensive" enforcement of a principle of individual liberty cannot fairly be classified as an infringement on individual liberty, and that such enforcement, dispersed as it would be and directed merely at preserving the integrity of the society, would not constitute a state in any serious sense. A further difficulty, however, results from the attachment of a principle of private property, and of unrestricted accumulation of wealth, to the principle of individual liberty. This increases sharply the possibility that many reasonable people who respect their fellow men and women will find themselves outside the law because of dissent from a property interpretation of liberty. There is, furthermore, broad ground for reasonable disagreement, even among those who would regard some form of property as a basic right, as to what should count as legitimate property and what modes of acquisition of property should be recognized. An obvious example is the right to bestow inheritance, to which Rothbard holds but which might be contested as an unreasonable extension of legitimate property rights; other examples of disputed conceptions of property rights abound in the lawbooks of our society. One can imagine, in addition, that those who lose out badly in the free competition of Rothbard's economic system, perhaps a considerable number, might regard the legal authority as an alien power, a state for them, based on violence, and might be quite unmoved by the fact that, just as under nineteenth-century capitalism, a principle of liberty was the justification for it all.

Most conceptions of anarchism that are not outright communist in economics minimize the possibility of great accumulations of private wealth, or of great disparities in economic well-being, by a concept of social property and social wealth that sets limits to private accumulation. It is of course just the absence of this category of the social that is crucial to Rothbard's system. Further consequences of this absence will appear in the more specific discussion below. At this point it seems fair to assert that Rothbard's inclusion of property in his definition of the individual and of liberty is likely to introduce heavy stresses into his system of justice, and that the compatibility of his system with anarchy, in other than a sheerly formal sense of the latter, is far from clear.

I. The Two Party Model

Whether Professor Rothbard's system is an anarchism is of course pertinent to the present symposium. But it is not the only pertinent question, because the society envisaged, however it should be called, would still have just those merits and failings that it has. The burden of my comment, as I develop it in this section and the two following, will be negative, because I believe that the shortcomings are truly serious.

Consistent with his antagonism to the social, Professor Rothbard adheres to a model for analysis and resolution of disputes and of more serious aggressions that I shall refer to as "the two-party model." "All disputes," he says, "involve two parties: the plaintiff, the alleged victim of the crime or tort, and the defendant, the alleged aggressor" (p. 196). If I understand Rothbard correctly, he could conceive of plaintiff or defendant, alleged victim or alleged aggressor, as (either or both) plural in number, and he could conceive also of cases where each alleges that the other is the offender. (If I am mistaken, it will not affect my discussion.) But it is clear that Rothbard recognizes no third-party, or what more extendedly might be called social, interests as legally and judicially relevant to an allegation of aggression. His severe individualism requires a two-party model, and the consequences are considerable.

The two-party model turns up first with respect to disputes, mainly economic, where negotiation and voluntary binding arbitration have failed to achieve a mutually acceptable settlement. With respect to disputes that are for practical purposes bilateral, Rothbard's emphasis upon arbitration is useful. It is not a specifically anarchist device, but I know of no reason why an anarchist would object to its utilization at many junctures in an anarchist society. But disputes are not, even for practical purposes, always bilateral.

Assuming the present family structure for context, a dispute over "custody" of a child, between the parents, affects very much a third party, namely the child, whose interests do not necessarily coincide with the interests of either parent — not necessarily, at any rate, with what they perceive their interests to be. (Even if the child is drawn into an arbitration process as an active party — contrary to the basic

tendencies to which human being has demonstrated its prone-ness: tendencies to magnify oneself to a point that others are only means to one's ends, tendencies to magnify oneself by enslaving others, tendencies to self-deception and other-deception, tendencies to cower before the power of others, tendencies to herd against the anomalous individual, tendencies to avoid responsibility for decisions, and so on: for anarchism is as much a distrust as a faith. Anarchists insist upon a careful distinction between society and state in order to indicate that in seeking the abolition of the latter, which stands at the center of a network of power structures to which it provides legitimation and defense, they do not seek the breakup of human society but rather an order constituted freely through manifold agreements, contracts, negotiations that can avert the actualization of those personally and socially destructive tendencies that situations of power (generically: political relations) trigger. A different order entirely, and nonanarchist, will be an order attained through or rationalized as a single societal contract or through imposition of a central authority by any procedure whatever.

A *society* will be just, then, insofar as it is free, in the sense of the metaphor, of "enslaving" social or political institutions (military, familial, governmental, educational, sexual, ethnic-hierarchical, caste-stratificational, ecclesiastical, etc.); but it will not be a society at all unless patterns of cooperation capable of sustaining human communities and vital personal existence are achieved. (To be anarchist and just, a society need not be perfectly or even approximatively egalitarian in an economic sense, unless such a principle arises from mutual agreement; unjust would be such systematic discrepancies of wealth as would constitute de facto economic classes, where the inferior class or classes would be chronically blocked off from full participation in the life of the society.) It is generally assumed by anarchist writers that in an anarchic society the incidence of "antisocial," "delinquent" behavior would be negligible because its source in poverty, social degradations, and humiliations, and the alienation of person from person and person from community would have been eliminated. The existence of societies, and regions within some other societies, where homicide and lesser violence against persons is rare and where Theft and vandalism are not ways of life gives reason to

has been one in which these and related concepts have been generalized and universalized and so interpreted as to transcend any particular perspective of social oppression.

Thus, although one finds the concept of a working class in many anarchist writings, one finds that, generally, appeal is made to people, or to the people, in behalf of what are thought to be the true interests of all persons. In the enlarging and universalizing of such ideas as freedom, anarchism may have sacrificed "practicality"; rightly put, that question becomes complex and I cannot discuss it here. But however that may be, anarchism represents, as I understand it, a kind of intransigent effort to conceive of and to seek means to realize a human liberation from every power structure, every form of domination and hierarchy. Correlative with this negation is the positive faith that through the breakdown of mutually supportive institutions of power, possibilities can arise for noncoercive social cooperation, social unity, specifically a social unity in which individuality is fully realizable and in which freedom is defined not by rights and liberties but by the functioning of society as a network of voluntary cooperation. It is in this sense that anarchisms are a kind of individualism, contrasting sharply to the collectivism and centralism of Marxian theory but also con-traasting sharply to the individualism associated with capitalist traditions.

Elsewhere I have tried to show that what is said above is, indeed, what anarchism "is about."[1] Here I will sketch, a little too hastily, some of the broad features of a general view of justice that I believe are implicit in this interpretation of anarchism.

The presumption underlying the negation of the various forms of power and of all those relations that can be characterized by the metaphor "slavery" is that social structures ordered by power prevent, and render people functionally incapable of, the exercise of capacities for free agreement and voluntary cooperation. Cor-relatively, they provide opportunity and temptation for the exertion of

[1] "The Negativity of Anarchism," in *Interrogations: Revue Internationale de Recherche Anarchiste*, Paris, France, No. 5 (December 1975). But this is not yet a complete formulation of my view of anarchism as a historical idea embodied in social movements.

model — it is not very likely that a young child will be in a position to give informed consent to the procedures and proceedings.) A dispute between a landlord and a plumber may affect the tenants considerably. Far more importantly, it is not clear how, in a society that is defined as consisting of individuals and private enterprises, a matter such as the pollution of air and waterways by a papermill can be dealt with adequately. (Those affected by such disputes may not be nameable even in principle, because persons not yet born, whose parents may not even have been born, may be among them.) The interests of such affected individuals are not necessarily represented either by the disputants or by arbitrators they select. Such interests are commonly referred to as social interests, that is, interests that cannot be specified adequately as a set of individual interests. Conceivably, every person in the world, and every "possible" descendant, might be affected by a property owner's decision to construct a nuclear-energy installation of a certain design. Such "disputes" may not be the source of major overt social conflict (i.e., violence) in our society, but they have come to be recognized, although slowly, as affecting us in large numbers and vitally.

What Professor Rothbard has done, it seems to me, is to propose that complex human problems be dealt with by a model suited to disputes between two neighbors over a property line. This is just the kind of anarchism that Marxists have succeeded in discrediting because it seems to show so little awareness of the last hundred and fifty years of technological evolution. There are anarchists who meet the problem of technological socialization of the economy, and of life, by proposing return to preindustrial technology, even to an agricultural economy; but I am sure that Rothbard would reject this.

The consequences of the two-party model become more dramatic, if no more problematic, when Professor Rothbard discusses violent aggression against persons. Once more there is only "alleged victim" and "alleged criminal," and all proceedings are defined as those of the first against the second. The victim is held to be free to exact his or her own justice or vengeance, subject to legitimate reprisal only if found to have misidentified the criminal: "The courts would not be able to proceed against McCoy if in fact he killed the right Hatfield" (p. 204). A very strange saying indeed.

By now we have learned, I would have thought, that violence and other antisocial behavior arises out of some context of human relations within which responsibility is not only difficult to pinpoint but often so vague that the concept is useless if not noxious. The very Hatfield/McCoy example illustrates this. Does anyone know who is responsible for initiating a series of acts of vengeance? Does anyone know who committed acts of initial provocation, and is there any way of saying that some individual or either family can be held uniquely responsible? How can we differentiate between the "surviving McCoy" who finds "what he believes to be the guilty Hatfield" and the Hatfield who probably believed that he was fully justified in killing a McCoy? Aggression is not a simple observable fact; the aggressor is, notoriously, always someone other than oneself. We know in fact that a very high percentage of homicides and assaults occur within families and among friends, and the violent climax has usually arisen out of a long history of strife; the problem is not merely that it is hard to say which person is responsible but that it often makes no sense to say that one individual or the other must be, for it is as though their mutual hostility has made them into Siamese twins. If Professor Rothbard were to offer, in verdicts of responsibility and of punishment, to make allowance for such complexities, as does the present judicial system in fact, this would not meet my point; he would be taking a bad model as fundamental and doing patchwork upon it. A contemporary view of justice, I would expect, would seek out a model that took our psychological understanding, and the social psychology of aggression, into better account.

Professor Rothbard does not trouble himself either about the fact that acts of violence of the more anonymous sort, the "crime in the streets" that is a recent preoccupation, often if not almost invariably say more about the pathologies of a human community than about the pathologies of the individuals who commit them. There is of course a sense of "responsibility" by which one wants persons to accept responsibility for all their actions, and this is a powerful if not indispensable ethical principle. But the imputation of responsibility to others as justification for reprisal is a different matter entirely. Individuals do not create the social patterns and the community beliefs in terms of which they learn to make their choices. On the more

the sole proprietor and therewith eliminate their social role. These concerns reflect social reality in considerable degree; they do not relate to phantoms. They are exactly the foci of Professor Rothbard's discussion. What are not the foci, what one will look for in vain, are the specific concerns of the poor, of wage workers, of socially and economically subordinated ethnic or racial groups, of the impoverished peoples of that American empire which, rather than the legally defined nation, should be understood as constituting our economic society. Nor of course does one find any reflection in Rothbard's paper of the concerns of those who find myriad shortcomings in middle-class values and ideas. The very definition of human being as an individual who possesses property is closely linked, it hardly needs saying, with those values and ideals.

The points made above have special relevance because the main traditions of anarchism are different entirely. These traditions, and the theoretical writings associated with them, express the perspective and the aspirations, and also, sometimes, the rage, of the oppressed people in human society: not only those economically oppressed, although the major anarchist movements have been mainly movements of workers and peasants, but also of those oppressed by power in all those social dimensions that have become (recently) themes of "liberation" movements, and in many other dimensions as well, including of course that of political power expressed in the state.

The strength of anarchism as a source of social idealism, and as expression of such idealism, lies partly in the fact that, unlike Marxian socialism, it is not wedded to a perspective of economic oppression solely. (At the same time it has not been affected, as has Marxian socialism, by the development of ideological political parties engaged in conquest of power; nor has it like recent Marxism been immixed with nationalism. Anarchist critique of such new forces of oppression or potential oppression, self-justified by their ideal aims, has been directed not only at Marxist movements but also, traditionally, as self-criticism, at similar potentialities within anarchist movements.) The "freedom" and "antiauthoritarianism" of anarchism did derive in large measure from the pluralistic socialism of the First International but the historical development of anarchism

things go on as before, and he constructs a system of police and judicial power without any consideration of the influence of historical and economic context. Out of the history of anarchist thought and action Rothbard has pulled forth a single thread, the thread of individualism, and defines that individualism in a way alien even to the spirit of a Max Stirner or a Benjamin Tucker, whose heritage I presume he would claim — to say nothing of how alien is his way to the spirit of Godwin, Proudhon, Bakunin, Kropotkin, Malatesta, and the historically anonymous persons who through their thought and action have tried to give anarchism a living meaning. Out of this thread Rothbard manufactures one more bourgeois ideology.

In characterizing Professor Rothbard's theory as ideological, I am using the term in the sense of a system of ideas justificatory, by means of a priori principles, of a certain way of life, and of the privileges of certain classes or social strata. I do not think that we fully understand the meaning and limitations of various social theories unless we understand their perspective. The problems of human being and society will have a certain shape in the perspective of the middle classes, another shape in the perspective of a bureaucracy, another shape in the perspective of a feudal aristocracy, another shape in the perspective of a military caste; and it will not be just the problems of human being that have a particular shape, it will be, also, society and human being themselves that will have a particular shape, a particular definition, that pertains to the given perspective.

If we want to transcend such limited truths and partial conceptions, it will be important to reveal the bias inherent in them in order to attain a truth more adequate to humankind (perhaps even to more than humankind). It seems clear to me that Professor Rothbard articulates the values and concerns of members of a middle class, specifically their concern with property and taxation, their resentment at being taxed to relieve the economic distress of the poorer classes, their sense that government is protective of the monopoly position of large corporations against any efforts of middle-class persons to increase their wealth and become significant proprietors, their feeling of vulnerability to depredations against their limited and not easily replaceable property, and their awareness of the possibility, realized in communist nations, that the state may become

personal level the social context intervenes in evident ways, as (for example) in a community where the concept of honor, or the disgrace of cuckoldry, attains a certain influence and force. On the more public level, we have had abundant experience of the influence of racial and religious bigotry, and of racial and religious and economic degradation. These are pathologies of society. A simplistic notion of responsibility, conjoined with legitimation of private acts of retaliation, would seem, among its consequences, to be invitational to blindly irrational acts of vengeance that worsen the injustice that exists.

An equally important limitation of Professor Rothbard's two-party model is that it excludes me (for example) as a "party" when an act of violence in my community does not involve me quite directly. But I do not know how I can fail to be affected and concerned by an act of violence in the community in which I live. In part, doubtless, I feel this because I think of people as living in communities, a concept rather alien to Professor Rothbard's way of thinking, and one reason I am an anarchist is that I would like to live in a world where there would be more genuine communities than exist now. But quite apart from that, I cannot but think that something is gravely amiss, that concerns me in numerous ways, when assault or rape or the like occurs in my community. Not only is my sense of human solidarity, and of concern for an injured person, evoked, not only do I feel a responsibility to the injured person, but I am also and especially concerned that what is done to rectify the injury, and to avert its repetition, be done well. I do not want to intervene in any and every case, but I want my concern to find effective expression, in the mode of rectification above all.

In certain cases one's concern as neighbor has special justification. If a parent abuses or kills his or her infant child, the burden is surely not upon the victim or its "heirs" to seek redress. But any act of violence is a rent in the texture of a human community, and this, it seems to me, is something to which the community must respond. The fact that it is not practical that all of us intervene individually is perhaps the major justification for socialization of the justice process. One need not approve, as I do not, of the existing court system with its bail system, patronage judges, adversary court proceedings, and

the rest. I am saying merely that the impulse to socialize justice, to transpose it from the purely private to the social realm, corresponds to the sense of most of us, shared by our ancestors for thousands of years at least, that justice is a social concern that must be dealt with socially. If we recognize the social character of justice, our problem will be to find a socialization of it that is different than our existing system and other than the institutionalization of private vengeance, as Rothbard's system threatens to be. We will not abandon the socialization of justice merely because its present socialization is rotten with injustices.

I have been stressing, in addition to "third party" and social responsibilities to those who suffer harm, a responsibility to seek the welfare of our community, of our social existence. It is perhaps implicit in the latter that we should think of ourselves as having a responsibility also toward those who have committed acts of aggression — but I should like to develop the point explicitly.

If we see violence as expressing a rent in the texture of community, we will be careful to avoid making neat and self-satisfying dichotomies of criminals and noncriminals, guilty and innocent, law-abiding and law-violating, aggressive and nonaggressive, and we will not be content with a justice of "Who did it?" Certainly we will not suppose that "the one who did it" (suppose it was Lee Oswald) has lost all claims of respect for life and person and is fair game for private vengeance, by one's own hand or by the hand of a hired assassin. We will not scapegoat so-called aggressors and thereby reassure ourselves of our utter blamelessness, and we may feel impelled to meditate upon the saying that "We are all murderers."

Thus, when I learn that someone who has committed a long series of major and minor acts of violence against persons was himself the victim, throughout childhood and adolescence, of abuse and contempt and denial of love, I cannot but feel that we have a responsibility toward that person. Nothing follows simply and logically about how that responsibility is to be fulfilled — but the difficulty of meeting a responsibility does not relieve one of it. What will be wrong will be to abstract from the fact that that person is a human being and to regard that person only as "the killer," "the rapist,"

McCoy if in fact he killed the right Hatfield.") Since he is not overtly presenting a theory of punishment, it is difficult to pursue the relation between defense and retribution. But defense is always present and future-oriented, retaliation and retribution are predominantly past-oriented. Although I can imagine lines of argument that [227] seek to bring them together, I have no idea what brings them together for Professor Rothbard. I think therefore that I have every reason to worry about what I would be assenting to if I assented to his defense axiom. Philosophically the problem could be expressed in this way: taken very strictly and literally, self-defense does not give us much in the way of a system of justice, and an attempt to enlarge it so as to produce a full-bodied theory of justice must, it seems, appeal to other axiomatic propositions. One would want to know if for Professor Rothbard the right of revenge is such a suppressed premise.

IV. Anarchism

What I have taxed Professor Rothbard (or his theory) with in my review is this. In attempting to say what a society without a state would be like he has offered principles and procedures by which "defense services" could be provided. The very term "defense" should have set us on guard, for already here the aggressor-victim model can be anticipated. Wrongs and injuries are defined as "crimes," a term which itself presupposes law that defines what is criminal. Rothbard's criminology is unfortunately rather like the commonsense criminology of the good citizen who thinks of criminals as others, as alien menaces, not conceivably himself. Not surprisingly, Rothbard provides us with a model for wrongs and injuries that seems to be useless either for understanding the events or for considering means of rectification, that is, for bringing the given story to the most desirable end. He reasons in terms of unit entities whose relations with each other are legal and economic but not in any specific way human. He not only disregards but rules out the socialization of justice. Most generally, he writes of society as though some part of it (government) can be extracted and replaced by another arrangement while other

beings. I am pretty sure that Professor Rothbard would not talk so coolly if he were talking about some Wieck or some Rothbard. Yet I have before me the fact that he conducts his discourse about human justice in a way that abstracts not only from socioeconomic context, not only from the life and community context of social problems, but also from human feeling about life and death.

For Professor Rothbard, as I read his essay, there are no moral issues to be considered; merely self-defense and whatever it seems to justify. I cannot think of a harder problem, a harder moral problem, facing an anarchist society, or any society that would claim an ethical basis, than that of what to do when one human being has killed another, above all when that act has no reasonable claim of immediate self-defense. (It is not alleged that the McCoy who kills the Hatfield is himself in danger, nor is it in any way implied that he must justify his act by such claim.) I do not understand how it can be written about in Rothbard's manner, without a word that betrays a shadow of anguish. Of course, Rothbard may not be interested in morality or ethics; but in that case it is not clear what interest his society, as an object of intellectual contemplation, is going to have for me.

If I set aside such feelings, and pursue the meaning of Professor Rothbard's example and the discussion surrounding it, I find a philosophical move that on its own account is very serious. The right of self-defense has been offered as axiomatic. If we must have a Hobbesian axiom, I would prefer one that directs us to seek peace, perhaps while making some allowance for the occasional necessity of militant self-defense. But I will allow Rothbard his axiom. What I cannot allow is his move, without any argument, from self-defense to what he calls "retaliation" as a right legitimated by the defense axiom. As far as I can make out, Rothbard's "retaliation" would be equivalent to "retribution," "reprisal," "revenge."

I do not wish to argue here the merits of a retributivist theory of justice. (In my view, an "anarchist theory of punishment" would work out to a self-contradiction.) Important at the moment is the fact that Professor Rothbard introduces retribution under color of self-defense and does not seem to be aware that the matter requires discussion. (Again, "The courts would not be able to proceed against

"the aggressor," etc., an abstraction that runs systematically through Professor Rothbard's paper.

This misleading abstraction, and the other shortcomings that I have tried to indicate in this section, stem directly, I believe, from Rothbard's two-party model. The two-party model in turn stems directly from his severely individualistic conception of human being — a conception that is not characteristic of the anarchist traditions generally, even though, in one sense, all anarchisms are a kind of individualism. Underlying his two-party model of disputes is a unit model of man, and a unit of the thinnest sort, whose only predicates seem to be "has property," "is an aggressor," "defends himself," "kills so and so," and the like. I admit that this world with its curious population makes me uncomfortable.

II. Justice by Private Enterprise

An equally misleading abstraction, still more damaging to Professor Rothbard's "society without a State," concerns the relation of his juridical system to the society of which it would be a part.

Each person is entitled to act as judge and policeman, and so on, but just as most of us do not make our own shoes Professor Rothbard imagines that there will be police agencies, primary courts, and courts to which such courts may appeal, all organized on a free-enterprise basis and available for hire. He wants to show that there can be machinery of adjudication and enforcement that obviates all need for a tax-based government.

If we are worried about the possible corruption and venality of "private" courts and police forces, we are assured that free-market competition among them will "place severe checks on such possibilities" (p. 204–05). But we should, I think, be worried about another problem than that of private courts "that may turn venal and dishonest" or a private police force that "turns criminal and extorts money by coercion." There 's something more serious than the "Mafia danger," and this other problem concerns the role of such "defense" institutions in a given social and economic context.

Rothbard's context, we remember, is one of a free-market economy with no restraints upon accumulation of property. Now, we had an American experience, roughly from the end of the Civil War to the 1930s, in what were in effect private courts, private police, indeed private governments. We had the experience of the (private) Pinkerton police which, by its spies, by its agents provocateurs, and by methods that included violence and kidnapping, was one of the most powerful tools of large corporations and an instrument of the oppression of working people. We had the experience as well of the police forces established to the same end, within the corporations, by numerous companies, including the Colorado Fuel and Iron police of Vice President Rockefeller's ancestors and the private police of the Ford Motor Company. (The automobile companies drew upon additional covert instruments of a private nature, usually termed vigilante, such as the Black Legion.) These were in effect, and as such they were sometimes described, private armies. The territories owned by coal companies, which frequently included entire towns and their environs, the stores the miners were obliged by economic coercion to patronize, the houses they lived in, were commonly policed by the private police of the United States Steel Corporation or whatever company owned the properties. The chief practical function of these police was, of course, to prevent labor organization and preserve a certain balance of "bargaining."

On Rothbard's definition of "the state," such economic, judicial, and police complexes might not qualify for the designation "state" or "mini-state." They did not collect taxes — although this would have been absurd in many cases, since the miners were often paid in "scrip" rather than United States currency and their normal condition was indebtedness. These complexes were economically rather than territorially based and did not deny the territorial authority or tax-collecting authority of the government. But these complexes were a law unto themselves, powerful enough to ignore, when they did not purchase, the governments of various jurisdictions of the American federal system. This industrial system was, at the time, often characterized as feudalism. One may be a critic of the system of strong federal government that has emerged in America, and still recognize that one reason for its development was the demand of

working people that the federal government protect them against, and put an end to, a system of industrial feudalism.

When private wealth is uncontrolled, then a police-judicial complex enjoying a clientele of wealthy corporations whose motto is self-interest is hardly an innocuous social force controllable by the possibility of forming or affiliating with competing "companies."

My point is not a merely empirical one, resulting from an effort to imagine how Professor Rothbard's system might work out. My conceptual point is that any judicial system is going to exist in the context of economic institutions. If there are gross inequalities of power in the economic and social domains, one has to imagine society as strangely compartmentalized in order to believe that those inequalities will fail to reflect themselves in the judicial and legal domain, and that the economically powerful will be unable to manipulate the legal and judicial system to their advantage. To abstract from such influences of context, and then to consider the merits of an abstract judicial system, as I believe Professor Rothbard does, is to follow a method that is not likely to take us far. This, by the way, is a criticism that applies not only to Professor Rothbard's but to any theory that relies on a rule of law to override the tendencies inherent in a given social and economic system.

III. The Meaning of Defense

When one is talking about violence of person against person, about the destruction of human life even, one is, I do not wish to stop feeling, talking about human tragedies, human suffering, in short, pain. My sense of what anarchism is, is that it does not repudiate the great moral concerns — that, if anything, it seeks to enlarge them. But Professor Rothbard finds it possible to write, quite coolly, "This is fine," when in his example the surviving McCoy kills the "guilty" Hatfield. This wants some attention.

Hatfields and McCoys are of course by now legendary figures rather than real persons. To talk about them is in a way like talking about cartoon-comedy figures — these are one-dimensional beings, and one does not think of them as flesh-and-blood mortal fellow