

The State: From Minarchy to Anarchy

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The minarchist libertarian has a conceptual war on two fronts. In front, as it were, are the usual proponents of larger states. But nipping at his heels from the rear is the anarchist, who would abolish the state altogether. The purpose of this essay is to see whether the minarchist can stand his ground against both. There are serious problems involved in doing so.

I have explored this question in an earlier article,¹ the main points of which I will begin by summarizing.

To begin with, we are broadly assuming, for present purposes, the general view known as Libertarianism. This could be - and certainly has been - questioned, of course. For present purposes, the immediately relevant concern is with anarchists who claim to be “communist” in some sense. I have argued elsewhere that the “socialist” version of anarchism is impossible.² If a social system inherently requires extensive redistribution, as in “from each according to his ability, to each according to his need”, then it will require what amounts to a state to bring this about. By contrast, it appears that a completely decentralized social system is compatible with a free-market economy. Both of these might be (and certainly have been) denied. But as regards the first, I see no prospect of success for the would-be communist. As regards the second, extensive

¹ *Minarchism* in the web journal *Etica & Politica / Ethics & Politics*, 2003, 2
http://www.units.it/etica/2003_2/NARVESON.htm

² See Jan Narveson, *Respecting Persons in Theory and Practice* (Rowman & Littlefield, 2002) chapter 10, “The Anarchist’s Case” pp. 185-202; also in John T. Sanders and Jan Narveson, eds., *For and Against the State*, [Rowman & Littlefield, 1996], ch. 10, pp. 195-216.

analysis is no doubt required, but on the face of it, anarchism of the capitalist type appears to be intrinsically possible, since it requires no redistribution, and indeed forbids compulsory redistribution. Since we will need to discuss certain aspects of this in detail, the above may be taken as programmatic for the present. But I will not linger with the communist versions of anarchy, since those appear to require wishful thinking and unreal assumptions.

Still, why Libertarianism? Libertarianism is, roughly, the view that we *may* do *what we want*, subject to the constraint that we may *not* do what injures, harms, or more generally imposes *loss* on any other person. The qualifier 'roughly' is important. First, the formula has to be qualified so as to make clear that people may lose their eligibility for treatment along libertarian lines, namely by infringing those lines themselves. Again roughly, it is the "innocent" who may not be treated in that way. But the relevantly guilty may: we may certainly defend ourselves against attackers, and more generally against those who employ force or fraud against us.

No point is more important concerning libertarianism than that its thesis is that we *may* do this, which is to say that it is *permissible* for us to do this - but it is *not obligatory* to do it - a point whose overlooking has given rise to an enormous amount of misunderstanding and misinterpretation of the libertarian view. If you hit me and I elect not to hit back, that's my option. But I may hit back, up to some point; moreover, I may enlist someone else to do the hitting for me, provided it is of the right amount. (And what is the "right amount"? That's a serious question, which could, as will be seen, affect the ensuing discussion. I therefore put that aside at this point, to be taken up later where pertinent.)

The libertarian principle attributes to everyone what are now generally known as “negative rights”: that is to say, they impose on others the duty to *refrain* from certain activities; but they do not, on the face of it, impose on others any duty to *do* anything, just like that. Wrongdoers may be said to have a duty to repair the effects of their wrongdoing, where possible; but as regards our general relations with other non-wrongdoers, none of us may be *compelled* to do anything for them, in general. When such compulsion is ever in order, it has to be because we have authorized it, especially by voluntarily enlisting in some mode of association entailing duties which may be imposed on us if we do not perform up to the level enlisted for. (Again, just which activities constitute such enlistment requires some careful analysis. Making explicit contractual agreements does it. But does becoming someone’s roommate do so? That’s harder to say, and again, will be tabled for at least the time being.)

This feature of libertarianism is of the last importance for our topic. If we have no *duty* to help even ourselves, let alone others, enforce what libertarianism tells us are our rights, then there is a problem about a classic argument for the State. That classic view is that the state is necessary in order to enforce our rights. Of course it is important to ask whether the argument is correct for this claim. But whether or not it is so, there is a further issue. For the State is a paradigmatically *involuntary* organization. It has power over *all* within its territory, whether they like it or not, whether they asked for its help or not, and regardless of why they happen to be *there*. And its “having power” is, specifically, its having the power to *compel* people to do what it tells them to do. Now, the only things it *may* tell us to “do” are *refrainings*: the state may *forbid*. But how can it *require*, seeing that we are not fundamentally required to do anything at all?

If we signed up for the State, of course, that would answer the last question. We are required because we said we would do it - so, *pay up!* Somebody can plausibly say the

latter under that condition. But the condition doesn't obtain in all cases. *You may not* have "signed up." Now what? Apparently the state has no business compelling you, then, to do what it asks, except insofar as what it asks is to refrain from using force or fraud against others.

The "classic argument" now has to be strengthened by insisting that, somehow, even though we may deny it, we *did too* "sign up." That's what Socrates apparently thought. But he seems to have no argument for the view that we *did*. Perhaps he has an argument that we *should*. That's what Locke and others have. But, are they right?

That is to say: would it be right to hold that any rational person *would* authorize the state not only to intervene to prevent libertarianly wrongful activity, but also to collect something from me to help pay those who do the intervening. The idea is that it would be rational for me to accept, at t_1 , the duty to continue paying this at $t_2...t_n$ - even if I don't, in my view, seem to be getting my money's worth!

The trouble is, that *doesn't* look rational. More precisely, it doesn't look so without some further premises. These include: it is not rational for me not to defend myself, and it is not rational for me to utilize any lesser agency than The State to do it, and that's because the State will do a *better job* than anybody else.

At this point the anarchist may well turn a bit sarcastic. The State, he may say, is an incompetent, bungling, and almost certainly *dishonest* organization which does not deserve my support, voluntary or otherwise.

What does the defender of the State have to say to that? He may respond by discussing cases and producing what he supposes to be evidence. But it is unclear

whether this kind of criticism is intended to be empirical or not. Certainly if it is empirical, the desired information is murky and hard to come by; moreover, there have been thousands of States over the centuries, and reputations have varied from extremely bad to very good. So do we turn to the good cases in support of the minarchist? Or to the bad cases in support of the anarchist?

But our issue is one of principle. And since it is, it won't be so easy to produce a case bad enough to support the anarchist, or good enough to support the minarchist. For everything will depend on the criteria employed. The libertarian's criterion is this: does government do evil to someone without compensating good *to that person*? If the question is whether they *ever* do that, it's hardly credible to reply in the negative.

Theorists with utilitarian sympathies may insist that this is the wrong criterion, and that we can compensate the bad done to A by good done to B, if it's great enough. Libertarians reject this. But they might not reject this: suppose that although sometimes governments visit evils on individuals not quickly compensated, yet in the longer run they are compensated.

Then the question becomes, firstly: how long is the "longer run"? And second, even if that works, might not a non-government supplier produce at least as good a result perhaps in a shorter term?

Suppose that supplier *might* indeed do that, but that governments, as typically will be the case, won't *let* the would-be supplier make offer his services for sale. This will convict government of the claimed dishonesty. If it can do the job better, why not prove it in a fair match against those who claim that *they* can? This puts a rather strong burden of proof on government, and on the face of it a fair one.

Perhaps the supporter of government will claim that this is the kind of job that can only be done adequately by a single supplier: the claim will be that competition is the *problem*; monopoly the solution. Typically it would be added that control over the monopolist is nevertheless available: the voter decides - democracy fixes it.

Or does it? Democracy subjects everyone to majority rule. If the original complaint is valid, then democracy would seem not to be in much of a position to help. What's to keep a majority from extracting benefits from minorities at their expense?

Let's return again to the fundamental libertarian principle. It has rightly been interpreted as supporting private property. And it has rightly been interpreted as implying that what's right about owning something lies in *how you acquired it*, and not *how much it's worth*. Libertarians do not affirm that the earth belongs to us all in common. What, we ask, did "everybody" (including the unborn) *do* to acquire all that stuff? The answer, of course, is *nothing*. Particular people acquired this and that by stumbling upon it, using it, then staking claim to it.

A claimed case against libertarianism, or at least against its distinctiveness, is made by some, unfortunately apparently including Robert Nozick, who is almost universally taken to have the copyright on the entire Libertarian idea, who surmise that the ownership of almost everything there is is called into question by past sins: My great-grandfather stole something from your great-grandfather, and therefore I owe you something. But that's a ground-floor mistake. If A stole x from B and sold it to unwitting C, then A owes B something - but it's not obvious that C does. On the contrary: A has falsely claimed that x belonged to A, and so A not only owes something to B, but he also owes it to C:

C's money back, for instance. Saddling C with a debt that he had no reason to think he owed anyone is not on.

Moreover, these critics seem to think that we are all responsible for everyone's injustices. But we aren't. Suppose that A murders poor B, and nothing is done about this. That's bad, and it would be better if A were rounded up and put in jail, or hanged, or some such. However, if we ask, Who has to bell this particular cat? - the answer is, No one. We don't *owe* it to B that we avenge his death or rectify matters. In our own interest, yes, we may make efforts to apprehend the likes of A, so as to make the streets safer for ourselves. Or we may just take an interest in B, or we may take an interest in doing justice for its own sake. All legitimate, yes. But none of this obligates me or you or anybody. We just carry on - stupidly, as may be, but innocently, which is the point.

And for that reason it is not true that we all should be ready to submit to a tax to support a police force which will do all this for us. "For us"? Well, wait a minute. We'd be glad to have it done, perhaps: but maybe we don't think it's worth the price, thanks. We'll take our chances. Are we within our rights? Indeed we are.

This all comes back once again to the basic idea, the Libertarian Principle. This rather simple idea is that nobody gets to inflict uncompensated harm or damage on anybody else; and so, only those who have done that are eligible for treatment of the kind proscribed for all others. If our criterion of harmfulness is *what the individual in question accepts (or rejects)*, then the upshot is that police forces, and the like, purporting to do the individual a 'service' stand before that individual as supplicants, begging his or her approval. When it comes to what is strictly *you*, so goes the principle, then the persons

with the last word on the subject is *you*. Nobody owns you, nobody has the authority to decide what is good or bad for you, at this End of the Line - nobody except *you yourself*.

So now we must ask the Minarchist: granted that you have the right general idea about what you are supposed to be doing, do you in fact have any *authority* to do it? Of course the answer is obvious: No! That is to say: maybe a *lot* of people want to be governed, but then there are others who do not, and they *count*. Not in the democratic sense, of course - one vote among n thousand - but in the contractarian sense, of, *do you buy this or don't you?* The point being that *if you don't, then the deal is off*. The customer is always right. The Consumer is King.

Of course the consumer has no authority over *anybody else*. That's not in question. What is in question is the eligibility of any centralized agency to claim the right to decide about *all matters*, domestic and foreign. Where would it get this right? Again, the answer seems clear enough on the libertarian view: it has it if and only if the individuals who participate in these "matters" give it to them.

In the celebrated argument by Robert Nozick, we begin in the customary anarchic condition. People note that there are bad guys around, and the question what to do arises. The obvious answer is, Seek Help. In numbers there is strength, right? So: some form mutual-help agencies, while others purchase the services of protection entrepreneurs.

In the process, some questions arise. How does one trust the fellow helpers in the former? How can we rely on the contracts we make with the entrepreneurs in the latter?

These are difficult questions, but still, we know from common experience that in practice they are answerable, pretty much. Protection entrepreneurs will be looked at with care by meta-protection entrepreneurs who will sell higher-level contracts to keep the ground-level protectors in line. It all works out. That's the idea.

But Nozick thinks it won't all work out. Nozick supposed that there is a "natural monopoly" in this area - unlike any other area we can think of. Customers would naturally move to the agency that can offer superior protection, and he supposed these would be the bigger ones. But is he right about that? There's room to doubt it.

The natural thought - in many minds, anyway - is, "Who Guards the Guardians?" In an anarchy, it's perhaps the higher-level agencies who keep tabs on the low-level agencies. And, of course, some against whom we have to be concerned to protect ourselves will be people from the other side of the mountain etc. Dealing with *them* may require a bigger association. In any case, there's the problem of the Neighbor Associations. You have yours, they have theirs, and the question is whether They have Your best interests at heart, the likely answer being in the negative. Anyway, Nozick's idea is that there is a natural advantage in Size: big guys beat up on little guys, big gangs beat up on little gangs, and bigger protection agencies will win in disputes with smaller protection agencies. So there is an increasing return to scale. And because there is, we can expect that in any given area (this being, notice, not defined), there will "emerge" a "dominant protection agency."

There's a lot more, but we should have our doubts about this. Consider all the commodities you know about. Do big guys eat little ones, just like that? I don't think so! In the world of consumer goods, we find companies of all kinds surviving, despite huge

disparities in size: General Motors alongside Ferrari alongside Pescarola, and any number of others.

There's no real surprise in any of this. Those who are surprised, I think, are probably fixated on the "material production" aspect of production. Yes, a great big firm can make more widgets per hour of production-line worker than a little firm. But customers might prefer to deal with the little firm because the service is more personal, or because it can customize more efficiently, and so on. When we think about protection needs, surely they vary enormously. In many communities, there hardly is any need for it. People leave their doors unlocked, they make transactions on verbal promises alone, and so on. Where protection is needed, it might be very specific. And in any case, a small firm might be able to protect its customers much more effectively than a big one. People in threatened neighborhoods buy electronic devices, learn to shoot, join gun clubs, and perhaps register with small agencies that undertake to be on the job in an instant - in contrast to almost any police force anywhere. Generalizing about this is not appropriate.

And Nozick supposed that the dominant protection agency would wind up with state-like duties in relation to its involuntary "clients." But the problem here is that real-world politically powerful organizations may well have no scruples of that kind. If they would, why would they? The reasons for this promise to be moral in kind. But if they are so, why wouldn't they also lead to the conclusion that what the state is trying to do is just wrong in the first place?

This takes us to what I believe to be the heart of the issue. A has some sort of dispute with B. Direct discussion between them doesn't solve it; each enlists his "protective service" to protect what he claims to be his rights. The thought now is that the stronger agency will make an offer that the weaker one can't refuse. So its success rate will be

excellent, attracting more customers. - Or will it? Perhaps instead persons in the position of B will now form an association and create a stronger-yet protection agency.

But there is a third possibility: some entrepreneur C will come on the scene and offer to make an analysis of the situation with a convincing case why one party is in the right, or how the two can form an optimal compromise on some option they hadn't yet thought of.

There would be two reasons why people wouldn't quickly reach for their guns, or rather, why two people's agencies wouldn't reach quickly for *their* guns. One is that neither wants to get shot, and shooting at people has a way of resulting in that. If either A or B draws *his* gun, the other party's protective agency will be concerned to move in and prevent the gun-drawer from committing, and the other party from suffering, mayhem. But if the two agencies start gunning for each other, somebody is going to get hurt, and neither wants that. And if their clients are aware of their companies' bellicose tendencies, they'll look elsewhere for a safer, smarter firm to do business with.

A reputation for making good decisions is surely the best weapon anyone getting into this business could have. Reputation is what sells, and reputation comes from good service, or at least service perceived to be good. There having been two parties to the original dispute, input from both will be available. What could be more impressive than that the party who "lost" was nevertheless satisfied with the justice of the decision?

In contemporary times, of course, we can add that information of this sort can spread around very quickly indeed on the internet. People making judgments on particular cases can quickly avail themselves of many past decisions on similar or comparable

matters. The law libraries of the past fit comfortably on a few CDs; decisions everywhere can be consulted.

It is by now commonplace to point out that the law largely derives from common-law sources, not from legislation. Roger Scruton nicely describes it:

“Membership defined through place encourages people to see law as ‘the law of the land.’ This effect is amplified in the English and American case by the common law. Although common to the whole territory this law arose from local judgments and not from decrees issued by the sovereign ... The vast body of this law was, and remains, unwritten ... It is known as ‘case law,’ since it derives from the judgments delivered in individual cases. But it is not invented case-by-case... Rather, it advances by a process of discovery, in which evils are identified and remedies proposed, guided by principles of judicial reasoning that have their root in natural justice.”³

There are two points in this passage that may be thought to work in opposite directions. On the one hand, the system works because people identify with particular places and circumstances. On the other, the ultimate root is *natural* justice, which suggests general abstract principles. But in truth, these should be thought coordinate. The function of the law is to settle cases in a fair way, by reference to what the parties, and their cases, have in common. All disputes are particular, and so our data are all “case” in kind. Yet the point of a memory bank of cases is to see how they may be compared, how we can learn from one to the next. The fact that we can do this is itself ample evidence that the justice in question really is “natural.” It is natural in that it arises from the nature of the

³ Roger Scruton, *The West and The Rest*, (Wilmington, DE, ISI Press, 2002), 49-50.

case and of the circumstances. It is not a simple contest of wills, but of wills that claim to have a superior case - thus implying that "cases" are to be made and had.

This alters the situation drastically. We should not be conceiving the problems to be solved as ones essentially to be resolved by superior force of arms. We should instead be thinking of problems between people that can be solved by formulating and invoking common principles, deriving from common interests, even when the interests in the disputed cases do conflict.

The Libertarian thesis is that there is no superior interest to peace, provided it be universal. Peace can extend everywhere and be enjoyed by everyone; war, if extended very much, results in misery for everyone. We all know that. And so those who would inflict misery for the sake of gain, or just for the thrill of it, are truly the enemies of mankind, and need dealing with as such. Now, this is not the sovereign laying down something; it is common sense. And the question is whether it can function in the absence of a "sovereign laying down something." But really, the question is why it wouldn't so function, especially since it actually *does* so function, ubiquitously. To say that power-hungry men will usurp the reasonably well-functioning relations of particular people is only to raise the question why they will be able to do so. Presumably they will depend on henchmen. Then there will be persons, their potential victims, who rise up to oppose them, and then what? Usually, one supposes, someone has "won." But what has won in recent times is, roughly, a system in which democracy and the rule of law figure prominently. Should not the fact that the democracy in question is flawed, the laws turn out to be the fiats of tyrants rather than general principles to which all can appeal, without need of intermediaries in the form of legislators, matter?

These reflections take us back to our opening dilemma. Against the advocate of the Large State, such as we find almost everywhere today, the Minimalist complains that it is *too* large, that liberties are being unnecessarily or unjustly trampled. But that is the complaint that the anarchist levels against the minarchist, is it not? When we take up the slogan that “that government is best which governs least”, then what is to prevent us going further and concluding, with Henry Thoreau, that the very best government is the one that doesn’t govern *at all*?

Prospects for either, it must be confessed, are pretty dismal at present. The state is if anything expanding, and those who claim to be in favor of its diminution in fact have political programs that expand it. Unwary citizens buy the wares of politicians, unmindful of their costs. And then, threats from without and within arise to provide excuse, if not justification, for more action by the state.

This in turn raises the question what the minarchist or the anarchist is to do? Forming a political party with a view to getting our program adopted by political means is, of course, playing into the hands of the enemy at one level - embracing the state to destroy it. But there is no attractive alternative to this. The figure of the terrorist is, to put it mildly, not an attractive one, not to mention that his methods are such as to guarantee failure. And in principle democracy is open to any sort of domestic program that can command a majority. Yet, as noted above, the trend is exactly the reverse to what we might expect. The generous half-, quarter- and null-truths of politicians continue to rule the day.

Some sort of an alternative, perhaps, is at hand in the form of evasion. And indeed, the state is considerably evaded in many areas of life, in one way or another. There is the “underground economy,” in particular, and of course the Internet. So one thought would

be that these very profitable activities will expand and fill the space of human relations. But I don't think anyone's betting on that, either.

The conclusion remains: if we are arguing on the plane of high moral theory, anarchism looks to rule the day. The minimal-stater can't urge realism against the anarchist, since his program is just as unrealistic; and it's hard to see how any genuinely principled case can be made for retaining a barely-discernible government as against none at all. So the case rests.