

Internal Inconsistencies in Arguments for Government: Nozick, Rand, and Hospers

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Those who deny that the provision of protection services could be supplied through either the market or some other nonmonopolistic device must therefore endorse some sort of state. And those within that group who maintain that the provision of such services to everyone within a given territory is the only proper function of government must therefore advocate a minimal, or *laissez-faire*, state. However, an examination of the arguments of three of the better-known contemporary minarchists discloses problems of internal inconsistency which render them unsound, *even on their own terms*.

But prior to dealing with these arguments, it must first be determined what is meant by the term "state" or "government." Philosophers have devoted considerable time to this question, and no definition has met with universal approval. For example, the well-known Weberian definition—that the state is that agency in society which possesses a monopoly on the (legitimate¹) use of violence within a geographical area—is open to the criticism that, since other individuals and groups (murderers, terrorists, the Mafia, etc.) do in fact use violent measures, *no state* actually possesses such a monopoly. On the other hand, minarchist philosopher Robert Nozick's "necessary condition" for the existence of a state—that it must "announce that, to the best of its ability . . . it will punish everyone whom it discovers to have used force without its express permission"²—may well be one necessary condition but it certainly is not a *sufficient condition* for the existence of a state.³ For just as *claiming* a monopoly, as Nozick acknowledges, is not sufficient to constitute a state, merely *announcing* that one will, "to the best of one's ability," punish anyone whom he discovers using force cannot be enough to constitute a state. Otherwise, an individual with no ability to punish, and who would therefore be punishing "to the best of his ability" while not actually punishing anyone at all, would have to be considered "a state." Thus, it is clear that together with the *announcement* of the intent to punish must go *considerable ability* actually to punish. Looking at it from the opposite end, in the absence of a single agency claiming to exercise, and

in considerable measure actually exercising, a monopoly on the use of violence, a society must be considered an anarchy. This, of course, is only a "theoretical" definition; it is operationally deficient. It leaves unspecified, for example, the thorny question of how close an agency must be to actually possessing a monopoly on violence for it to be considered a state. Fortunately, this lack of empirical specificity is irrelevant to our purpose of examining the minarchist arguments for government. Since this is a question of theory, our theoretical definition does have the distinct advantage of permitting us to proceed with the analysis.

1. Nozick's Argument

Probably the best-known, despite being the most recent, of the contemporary minarchist arguments for government is the "invisible hand" argument advanced by Robert Nozick, in his *Anarchy, State, and Utopia*.⁴

Nozick begins with a discussion of a hypothetical anarcho-capitalist society in which protective services would be supplied on the market just as all other goods and services are. But protective services, he says, are unique in that they employ coercion. Therefore, in defending their respective clients they would come into conflict with each other, the result being that one dominant protective agency would eliminate its competition and emerge as the single such agency in a particular geographical region.⁵ This, says Nozick, would constitute an "ultraminimal state" in contrast to the "minimal" state of the classical liberals. The ultraminimal state, by the law of supply and demand, eliminates its competition in a particular area, thereby maintaining "a monopoly over the use of force" but providing "protection and enforcement services only to those who would purchase its protection and enforcement policies."⁶ The classical-liberal minimal state, on the other hand, held a *legal* monopoly over the use of force and supplied protection services to *all* its citizens.

However, argues Nozick, the ultraminimal state will soon transform itself into a minimal state, for under an ultraminimal state individuals would still be free to extract "private justice," and "the knowledge that one is living under a system permitting this, itself produces apprehension," with individuals never knowing how or when they may receive "retribution" from a private agent. Fear will pervade the entire society. Thus private justice constitutes "a public wrong." To protect its clients, the dominant protective agency may then "prohibit the independents from such self-help enforcement." This will not mean that the independents will be left defenseless, contends Nozick, for, according to the "principle of compensation," "the clients of the protective agency must compensate the independents for the disadvantages imposed upon them by being prohibited self-help enforcement of their own rights against the agency's clients. Undoubtedly, the least expensive way to compensate the independents would be to *supply* them with protective services to cover those situations of conflict with the paying

customers of the protective agency." This will not lead to "free riders," insists Nozick, for "the agency protects these independents it compensates only against its own paying clients on whom the independents are forbidden to use self-help enforcement. The more free riders there are, the more desirable it is to be a client always protected by the agency."⁷

While believing that this argument has justified the state, Nozick then proceeds to point out that, given natural rights (which he admits he merely assumes rather than demonstrates⁸), anything beyond the minimal state, including taxation, entails the violation of those rights, since it means the initiation of force against peaceful individuals. Hence, "the minimal state is the most extensive state that can be justified."⁹

While this is a most intriguing argument, it is not at all clear that Nozick has, in fact, succeeded in justifying the minimal state *even on his own terms*. For a minimal state, he notes, must (a) exercise, or attempt to exercise, a monopoly on the use of force within a given territory, and (b) provide everyone within its domain with protection.¹⁰ But while the dominant protection agency would prohibit self-help enforcement among its own clients and between independents and clients, its domain, Nozick says in a significant passage, "does *not* extend to quarrels of non-clients *among themselves*."¹¹ Nozick's dominant protection agency therefore falls short of *his own criteria* for a minimal state. In fact, since independent agencies could continue to operate so long as they did not confront the dominant agency, it is not even clear that the latter would constitute an ultraminimal state, which requires the provision of protection services by a single agency.¹² Nozick, it should be noted, is aware of this difficulty and reacts to it by simply relaxing his criteria. He then refers to the dominant agency as a "state-like entity" instead of simply a "state."¹³

There is, however, the potential for an additional problem. Suppose, theorizes Roy Childs, that in the midst of an established minimal state an agency arises using procedures identical to those of the state's agents. Since, under this condition, the incipient agency could not be any more risky than the state, a state operating on Nozickian principles would have no grounds for prohibiting its activities. But, continues Childs, since the state was already compensating those who would have patronized agencies using risky procedures, the new agency would not have to assume this burden and could therefore charge lower prices for the same quality service. This, in turn, would create an economic incentive for people to subscribe to the new agency, thereby forcing the minimal state to abandon its own compensation policy. But this would mean that the minimal state had reverted to the ultraminimal state. But, continues Childs, if the new agency continued to win new clients, and if other entrepreneurs, seeing the success of the new agency, also entered the field, the ultraminimal state would degenerate into a mere dominant agency, and eventually into "simply one agency among many."¹⁴

In short, the application of Nozickian principles to the Nozickian minimal state indicates that (1) such a state would tend to be internally unstable and (2) any attempt by the state to stabilize itself through the prohibition of competing protective associations which employ non-risky procedures would be a clear violation of Nozickian principles. Thus, it is likely that a Nozickian minimal state, even if established, would be short-lived and soon lapse back into anarchy. As Childs puts it, the invisible hand would strike back.

2. Rand's Argument

Another well-known argument for the minimal state is that of the objectivist philosopher, Ayn Rand. Not only does Rand advocate a minimal state but, like many other contemporary minarchists, she opposes taxation as a form of involuntary servitude.

The starting point for Rand is the cognition that life in society presupposes the repudiation of the initiatory use of violence. But, says Rand, "if physical force is to be barred from social relationships, men need an institution charged with the task of protecting their rights under an *objective* code of rules."¹⁵ And such a code, she believes, precludes the possibility of competition in this area. It is this fundamental incompatibility of force and production that is ignored by the anarchists. Suppose, says Rand in her critique of what she calls the anarchist theory of "competing governments," that

Mr. Smith, a customer of Government A, suspects that his next-door neighbor, Mr. Jones, a customer of Government B, has robbed him; a squad of Police A proceeds to Mr. Jones's house and is met at the door by a squad of Police B, who declare that they do not accept the validity of Mr. Smith's complaint and do not recognize the authority of Government A. What happens then? You take it from there.¹⁶

But while a government, defined as "an institution that holds exclusive power to *enforce* certain rules of social conduct in a given geographical area," is absolutely necessary, its *only* proper function is the protection of individual rights.¹⁷ Moreover, since the right to property is a most fundamental right, taxation would be immoral, and Rand therefore opts for what she terms "voluntary government financing."¹⁸ The wealthy strata who would have the most to lose if there were no agency to protect individual rights would, she believes, contract to contribute for the maintenance of this function. And since, she continues, police protection is a collective good, "those on the lowest economic levels. . . would be virtually exempt—though they would still enjoy the benefits of legal protection." The great merit of this arrangement, she says, is that it would keep government to a minimum. "Men would pay voluntarily for insurance protecting their contracts. But they would not pay voluntarily for insurance against the danger of aggression by Cambodia."¹⁹

Beyond these rather vague and cursory remarks Rand has written very little to further clarify her concept of "proper government." Some attention should therefore be paid to the recent series of articles by the objectivist, Paul Beaird, purporting to delineate and expand upon the Randian views on government.²⁰ According to Beaird, the crucial distinction between the Rothbardian-anarchist and the Randian-objectivist proposals for the rendering of police protection is that the latter is predicated upon the concept of *territorial jurisdiction*, while that notion is completely absent in the former. Because Rothbardian anarchism "lacks the geographical definition of jurisdiction," competing defense agencies, offering different policies and enforcing different laws, will operate on the same terrain. The result will be that "a person cannot be safe from the potential interference of unchosen defense agencies, even on his own territory."²¹ The concept of jurisdiction solves this problem by establishing a single enforcement agency with "exclusive power" to enforce rules of conduct within a clearly demarcated territory. But the extent of any government's jurisdiction, Beaird says, would be determined by the individual decision of each property owner. "The area of a proper government's authority extends no further than the property lines of the lands owned by its citizens. When a person subscribes to a proper government, his land is added to its jurisdiction." This, he claims, insures that a government will always be based on the "consent of the governed." For, the moment any property owner is no longer satisfied with "his government," he can secede from it and proceed "to contract with another government, or provide his own, or provide for none." Consequently, the application of objectivist principles may well "result in a map of a government's jurisdiction looking like a patchwork, with the patches being separated from each other by the lands governed by other governments."²²

This is a most curious doctrine indeed, for while firmly grounded in the Randian postulates of the sanctity of property rights, freedom of exchange and territorial jurisdiction, it nevertheless clearly conflicts with Rand's position on government on three fundamental points. The first follows from the idea that, according to the logic of the Beairdian analysis, every property owner would have the right to contract with the government of his choice. But this can only mean that all governments would operate on a fee-for-service basis. For any government endeavoring to provide free protection for the poor would be forced to raise its premiums to cover the subsidy. But this, of course, would encourage its patrons to seek protection from other governments not providing a subsidy and therefore in a position to offer lower rates. Thus, under the Beairdian proposal only those paying for protection would receive it. But this is clearly at odds with Rand's assertion that under an objectivist government everyone, including the poor, would receive protection.²³ Thus, while Rand opts for a minarchist state, the Rand-à-la-Beaird scenario would be consistent with, at most, an ultraminarchist state.

Secondly, Rand's major criticism of anarcho-capitalism is its failure to solve the problem of jurisdiction. Beard, of course, reiterates this criticism and maintains that this would not be a problem under his proposal, since "only one government" would have "authority on a plot of land at a time." But surely this would not be sufficient to alleviate the jurisdictional problem. Ironically, Rand's criticism of anarchism would apply with equal if not greater force to this Rand-à-la-Beard scenario. For it would certainly be possible for a Beardian society to be confronted with a situation in which "Mr. Smith, a customer of Government A, suspects that his... neighbor, Mr. Jones, a customer of Government B, has robbed him," and neither Government recognizes the other as legitimate. In fact, if every property owner were free to subscribe to the government of his choice, the number of governments would likely increase enormously—theoretically there could be as many governments as property owners—thereby magnifying the potential for the type of jurisdictional problems Rand is so anxious to avoid.

Finally, it is interesting that Rand calls the idea of "competing governments"—i.e., the idea that "every citizen" should be "free to 'shop' and to patronize whatever government he chooses"—a "floating abstraction" and a "weird absurdity." But how else could one classify the Beardian proposal except in terms of "competing governments" and the right of "every citizen... to 'shop' and to patronize the government of his choice"?

In brief, Beard's clarification of Rand's position on government is most significant. For, while clearly premised on and logically derived from Randian postulates, the Beardian scenario graphically illustrates the incompatibility between the Randian argument for the minimal state and Rand's own philosophical principles.

3. Hospers' Argument

The final contemporary minarchist argument with which I will deal is that made by philosopher John Hospers. Like the others, this, too, collapses from its own internal contradictions. While Hospers' outline of his ideal social order is sketchy, certain aspects of it are clear. First of all, everyone is held to have such "human rights" as those to life, liberty and property.²⁴ The sole function of government is the protection of these rights, and a government is legitimate so long as it restricts its activities to this sphere; but as soon as it exceeds this sphere it becomes an aggressor. Second, since an absolutely fundamental right is that to property and since taxation is a clear violation of property rights, there would be no taxation by a Hospersian government. (Hospers denies that there can be any rights in the absence of property rights.²⁵)

The government, Hospers believes, could support itself through a fee-for-service policy. The only time anyone would pay a government agency would be when, and to the extent that, he chose to avail himself of a government

service, and no one would be forced to receive or pay for any service he did not desire. Thus, an individual would be free to interact with others in the way he wished, including perhaps the signing of a contract. If one desired to insure himself against the possibility of contractual default he could, upon signing the contract, elect to pay a fee to the government thereby granting him access to the courts in the event of any contractual dispute. This fee—which Hospers reluctantly terms a “contract tax”—would be voluntary: people would only pay the fee if they found it in their interest to do so. However, since a Hesperian state would be so minuscule, and since “most people would find it to their interest to pay the fee,” he is confident that the government could be supported in this manner.²⁶

A very similar arrangement is suggested for police protection. While Hospers feels that statutory law, and thus a government, is necessary to insure a rule of law, he sees no reason why the government would have to enforce its own law. In fact, he acknowledges that “private police forces are doubtless much more efficient than those run by government.”²⁷ There is therefore an economic advantage to permitting police protection to be handled entirely by the market. The only restriction that it would be necessary to impose upon these private police companies—a restriction that Hospers feels would be impossible to enforce in an anarchist society—is that “they should be able to enforce only *the law of the land*.”²⁸ Beyond this, police companies would have complete freedom to compete against one another just like firms in any other field. Anyone desiring police protection could purchase it from the firm of his choice. And while no one would be compelled to purchase protection, only those paying the protection fee would receive protection. “If you want police protection you have to pay a fee to obtain it, but of course you are free not to want it or pay for it, in which case,” Hospers continues, “you will not have the protection even if you need it.”²⁹

In short, Hospers maintains that, while “laws should . . . be enacted by the state, . . . the enforcement of them might be left to private agencies.”³⁰ The provision of both police and court services would be handled on a fee-for-service basis; individuals would be free to purchase or not to purchase these services as they see fit but would be unable to purchase the services of any maverick police agency or court which adhered to norms at variance with those laid down by the state.

It is interesting to note that since a Hesperian state would render protection only to those purchasing it, it does not meet the criterion of a minimal state, which by definition must provide protection for everyone within its territorial boundaries regardless of payment. We may, therefore, borrow a term coined by Nozick and refer to Hospers as an “ultraminarchist.”

It is possible, however, that even this appellation is too strong. One of the essential criteria of a “state” is that it must come close to actually exercising a monopoly on the use of force within a given area. But since, in a Hesperian society, the use of force would presumably be handled not by the “government” but entirely by private police agencies, this raises the very ser-

ious question of whether the Hesperian "framework" meets the monopoly criterion to qualify as a state of any kind. Hospers might, of course, argue that his entire system—the legislature, plus fee-for-service courts and the private police agencies—constitutes a "state". But, surely, this would be "concept-stretching" to the point of meaninglessness.

Even more important is the question of how, if the use of force is to be left up to private police agencies, could the Hesperian proviso that these agencies must only enforce the legislature's statutory laws itself be enforced? What would happen if one, or two, or a dozen enforcement agencies started enforcing norms that conflicted with the laws enacted by the legislature? There are, so far as I can see, two possible scenarios. First, Hospers might contend that, since these maverick agencies would clearly be acting illegally, either they would not receive public patronage and so go out of business; or other police agencies, perceiving the threat of the illegals, would join forces to crush them. But since these are exactly the same measures Rothbardian anarchists rely on to insure the enforcement of their libertarian law code, Hospers' "ultraminarchism" would become all but indistinguishable from Rothbardian anarchism. Second, Hospers might alternatively argue for permitting the public legislature to diversify into the provision of police services. The public agency might then not only enact laws but also have enough force at its disposal to punish or crush any maverick agency. But since Hospers admits that private agencies are much more efficient than public ones, it is difficult to see why anyone would purchase protection from the latter. Consequently, the only ways the public agency could remain in business would be either by outlawing not just maverick, but *all*, private police agencies, or by charging every police agency a fee sufficiently high to cover the public agency's losses. Since the public agency would now hold an effective monopoly on the use of force it would meet the criterion for a state, although if it continued to operate on a fee-for-service basis it would remain a less-than-minimal state. However, it must be noted, neither of these options can be reconciled with libertarian principles. The outlawing of all private agencies would constitute a restriction on peaceful activities, while the fee charged every agency would be neither voluntary³¹ nor paid in exchange for services rendered. It would therefore be a tax in the full sense of that word.

In short, Hospers is placed in a dilemma: either he must permit taxation and some restrictions on peaceful activities, thereby violating his libertarianism, or he must rely for the enforcement of his "statutory law" on nonmonopolistic mechanisms, thereby violating his archism. As with Nozick and Rand, Hospers' defense of the minimal state collapses of its own internal contradictions.

Conclusion

The arguments for government of three of the better-known minarchists

have been examined from the standpoint of their internal consistency. All three are found to be premised on principles which, when consistently applied, prove to conflict with the concept of a state, minimal or otherwise. It has been said that the only consistent political positions are those of anarchism and totalitarianism. While this may or may not be true, the three contemporary minarchist arguments for the state examined here have indeed proved themselves to be inconsistent.

NOTES

1. Since this article deals with the question of the internal consistency of the minarchist arguments rather than with the moral justifications of government, I am not concerned with whether or not the use of violence by government can be justified. The question of whether a government can ever be a morally legitimate institution has been dealt with extensively by others. Two moral critiques of government that are modern classics are Murray N. Rothbard, "The Anatomy of the State," *Egalitarianism as a Revolt Against Nature* (Washington, D.C.: Libertarian Review Press, 1974), pp. 34-53; and Roy Childs, "An Open Letter to Ayn Rand," *Rational Individualist* (August, 1969).
2. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), pp. 23-24.
3. It should be pointed out that Nozick does not claim that this is a sufficient condition for the existence of a state; he merely says that it is one of the necessary conditions. The other necessary conditions are left unspecified.
4. Nozick, *Anarchy*, pp. 23-24.
5. Nozick appears to be on very shaky empirical grounds here. There are currently about 40,000 police forces in the United States. The "conventional wisdom" has been that a substantial reduction in that number would produce significant gains in terms of effectiveness and efficiency. However, as Vincent Ostrom recently pointed out, several empirical tests of this "conventional wisdom" indicated that "most of the statistically significant relationships ran counter to the hypothesis that an increase in size of jurisdiction would be positively associated with higher levels of police performance." Vincent Ostrom, "Neighborhood Organization and Urban Administration," *Neighborhood Concepts of Local Government*, ed. Barbara Knight and Myra Mae McFarland (Fort Wayne, Ind.: Government Reorganization Study Advisory Board, 1975), pp. 14-17. But if large police forces are conducive neither to economic efficiency nor to police effectiveness, then it is difficult to see how any Nozickian "dominant protective association" could emerge on the free market.
6. Nozick, *Anarchy*, pp. 15-26.
7. *Ibid.*, pp. 67, 110-13.
8. *Ibid.*, pp. 33-35.
9. *Ibid.*, p. 156.
10. See *ibid.*, pp. 22-25.
11. *Ibid.*, p. 109 (emphasis in original).
12. See John Sanders, "The Free Market Model Versus Government: A Reply to Nozick," *The Journal of Libertarian Studies* 1 (Winter 1977): 35-44.
13. Nozick, *Anarchy*, p. 118.
14. Roy Childs, "The Invisible Hand Strikes Back," *The Journal of Libertarian Studies* 1 (Winter 1977): 23-33.
15. Ayn Rand, *Capitalism: The Unknown Ideal* (New York: Signet, 1967), p. 331.
16. *Ibid.*, p. 335.
17. *Ibid.*, p. 332. Rand also states, however, that "the source of the government's authority is 'the consent of the governed.'" (p. 332). But this introduces a tension—of the same sort found in John Locke and Herbert Spencer—between natural rights on the one hand and consent on the other. Would an individual be obliged to obey a government enforcing only "natural rights" even if he had not consented to it?

18. Rand, *The Virtue of Selfishness* (New York: Signet, 1961), pp. 116-20. Interestingly, Rand also outlines a scheme of the payment of court services through a Hospersian-like, fee-for-service arrangement, while Hospers, in turn, says he would have no objections to a Randian-donation policy.
19. *Ibid.*, pp. 118-19.
20. Paul Baird, "Of Proper Government," *Option*, pt. I (January 1976): 19-20, 28; pt. II (April 1976): 12-14, 26-27; pt. III (May-June 1976): 22-26.
21. Baird, "Of Proper Government," pt. III, p. 24.
22. Baird, "Of Proper Government," pt. II, p. 12. Baird defends his consent doctrine by recourse to "tacit consent." This, of course, makes it very similar to the Lockean position, and it is therefore open to the same criticisms. While the landowner consents to a government by the positive act of subscribing to it, a traveller, a renter, etc., is claimed to be automatically consenting to a government simply "by entering land" over which a particular government has been given jurisdiction by the owner. But surely such a strained use of the term robs it of any real meaning.
23. It is true that Rand does mention the possibility of a fee-for-service arrangement for "one of the needed services" rendered by government, viz., "the protection of contractual agreements among citizens." But not only does Baird extend this to all government services, he also ignores Rand's disclaimer that "this particular plan is mentioned here only as an illustration of a possible method of approach to the problem...not as a definite answer..." Rand, *Selfishness*, p. 117. She also mentions the possibility of lotteries, but Baird has preferred to ignore this suggestion. Moreover, this fee-for-service suggestion, especially when extended beyond the area mentioned by Rand, would conflict with her goal of providing everyone, including the poor, with police and court services.
24. John Hospers, "What Libertarianism Is," *The Libertarian Alternative*, ed. Tibor Machan (Chicago: Nelson-Hall, 1974), p. 13.
25. *Ibid.*, pp. 7-8; and Hospers, *Libertarianism* (Santa Barbara, Calif.: Reason Press, 1971), pp. 61-62.
26. Hospers, *Libertarianism*, pp. 386-87.
27. John Hospers, "Will Rothbard's Free-Market Justice Suffice? No," *Reason* (May 1973): 21.
28. *Ibid.*
29. Hospers, *Libertarianism*, p. 387.
30. Hospers, "Rothbard's Free-Market Justice," p. 21.
31. It would certainly be stretching the point to maintain that the fee would be voluntary since consumers could forego purchasing protection altogether, and those providing protection could enter a new line of work, if either objected to the fee. This is tantamount to arguing that the obligation to pay income tax is "voluntarily" assumed when the individual "chooses" to earn a living.