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THREATS AGAINST THIRD PARTIES: A LIBERTARIAN ANALYSIS

Abstract

The non-aggression principle (NAP) is a core building block of the entire civilized edifice. But, proscribed by this principle are not only physical invasions. The threat thereof also runs counter to just law. The present essay is an attempt to wrestle with this all-too-often hidden, or at least less-than-fully-appreciated aspect, of this legal philosophy.

Annotasiya

Aqressiya tətbiq etməmək prinsipi bütün sivil strukturun təməlidir. Lakin bu prinsiplə qadağan olunan ancaq fiziki qəsdlər deyil. Təhlükə həmçinin hüquqa qarşı da yönəlir. Məqalə bu hüquqi fəlsəfənin əsasən gizli qalan və ya daha az dəyərləndirilən aspektini həll etməyə təşəbbüs göstərir.

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Introduction

In December 2015, Donald J. Trump, a then candidate in the United States Republican presidential primaries, proposed to “take out” the families of terrorists in order to deter terrorism.¹ While actual aggression against innocent persons decidedly violates libertarian law, we shall explore the question of whether it would be licit under libertarianism to threaten to harm a third party in order to stop someone from committing certain acts. We contend that the answer depends on whether that third party learns of the threat or not.

I. Background

To begin with, we offer a brief account of what the libertarian legal code is. The two basic building blocks of libertarianism are the non-aggression principle (NAP) and a theory of private property rights based on homesteading and voluntary exchange.

The NAP asserts that it is illicit for anyone or any group of people to initiate aggression against the person or property of others. (The question of what constitutes “aggression” will be addressed more precisely in the next section.) The use of force is, however, permitted in self-defense.

To determine whether an act is an intrusion upon another person’s property or merely the retrieval of one’s own possessions, we need a theory of property rights. Libertarianism holds that any property title obtained via homesteading or voluntary exchange is just and may not be deprived of the owner without consent.²

¹ See LoBianco (2015), “Donald Trump on terrorists: ‘Take out their families.’” CNN. December 3; <http://www.cnn.com/2015/12/02/politics/donald-trump-terrorists-families/>.

² On homesteading, see: Walter Block, *Earning Happiness Through Homesteading Unowned Land: a comment on ‘Buying Misery with Federal Land’ by Richard Stroup*, 15 *Journal of Social Political and Economic Studies*, Summer 237, 237-253 (1990); Walter Block, *Homesteading City Streets; An Exercise in Managerial Theory*, 5 *Planning and Markets* 18, 18-23 (2002); Walter Block, *On Reparations to Blacks for Slavery*, 3 *Human Rights Review* 53, 53-73 (2002); Walter Block and Michael R. Edelstein, *Popsicle sticks and homesteading land for nature preserves*, 7 *Romanian Economic and Business Review* 7, 7-13;

<http://www.rebe.rau.ro/REBE%207%201.pdf>; Walter Block and Guillermo Yeatts, *The Economics and Ethics of Land Reform: A Critique of the Pontifical Council for Justice and Peace’s ‘Toward a Better Distribution of Land: The Challenge of Agrarian Reform’*, 15 *Journal of Natural Resources and Environmental Law* 37, 37-69 (1999-2000); Walter Block v. Richard Epstein, *Debate on Eminent Domain*, 1 *NYU Journal of Law & Liberty* 1144, 1144-1169 (2005); Per Bylund, *Man and Matter: A Philosophical Inquiry into the Justification of Ownership in Land from the Basis of Self-Ownership*, Lund University (2004): <http://www.uppsats.se/uppsats/a7eb17de8f/>; http://perbylund.com/academics_polsci_msc.pdf; <http://www.essays.se/essay/a7eb17de8f/>;

It is worth noting that the scope of libertarianism is limited to judging whether a given act constitutes illicit aggression and therefore can be justly repelled or punished by force. It does not imply that any act that does not violate the NAP (and would therefore be legally permitted in a libertarian world) is necessarily desirable, commendable or even excusable.³

II. Why threat constitutes aggression

In this section we characterize in greater detail what the concept of “aggression” encompasses.⁴ The primary form of aggression is the use of physical violence: one violates the NAP through the nonconsensual seizure or physical alteration of another person’s property, such as through theft, robbery, murder or rape. (The last two types of action violate one’s property right in their own body.) For example, if the policeman actually kills a terrorist’s innocent son (not just threatens to do it), he will be guilty of a NAP violation.

From this starting point, two derived forms of aggression can be identified. The first of these is fraud. Suppose X and Y enter into a contract whereby X agrees to give Y an apple on the condition that Y gives X an orange. Suppose that, after X delivers an apple to Y, Y refuses to supply any orange to X. In

<http://www.lunduniversity.lu.se/o.o.i.s?id=24965&postid=1330482>; Per Bylund, *Man and matter: how the former gains ownership of the latter*, 4 *Libertarian Papers* 43 (2012): <http://libertarianpapers.org/articles/2012/lp-4-1-5.pdf>; Hoppe, Hans-Hermann, *Of Private, Common, and Public Property and the Rationale for Total Privatization*, 3 *Libertarian Papers* 1, 1-13 (2011) <http://libertarianpapers.org/2011/1-hoppe-private-common-and-public-property/>; Hugo Grotius, *Law of War and Peace (De Jure Belli ac Pacis)* 113 (1625) (translated by A.C. Campbell, London, 1814; Paul, Ellen Frankel. 1987); Stephan Kinsella, *A libertarian theory of contract: title transfer, binding promises, and inalienability*, 17 *Journal of Libertarian Studies* 11, 11–37 (2003): http://www.mises.org/journals/jls/17_2/17_2_2.pdf; Stephan N Kinsella, *How we come to own ourselves* 7 (2006); <http://www.mises.org/story/2291>; Stephan N Kinsella, *Homesteading, Abandonment, and Unowned Land in the Civil Law*, 18 (2009): <http://blog.mises.org/10004/homesteading-abandonment-and-unowned-land-in-the-civil-law/>; John Locke, *An Essay Concerning the True Origin, Extent and End of Civil Government*, in E. Barker, ed., *Social Contract* 17-19 (1948); John Locke, *Second Treatise of Civil Government* 51 (1955). Marko Marjanovic, *Least, Sufficient Force: Libertarian Theory of Defense* §5 (2013); Murray N Rothbard, *For a New Liberty* 32 (1973): <http://mises.org/rothbard/newlibertywhole.asp>.

³ For example, under this philosophy, pornography, prostitution, drug usage, would be legal, for consenting adults. However, that does not mean that libertarians favor engagement in such acts. For the difference between libertarianism which need not do so, and libertinism, which does, see Walter Block, *Libertarianism and Libertinism*, 11 *The Journal of Libertarian Studies: An Interdisciplinary Review* 117, 117-128.

⁴ See on this Murray N Rothbard, *The Ethics of Liberty* (1998): <http://www.mises.org/rothbard/ethics/ethics.asp>.

effect, Y is violating the condition on which X agrees to give Y the apple, and is therefore taking X's apple without his consent. But suppose Y offers a rock to X instead of the agreed upon orange. Would this still constitute fraud? After all, Y did express willingness to give X *something* in exchange for the apple he received. Yes, this would still be fraudulent, since X values the apple more than the rock, and, Y is contractually obligated to supply X with an orange, not a rock.⁵

The second form of derived aggression is threat.⁶ Suppose V points a gun to W's head and claims that he will shoot W unless W gives him \$100. This forces W to give up some of his property in order to avoid another property right violation against him (namely, murder). In other words, no matter which alternative W chooses, he necessarily loses control of some of his property.

A special kind of threat deserves separate treatment. Suppose that, rather than requesting money, V simply purports that he will shoot W no matter what W does. There is nothing W can do to change V's alleged plan, so W is not really forced to renounce any property titles in the way we saw in the last paragraph. If V does not end up shooting him (i.e. the threat is just bluff), it may seem that no coercion has occurred. However, we argue that there is still coercion in this case, as W would be prompted to increase security measures by wearing a bullet-proof vest, not going to places where he may encounter V, etc. In short, W would be forced to alter the way he spends his wealth in order to try to avoid the anticipated violent attack. Consequently, such a threat is still illicit as undermining W's full control of his property.

While we have just characterized illicit threat, it should be noted that the word "threat" is also often used to refer to utterances or acts that are licit, at least under libertarian law. Suppose A threatens to worship Gaia in order to stop B from eating broccoli. Is this "compulsion" against B a legal one? Yes, since A has the right to worship whosoever he wants. Consider in this regard blackmail versus extortion. There are threats in both cases. Take the former. The seller "threatens" to withhold the good⁷ from the buyer, unless the latter

⁵ But suppose that the "rock" is actually a diamond. Then, yes, it is still fraud, in that this valuable "rock" was not specified in the agreement. However, X might well "forgive" Y's fraud, and accept the diamond in lieu of the orange.

⁶ The word "threat" has two distinct meanings: (1) intimidating claim, and (2) danger or hazard. In this paper, we deal strictly with the first and not the second meaning of the term. If someone secretly buries a landmine in an unowned piece of land, he is making the environment dangerous, hence posing a "threat" in the second sense, to passers-by. However, since the perpetrator has not made any intimidating claim, his act does not constitute "threat" in the first sense, and is therefore irrelevant to the focus of the present paper.

⁷ Silence; refraining from engaging in malicious gossip, which also, of course, is perfectly legal.

pays him. Similarly, the buyer “threatens” not to pay the seller unless the agreed upon good or service is supplied to him. Licit, all around (Block, 2013). In very sharp contrast indeed, extortion is the threat of initiatory violence against the victim,⁸ unless he accedes to the wishes of this criminal.

What we infer from this is that in order for a threat to the law. It is entirely licit to “threaten” to withhold a good or service unless paid. Ditto for “threatening” not to pay an agreed upon price unless delivery of the good or service is made. In extortion, the threat is to kidnap the target’s children and/or in some other such manner deliver mayhem to the victim, which he has no right to do. In sharp contrast, in blackmail, the “threat” is to engage in gossip, at the target’s expense. Since telling tales about people is and should be legal, this would be a legitimate, lawful threat.

III. Threat against third parties

So far we have established that it is illicit under libertarianism for someone, say A, to demand someone else, say B, to do something (which B has the right not to do) by threatening to aggress against *that same person B* if he does not comply. In this section we consider a variant of this type of act: what if, instead of threatening to aggress against B, A threatens to aggress against a third person C as a consequence of B’s non-compliance?

We will divide our analysis into several cases. But before we proceed, it is important to reiterate that it is surely against libertarian law to actually aggress against an innocent third party as a “punishment” for someone else’s action. In the following cases, we confine ourselves to the sole question of whether it would be licit to *utter a threat to do so*, without executing the content of the threat.

A. C does not learn of the threat

Suppose A tells B that A will aggress against C if B does not do a certain thing, but C is not aware of this assertion by A at all. Has A violated the non-aggression principle? There are two sub-cases here. The answer is the same in both sub-cases, but the sets of reasons are different.

1. Threat is used to stop non-rightful act by B

Suppose B, a terrorist, plans to commit a violent attack (which is plainly not a rightful act), and A, a (ideally private) policeman, wants to prevent this from happening.

Before we even consider the possibility of A threatening to hurt C, let us ask the question of whether it would be licit for A to threaten *B himself* in order

⁸ Which of course is not licit, at least not in the libertarian society.

to deter him. Suppose A tells B, "If you commit a terrorist attack, I will torture you for 30 years!" Is this a licit threat?

Recall that in section III, we concluded that certain threats are illicit because they leave the victim with no choice but to give up certain property rights. For example, if a victim is forced by a threat to give \$100 to a robber, the victim loses \$100. But the situation with the terrorist is different. For B has no right to commit any terrorist attack in the first place. If he is forced by the threat to refrain from committing a terrorist attack, he is not losing any property rights (he is merely rendered unable to acquire illegitimate additional ones). Thus, A's threat against B is not aggressive in nature.⁹

⁹ Note that this has nothing to do with whether A's alleged punishment against B "fits the crime." The point is not about A giving advance notice of the proper legal consequences of B's crime, but merely about A using a threat as a tool to convince B not to commit the crime. For libertarian theories concerning punishments that "fit" the crime, see Block, Walter. 1999. "Market Inalienability Once Again: Reply to Radin," *Thomas Jefferson Law Journal*, Vol. 22, No. 1, Fall, 37-88; http://www.walterblock.com/publications/market_inalienability.pdf; Block, Walter, *Berman on Blackmail: Taking Motives Fervently*, 23 Florida State University Business Review 57-114 (2003); Block, Walter, *Libertarianism vs. Objectivism; A Response to Peter Schwartz*, 26 *Reason Papers*, 39-62 (2003); Block, Walter, *The Non Aggression Axiom of Libertarianism*: <http://archive.lewrockwell.com/block/block26.html>; Block, Walter, *Austrian Law and Economics: The Contributions of Adolf Reinach and Murray Rothbard*, (2004) *Quarterly Journal of Austrian Economics* 69-85; Block, Walter, Reply to Frank van Dun's *Natural Law and the Jurisprudence of Freedom*, 18 *Journal of Libertarian Studies* 65-72 (2004); Block, Walter, *Radical Libertarianism: Applying Libertarian Principles to Dealing with the Unjust Government, Part II*" 28 *Reason Papers* 85-109 (2006); http://www.walterblock.com/publications/block_radical-libertarianism-rp.pdf; Block, Walter E. 2009A. "Toward a Libertarian Theory of Guilt and Punishment for the Crime of Statism" in Hulsmann, Jorg Guido and Stephan Kinsella, eds., *Property, Freedom and Society: Essays in Honor of Hans-Hermann Hoppe*, Auburn, AL: Ludwig von Mises Institute, 137-148; http://mises.org/books/hulsmann-kinsella_property-freedom-society-2009.pdf; Block, Walter, "Libertarian punishment theory: working for, and donating to, the state" 1 *Libertarian Papers* 5, 8 (2005); <http://libertarianpapers.org/2009/17-libertarian-punishment-theory-working-for-and-donating-to-the-state/>; Block, Walter E, *Rejoinder to Kinsella and Tinsley on Incitement, Causation, Aggression and Praxeology*, 22 *Journal of Libertarian Studies* 641, 641-664 (2011) http://www.constitution.org/cb/crim_pun.htm. Beccaria's Of Crimes and Punishments; Block, Walter E., William Barnett II and Gene Callahan, The Paradox of Coase as a Defender of Free Markets, 1 *NYU Journal of Law & Liberty* 1075-1095 (2005); <http://tinyurl.com/2hbdz4>; Gregory, Anthony and Walter E. Block, *On Immigration: Reply to Hoppe*, 21 *Journal of Libertarian Studies* 25, 25-42 (2007); http://mises.org/journals/jls/21_3/21_3_2.pdf; Stephen Kinsella, *Punishment and Proportionality: the Estoppel Approach*, 12 *The Journal of Libertarian Studies* 51, 51-74 (1996); http://www.mises.org/journals/jls/12_1/12_1_3.npdf; Morris, Herbert. 1968. "Persons and Punishment." 52 *The Monist* 475, 475-501; <http://www.law-lib.utoronto.ca/bclc/crimweb/bboard/personsandpunishment.pdf>; Robert Nozick (1981):

It follows that A's threatening to hurt C in order to stop B from committing a terrorist attack is *a fortiori* justified. Again, if B refrains from committing a terrorist attack, he is not losing any property rights.

2. Threat is used to stop rightful act by B

Suppose A threatens to kill C in order to stop B from eating broccoli (which B of course has the right to do). Now, one of the two alternatives that A gives B – not to eat broccoli – constitutes a loss of (property) rights on the part of B, as he can no longer use his broccoli, fork, hands, mouth, etc. in whatever way he wishes. However, the other alternative available to B – eating broccoli anyway and letting C be killed – does not result in any loss of (property) rights on the part of B, since C is not B's property.¹⁰

B. C learns of the threat

In the previous case, in order to determine whether a threat is licit, we only needed to examine whether it violates B's rights; since C does not even learn of the threat, no aggression against C could have transpired. But we now consider the case that C does learn of the threat. Then the possibility of violating C's rights also comes into the picture. Indeed, since we have established that any threat to hurt C does *not* violate B's rights (and our arguments do not depend on whether C learns of it), the only way the threat could be illicit is to violate C's rights.

Whether the act that A is trying to prevent B from doing is rightful or not, C has no direct control over whether B does it. Therefore, this scenario relates back to our discussion of unconditional threats in section III: there is nothing

Philosophical Explanations, Cambridge, MA: Harvard University Press, 363-373; Charles Olson, *Law in Anarchy*, 12 *Libertarian Forum* 4, 4 (1979);

Whitehead, Roy and Walter E. Block, *Taking the assets of the criminal to compensate victims of violence: a legal and philosophical approach*, 5 *Wayne State University Law School Journal of Law in Society* 229, 229-254. In the view of Rothbard (1998, p. 88, ft. 6): "It should be evident that our theory of proportional punishment—that people may be punished by losing their rights to the extent that they have invaded the rights of others—is frankly a *retributive* theory of punishment, a 'tooth (or two teeth) for a tooth' theory. Retribution is in bad repute among philosophers, who generally dismiss the concept quickly as 'primitive' or 'barbaric' and then race on to a discussion of the two other major theories of punishment: deterrence and rehabilitation. But simply to dismiss a concept as 'barbaric' can hardly suffice; after all, it is possible that in this case, the 'barbarians' hit on a concept that was superior to the more modern creeds."

¹⁰ The two authors of this paper disagree on whether or not A's threat in scenarios such as this is licit. We therefore leave this question unanswered in this paper, and record the two authors' thoughts in the Appendix for the reference of future explorers of this intriguing question.

C can do (without persuading others to cooperate) that can affect the realization of the condition for A's punishment upon him. Another way to look at the matter is as follows: C is forced by the threat to take certain measures to stop B from committing the act in question, *or* to increase C's own security measures, in an attempt to avoid C's own demise. All in all, such threats by A interfere with C's autonomy and are therefore illicit, regardless of whether it is used to stop a rightful or non-rightful act by B.

IV. Indirect Knowledge of Threat

Let us probe a bit deeper into the issue of whether or not A's threat to B, that A will murder C, is a violation of the latter's rights. Clearly, if C never learns of this, there can be no question of any rights violation.¹¹ However, in the case under discussion, C is the innocent son of B, the terrorist, who is about to kill millions with a nuclear device. C hears of this threat, if he ever does, *after* the threat is uttered by A against B. Presumably, the nuclear menace is now long gone, resolved one way or the other. If C is now a decent adult, and first hears of this threat of A's against B, he is likely to be more than ready to forgive A, for attempting in this way to save millions of people's lives. It is only if he is still a child, and/or is not "decent" that he will be harmed by this

¹¹ A similar case is that of attempted murder, where the target never learns of an unsuccessful attempt to murder him. If this attempt never impacts the target, then there can be no more guilt for the entirely unsuccessful perpetrator than if he "attempted" to commit this foul deed by thinking bad thoughts about his "victim" or by employing voodoo. See on this Kinsella, 1996, 68-69, 2006B, 2009A, 2009B. See also O'Neill and Block, 2013, on how the victim's knowledge of a threat enters into the determination of its legitimacy: Given a libertarian theory of punishment grounded in the notion of estoppel (Kinsella, 1996), it is sensible that the estoppel claim is raised whenever a person attempts to violate the NAP, even if they somehow fail. For example, if X swings his axe at a shape hidden behind the curtains, thinking it to be Y, then X is intending to initiate force against Y (assuming it is not retaliation for a prior aggression). This is so even if nothing turns out to be there, and X's axe tears his own curtain and nothing more. If Y is far away from the scene at the time there is no crime, because there has been no actual force and no threat of force known to Y. However, if Y is close enough to be aware of this action, or if he is away at the time, but later becomes aware of it, then this might constitute an assault on Y insofar as it puts him in anticipation of unlawful aggression against him--it is a threat to initiate force. This holds notwithstanding the fact that Y is physically unharmed (typically, when a threat is uttered, the target is physically unharmed, at least for the moment). In such a case Y is entitled to restitution from X for this assault and X is legitimately estopped from asserting his own rights (to a proportionate extent) against Y. X has aggressed against Y, albeit in a way that did not achieve X's intended outcome. (There may be issues as to the proximity of Y to the event, and whether X's behavior really does constitute a threat if Y is far away. The key point is that to establish a crime Y must also establish that some actual threat has occurred by virtue of the conduct complained of.)

threat, and/or be unwilling to forgive A, in which case A will be guilty of an illicit threat and restitution will be in order. Yes, we take the position that if a victim fully forgives his invader in such types of examples, there is a strong case to be made that the initial act was not really an invasion, not a NAP violation, in the first place.

What about the owner of a cabin in the woods, broken into by a starving, frost-bitten person in the middle of the winter? He saves his life by doing so, while eating the food stored within. The home invader leaves his name and address and sends payment for his “theft.” Is he really a trespasser or a thief? It all depends upon the owner of the cabin, in our view. To the degree the victim forgives the perpetrator, it was not a crime, *ex post*, even though *ex ante* it certainly was.¹²

V. Legality vs. Morality

It is crucially important to distinguish legality and morality. In the former case, violence comes into play. If an act is illegal, this is justification for the employment of physical force, in defense against it or in retaliation for it. If murder, theft, rape, arson and fraud are against the law, it is justified for the forces of law and order to utilize ferocity, if need be, against the murderers, thieves, rapists, arsonists and fraudsters. This is something libertarians applaud, since these law-breakers are guilty of the prior initiation of aggression against innocent people. Similarly, if laws prohibiting paying low wages, charging high rents or interest rates, pornography, prostitution and gambling are illegal, this serves as the justification for physically subduing malefactors. Libertarians reject such laws, however, since the law breakers in these cases violate no rights. They are victimless “crimes.” They take place between and among consenting adults, only, in which case there were no prior rights violations.

Morality is an entirely different matter. There is no one who doubts that the first set of behaviors are immoral, murder, etc. All decent people are repulsed by them. Even those who perpetuate these evil deeds recoil from them were they to be perpetuated upon themselves.¹³ Similarly, all proper societies ban them by law. The second set of acts, violating price controls, engaging in prostitution, etc., are very different. Most people regard all of

¹² On the other hand, if the owner booby trapped the cabin, whether or not he placed a prominent sign to that effect on the front door, he is guilty of no crime.

¹³ Yes, yes, there are exceptions. For example, a masochist might enjoy being the “victim” of an assault and battery, a suicidal person might welcome being murdered. We speak in overwhelming generalities in the text above.

them as immoral. Libertarians, at least qua libertarian, have no opinion in this issue at all, since this philosophy is solely concerned with legality¹⁴ and strictly eschews all other issues of ethics.

How do libertarians deal with the trolley¹⁵ challenge to their philosophy? Here, matters are a bit more complicated. Suppose we can throw the proverbial fat man onto the path of the trolley, thereby killing him, an outright act of murder. By doing so, we can save, oh, one billion innocent people.¹⁶ In this case, morality and legality diverge once again, at least for most people, but in an entirely different manner. For the majority opinion would think this entirely justified behavior from a moral point of view. Again, libertarians, qua supporters of this philosophy, have no view on this matter, may not have any opinion on it, are precluded from doing so.¹⁷ But, clearly, such behavior is

¹⁴ Which acts should be legal, and which ones prohibited by law is the only concern of the libertarian qua libertarian.

¹⁵ See on this Clark, Josh. Undated. "How the Trolley Problem Works."

<http://people.howstuffworks.com/trolley-problem.htm>; Phillipa Foot, *The Problem of Abortion*

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what to do about it, (2002): <http://www.wjh.harvard.edu/~jgreene/GreeneWJH/Greene-Dissertation.pdf>;

http://mises.org/journals/jls/21_3/21_3_2.pdf; Kamm, Francis Myrna.

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Thomson, Judith Jarvis. 1985. "The Trolley Problem" *The Yale Law Journal*, Vol. 94, No. 6 (May), 1395-1415;

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Zimmer, Carl. 2004. "Whose life would you save?" *Discover Magazine*. April 21;

<http://discovermagazine.com/2004/apr/whose-life-would-you-save>

<http://discovermagazine.com/2004/apr/whose-life-would-you-save>

¹⁶ Why be pikers? Let us increase the usual numbers of people thereby saved in these examples.

¹⁷ If they do, they are not libertarians, at least on this one issue. States Rothbard, 1982, p. 152:

"... we are not, in constructing a theory of liberty and property, i.e., a 'political' ethic, concerned with all personal moral principles. We are not herewith concerned whether it is

contrary to one of the most basic building blocks of libertarianism, the non-aggression principle (the NAP), in this case proscribing the murder of an innocent fat person. What, then, to do, to rescue the perspective from the charge that it would in effect condemn on billion people to death, in order to save merely one person? The answer, emanating from this quarter is that we view it like any other NAP violation: it must be punished.¹⁸ So, hopefully, a “hero” will rise up amongst the populace, kill, no, murder, the fat man by pushing him onto the path of the oncoming trolley, save the one billion who otherwise would die, and face the punishment dealt out to all murderers; presumably, the death penalty. However, there is a safety net available to libertarian theory when dealing with the trolley problem: who decides whether or not the full penalty should be imposed upon the murderer? His heirs. May they even go so far as to entirely forgive the murderer in such cases. Yes, indeed, they may do so.¹⁹ Here is the out, or the saving grace for our hero. The victim himself, if he is philosophically oriented, will have anticipated just this sort of eventuality. His heirs will very likely take into account the extenuating circumstances of the trolley challenge. Presumably, although there can be no guarantee here, the heirs will forgive the heroic murderer, given the number of lives saved thereby.

moral or immoral for someone to lie, to be a good person, to develop his faculties, or be kind or mean to his neighbors. We are concerned, in this sort of discussion, solely with such ‘political ethical’ questions as the proper role of violence, the sphere of rights, or the definitions of criminality and aggression.”

¹⁸ For the libertarian view on punishment, see: Block, 1999, 2002-2003, 2003A, 2003B, 2004A, 2004B, 2006, 2009A, 2009B; Block, Barnett and Callahan, 2005; Gregory and Block, 2007; Kinsella, 1996; Marjanovic, 2013; Morris, 1968; Nozick, 1981, 363-373; Olson, 1979; Rothbard, 1998, 88; Whitehead and Block, 2003. In the view of Rothbard (1998, p. 88, ft. 6): “It should be evident that our theory of proportional punishment—that people may be punished by losing their rights to the extent that they have invaded the rights of others—is frankly a *retributive* theory of punishment, a ‘tooth (or two teeth) for a tooth’ theory. Retribution is in bad repute among philosophers, who generally dismiss the concept quickly as ‘primitive’ or ‘barbaric’ and then race on to a discussion of the two other major theories of punishment: deterrence and rehabilitation. But simply to dismiss a concept as ‘barbaric’ can hardly suffice; after all, it is possible that in this case, the ‘barbarians’ hit on a concept that was superior to the more modern creeds.”

¹⁹ Unless the victim has left a clear message indicating how his murderer, in such cases, should be treated, to the contrary.

Conclusion

Here we record the two authors' differing opinions on the question considered in sub-case IV(a)(ii), viz. whether it would be licit to threaten to aggress against a third party in order to stop someone from committing a rightful act.

Block's opinion:

A threatens B that if B eats broccoli, A will murder C. Suppose C is B's son, and B values this child of his very much, far more than eating broccoli. This is an illicit threat, since if carried out, it would deprive B of something greatly important to him, his son's life. If B gives in to this threat, he still loses a right of his, albeit less valuable: his ability to eat that vegetable. Now posit that A threatens to kill D in order to stop B from eating broccoli and that D is a stranger to both of them, particularly to B. Now the issue turns on even so, whether or not B values D at all. Let us assume B is a decent sort and would regret A's murder of D sufficiently to leave off ever eating broccoli again.²⁰ Then, again, we should count this as an illegitimate threat since it deprived B of a value he otherwise would have had; the life of D, a stranger or the right to eat broccoli. Next case: A threatens to kill E in order to stop B from eating broccoli, and B does not wish to protect the life of E. Then and only then will B not be directly forced to change his cuisine. However, even in this case, B will still be in fear of A. The former will think the latter a madman, capable of doing just about anything violent. Even if B gives not a fig for E, if B has any decency at all,²¹ he will still give up his favorite food, and thus his rights will be violated. Next case: A threatens B that A will kill F, and B hates F; wishes the latter dead. Then and only then will B not become a victim of A's. B can still eat all the broccoli he wants. However, if F hears of this, A's threat to B will be a violation of F's rights, not B's.

Loo's opinion:

I contend that such a threat is still licit, because it leaves open a second alternative for B: to eat broccoli and let C be killed. As counter-intuitive as it may sound, this does *not* deprive B of any rights, even if C is B's son. In principle, this is the same as A threatening to litter in a random neighbor's backyard. B's deep concern for C's welfare should not make any difference in the legal realm. The fact remains that C is a separate person.

To make the logic even clearer, consider the following example: instead of threatening to kill C, A threatens to commit suicide if B commits a terrorist attack. Such a threat obviously does not violate B's rights. But *relative to B*, A

²⁰ A's threat is a very powerful one.

²¹ I continue to consider A an all-powerful, unstoppable criminal

is in an analogous position as every other person in the world, including C. So we see that A's threatening to kill C cannot be deemed to violate B's rights either.

Note that the "harmless" nature (as far as B is concerned) of the alleged punishment not only renders a threat in this sub-case licit, but it also provides an extra reason why threats in the previous sub-case (which are employed to stop non-rightful acts) are licit, besides the reason already discussed before. Simply speaking, a threat in subcase IV(a)(i) is licit because "both horns are good," while a threat in subcase IV(a)(ii) is licit because "one horn is good." A threat is licit as long as "at least one horn is good."