

How Does Justice Relate to Economic Welfare? A Case Against Austro-Libertarian Welfare Economics

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This paper argues—contra some Austro-libertarians—that whether a given exchange is welfare-enhancing or welfare-diminishing does not depend on whether that exchange is just or unjust, respectively. Rather, we suggest that in light of our two thought experiments, Austro-libertarianism has at least a pro tanto reason to conceive of justice and welfare as two logically distinct ideals. This would in turn, most interestingly, predict the possibility of (a) just but welfare-diminishing exchanges and (b) unjust but welfare-enhancing ones. Upon considering possible rejoinders to our points, we suggest that Austro-libertarians abandon a justice-based notion of welfare.

Keywords: Austrian welfare economics; demonstrated preference; libertarianism; justice; voluntariness; free market.

1. *Introduction*

According to Austro-libertarians,¹ the free market is conceived in terms of property rights. Most characteristically, the main Austro-libertarian

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¹ The two welfare theorems discussed below is the crux of the Rothbardian welfare economics, which was followed—with some minor twists—by numerous Austrians: e.g. Hoppe (1990), Gordon (1993), Herbener (1997, 2008) or Hülsmann (1999). To avoid the tediousness of our prose, we shall henceforth refer to them simply as *Austro-libertarians*. However, in all fairness, we cannot but mention that

argument for the free market regime is of moral rather than economic nature. To see that consider, for example, the following quote from Rothbard ([1973] 2006: 48–49):

It so happens that the free-market economy, and the specialization and division of labor it implies, is by far the most productive form of economy known to man, and has been responsible for industrialization and for the modern economy on which civilization has been built. This is a fortunate utilitarian result of the free market, but it is not, to the libertarian, the prime reason for his support of this system. That prime reason is moral and is rooted in the natural-rights defense of private property we have developed above. Even if a society of despotism and systematic invasion of rights could be shown to be more productive than what Adam Smith called ‘the system of natural liberty’, the libertarian would support this system. Fortunately, as in so many other areas, the utilitarian and the moral, natural rights and general prosperity, go hand in hand.

Here, Rothbard makes it most explicit that the “prime reason” why libertarians support the free market is moral. The fact that the regime under consideration happens to be the most productive sort of economy is only “a fortunate utilitarian result.” That property rights are central to the Austro-libertarian understanding of the free market (or capitalism) and various other institutions is further evinced by the following citation from Hoppe ([1998] 2010:18):

Next to the concept of action, *property* is the most basic category in the social sciences. As a matter of fact, all other concept [...]—aggression, contract, capitalism and socialism—are definable in terms of property: *aggression* being aggression against property, *contract* being a nonaggressive relationship between property owners, *socialism* being an institutionalized policy of aggression against property, and *capitalism* being an institutionalized policy of the recognition of property and contractualism.

However, even though Austro-libertarians at large endorse the free market regime primarily because it respects property rights, they also set themselves an additional task of proving that it is the free market that always increases social utility. They want to achieve it by resorting to the concept of demonstrated preference and the Unanimity Rule. The concept of demonstrated preference refers to the actual choice that “reveals, or demonstrates, a man’s preferences; that is, that his preferences are deducible from what he has chosen in action.” (Rothbard [1956] 2011: 290) On the other hand, the Unanimity Rule has it that “[w]e can only say that ‘social welfare’ (or better, ‘social utility’) has *increased* due to a change, if no individual is worse off because of the change (and at least one is better off).” (Rothbard [1956] 2011:

Rothbardians are not exhaustive of Austro-libertarians. After all, one can easily point to many prominent Austrians of more or less libertarian persuasion. Suffice it to say that both Mises ([1922] 1962, [1949] 1998, 2002) and Hayek ([1960] 1978) shared a broadly construed libertarian world-view. Furthermore, it is worth noting that what singles out Rothbardians is their uncompromised adherence to absolute private property rights (see: Rothbard [1982] 2002). Still, bear it in mind that non-Rothbardian Austro-libertarians are outside the scope of the present paper.

314) Briefly stated the idea is that the concept of demonstrated preference and the Unanimity Rule can show, without passing any ethical judgements,² that (1) the free market always increases social utility³ and that (2) no governmental intervention can ever increase it. In other words, the above two statements have it that just exchanges are always mutually beneficial and that unjust exchanges can never be welfare-enhancing.⁴ Following Kvasnička (2008: 49), we can call claim (1) the first welfare theorem and claim (2) the second welfare theorem.⁵

² The reason Austrians employ the Paretian Unanimity Rule—instead of the notion of Marshall efficiency—is precisely because they disown the idea of interpersonal comparisons of utility. It is Marshall’s idea of efficiency, but not the Paretian, that is committed to passing a judgement on whether social utility increased or not in situations wherein one party to an exchange benefits, whereas the other loses. For an excellent analysis of Marshall efficiency, see e.g. Friedman (1990, 2000).

³ As one anonymous reviewer observed, it must be added that it is *the ideal free market* (i.e. the one on which there are no invasions of property rights) that allegedly ensures welfare-maximization. And indeed, in his famous essay, Rothbard ([1956] 2011: 320) writes that “[t]he free market is the name for the array of all the voluntary exchanges that take place in the world.” And, as remarked by Prychitko (1997: 438), “[b]y this definition, the free market excludes invasive acts.” Incidentally, we are going to elaborate on the rights-based concept of voluntariness, as adopted by libertarians, in the forthcoming parts of this essay.

⁴ To avoid the tediousness of the prose we shall use “mutually beneficial” as elliptical for “mutually beneficial *ex ante*” or “mutually beneficial *in expectation*”.

⁵ As sharply spotted by an anonymous referee, Rothbard’s two welfare theorems, as dubbed by Kvasnička, do not quite coincide with two main theorems of standard welfare economics. For, in standard welfare economics, *the first theorem* has it that under such conditions as perfect information, complete markets (characterized by every single asset having a price and no or negligible transaction cost) and with consumers and firms being price takers (i.e. with nobody having market power), all market outcomes are going to be Pareto-efficient. That is to say, what the market—under the said assumptions—is going to lead to is the situation wherein we cannot render *anybody* better off without simultaneously rendering *somebody else* worse off. This, as might be noted, bears some resemblance to Rothbard’s first welfare theorem, which, recall, has it that the free market always increases social utility. However, the two theorems differ in one crucial respect. After all, Rothbard ([1956] 2011) is interested in *Pareto-superior moves* (i.e. the exchanges benefitting at least one party, while not decreasing anybody’s well-being) rather than in the state of Pareto-efficiency, in which no further mutually beneficial exchanges are possible. Still, Rothbard’s second welfare theorem is completely dissimilar to the second theorem of standard welfare economics. The *second welfare theorem* of mainstream economics, on the other hand, turns the first one around. To wit, whereas the first welfare theorem submits that any market allocation is Pareto-efficient, the second welfare theorem says that any Pareto-efficient allocation can be achieved by the market under the same set of assumptions as the ones under which the first welfare theorem holds. Or, more technically, for all x ’s, x being a Pareto-efficient outcome, there exists y , y being a distribution of initial endowments, such that the market will bring about x , given y . Needless to say, these considerations are totally unrelated to the Rothbardian second welfare theorem. Incidentally, for an excellent elaboration on the fundamental theorems of standard welfare economics, see e.g. Greenwald and Stiglitz (1986).

The present paper argues against both of these claims. Additionally, it makes a positive argument for market inefficiencies and mutually beneficial injustices, and hence for the position that justice and welfare should constitute two independent ideals within the Austro-libertarian framework. This in turn predicts that there can indeed be (a) just but welfare-diminishing exchanges and (b) unjust but welfare-enhancing ones.

The agenda of the present paper is as follows. Section 2 produces a thought experiment attempting to demonstrate that there are indeed such exchanges that should be most aptly classified as just but welfare-diminishing. Section 3, by contrast, introduces another thought experiment designed to show that we can conceive of unjust but welfare-enhancing exchanges. We believe that the said two imaginary scenarios do no violence to original Austro-libertarian methodological tools of demonstrated preference and the Unanimity Rule so that no questions are begged. Section 4 preempts possible rejoinders to our position. Section 5 concludes.

2. Just exchanges are not necessarily welfare-increasing

Let us start with a paradigm example of exchanges that are both unjust and welfare-diminishing. We believe that the classical highwayman's proposal "Your money or your life" is such an example. This proposal has the following biconditional structure:

Highwayman

- (1) If you pay me (demand), I won't kill you (relative benefit).
- (2) If you don't pay me (refusal), I will kill you (threat).

First, since the threat element promises an action that would violate the recipient's rights, the actor's payment would result in an unjust distribution.⁶ Second, the payment, although unjust, is an exchange, that is, an instance of action. Finally, it is intuitively obvious that the recipient's welfare diminishes *ex ante* by paying under these conditions. Now the crucial point is that this welfare-diminishment cannot be relative to what would have happened, had he failed to pay. Since his payment was an action, he must have benefited relatively to the option foregone, that is, being killed. Otherwise, he would not have paid but rather been killed.⁷ Hence, his welfare-diminishment cannot be understood in relative terms but must be explained in accordance with an

⁶ That illegitimate threats result in unjust outcomes and that legitimate threats result in just outcomes is most clearly evidenced by Block's (2013) treatment of blackmail.

⁷ To this effect says Mises ([1949] 1998: 351): "First, valuing that results in action always means preferring and setting aside; it never means equivalence." From this statement we can deduce that in Highwayman, as long as the highwayman's victim chooses to pay, he must prefer parting with the money to being killed.

absolute baseline. In other words, the recipient's welfare diminished compared to the situation wherein the highwayman would have nothing to do with the recipient at all. This sort of comparison involved in the idea of absolute welfare-diminishment makes perfect intuitive sense: the recipient seems to be rendered worse off when compared to the situation in which the gunman would have nothing to do with the recipient at all. It therefore follows, interestingly, that the fact that the recipient benefits relatively by handing the money to the gunman seems to be irrelevant to the estimation of his overall welfare. Since the victim's welfare obviously diminishes, welfare-diminishment cannot be explained in terms of relative benefits but must be explained in absolute terms of what would have happened if the highwayman had had nothing to do with the victim. Hence, *Highwayman* clearly represents an exchange which is both unjust and welfare-diminishing even if it, being an action as it was, benefited the victim relatively.

To provide a still more informative context, let us also consider a paradigm exchange which is just and welfare-enhancing at the same time. Suppose that the car dealer makes the following proposal to the customer:

Car Dealer

- (1) If you pay me (demand), I will sell you a car (relative benefit).
- (2) If you don't pay me (refusal), I will not sell you a car (threat).

First of all, since the threat element promises an action that would not violate the recipient's rights, the customer's payment would result in a just distribution. Second, since the payment is an action, the customer must have benefited relatively by paying. Otherwise, he would not have paid. However, contrary to the above example with the highwayman, the customer also benefited in absolute terms because he would have been worse off when compared to the situation in which the car dealer had had nothing to do with him at all. This exchange would therefore be just and welfare-enhancing in both senses of welfare-enhancement, that is, in relative and absolute sense.

Having spelled out crucial characteristics of, on the one hand, a paradigm case of unjust and welfare-diminishing exchanges and just and welfare-enhancing ones on the other, we are in a position to introduce our first thought experiment. Suppose that a blackmailer makes the following proposal to the blackmailee:

Blackmail

- (1) If you pay me \$1.000.000 (demand), I will let your reputation remain untarnished (relative benefit).
- (2) If you don't pay me (refusal), I will gossip about your secrets (threat).

First of all, since the threat element promises an action that would not violate the criminal's rights, the blackmailee paying the blackmailer \$1.000.000 would result in a just distribution. To see that, consider the following assessment of justice of blackmail proposals by Block (1999: 124), who has it that in blackmail scenarios "a valuable consideration is demanded, under the threat of doing something entirely licit, something that everyone would agree is legitimate if it occurred in any other context." Moreover, our author also notes that under blackmail "money is usually the valuable consideration demanded" and that "the threat is to engage in entirely legal gossip."⁸

Second, since the blackmailee paying the blackmailer is an action, the blackmailee must have benefited relatively by transferring money. Otherwise, he would not have paid. However, contrary to *Car Dealer*, the blackmailee did not benefit in absolute terms because he would have been better off when compared to the situation in which the blackmailer had had nothing to do with him at all (since then he would preserve his reputation for free). Thus, in this respect, the blackmailee is in the same position as the highwayman's victim in *Highwayman*. That is, he benefits only relatively but not absolutely. The only relevant difference between the two cases is justice of the threat element and, therefore, of the subsequent distribution. Hence, blackmail exchanges would be just, although welfare-diminishing in the relevant sense. Thus, we have a case that seems to run counter to Rothbard's first welfare theorem that just exchanges always increase social utility.

To illuminate further why we contend that blackmail exchanges do not increase blackmailees' welfare, we should come back to our distinction between benefitting relatively and benefitting absolutely. We might also call benefitting relatively benefiting in a weak sense, whereas benefitting absolutely benefiting in a strong sense. Now let us define benefitting in a weak sense as maximizing one's welfare under a newly imposed budget constraint. In fact, little wonder this sense of benefitting is weak. For we should bear in mind that every instance of human action benefits its doer at least in the weak sense. Whatever economic agents do, they maximize their expected welfare under the occurrent circumstances, whether welcome or not. However, were Austro-libertarians to adopt the weak sense of benefitting in their defence of the presumed social-welfare-enhancing character of blackmail exchanges, they would at the same time prove too much. For then, it would transpire that the gunman's proposal "Money or your life" is welfare-enhancing too. After all, whatever the gunman's victim happens to choose under the thus imposed constraint will automatically increase his expected welfare.

⁸ Moreover, in this context it is worth remembering that for libertarians, the justice of arising distributions depends on the legitimacy of antecedent proposals and whether proposals are legitimate or not depends solely on the legitimacy of the threat element (see e.g. Block 2013). It is for that reason that libertarians would find the distribution of endowments arising after the blackmailee's buying off the blackmailer just.

In other words, the victim can still benefit relatively, even in such dire straits. Yet, it is a matter of course that no Austro-libertarians would be ready to bite the bullet and thus concede that the victim's exchange with the gunman constitutes a Pareto-superior move. Besides being extremely counterintuitive, this move would violate the second welfare theorem, which has it that no unjust exchanges ever increase social utility. Hence, the exchange under consideration is correctly believed to amount to a paradigm case of welfare diminishment. But if so, then, clearly, we are not warranted in inferring welfare-enhancement from the fact of benefitting relatively. In fact, as the doctrine of opportunity cost attests, benefitting relatively sweeps over the whole realm of human action and as such it is, of course, powerless to distinguish between welfare-enhancing and welfare-diminishing exchanges.

Therefore, since resorting to the weak sense of benefitting can in no way be supportive of the claim that blackmail proposals increase social utility, what is left to show is that they do not increase welfare in absolute terms. To see that, let us remind ourselves that benefitting absolutely is benefitting strongly, that is, not only given the constraint on the actor but also compared to the situation in which the constraint-maker had nothing to do with the actor. Thus, to establish whether the blackmailee actually benefits from the blackmailer's proposal we should compare this situation to a merely possible situation in which the actual blackmailee does not have to deal with the actual blackmailer at all, everything else equal. It seems quite clear that the actual blackmailee would be better off if no blackmailer were around, for in this situation the former would not even have to pay to preserve his reputation. By contrast, once the blackmailer appears on the stage and makes his blackmail proposal, there is no chance for the blackmailee to preserve his good reputation *and* keep the money. Therefore, it stands to reason that the blackmailee does not benefit absolutely when given a blackmail proposal. And, rather unsurprisingly, the same remark applies to *Highwayman*. The highwayman's actual victim would have been better off had he had nothing to do with the highwayman at all in the first place. Once confronted by the highwayman, the victim can no longer preserve his money and his life.

To summarize, since the idea of benefitting relatively may be rightly discarded as a criterion of welfare-enhancement and because the comparison involved in the notion of benefitting absolutely shows that blackmail proposals are welfare-diminishing, Rothbard's first welfare theorem seems to be challenged. For blackmail proposals, while being welfare-diminishing, are clearly just, as additionally admitted by Austro-libertarians themselves. Hence, the entire argument put forward in this section can be reduced to the following *modus tollens* reasoning. If the first welfare theorem is true, then blackmail proposals, being just as they are, are welfare-enhancing. However, blackmail proposals are not welfare-enhancing. Therefore, the first welfare theorem is false. Additionally, the blackmail proposal, although opposite morally,

is economically analogous to the highwayman's proposal because both proposals make their respective recipients lose in the absolute sense. That is why, Austro-libertarians are caught in a dilemma. If they want to preserve the intuition that the highwayman's proposal is welfare-diminishing, then they are committed to regarding blackmail proposals as welfare-diminishing too, which in turn would run against the first welfare theorem since blackmail proposals are—by their lights—just. If, on the other hand, they wanted to deem blackmail proposals welfare-enhancing in order to preserve the first welfare theorem, then they would be committed to regarding the highwayman's proposal welfare-enhancing too, which would in turn run against the second welfare theorem since the highwayman's proposal is unjust.

3. Unjust exchanges are not necessarily welfare-diminishing

As already mentioned, the so-called Rothbard's "second welfare theorem" (see: Kvasnička 2008: 49) has it that "*no act of government whatever can ever increase social utility*" (Rothbard [1956] 2011: 323). In order to show that it is not the case, let us propose the following thought experiment, which is designed to illuminate a possibility of there being unjust and yet welfare-enhancing exchanges.

Fridge

Suppose A has an old broken fridge in his backyard, which is an economic bad for him. He would like to get rid of it, but it takes disposing of it in a faraway junkyard. Selling it would also be burdensome for him due to high transaction costs. So, the fridge just sits there in the backyard spoiling its owner's view. One day he sees, to his delight, a thief absconding with the fridge. Having realized his fridge is thus being removed for free, he decides not to interfere.

First of all, this exchange of an old fridge for the satisfaction of having it removed is unjust. Clearly, our thought experiment stipulates that person A holds a property right in the fridge. Additionally, the above scenario assumes that A has never waived his ownership rights. However, there is a worry that the putative theft cannot count as right-violating simply because A welcomes it, which might translate into a tacit waiver. But this charge is unavailable for Austro-libertarians, who repudiate the juridical significance of tacit or implicit consent.⁹ As

⁹ The following citation from Hoppe (2006: 389–390) is most representative: "Orthodox, i.e., statist, political theorists, from John Locke to James Buchanan and John Rawls, have tried to solve this difficulty through makeshift "tacit," "implicit," "conceptual" agreements, contracts, or state constitutions. All of these characteristically tortuous and confused attempts, however, have only added to the same unavoidable conclusion drawn by Rothbard: That is impossible to derive a justification of government from explicit contracts between private property owners, and hence, that the institution of the state must be considered unjust, i.e., the result

pointed out by Williamson M. Evers (1977: 193), the notion of tacit consent “is an overbroad extension of consent that makes it meaningless as a criterion of legitimacy.” To this effect Evers quotes Gough (1957: 139), who commenting on John Locke’s idea of tacit consent supporting the creation of government says that “[i]f consent could be watered down like this, it would lose all value as a guarantee of individual liberty, and the most outrageous tyrant could be said to govern with the consent of his subjects.” Thus, we are justified in concluding that the exchange analyzed in our thought experiment is illegitimate, for resorting to the idea of tacit consent in order to claim that there was a tacit waiver of the fridge owner’s rights is blocked for Austro-libertarians.¹⁰

Second of all, the above thought experiment assumes that the exchange in question involves an action on the part of A. After all, A omitted to interfere with the process of stealing and as Mises ([1944] 1998: 13) famously contended, all omissions are actions:

of moral error”. See also Nozick (1974: 287) saying that “tacit consent isn’t worth the paper it’s not written on”. Additionally, see Rothbard ([1982] 2002: 164–166); Barnett (1986: 317); Evers (1977). However, see the caveat in the footnote below.

¹⁰ At this point, an anonymous referee made an ingenious point trying to reduce our argument ad absurdum. For, as he or she claims, if libertarians indeed do not recognize tacit consent at all, why shaking somebody’s hand without his or her *explicit* consent should not count as right-violating too? In other words, would not a handshake without explicit consent be involuntary? However, clearly, libertarians would not like to deem a handshake without explicit consent involuntary? But if so, this indeed calls for making room for tacit consent at least in some situations. But then, a critical problem arises: if we do concede that libertarians must recognize tacit consent in some situations, why should our *Fridge* not involve tacit consent too? What can we offer at this point is, first, the observation that—as it follows from our examples including the alleged insignificance of tacit consent—libertarians do not recognize the legitimacy of tacit consent when it is the government that is apparently consented to. Second, we believe that it is social conventions that help us establish whether consent is given or not. For instance, libertarians would accept that a person entering a taxi and saying “Take me to the city centre” *agrees* to pay upon arrival. They would also concur that a person ordering coffee in a café agrees to pay upon drinking it. Moreover, and crucially, we contend that once we take heed of *social conventions* we should conclude that our *Fridge* scenario does not involve tacit consent, as keeping unused things in one’s backyard does not *conventionally* communicate that one is ready to give up one’s ownership of the said items. And it is for that reason that another person’s taking of the fridge counts as a theft rather than original appropriation. Now a few words are due about the referee’s counterargument involving a handshake as allegedly right-violating. We submit that whether a handshake amounts to a right-violating act again depends on the context. If two friends meet, then, most certainly, their shaking hands would be a voluntary act as the tacit consent to shake each other’s hands holds between the two, as they are, after all, *friends*. However, if a man menacingly approached a woman from behind and shakes her hands, we would not be warranted in speaking of the woman tacitly consenting to such a handshake. Rather, this sort of a handshake would constitute nothing short of an act of battery. For an illuminating analysis of how social conventions are evidentiary of whether consent was given or not, see e.g. Husak and Thomas (1992).

Praxeology consequently does not distinguish between “active” or energetic and “passive” or indolent man. The vigorous man industriously striving for the improvement of his condition acts neither more nor less than the lethargic man who sluggishly takes things as they come. For to do nothing or to be idle are also actions, they too determine the course of events. Wherever the conditions for human interference are present, man acts no matter whether he interferes or refrains from interfering. He who endures what he could change acts no less than he who interferes in order to attain another result. A man who abstains from influencing the operation of physiological and instinctive factors which he could influence also acts. Action is not only doing but no less omitting to do what possibly could be done.

Moreover, due to the fact that A acted, our thought experiment side-steps the so-called “fallacy of psychologizing” (Rothbard ([1956] 2011: 296). For by acting in the form of omitting, he thereby demonstrates his preference for non-interference over interference. Whatever the reason A is now acting on, it remains apodictically true that, everything considered, A prefers getting his fridge stolen to intervening and thus preventing the thief from taking possession of it.

Third, since A acted, he must have benefited relatively. That is, given the thief’s presence, A prefers non-interference with his fridge being stolen over being stuck with it in his backyard. But more interestingly, A also benefited in absolute terms because if there were no thief around, A would still be stuck with his fridge. Hence, we should conclude that the exchange in question was welfare-enhancing. Since it was also unjust, it follows that it then constitutes a counterexample to Rothbard’s second welfare theorem.

Finally, what is important to note is that our thought experiment is also true to the Unanimity Rule, adopted by Rothbard. This is a crucial issue, for if we were to find out that at least one party to the above exchange were rendered worse off, the determination of whether the exchange was on balance welfare-enhancing or welfare-diminishing would have to rely on the interpersonal comparison of utility—an anathema to Austro-libertarians. Yet, our thought experiment seems to escape unscathed in this respect too. Clearly, the thief seems to maximize his welfare at least in expectation when he is stealing A’s fridge as compared to anything else he saw as a possibility.

4. *Involuntariness charge*

Trying to put ourselves in Austro-libertarians’ shoes, we can think of one truly critical objection to our position. It is for this reason that we are going to attempt to preempt it. The objection in question appeals to the notion of voluntariness, as understood by Austro-libertarians. Thus, let us first clarify what this understanding is. As Nozick famously put it (1974: 262):

Whether a person’s actions are voluntary depends on what it is that limits his alternatives. If facts of nature do so, the actions are voluntary. (I may voluntarily walk to someplace I would prefer to fly to unaided.) Other

peoples' actions place limits on one's available opportunities. Whether this makes one's resulting actions non-voluntary depends upon whether these others had the right to act as they did.

Following Nozick, we can say that Austro-libertarians' understanding of the notion of voluntariness is rights-based. To put it simply, if A constrains B's options legitimately (i.e. while violating no rights of B's), B reacts voluntarily. If, by contrast, A constrains B's opportunity set illegitimately (viz., while violating B's rights), B reacts involuntarily. As a consequence of this theory, for example, since libertarians, as we remember, consider blackmail proposals morally permissible, they view the act of buying the blackmailer off as a voluntary payment.¹¹ On the other hand, since Austro-libertarians deem extortion or robbery proposals (e.g. "Give me your money or I will kill you") morally impermissible, they would deem such payments involuntary. This Austro-libertarian idea of rights-based voluntariness is further evidenced by, for example, the following quotations from Rothbard ([1956] 2011: 320) for whom, on the one hand, "[t]he free market is the name for the array of all the voluntary exchanges that take place in the world" while "rooted in the natural-rights defense of private property," on the other (Rothbard 2006: 48). After all, for Rothbard (2006: 50) the very idea of freedom is rights-based. As he points out, "Freedom is a condition in which a person's ownership rights in his own body and his legitimate material property are not invaded, are not aggressed against.... Freedom and unrestricted property rights go hand in hand."

Hence, having at their disposal this rights-based idea of voluntariness, Austro-libertarians could maintain that, for example, *Highwayman* involves the involuntary exchange due to the fact that the highwayman's victim's property rights are violated. Now since the highwayman exchange is involuntary, Austro-libertarians could try to claim that the reason for which it is welfare-diminishing is not the fact that the victim loses in absolute terms but exactly the fact that it is involuntary.¹² By

¹¹ See, for example, Rothbard's ([1962] 2009: 183) *Man, Economy, and State*, in which he says: "Similarly, blackmail would not be illegal in the free society. For blackmail is the receipt of money in exchange for the service of not publicizing certain information about the other person. No violence or threat of violence to person or property is involved." See also Block (2013).

¹² At this point, we would like to reassure the reader that for Rothbardians the standard of welfare-enhancement (and welfare-diminishment) is indeed justice-based rather than being rendered better off or worse off in *absolute* terms, respectively. First of all, consider the original Rothbardian ([1956] 2011: 320) attempt to argue for the free-market efficiency: "Let us now consider exchanges on the free market. Such an exchange is voluntarily undertaken by both parties. Therefore, the very fact that an exchange takes place demonstrates that both parties benefit (or more strictly, *expect* to benefit) from the exchange. The fact that both parties chose the exchange demonstrates that they benefit. The free market is the name for the array of all the voluntary exchanges that take place in the world. Since every exchange demonstrates a unanimity of benefit for both parties concerned, we must conclude that *the free market benefits all its participants*." However, as we remember, Austro-libertarians adhere to the Nozickian (1974: 262) rights-based

contrast, in the blackmail scenario, the agreement on the part of the blackmailee secured by the blackmailer's proposal is voluntary since there is no right violation looming in the case of the blackmailer spreading the unwelcome gossip. In other words, in the blackmail scenario, the blackmailer's threat is legitimate and it is for this reason that when the blackmailee agrees to pay, he does so voluntarily. Now because he agrees voluntarily, Austro-libertarians could try to argue that the exchange is welfare-enhancing, regardless of the fact that he loses in absolute terms. This sort of retort would not only establish an important difference between *Highwayman* and *Blackmail* in terms of their respective social utility but would also save the first welfare theorem against our thought experiment by showing that blackmail exchanges are both just and welfare-enhancing. The same criticism would of course apply to other cases considered in the present paper.

On the face of it, the critique pointing to the involuntary and voluntary character of the scrutinized exchanges, respectively, appears to be formidable. After all, it might seem to be the voluntariness of an exchange that secures mutual benefits, whereas the involuntariness of an exchange might be presumed to bring losses to at least one party. To appreciate it even more, we should yet again take heed of the fact

understanding of voluntariness. To reiterate, an exchange is deemed involuntary when it involves a right violation, whereas it is regarded as voluntary when it is rights-respecting. Couple those insights with all voluntary exchanges being mutually beneficial and all involuntary exchanges involving losses to (at least) one party and we end up with the ultimate standard of exchanges being mutually beneficial or not. That is, in final analysis, some exchanges are mutually beneficial by virtue of there being *just*, whereas some other exchanges are not mutually beneficial by virtue of their being *unjust*. Moreover, the idea that the welfare-enhancing and welfare-diminishing character of exchanges derives from their being just and unjust, respectively, is even more explicitly stated in Herbener (2008: 61), who has it that “[v]oluntary and involuntary interactions are defined in economics to recognize the distinction between cases in which it is possible to deduce that a person is better off from an interaction with another person and cases in which it is possible to deduce that he is worse off. Each person comes to an exchange with his naturally-owned property. A voluntary exchange occurs when neither trader uses or threatens violence against the property of the other. If the two persons trade the ownership of property without aggressive violence, then the exchange is voluntary. Given their natural ownership of property, each person chooses an alternative he prefers more than the non-interaction alternative. Both traders benefit. If one person violently aggresses against the property of the other person, then the exchange is involuntary. Given their natural ownership of property, the aggressor chooses an alternative that he prefers more than the non-interaction alternative and the victim is forced to choose an alternative that he prefers less than the non-interaction alternative. The aggressor benefits and the victim loses.” Clearly, since mutual benefits depend on voluntariness of an exchange, and since the exchange is voluntary due to its rights-respecting character, then, in the end, mutual benefits are attributed to the *just* nature of the exchange. The same reasoning applies, *mutatis mutandis*, to the exchanges failing to be mutually beneficial. Ultimately, their failing to be mutually beneficial is due to their being *unjust*. Needless to say, this justice-based standard of welfare-enhancement and welfare-diminishment has nothing to do with being rendered better off or worse off in absolute terms, respectively.

that the concept of voluntariness, as employed by Austro-libertarians, is rights-based. Moreover, it must also be borne in mind that the free market, which libertarians are so keen on defending, is first and foremost about respecting rights. Hence, all these arguments combined might support the conclusion that market exchanges are mutually beneficial because they are rights-respecting and therefore voluntary, whereas all non-market exchanges are not mutually beneficial because they are rights-violative and therefore involuntary. This argument would obviously run counter to our position.

To further elucidate how the above argument could contradict our position, let us represent it in a syllogistic form:

- (1) All rights-respecting (market) exchanges are voluntary exchanges
- (2) All voluntary exchanges are mutually beneficial
- (3) Therefore, all rights-respecting (market) exchanges are mutually beneficial

And, *mutatis mutandis*, the argument goes analogously for involuntary exchanges:

- (1) All rights-violating (non-market) exchanges are involuntary exchanges
- (2) All involuntary exchanges fail to be mutually beneficial
- (3) Therefore, all rights-violating (non-market) exchanges fail to be mutually beneficial

However, against the above reasoning we can point out that if an exchange's rights-respecting (or market) character implies its voluntariness, and if its voluntariness in turn guarantees mutual benefits, then in the end, it is the rights-respecting character of an exchange that guarantees mutual benefits. Therefore, it seems that we do not have two separate cases for the free market but only one, that is, the case based on the rights-respecting character of the free market. After all, the fact that the free market increases welfare ultimately depends on the fact that it is rights-respecting. But remember, Austro-libertarian ambition was to make two independent cases for the free market, not one. Thus, that would mean that they failed to argue for the free market on two counts: moral and economic. After all, as pointed out by Rothbard (2006: 48–49), it is only “a fortunate utilitarian result of the free market,” that it “is by far the most productive form of economy.” Decidedly, it is not “the prime reason for his support of this system,” for the “prime reason is moral and is rooted in the natural-rights defense of private property.” Thus, if Austro-libertarians wanted to employ the above reply to our position, they would have to drop the ambition of providing two separate arguments for the free market. But that is not the only problem they would face.

For why should the standard of voluntariness precisely fit a just distribution of rights? In other words, why should only rights-respecting exchanges be voluntary and *vice versa*? Consider our fridge owner in *Fridge* yet again. Although his rights were violated due to the fridge

being stolen, the fridge owner was clearly not coerced by the thief. He was not even pressurized or motivated by any sort of threat or offer. To claim that he nonetheless was coerced only due to the fact that his property rights in the fridge were violated would hardly make any sense. Moreover, he was keen on getting rid of the fridge in the first place and so he welcomed the theft. The fridge owner had a choice over interference or non-interference and given his preferences and lack of any pressure, he decided not to interfere. To resort to some formalization, our point against Austro-libertarians' idea of rights-based voluntariness as a possible counterargument to our position can therefore be expressed as the following *modus tollens* reasoning:

- (1) All rights-violating exchanges are involuntary_{libertarian sense} exchanges.
- (2) All involuntary_{libertarian sense} exchanges are involuntary exchanges.¹³
- (3) The exchange in *Fridge* is a rights-violating exchange.
- (4) Therefore, the exchange in *Fridge* is an involuntary_{libertarian sense} exchange.
- (5) But, the exchange in *Fridge* is not an involuntary exchange.
- (6) Therefore, it is not the case that all involuntary_{libertarian sense} exchanges are involuntary exchanges.
- (7) Therefore, it is not the case that all rights-violating exchanges are involuntary exchanges.

¹³ We are very grateful to an anonymous referee for drawing our attention to the fact that the previous formalization of the above argument suffered from the problem of equivocation. Originally, the argument read:

All rights-violating exchanges are involuntary.
 The exchange in *Fridge* is rights-violating.
 Therefore, the exchange in *Fridge* is involuntary.
 But, the exchange in *Fridge* is not involuntary.

Therefore, it is not the case that all rights-violating exchanges are involuntary.

Indeed, this version of our argument, as it stood, equivocated between involuntariness in the libertarian sense and involuntariness *simpliciter* or as understood pre-theoretically, or intuitively, or voluntariness as a matter of fact, if you will. It is precisely the referee's insight that enabled us to draw the distinction between involuntariness in the libertarian sense and involuntariness *simpliciter*, which in turn, we believe, rendered our argument both valid and more penetrating. Our improvement over and above the previously made argument involved adding premise (2). This particular premise states nothing short of the libertarian pretension of capturing all involuntary exchanges in terms of their rights-based standard of involuntariness, something we now call involuntariness in the libertarian sense. However, what our *Fridge* exchange is designed to show is that this particular exchange is indeed involuntary in the libertarian sense but still voluntary as a matter of fact, the observation which in and of itself is sufficient to undermine premise (2), the libertarian rights-based standard of assessing involuntariness. To wit, since we feel strongly about *Fridge* being a voluntary (as a matter of fact) exchange and since *Fridge* involves right violation, this *ipso facto* casts doubt upon the libertarian contention that all exchanges that are involuntary in the libertarian sense are involuntary *simpliciter*.

And so we cast doubt upon the premise (2) and on the libertarian pretence that all rights-violating exchanges are involuntary *simpliciter*. In other words, via *modus tollens*, we contend that since the argument's conclusion is implausible, the Austro-libertarian standard of rights-based voluntariness is to be jettisoned. For if the owner benefits by being deprived of his fridge, then there is probably some flaw to rights-based voluntariness. To reiterate, what rights-based voluntariness achieves is that it links (a) just exchanges with mutual benefits and (b) unjust exchanges with Pareto-inferior moves. However, both (a) and (b) were challenged by our thought experiments.

5. Conclusion

The aim of this paper was to argue that there is a good reason for Austro-libertarians to recognize justice and welfare as two fully distinct ideals. To bolster this claim, we launched two thought experiments designed to show the plausibility of the two types of exchange (hitherto denied by Austro-libertarians), that is, (a) unjust but welfare-enhancing and (b) just but welfare-diminishing. While proceeding with the said scenarios, we tried to do no (or as little as possible) damage to the Austro-libertarian methodological edifice. In particular, we took the original Rothbardian conceptual framework of demonstrated preference and the Unanimity Rule for granted. And it is on these grounds that we claim that the plausibility of the above-mentioned two sorts of exchanges follow. Therefore, if our thought experiments count for something, then Austro-libertarians' contention to the effect that the free market always increases social utility and that unjust exchanges never increase social utility seems unfounded.

Having thus made a *prima facie* case for unjust but welfare-enhancing exchanges and for just but welfare-diminishing ones, we tried to preempt a possible criticism appealing to the concept of voluntariness. However, as it transpired, this move is of no avail to Austro-libertarians as it simply reasserts the link between justice and welfare, something our thought experiments were supposed to undermine. And finally, given the avowed *prima facie* plausibility of our imaginary scenarios, it seems that it is the rights-based standard of voluntariness that needs revising, at least for the purposes of Austro-libertarian welfare economics.

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