

Roberta Modugno Crocetta

rmodugno@luiss.it

Murray Rothbard's anarcho-capitalism in the contemporary debate. A critical defense.

Murray Rothbard suggests the anarcho-capitalist model, basically a system of protection agencies competing in a free market and voluntarily supported by people choosing to buy protective and judicial services. Anarcho-capitalism would mean the end of the state monopoly of force, or, as Rothbard would say, the end of the legalized channel for crime.

Having a free market of protective services would mean:

<<maintaining the axiom of the free society, namely, that there be no use of physical force except in defense against those using force to invade person or property. This would imply the complete absence of a State apparatus or government; for the State, unlike all other persons and institutions in society, acquires its revenue, not by exchanges freely contracted, but by a system of unilateral coercion called taxation. Defence in the free society (including such defense services to person and property as police protection and judicial findings) would therefore have to be supplied by people or firms who (a) gained their revenue voluntarily rather than by coercion and (b) did not - as the State does - arrogate to themselves a compulsory monopoly of police or judicial protection. Only such libertarian provision of defense service would be consonant with a free market and a free society. Thus, defense firms would have to be as freely competitive and as noncoercive against noninvaders as are all other suppliers of goods and services on the free market. Defense services, like all other services, would be marketable and marketable only>>. ¹

Rothbard is well aware of the importance of the *rule of law* in a libertarian society. Important and serious studies tell us that we don't need the state in order to have a law code. We have examples of law codes, which have originated spontaneously, the merchant

¹M. N. ROTHBARD, *Power and Market*, Sheed Andrews and McMeel, Kansas City, 1977, p.2

law and the *common law* itself, for instance.²He envisages a *Libertarian Law Code*. The Code would retain the principle of non-aggression against person and property. Instead of constructing a totally new code, Rothbard proposes to work on the common law already existing and to amend it. Rothbard notes that not all the common law principles are libertarian ones. The role of reason is to correct customary law on the basis of the non-aggression principle. The Libertarian Law Code shouldn't simply respect the customs, because customary rules could be non-libertarian.³Rothbard denies tradition a blind respect, but this doesn't mean he is a constructivist. Nevertheless this is the opinion of Chris Matthew Sciabarra. In *Total Freedom* Sciabarra writes:

<<This Rothbardian antidote to modern statism is “constructivistic”, as Hayek would say, because it depends upon a deliberately designed code of moral political action abstracted from the historical and cultural context within which it gains specificity>>. ⁴

The problem, according to Sciabarra, is that <<Rothbard does not view rights as historically relative. The principles he invokes are fundamental and immutable, fully valid as an objective transhistorical cross cultural reference point by which to evaluate the justice of specific property entitlements>>. ⁵

According to Sciabarra Rothbard's anarcho-capitalism is “constructivist”, abstracted from historical and cultural context and, therefore, basically utopian.

²F. A. VON HAYEK, *Law, Legislation and Liberty*, vol.I, *Rules and Order*, University of Chicago Press, Chicago, 1973. On the origin of law and the role of private judges see B. LEONI, *Freedom and the Law*, Van Nostrand, Princeton, 1962; J. PEDEN, *Property Rights in Celtic Irish Law*, in <<Journal of Libertarian Studies>>, Spring 1977, pp. 81-95; *Stateless Society: Ancient Ireland*, in <<The Libertarian Forum>>, Aprile 1971; T. ANDERSON, P. J. HILL, *An American Experiment in Anarcho-capitalism*, in <<Journal of Libertarian Studies>>, n.1, 1979, pp.14-25. Bruce Benson and Randy Barnett have concentrated on the destatization of the law. According Anthony De Jasay the juridical structure has to be of the less formal type, such as the merchant law during the middle ages . A. DE JASAY, *Choice, Contract, Consent: A Restatement of Liberalism*, Institute for Economic Affairs, 1991, p.67; *Against Politics*, Routledge, London, 1997, pp.131-142; *The State*, Liberty Fund, Indianapolis, 1998; M. N. ROTHBARD, *Per una nuova libertà*, cit., pp.314-319; B. BENSON, *Customary Law with Private Means of Resolving Disputes on Dispensing Justice: a Description of a Modern System of Law and Order Without State Coercion*, in <<Journal of Libertarian Studies>>, n. 2, 1990; *The Enterprise of Law: Justice Without a State*, Pacific Research Institute for Public Policy, San Francisco, 1990; *To Serve and Protect: Privatization and Community in Criminal Justice*, New York University Press, New York, 1998; R. BARNETT, *The Structure of Liberty: Justice and the Rule of Law*, Clarendon Press, Oxford, 1998

³M. N. ROTHBARD, *For a New Liberty. The Libertarian Manifesto*, Macmillan, New York, 1973, pp.230-231

⁴C. M. SCIABARRA, *Total Freedom. Toward a Dialectical Libertarianism* , University Park, Pennsylvania State University Press, pp. 203-204

In this paper I'm suggesting that Rothbard's theory is not constructivist, not abstracted from history, not utopian. I'm refuting these critics as follows:

- 1) Rothbard's theory cannot be considered "constructivist" because, although Rothbard grants an important role to reason, he relies on the theory of the spontaneous order, namely on unintended consequences of human action. The theory of the spontaneous order is the opposite of constructivism.
- 2) Rothbard's anarcho-capitalism is not abstracted from historical and cultural context. In fact Rothbard grounds the Libertarian Law Code on the common law, a customary and historically developed law. Moreover he always gave great importance to the history of the libertarian idea.
- 3) The charge against Rothbard of being utopian fails for two reasons. First, Rothbard's anarcho-capitalism lacks the monistic and totalitarian character of utopia. Second, Rothbard suggests a practical instrument to move toward the libertarian society: the right to secession.

The topic of the unintended consequences of intended human actions is very important in Rothbard's thought. Rothbard is well aware of the importance of the Mandeville-Ferguson-Smith tradition. This tradition underlines the limits of reason and discovers the spontaneous character of human institutions. Rothbard himself is in the tradition of the "invisible hand". He recognises that the best rules we have, the most libertarian ones, are those which evolved through centuries in an unintended way. On the other hand Rothbard is worried about the possible conservative implications of the theory of the unintended consequences of human action. The risk to be avoided is the blind respect for tradition. Rothbard writes: <<it is a happy accident of history that a great deal of private law and common law is libertarian>>, but the evolved law is <<anti-libertarian>> ⁶, too. <<This means taking the largely libertarian common law and correcting it by the use of man's reason, before enshrining it as a permanent fixed libertarian code or constitution>>. ⁷ The topic of the unintended consequences and of the spontaneous origins of institutions is a central point

⁵Ivi, pp.213-214

⁶M. N. ROTHBARD, *On Freedom and the Law by Bruno Leoni*, in <<New Individualist Review>>, n.4, 1962, p.38

⁷Ivi, p.40

within Rothbard's criticism of Friedrich von Hayek. According to Rothbard, focusing on the unintended origins of institutions could rehabilitate the state and conceal the aggressive nature of the state. Those who focus on the unintended consequences of human action <<tend to whitewash the growth of government in the 20th century. [...] Stressing the Ferguson -Hayek formula cloaks the self-interested actions>>. ⁸Rothbard wants to avoid the danger of transforming the state into an innocent institution simply because it is an unintended consequence of human action. But this doesn't mean that Rothbard's theory is constructivist. Rothbard wants to check the unintended consequences and correct those which are not consistent with the non aggression principle. Anarcho-capitalism itself rests on a free market spontaneous order. Beside this free market order, Rothbard sees a role for reason, the understanding and application of the non aggression principle. Rothbard is not a constructivist. The awareness of the limits of human reason is clear. Trying to examine what a free market defense system might look like Rothbard writes: <<It is, we must realize, impossible to blueprint the exact institutional conditions of any market in advance, just as it would have been impossible fifty years ago to predict the exact structure of the television industry today>>. ⁹ The juridical structure of the libertarian society is, according to Sciabarra, totally abstracted from the historical context. ¹⁰But this is not true. Rothbard added to the evolutionist tradition an objective standard of justice. This was because the evolutionist theory alone couldn't supply a radical criticism of the state. The libertarian law code is based on the historical common law, consistently amended according to the non aggression principle.

According to Sciabarra, Rothbard's << anarcho-capitalist alternative>> is not only abstracted from history, but is <<fundamentally utopian>>¹¹ <<Utopianism -Sciabarra writes- is an abstract form of thought that dichotomizes its progressive goals from the social, historical, and philosophical context on which they genetically depend. Genuine radicalism, by contrast, grasps the dialectical relationship between goals and context and seeks to

⁸M. N. ROTHBARD, *The Consequences of Human Action: Intended and Unintended*, in <<Free Market>>, May 1987, p.3

⁹M. N. ROTHBARD, *Power and Market*, p.5

¹⁰C. M. SCIABARRA, *Total Freedom*, p.350

transform society on the basis of the conditions that exist>>. ¹²Anarcho-capitalism seems to Sciabarra a deliberate construction of a new society.

In charging anarcho-capitalism with being utopian, Sciabarra is not alone. James Buchanan writes that <<anarchy is the ideal for ideal man>>. ¹³Rothbard, on the other hand, holds that the libertarian society does not need <<a new, magically trasformed Libertarian Man [..]. Given any particular degree of “goodness” or “badness” among men , the purely libertarian society will be at once the most moral and the most efficient, the least criminal and the most secure of person and property>>. ¹⁴ But we have other Rothbard critics. According to Van den Haag anarcho-capitalism is one of the product of eighteenth century rationalism and anarcho-capitalists want <<to invent a social organization based not on history but on their rationalist principles>>. ¹⁵ Russell Kirk’s criticism is similar. Libertarianism is <<a simplistic ideology>> that is radically doctrinaire, contemptuous of tradition and custom. According to Kirk the libertarians disregard historical and cultural traditions, give primacy to <<an absolute and indefinable liberty>> and have paved the way for <<a Utopia of individualism>>. ¹⁶ Order can be originated only by a long evolution. ¹⁷ John Gray, on the basis of Hayekian arguments, characterizes anarcho-capitalism as social engineering¹⁸ The most common criticism are: utopianism, social engineering, constructivism and abstraction from historical context.

But is true that anarcho-capitalism is a Utopia? A constructivist idea of social engineering? I would like to call attention to Rothbard’s important work against scientism and constructivism, *Individualism and the Philosophy of Social Sciences*. ¹⁹ Moreover we have theoretical instruments to defend Rothbard’s anarcho-capitalism from the charges of

¹¹Ivi, p.204

¹²Ivi, pp.341-342

¹³J. BUCHANAN, *The Limits of Liberty: Between Anarchy and Leviatan*, Chicago University Press, Chicago, 1975

¹⁴M. N. ROTHBARD, *For a New Liberty*, p.234

¹⁵E. VAN DEN HAAG, *Libertarian and Conservative* in <<National Review>>, 1979, p.726

¹⁶R. KIRK, *A Dispassionate Assessment of Libertarians*, Heritage Foundations, Washington, 1988, pp.2-6

¹⁷Ivi, pp. 7-8

¹⁸J. GRAY, *The Best Laid Plans. Review of J. Scott ‘seeing Like a State’*, in <<The New York Times Book Review>>, 19 April 1998

¹⁹M. N. ROTHBARD, *Individualism and the Philosophy of the Social Sciences*, Cato Institue, San Francisco, 1979

utopianism. Rothbard's libertarian ethic is consistent with the widest variety of personal values and cultures. As long as the principle of non aggression against person and property is respected, everyone is free to pursue his ends and to have the values he prefers. This is an important point. The totalitarian character of utopia has been well emphasized by Isaiah Berlin, among others. Rothbard's theory totally lacks the monistic and totalitarian character of utopia. The anarcho-capitalist structure is consistent with pluralism of values and cultures. Rothbard writes:

<<Under total privatization [...] With every locale and neighborhood owned by private firms, corporations, or contractual communities, true diversity would reign, in accordance with the preferences of each community. Some neighborhoods would be ethnically or economically diverse, while others would be ethnically or economically homogeneous. Some localities would permit pornography or prostitution or drugs or abortions, others would prohibit any or all of them. The prohibitions would not be state imposed, but would simply be requirements for residence or use of some person's or community's land area. While statist who have the itch to impose their values on everyone else would be disappointed, every group or interest would at least have the satisfaction of living in neighborhoods of people who share its values and preferences. While neighborhood ownership would not provide Utopia or a panacea for all conflicts, it would at least provide a "second best" solution that most people might be willing to live with>>. ²⁰

Rothbard was a modern abolitionist and he insisted on the immediate abolition of all aggression and injustice. He was a true radical. The libertarian creed was born as a radical movement. When classical liberalism abandoned radicalism for the politics of little steps and little reforms, libertarianism became a conservative movement and lost its force.²¹ Rothbard once again made the struggle for liberty that intellectual adventure, that deed of courage, Hayek called for. ²²

²⁰M. N. ROTHBARD, *Nations by Consent: Decomposing the Nation State*, in <<Journal of Libertarian Studies>>, vol. 11, n.1, Fall 1994, p. 7

²¹M. N. ROTHBARD, *For a New Liberty*, pp.14-19

²²F. A. VON HAYEK, *Studies in Philosophy, Politics and Economics*, Routledge and Kegan Paul, London, 1967, p.194

Rothbard believes that the libertarian society is feasible because it is consistent with human nature. On the other hand, Utopias are inconsistent with human nature and therefore unfeasible.

Sciabarra think that what he called <<dialectical libertarianism>>, a libertarianism grounded in its cultural, historical and social context, is the only way to escape from utopia. According to Sciabarra, Murray Rothbard, in his later years, tried to ground his theory on a historical and cultural context, but, in any case, <<Rothbard stands on the precipice of utopia>>²³. The cultural context Rothbard refers to is a conservative one. Sciabarra cites a series of article of the nineties in which Rothbard talk of the importance of traditional values for the community.²⁴ It seems to me that Rothbard always sought an alliance with various cultural contexts, not only during the nineties. It was part of Rothbard's strategy.

I think that in order to discover the importance Rothbard gave to historical and cultural context, we need to turn our attention elsewhere. Rothbard always stressed the importance of the historical and traditional context. It is enough to remember Rothbard's two great works in history of economic thought and intellectual history, *An Austrian Perspective on the History of Economic Thought* and *Conceived in Liberty*. In *An Austrian Perspective on the History of Economic Thought* Rothbard discovers the most ancient roots of Austrian economics. In *Conceived in Liberty*, he finds the intellectual roots of the libertarian idea, the "permanent legacy" of the American people. This emphasizes the importance of grounding the libertarian theory in the context of a great and long tradition.

In *Nations by Consent: Decomposing the Nation State*, one of Rothbard's last articles, he points out a practical instrument to move towards a libertarian society. This instrument is the right to *secession*. After the end of communism in the Soviet Union and in Eastern Europe national communities, previously suppressed by the state, emerged. The true national community is something completely different from the aggressive state. <<It is a complex and varying constellation of different forms of communities, languages, ethnic groups, or religions>>.²⁵ Individuals are not linked only by the exchange process.

²³C. M. SCIABARRA, *Total Freedom*, p.355

²⁴Sciabarra refers to a series of articles in <<Rothbard-Rockwell Report>>. M. N. ROTHBARD, *Right Wing Populism*, in <<Rothbard-Rockwell Report>>, 1992; *On Resisting Evil*, in <<Rothbard-Rockwell Report>>, 1993; *Sweet Land of Liberty*, in <<Rothbard-Rockwell Report>>, 1995; *The New Fusionism: A Movement for Our Time*, in <<Rothbard-Rockwell Report>>, 1991

²⁵M. N. ROTHBARD, *Nations by Consent*, p.2

<<Everyone is necessarily born into a family, a language, and a culture. Every person is born into one or several overlapping communities, usually including an ethnic group, with specific values, cultures, religious beliefs, and traditions. He is generally born into a “country”. He is always born into a specific historical context of time and place, meaning neighborhood and land area>>. ²⁶ The spontaneous and true national community, based on consent, is clearly born through an evolutionary process. This is another point against the supposed constructivism in Rothbard’s thought. The modern state, with violence, suppressed the spontaneous communities, imposing all its monopolies. There are many examples of true communities whose spirit is still alive. The Scots, the Welsh, the Basques, the Bretons, for instance. Each community should be free to secede and govern itself. The result would be <<to decompose existing coercive nation-states into genuine nations, or nations by consent>>. ²⁷

<<In short, every group, every nationality, should be allowed to secede from any nation-state and to join any other nation state that agrees to have it. That simple reform would go a long way toward establishing nations by consent>>. ²⁸

The secessionist idea was already present in *Power and Market*, but in *Nations by Consent* secession is pointed out as the practical instrument to move toward anarcho-capitalism. Here Rothbard pragmatically goes beyond the theoretical anarcho-capitalist model and indicates the right to secede as a viable path to a libertarian society. Moreover, in *Nations by Consent* there is a great deal of consciousness of the importance of cultural and historical context, and Rothbard grounds the right to secession in actual historical experience. In doing so he caunters the accusation of being utopian.

<<I raise the pure anarcho-capitalist model in this paper, not so much to advocate the model per se as to propose it as a guide for settling vexed current disputes about nationality. The pure model, simply, is that no land areas, no square footage in the world, shall remain “public”; every square foot of land area, be they streets, squares, or neighborhoods, is

²⁶Ivi, p.1-2

²⁷Ivi, p.5

privatized. Total privatization would help solve nationality problems, often in surprising ways, and I suggest that existing states, or classical liberal states, try to approach such a system even while some land areas remain in the governmental sphere. [...] Pending total privatization, it is clear that our model could be approached, and conflicts minimized, by permitting secessions and local control, down to the micro-neighborhood level, and by developing contractual access rights for enclaves and exclaves. [...] In sum, if we proceed with the decomposition and decentralization of the modern centralizing and coercive nations state, deconstructing that state into constituent nationalities and neighborhoods [...] the scope of private contract, and of voluntary consent, will be enhanced, and the brutal and repressive state will be gradually dissolved into a harmonious and increasingly prosperous social order>>. ²⁹

²⁸*Ibidem*

²⁹Ivi, pp.6-10