

Saggi

# The War on Privacy – or, Privacy as a Strategy for Liberty

## La guerra alla privacy – o, La privacy come strategia per la libertà

ANDREA TOGNI

*Independent researcher*

andrea.togni@protonmail.com

**Abstract.** In the last chapter of *The Ethics of Liberty*, Rothbard discusses his theory of strategy for liberty, and recommends tools such as education that libertarians can lean on to attain the highest political goal of freedom. Building on Rothbard's shoulders, the main thesis of this paper is that an effective theory of strategy for liberty cannot dispense with privacy, which needs to be understood as a condition for the enjoyment of liberty and not as a right *per se*. In the first section, the discussion is framed in the context of natural rights libertarianism. Then, a metaphysical taxonomy of property is provided, which articulates the functioning of property rights and privacy in the realm of the body and of the mind, in the realm of alienable goods and services, and in the realm of information. The third section deals with the war on privacy that is raging nowadays; not coincidentally, the ultimate enemy of this war is private property. The last part of the paper contends that Rothbard is correct in reducing privacy rights to property rights, but this doesn't mean that privacy has no place in libertarian thought; on the contrary, privacy is one of the main conditions for the defense and preservation of property rights, and, in the case of information, property cannot even exist without it. If these theses are true, libertarians need to find a proper place for privacy in their theory of strategy for liberty.

**Keywords:** privacy, Rothbard, theory of strategy for liberty.

**Riassunto.** Nell'ultimo capitolo de *L'etica della libertà*, Rothbard articola una teoria strategica della libertà, e indaga il ruolo di strumenti quali l'educazione per l'otteni-

mento del più alto valore libertario. La tesi principale di questo articolo è che una strategia libertaria efficace deve tenere conto della privacy, la quale non va intesa tanto come un diritto naturale, quanto come una condizione necessaria all'ottenimento della libertà. Nel primo paragrafo, la discussione viene collocata nella cornice del libertarismo giusnaturalista. Successivamente, viene enucleata una tassonomia metafisica del diritto di proprietà e della privacy: tale tassonomia distingue tra l'ambito del corpo e della mente, l'ambito dei beni e dei servizi alienabili, e l'ambito delle informazioni. La terza sezione si occupa della guerra contro la privacy che caratterizza l'epoca contemporanea, e mostra come essa abbia come obiettivo ultimo la proprietà privata in quanto tale. Nell'ultimo paragrafo, viene discussa e accettata la teoria di Rothbard per cui il "diritto alla privacy" deve essere ridotto ai diritti di proprietà; tuttavia, si argomenta che la privacy è una condizione imprescindibile per la difesa della proprietà privata, e che, nell'ambito delle informazioni, essa è anche una condizione d'esistenza della proprietà. Se le tesi qui proposte sono corrette, la privacy non può che giocare un ruolo centrale in ogni teoria strategica per la libertà.

**Parole chiave:** privacy, Rothbard, teoria strategica per la libertà.

## 1. Introduction

In *The Ethics of Liberty*, Rothbard starts from natural law to build a political philosophy of liberty whose main concern is to show when the use of violence is legitimate or immoral.<sup>1</sup> Libertarianism is founded on natural rights: given that natural law shows that each human being owns herself and her justly acquired property,<sup>2</sup> given that liberty consists in the ability to make use of her faculties and property away from external violent interference, and given that liberty constitutes mankind's essence, the initiation of violence by an individual or a group of individuals cannot be morally justified. Stated otherwise, violence is legitimate for self-defense only, and no utilitarian calculus can confer moral grounds to bypass the non-aggression principle.

While libertarianism is fascinating and compelling in theory, in the last chapter of his book Rothbard admits that, as a matter of fact, few libertarians have tried to show "how to move from the present (*any* present)

---

<sup>1</sup> Rothbardian anarcho-capitalism is a subset of libertarianism, which is one among many approaches that political philosophers can develop. Narrowing the context of the paper to the Rothbardian theory of strategy for liberty allows us to focus on the relation between privacy and liberty, which is the main topic of the article. Of course, the results here achieved can be reshaped and modulated using other philosophical languages.

<sup>2</sup> Rothbard's theory of justice contends that external property is legitimate when acquired through homesteading or voluntary exchange.

mixed state of affairs to the goal of consistent liberty.” Indeed, “the elaboration of a systematic theory of liberty has been rare enough, but exposition of a *theory of strategy* for liberty has been virtually nonexistent.”<sup>3</sup> Rothbard tries to fill this void by outlining some strategic principles. For example, libertarians must be uncompromising with regard to their goal: “The libertarian must be an ‘abolitionist’, i.e., he must wish to achieve the goal of liberty as rapidly as possible. [...] The libertarian, then, should be an abolitionist who would, if he could, abolish instantaneously all invasions of liberty.”<sup>4</sup> For example, abolitionists aimed at eliminating slavery completely, leaving no room to compromises or gradualist temptations, because slavery violates self-ownership and liberty in every possible way; the fight against taxation is another libertarian battle, because taxes are violent invasions of liberty and property. While the goal of liberty is clear, a discussion about the means to attain this goal cannot be avoided. First, Rothbard states that no strategy can contradict the highest political goal of liberty. Also, he accepts the Misesian view that “the world, at least in the long run, is governed by ideas,”<sup>5</sup> which explains why it is important for libertarians to educate about liberty and property. Moreover, he’s ready to point out that freedom and prosperity have found a permanent actualization thanks to the industrial revolution, whose long-term benefits will last for centuries. Nonetheless, it cannot but be acknowledged that the education system is often controlled by enemies of liberty and agents of the state, and that governments worldwide have found efficient ways to meddle with the economy and to take more and more control of people’s lives. Given this reality, it becomes impelling to build on Rothbard’s shoulders and elaborate further on a viable strategy for liberty. While education and (black) markets remain strategic for the achievement of a libertarian society, the contention of this paper is that an effective strategy for liberty cannot do without putting privacy at the center of the stage.

## 2. A metaphysical taxonomy of property

Natural law makes the exercise of natural rights possible. Libertarian reductionism holds that all natural rights must be tracked down to property rights. For example, there is no absolute right to free speech: people can speak freely on their property, but when they are at someone else’s house, the owner is free to set the rules that must be followed on

---

<sup>3</sup> Rothbard, *The Ethics of Liberty*, 257. Italics in the original.

<sup>4</sup> *Ibid.*, 259.

<sup>5</sup> *Ibid.*, 264.

her soil, including the rules governing what cannot be said. In the same way, an absolute right to education cannot exist in a libertarian society: instead, anyone is free to purchase whatever education service teachers are willing to sell.<sup>6</sup> Also, the right to life stems from the natural fact that every human being owns her body and mental faculties; similarly, ownership of the body implies the right to give oneself death. In general, every human right can be deduced from more fundamental property rights. It is important to note that property entails exclusivity: nobody but the just owner can make legitimate use of her property; violence can be defined as unwanted interference with others' ownership rights, and liberty can be defined negatively as freedom from such violent interference.

In his writings, Rothbard discusses a useful but somehow overlooked distinction between alienable and inalienable property rights. The possession of the body and of the mind cannot be alienated, because it is an indelible fact of nature: it is a self-evident truth that one owns herself. Of course, human law violates natural law sometimes, as in the case of legal slavery. However, when conflicts between human law and natural law arise, principled (non-utilitarian) libertarians cannot but stand with the latter, thus recognizing the first as illegitimate. For example, a contract that sells a human body cannot be enforced, because nobody can dispense with self-ownership even if she wants to. Rothbard writes: "The concept of 'voluntary slavery' is indeed a contradictory one, for so long as a laborer remains totally subservient to his master's will voluntarily, he is not yet a slave since his submission is voluntary; whereas, if he later changed his mind and the master enforced his slavery by violence, the slavery would not then be voluntary."<sup>7</sup> Thus, there is a sense in which the body and the mind are essentially private: X is the only legitimate owner of X's limbs and personality, and Y enjoys exclusive inalienable ownership of Y's body and mind.

While property of the body and of the will is not alienable, goods and services can be exchanged on the free market, making property in this realm alienable. For example, a cyclist may buy a Giant TCR and sell it at a later stage because a bicycle is not an intrinsic part of her nature. The same is true for the services that one can perform and that others are willing to buy. For example, voluntary selling one's expertise in teaching history and philosophy enhances cooperation with other human beings and enriches the development of the personalities involved. In general, property of external objects, of money, and of labor can be alienated to the benefit of all parties.

---

<sup>6</sup> This holds true for all goods and services.

<sup>7</sup> Rothbard, *The Ethics of Liberty*, 41.

A systematic analysis of property rights in the field of information, both in the form of digital data and of ideas that can be communicated verbally, is sorely missing in libertarian thought. Property exists where scarcity exists. Ideas and data can convey specific information and are therefore valuable; however, technology makes them replicable endlessly at basically no cost, which means that the establishment of property rights in this domain follows its own set of rules. Given that data and information are scarce and of value, they can be packaged as salable goods (this is the case of books and of data gathered by websites to be sold to third parties), or they can provide knowledge without being sold for money (this happens, for example, when listening to a friend supplies good food for thought).<sup>8</sup> Nowadays, most exchanges of data and ideas take place on the internet, which runs on an infrastructure of servers and fibers where property rights are not well-defined, given the simultaneous involvement of corporations, governments, and multiple individuals. Ownership of digital data is not the same as ownership of the infrastructure on which data runs,<sup>9</sup> but the exchange of data is dependent on this infrastructure. The lack of clear boundaries between these different sets of property rights is one of the biggest unsolved issues of the contemporary world, given the impact it has on everyone's life. This explains why it is naive to assume that end users are entitled to the ownership of the data generated by the interaction with platforms like Twitter or Facebook: first, this data would not exist without the hardware and the software supplied by those companies; second, information that is shaped by the interaction with other people cannot be the exclusive property of just one agent. Another relevant factor is that both digital data and mental ideas can be duplicated almost effortlessly by anyone who comes into contact with them.<sup>10</sup> This stems from the fact that privacy in the information realm is "all or nothing": once it is lost, it is lost forever. If privacy is lost, there cannot be exclusive property of data and ideas, although they can still be used in valuable ways. Indeed, public data and ideas are subjected to a new process of homesteading: anyone mixing her labor with them creates a new set of information that she owns exclusively as long as privacy is preserved. For

---

<sup>8</sup> Some libertarians maintain that only information goods (like books) and information services (like teaching) are scarce and valuable, not information or data *per se*. This paper does not take a stand on this issue. The thesis submitted here is just that, while it is true that only good and services can be sold on the market, it is also true that ideas and data can be exchanged to provide knowledge that can be used in a variety of ways. Moreover, albeit information in itself has no monetary value, it can be exploited both as an attack vector against property rights and as a defense tool against adversaries.

<sup>9</sup> Conceptually, this infrastructure is an alienable external good, like the Giant TCR mentioned above.

<sup>10</sup> This is why data, ideas, and information are not salable goods *per se*.

example, this paper builds a theory of strategy for liberty starting from Rothbard's approach; the result is a new body of thought that the author owns exclusively as long as it is kept private, and that can be homesteaded legitimately by everyone once it is published.<sup>11</sup>

Human beings produce an indefinite amount of data about themselves constantly. Privacy (and therefore ownership) of a single piece of information can be fully preserved, but that does not prevent an adversary from collecting other data in order to infer the original information. Thus, while it is theoretically useful to maintain that privacy is "all or nothing" with regard to isolated information, countermeasures against the collection and aggregation of public data are needed. As Klein points out,<sup>12</sup> government regulations cannot help in this regard: it is up to consumers to choose tools that protect their privacy, and it is up to the market to satisfy this demand without foregoing profits.<sup>13</sup> In an ideal world, data is private by default and visible by choice; instead, public data cannot be made private, because, once information is in the wild, exclusive control over it is lost.

The main thesis of this paper is that privacy is one of the most important conditions for the free enjoyment of any kind of property: where there is no privacy, property is on the brink of being stripped away. Privacy can be defined as the state of being invisible by default to others, and visible by choice.<sup>14</sup> In the case of the body and of the mind, there is always a sense in which privacy is preserved. X can make her thoughts public and show her body to others, but, in the deepest sense, that mind and that body are fully accessible only to X. Although it is impossible to attain complete invisibility (even an eremite is always under the gaze of some man or animal), there is always something that X cannot see and understand about others' bodies and souls, and vice versa. This is the reason why the ownership of the body and of the mind cannot be alienated. The matter is different in the case of external property. Buying a good or a service entails that the new owner can make exclusive and private use of it, that is, she can make use of it away from the intrusive eye of previous holders and of others; in the case of alienable property, the selling side loses ownership of that object completely when an exchange takes place.

---

<sup>11</sup> For a compelling case against intellectual property, see Kinsella, *Against Intellectual Property*.  
<sup>12</sup> Klein, "Data."

<sup>13</sup> And the market is providing them, even in the digital domain, where the exchange of data is relentless. For example, Signal and Threema are messaging apps that do not share users' data with third parties; Protonmail and DuckDuckGo are user-friendly, privacy-preserving alternatives to Google services; ad-blocking and tracker-blocking browser extensions are on the rise; Monero is a cryptocurrency that hides information about the sender, the recipient, and the amount of any transaction that occurs on its network; and so on.

<sup>14</sup> For a detailed discussion on privacy as invisibility (by default), see Togni, "Privacy."

Privacy in this realm is always gradual, because it is impossible to make an object (or an action) completely invisible to others. Of course, the more the privacy, the more the security against aggression, the easier to maintain exclusive possession. Lastly, privacy is “all or nothing” in the case of data and ideas. When information becomes public, the holder loses exclusive ownership, knowledge is spread, and a new process of homesteading begins. Both the former exclusive owner and the people who have come into contact with the information can participate in this process of creating new content from a common ground. The new gist becomes the exclusive property of its inventor, at least until she decides to share it.

To sum up:

<b>Realm</b>	<b>Kind of property</b>	<b>Privacy</b>
Body and mind	- Inalienable - Completely exclusive	- Gradual - It can never go to zero
External property (goods, services...)	- Alienable - Exclusive until exchanged	- Gradual - It can go to zero
Information (digital data, ideas...)	- Alienable - Constant homesteading of public knowledge	- All or nothing - Threat from aggregation

### 3. The war on privacy

If it is true that privacy is one of the main conditions for the respect of property rights, then a relentless war on privacy should be expected from enemies of private property, especially governments. This is indeed what is happening. In this section, some examples of the widespread war on privacy that is raging nowadays are discussed, in order to show that property rights are put in danger where privacy is violated. Each of the cases highlighted here is well-known in the libertarian literature; what follows does not aim at bringing new social phenomena to light, but at underlining that governments are ramping up the effort to circumvent citizens’ privacy in order to exert greater control over them; *ex negativo*, this implies that privacy should play a central role in the theory of strategy for liberty.

Property of external objects and of the fruits of labor is the easiest to attack, because it is always somehow exposed to the prying eyes of thieves. A robber cannot steal property that she does not see; thus, her first concern is to locate what she wants to take possession of. In order to understand the extent and the consequences of the war of privacy in the realm of external objects, it is sufficient to take a look to the always increasing burden of taxation. As shown by numerous libertarians, taxation is theft and/or extortion, because it involves a non-voluntary “exchange”: the clearest

and probably definitive explanation of the point is given by Spooner where he demonstrates why the highwayman is far nobler than the politician that robs the people “for their own protection.”<sup>15</sup> The most effective way to protect external alienable property from the villainy of the state is to subtract one’s holdings from its sight, that is, to increase privacy. The purpose of tax evasion and avoidance is exactly to hide property, to make it invisible: a thief cannot steal wealth that she is not able to find. Tax evasion is the just result of good privacy opsec, and good privacy opsec allows common people to maintain full ownership of the goods that they have worked for.

Beyond taxation, governments are putting external private property in jeopardy through their increasing effort to abolish physical cash. Money constitutes one half of indirect exchanges (the other half being the good or service that is sold), and should preserve privacy. An exchange is peer-to-peer (free) if the payer and the payee are the only protagonists, if there is no unwanted interference from a third entity. Cash is vital for property and freedom, because the market is, by definition, a web of peer-to-peer exchanges, and because cash enables anonymous and private payments. If cash was abolished and all money transactions were visible to third parties like private banks or government agencies, there would not be any peer-to-peer (free) exchange, because it would be possible for the observer to interfere with all trades violently; more importantly, even when the observer does not act, the fact that she *may* do so cannot but affect the behavior of the payer and of the payee.<sup>16</sup> No wonder, then, that govern-

---

<sup>15</sup> Spooner, *No Treason VI*, 17: “The fact is that the government, like a highwayman, says to a man: Your money, or your life. And many, if not most, taxes are paid under the compulsion of that threat. The government does not, indeed, waylay a man in a lonely place, spring upon him from the road side, and, holding a pistol to his head, proceed to rifle his pockets. But the robbery is none the less a robbery on that account; and it is far more dastardly and shameful. The highwayman takes solely upon himself the responsibility, danger, and crime of his own act. He does not pretend that he has any rightful claim to your money, or that he intends to use it for your own benefit. He does not pretend to be anything but a robber. He has not acquired impudence enough to profess to be merely a ‘protector,’ and that he takes men’s money against their will, merely to enable him to ‘protect’ those infatuated travellers, who feel perfectly able to protect themselves, or do not appreciate his peculiar system of protection. He is too sensible a man to make such professions as these. Furthermore, having taken your money, he leaves you, as you wish him to do. He does not persist in following you on the road, against your will; assuming to be your rightful ‘sovereign,’ on account of the ‘protection’ he affords you. He does not keep ‘protecting’ you, by commanding you to bow down and serve him; by requiring you to do this, and forbidding you to do that; by robbing you of more money as often as he finds it for his interest or pleasure to do so; and by branding you as a rebel, a traitor, and an enemy to your country, and shooting you down without mercy, if you dispute his authority, or resist his demands. He is too much of a gentleman to be guilty of such impositions, and insults, and villainies as these. In short, he does not, in addition to robbing you, attempt to make you either his dupe or his slave.”

<sup>16</sup> This is known as a “chilling effect.”



ments worldwide are pushing for electronic, centralized payment systems under constant surveillance.

Throughout human history and most civilizations, slavery has been the most common legal instrument to take control of others' body and mind. While self-ownership is metaphysically engraved in human nature, serfdom shows how profound and prolonged the clash between human legislation and natural law can be. Fortunately, slavery has been mostly abolished nowadays, with some tragic exceptions. However, this does not mean that governments and other entities have given up their haughty attempt to take control of the inalienable property of the body and of the soul. Prohibitionism and the war on drugs prove the point. Natural law prescribes that each human being owns her body; if this is true, then everybody is free to decide whether to drink alcohol or not, whether to take a drug or not. Governments justify prohibitionism and the war on drugs by asserting that the good help of the state is useful to save people from wasting their lives on addictive substances. From a non-utilitarian libertarian perspective, even if the war on drugs was a perfect success and drug abuse was completely eradicated,<sup>17</sup> it would still be immoral and dangerous to allow the state to prohibit non-violent behaviors such as taking a drug: if natural self-ownership can be bracketed with regard to drugs, then it can be bracketed with regard to anything else. For example, sugar can be dangerous to human health, so why shouldn't politicians impose a sugar tax for the greater good of collective health?<sup>18</sup> In short, the war on drugs gives the state a set of arguments that can be exploited to justify more and more interference with bodily and mental autonomy. McGirr's book on prohibitionism<sup>19</sup> explains very well how the surveillance system and the law enforcement apparatus developed by the American government to fight the use of alcohol survived the ratification of the 21<sup>st</sup> amendment.

The war on Covid has allowed governments worldwide to upgrade their war on privacy and their attack against individual self-ownership. To show the point, it is useful to take a quick look at Covid passports. Generally speaking, passports are official documents that the state grants only to people who satisfy one or more requisites. Covid passports are issued only to people who can prove that they are vaccinated or that they have tested negative to the virus; in turn, being able to show the pass gives permission to perform ordinary activities such as eating at a restaurant or entering a workplace. It is not an exaggeration to assert

---

<sup>17</sup> Of course, this is not the case: prohibiting something does not cause its disappearance, and, if anything, the war on drugs has aggravated the problems connected to drug abuse.

<sup>18</sup> Of course, there is no empirical reason to believe that taxes on sugar benefit individuals' health.

<sup>19</sup> McGirr, *The War on Alcohol*.

that Covid passports represent one of the biggest violations of privacy ever developed. While the war on drugs targets single individuals, Covid passports are universal requirements extendable, in principle, to all citizens. While the war on drugs forbids citizens to take some substances, Covid passes nudge or force them to take a drug, even against their will. While in the case of drug addiction the state needs to prove any “wrongdoing,”<sup>20</sup> with Covid passports the burden of the proof is on the citizen to show that she has complied with the requirements imposed by the government. While in the case of the war on drugs everyone is innocent until proven guilty, in the case of Covid passports every citizen is guilty (sick) until the contrary is proven. Importantly, to prove one’s innocence requires the abandonment of privacy: if citizens want to live in society, they must share their vaccination or health status with the government, and, more or less directly, with anyone the state appointed to check the validity of the pass (employers, restaurant owners, cinema officers...). If an individual refuses to share her data with the state, she is prevented by law from enjoying a number of social activities. Note that the mechanism and the technology of the vaccination card can be extended easily to all aspects of life. For example, the state may start requiring citizens to consume not more than a certain amount of fuel per month, the penalty being some sort of driving ban; only people that are able to prove that their diet is healthy may be given “free” access to public health services; and so on. The advancement of technology helps states and big tech governmentalities to trace people’s behaviors, thus eroding privacy, thus restricting liberty. As with slavery, human law can trump natural law only temporarily, but “temporarily” can mean a very long time, given the amount of data and information the state is able to collect and take advantage of. Common travel passports were just a “temporary” measure introduced after World War I to “facilitate” travel between nations that had fought to death for years; similarly, the European Union introduced Covid passes to “facilitate” the freedom of movement of European citizens.<sup>21</sup> In the case of common passports, the relatively new technology of photography helped the state to collect information about citizens; for the adoption of Covid passports, big data is the main driver.

Covid passports are a tile in a larger scheme called ID2020<sup>22</sup> that aims at making digital ID universal. The Digital Health ID program “seeks to provide [Bangladeshi] infants with a portable, biometrically-linked digital ID either at the point of birth registration or at the time of routine

---

<sup>20</sup> Of course, from a libertarian perspective there is no legal wrongdoing in taking a drug.

<sup>21</sup> Speranta, “Passports”

<sup>22</sup> URL: <https://id2020.org/>

immunization.” ID2020 is based on the following approach: “The ability to prove who you are is a fundamental and *universal human right*. Because we live in a digital era, we need a *trusted* and reliable way to do that both in the physical world and online” (italics added). First, from a libertarian perspective, all human rights are property rights: the ability to prove one’s identity facilitates human interaction and cooperation, but it cannot qualify as a “universal human right,” and certainly it is not something that needs to be “protected” by the state and its allies. Second, ID2020 proponents want to earn the trust of the population by promising to safeguard privacy: “While the move to digital ID has had many positive effects, it has been accompanied by countless challenges and setbacks, including large-scale data breaches affecting millions of people. Most of the current tools are archaic, insecure, lack appropriate privacy protections and commoditize our data. But that’s about to change and ID2020 is leading the charge.” With ID2020, “only you control your own identity, what data is shared and with whom.” While it is true that better privacy practices are needed, a centralized system like ID2020 can preserve privacy between citizens at best, but certainly not between citizens on the one hand and authorities on the other: it is not “only you [that] control[s] your own identity,” but you and your ID providers.<sup>23</sup> Moreover, privacy is threatened by the fact that digital IDs may allow the aggregation of personal information related to health, money, and so on, giving the state and Big Tech a complete picture of citizens’ behaviors; the more data the authorities gather, the more control they enjoy; as shown by Covid passports, this control is not restricted to information, but impacts the very foundation of property rights, that is, the ownership of the body and of the mind.<sup>24</sup> A strategy for liberty must pursue the exact opposite of programs like ID2020: it must seek universal privacy, anonymity, and invisibility, and must support the development of technologies that prevent the state from accessing *any* kind of personal data, both online and during everyday life. Rothbard underlies that libertarians must be uncompromising in their search for liberty and in their abolitionism of illegitimate violence; similarly, a strategy for liberty must be uncompromising in pursuing the abolition of all state-mandated ID programs, health passports, travel passports, and the like. Rothbard maintains that the goal of liberty is not utopian, because it conforms to human nature; similarly, privacy might be technically

---

<sup>23</sup> Practically, centralized databases collecting personal information are honeypots for hackers: sooner or later, these systems are breached, which is detrimental to the security of society at large.

<sup>24</sup> The collection of ID and other data does not imply that individuals lose the ownership of their body and of their mind, because the latter kind of property is inalienable; however, it renders the use of violence and coercion easier and more efficient.

and contingently difficult to attain, but it does not reside in Dreamland, because it is probably the most important condition for the full actualization of natural liberty. Without privacy, liberty is transmuted into positive concessions that are granted only to those who comply with the orders of would-be commanders-in-chief of people's lives.

#### 4. Privacy as a strategy for liberty

The previous section discussed some well known circumstances where governments strengthen their structures of power by violating citizens' privacy. Given the escalation in the war on privacy, one would expect, *ex negativo*, that the defense of privacy played a vital part in any theory of strategy for liberty. Still, the importance of privacy is somehow underestimated by many libertarians.<sup>25</sup> In part, this has to do with the Rothbardian analysis of the concept. In chapter 16 of *The Ethics of Liberty*, he denies the existence of privacy rights and maintains that they need to be reduced to property rights. On privacy as the right to prevent others from sharing knowledge, he states: "But is there really such a right to privacy? How can there be? How can there be a right to prevent Smith by force from disseminating knowledge which he possesses? Surely there can be no such right. Smith owns his own body, and therefore has the the property right to own the knowledge he has inside his head, including his knowledge about Jones. And therefore he has the corollary right to print and disseminate that knowledge. In short, as in the case of the 'human right' to free speech, *there is no such thing as a right to privacy except the right to protect one's property from invasion.*"<sup>26</sup> Conversely, "no one person or group of people (and therefore 'the public') has the *right* to know anything. They have no right to knowledge which other people have and refuse to disseminate."<sup>27</sup> That privacy rights are in reality property rights holds true in a variety of cases: "Wiretapping is properly a crime *not* because of some vague and wolly invasion of a 'right to privacy,' but because it is an invasion of the *property right* of the person being wiretapped."<sup>28</sup>

Rothbard is correct in stating that all rights are property rights, and therefore that there is no right to privacy *per se*. However, the contention of this paper is that privacy, while not being a right, is a primary condition for the actualization of liberty: without privacy, property is put in jeopar-

<sup>25</sup> This paper deals with anarcho-capitalist, Rothbardian libertarianism, where privacy discussions tend to be more empirical than strategic.

<sup>26</sup> Rothbard, *The Ethics of Liberty*, 121. Italics in the original.

<sup>27</sup> *Ibid.*, 122. Italics in the original.

<sup>28</sup> *Ibid.* Italics in the original.

dy by intrusive observers' menace of coercion and violence. Privacy makes defense against aggression effective, and effective defense allows the enjoyment of freedom. For example, physical property that is under the constant scrutiny of taxmen is not safe and is always on the brink of confiscation; wealth deposited in a transparent financial system can be seized by decree; personal information that is collected in a centralized database can (and will) be used against citizens; living under a jurisdiction that does not protect against privacy invasions can be detrimental to the quality of life. Importantly, privacy is not just one system of defense among others: the conceptual difference is that its violation is the prerequisite for any other violation. If X wants to punch Y, she needs to see her; if X wants to steal from Y's house, she needs to get around her privacy protections, like alarm sirens, doors, and safety deposit boxes; if X wants to use Y's medical record against her, she needs to see the data; and so on. An attacker must always see her victim first; once the victim is seen, the first-mover advantage is all for the attacker. Conversely, privacy gives the first-mover advantage to the potential victim: when it is effectively preserved, any potential attack is stopped *before* it takes place, which is what makes privacy crucial for any theory of strategy for liberty. Other instruments of defense, like, for example, weapons or body guards, enter the stage *after* privacy protections and the related first-mover advantage are lost.

The theory of strategy for liberty needs to take into account the metaphysical peculiarities of the domain of the body and of the mind, of the domain of physical external objects, and of the domain of information, ideas and data. Metaphysically, the property of the body and of the mind is not alienable, and everyone enjoys exclusive control over them. Practically, however, aggression represents a serious hindrance to happy life. Humans are physically weaker than most animals, and so they need to hide from predators by concealing their body. Similarly, human beings may threaten the security of fellow human beings: privacy helps to prevent attacks by making one's body invisible. When aggression is institutionalized, finding legal and non-legal ways to protect privacy becomes the priority: a slave needs to escape (to make herself invisible to her "owner") in order to regain her liberty; protecting privacy online is a necessity for political dissidents (and for everybody else); laws against the invasion of privacy may guarantee some peace of mind; and so on. When it comes to the body, the right to keep and bear arms is regarded as integral to the full actualization of property and liberty. While this is true, it is also true that, sooner or later, a stronger and better-armed enemy will show up; therefore, it is wise to avoid attacks altogether. From this point of view, privacy is not only the necessary complement to the right of self-defense, but it also aims at rendering self-defense a secondary, just-in-case option. Enjoining privacy by

default and optional visibility means sharing time with trusted, non-dangerous people and avoiding unwanted confrontation. When this ideal scenario does not take place, there are other, less conclusive but still effective ways to defend property rights: for example, privacy in the form of silence helps with troubles avoidance, because everything that is said can be used against the speaker; psychological reserve, or the ability to make thoughts invisible to others, especially in public, is another instantiation of privacy. In short, privacy assists with the defense and preservation of the natural property of the body and of the mind.

The existence of doors, walls, window shutters, strongboxes, enclosures, and the like proves that privacy is a condition for the defense and preservation of physical alienable property. The possession of an arsenal guarantees the respect of property rights to a good degree, but it is not sufficient against all enemies. On the one hand, arms alone are not that effective against the confiscatory power of the state and of organized gangs (this point makes the concealment of wealth highly recommended); on the other hand, privacy is effective against all forms of assault, because it is impossible to assault property that is not seen. However, given that, metaphysically, privacy in the physical domain is gradual and can be completely eliminated, privacy and classic tools for defense like weapons need to go hand in hand. Still, *in principle* it is better to enjoy privacy without self-defense instruments than the reverse, because in the first case, but not in the second, one would be living in a trusted environment.

Privacy by default is also necessary for the free exchange of goods and services. If an exchange occurs under the scrutiny of an *unwanted* third party, it is not completely free: the presence of the uninvited player may cause the interruption of the trade, its alteration, or the destruction of the environment of trust between the peers. Of course, people exchanging goods and services may *want* to make use of third parties like arbitrators, judges, mediators, and the like; in this case, there is no *violation* of privacy, because the third party is just selling her services to the two original peers. The role of privacy is to facilitate cooperation: it prevents unwanted parties from interfering with the exchange, and it creates an environment of trust that promotes the sharing of goods, services, and knowledge. Similarly, a private medium of exchange helps to create a level of trust that cannot exist when the financial system is under the scrutiny of powerful strangers. Thus, privacy is not just one among many secondary conditions that facilitate commerce, like, for example, good weather or an efficient communication system; rather, privacy guarantees that trades are *free* from unwanted surveillance, interference, and disruption. In short, privacy by default and optional visibility reinforce defense and trust, thus bolstering property rights and cooperation.

In the sphere of digital data and mental ideas, privacy not only paves the way for the preservation of property rights, but it is also a condition of their existence. Public data and ideas cannot be the exclusive property of anyone, because everybody can duplicate them basically for free; at the same time, everyone can mix her labor with them in order to create new exclusive knowledge in a constant process of homesteading; of course, sharing the newly created knowledge equals to the abandonment of privacy and entails the illegitimacy of any claim to exclusive property. The importance of privacy in the digital world is shown by the widespread use of cryptography and encryption. Cryptography makes sensitive data illegible to anyone except the sender and the recipient, thus creating an environment of trust that opens up the space for new forms of human cooperation. On the other side, if cryptography is broken, privacy and property are lost immediately and irremediably. The importance of privacy emerges *ex negativo* when it is lacking. For example, Covid passes health data available to central authorities, thus disrupting privacy: the data in question is not fully controlled by citizens, it is just about them, and it can be used by violence monopolists against their properties, both digital and physical. Also, the centralization of data infrastructure and the collection of data by central authorities are antithetical to the preservation of privacy and property; therefore, libertarians should strategically push for decentralized, private systems that give users privacy and full possession of sensitive data. Importantly, in the digital domain privacy is the *only* viable strategy for the defense of property: first, physical weapons and other physical tools cannot prevent the spreading of information, ideas, and data that are not, strictly speaking, physical; second, given that public knowledge can be duplicated endlessly at no cost, and given that knowledge in other people's head is theirs, forbidding the use of mental capacities amounts to a violation of the non-aggression principle. Therefore, the only way to ensure that information is not used as a weapon is to prevent its diffusion in the first place; that is, the only effective defense in the domain of information is privacy. At the same time, scarcity of data and information, and thus property of data and information, cannot exist without privacy: cryptography and encryption, as used, for example, in the cryptocurrency world, prove the point. Owning bitcoin means owning the *private* keys associated with a public address *exclusively*. A private key enables its owner to spend the unspent transaction outputs controlled by it; if Y gets to know X's private keys, Y can spend "X's" money, which is not X's anymore. With "privacy coins" like Monero,<sup>29</sup> external observers are impeded from seeing information regarding the sender, the recip-

---

<sup>29</sup> URL: <https://www.getmonero.org/>

ient, and the amount exchanged, which renders the life of attackers more troublesome, thus rendering the enjoyment of digital money and property more serene. Note that the term “privacy coin” is redundant and pleonastic, because it is possible to argue that money *must* enjoy some level<sup>30</sup> of privacy. Thus, it is more accurate to say that Monero is a cryptocurrency in the etymological sense: it is a private (“crypto” in Greek means “hidden”, “secret”) medium of exchange (currency); as such, it is a strategic tool for liberty.

To sum up:

<b>Realm</b>	<b>Privacy as a strategy for liberty</b>
Body and mind	<i>Ex ante</i> defense of property
External property (goods, services...)	<i>Ex ante</i> defense of property
Information (digital data, ideas...)	Condition of existence of property

## 5. Conclusion

In the contemporary world, property and liberty are put in danger by a relentless war on privacy, where governments and big corporations are acting as villains. Property of the body and of the mind, property of alienable goods and services, and property of information constitute different ontological realms, each with its peculiar nature and following its own set of rules; in all cases, however, privacy plays a central role for the actualization of liberty. While Rothbard is correct in reducing privacy rights to property rights, privacy can be constructed as one of the most important conditions for liberty, thus becoming a central focus for philosophers interested in building a theory of strategy for liberty. Usually, libertarians stress the role of education and of the market for the advancement of liberty, but history has proven again and again that violence monopolists can seize the control of schools and businesses: the main reason is that schools and businesses operating in the open are easy targets for men with guns.<sup>31</sup> The right to self-defense complements property rights, and plays a central role in any theory of strategy for liberty. However, the state can arm itself more heavily than any private citizen, and gun control rhetoric finds fertile terrain in vast parts of the Western population. Even where the right to keep and bear arms is legally protected, its shield is not always strong enough when state actors and their associates declare war on the people. In short, markets, education, and self-defense need to be complemented if property rights are to be preserved. The contention of this paper is that privacy

<sup>30</sup> How much privacy is needed for money to be *good* money is up for debate.

<sup>31</sup> Agorists are correct in maintaining that black markets are the only free markets.



as invisibility by default is among the most important conditions for the enjoyment of liberty. If violent attackers cannot see the target, the attack cannot take place. In addition, privacy reinforces trust and enables peer-to-peer exchanges: excluding unwanted parties and preventing surveillance makes interactions with one's dears and with economic partners truly free. Privacy is the actual ability to exclude others from unwanted interaction: this exclusion is non-violent because it consists in making oneself invisible by default; conversely, privacy, cooperation, and trust go hand in hand, because privacy allows voluntary and selective interaction. In short: the existence and the defense of exclusive property rights are in trouble without selective visibility, that is, without invisibility by default, that is, without privacy. Privacy is a strategic condition for liberty.

## Bibliography

- Kinsella, Stephan. *Against Intellectual Property*. Auburn: Mises Institute, 2015.
- Klein, Peter. "It's not so simple who owns 'your' data." *Truth on the Market*, October 20<sup>th</sup>, 2020. URL: <https://truthonthemarket.com/2020/10/22/its-not-so-simple-who-owns-your-data/>, 2020.
- McGirr, Lisa. *The War on Alcohol: Prohibition and the Rise of the American State*. New York-London: Norton, 2015.
- Rothbard, Murray. *The Ethics of Liberty*. New York-London: New York University Press, 2014.
- Speranta, Dumitru. "Passports were a 'temporary' war measure." *FEE Stories*, October 16<sup>th</sup>, 2016. URL: <https://fee.org/articles/passports-were-a-temporary-war-measure/>, 2016.
- Spooner, Lysander. *No Treason VI & The Constitution of No Authority*. Hawthorne: BN Publishing, 2012.
- Togni, Andrea. 2022. "Privacy as Invisibility (by Default). Bridging the Gap between Anarcho-Capitalists and Cypherpunks." *Journal of Libertarian Studies*, vol. 6 (1). URL: <https://jls.scholasticahq.com/article/57657-privacy-as-invisibility-by-default-bridging-the-gap-between-anarcho-capitalists-and-cypherpunks>.