

**AGAINST POLITICS: ON GOVERNMENT, ANARCHY,
AND ORDER. BY ANTHONY DE JASAY. LONDON
AND NEW YORK: ROUTLEDGE, 1997**

This is a wonderful collection of previously published articles by Anthony de Jasay who, it turns out, is an undiscovered Austrian, or at least a close cousin. The essays in *Against Politics*, published between 1989 and 1996, are united around a common theme, the economic and political aspects of government and “ordered anarchy.” The book is full of sparkling insight and penetrating, calm dissections of pro-state arguments. Opponents of the state will find much ammunition here. Statists (even of the minimalist variety) will find much to ponder.

Jasay’s arguments pack quite a punch, and make it clear that he is a powerful, careful scholar. He also appears to be a quasi-Austrian economist and political theorist, which is surprising given that he does not appear to be very familiar with the work of Austrian theorists, such as Mises and Rothbard. Has he even read *Human Action*? One wonders. The primary well-known Austrians he cites are Hayek and Wieser, who represent the “Vienna School” (p. 162) instead of the Austrian School. He has apparently come to many Austrian conclusions without the benefit of much exposure to Austrianism. For example, he makes good use of the observation that not only is utility not measurable, but interpersonal utility is also completely incommensurate (see, e.g., pp. 81–81, 92, 98, 144). He even writes that, “[u]nlike the physical sciences, inference presupposing purposiveness is proper to the study of reasoning beings and cannot be avoided without inordinate loss of content” (p. 74), which bears an uncanny similarity to Mises’s own epistemology (Mises [1949] 1966; 1962; 1981).

The book is divided into two parts. The seven chapters of Part 1 are critical of statism, the view that political action is necessary, efficient, or desirable. In the four chapters of Part 2, our author somewhat tentatively proffers his own politico-economic theories, designed to show that various desirable social institutions are possible without political arrangements. The essays are well-ordered and generally fit together almost as well as chapters of an integrated work, although, as is to be expected in a collection of this kind, there is some repetition and redundancy. (A useful summary of the book’s themes, structure, and arguments is found in the Introduction, at pp. 4–7.)

Jasay, like Austrian David Gordon, is a master of criticism.¹ A standard technique is to hold a statist’s logic up to standards that the statist himself espouses. In a

¹It might be interesting to see the two review each other’s work.

The Quarterly Journal of Austrian Economics vol. 1, no. 3 (Fall 1998): 85–93

rare personal glimpse, he reveals an instance of applying this technique in his own life:

The present writer, when a subject of a "people's democracy" [presumably the author's country of origin, Hungary], used to taunt his political masters that capitalism had never existed anywhere, that it was yet to come, it was the "wave of the future"—a taunt that reduced them to fury but naturally failed to provoke any refutation. (pp. 108–9)

Given his powers of criticism, the critical pieces in Part 1 contain stronger arguments than Part 2, although for some (such as this reviewer), the essays in Part 2 will still be of at least as much or more interest. For although his positive theorizing is weakened by his own moral skepticism (more on this below), it is strengthened by his critique of statist alternatives; further, his basic intuitions and premises are largely sound. Combine this with a multitude of keen insights and critiques of opposing social theories, and Part 2 is of immense interest, even with its deficiencies.

Part 1 opens with "Self-Contradictory Contractarianism," which addresses the argument that various "intractable" problems of the state of nature, such as prisoner's dilemma and free riding (pp. 11–12), prevent systematic social cooperation. One way out of these dilemmas would be to make "binding" contracts. However, people cannot make binding contracts in the state of nature, since rational actors without fear of sanction will always default, thereby making contracting impossible and requiring the state to provide an effective contract enforcement mechanism.

But, Jasay asks, "if contracts require an enforcer, how could there be a social contract creating an enforcer without *its* enforcement being assured by a meta-enforcer created by a meta-social contract, and so on in an infinite regress" (p. 5). Jasay recognizes that the proposed solution assumes that the state can act as an "enforcing agent acting as a programmed automaton" (p. 19). Yet this is to "assume away the principal-agent problem" (*ibid.*), since the state has little reason to restrict itself to enforcing the contract. For these and other reasons, "[t]here is . . . no contractual exit from the state of nature: if the state is to be created by contract, it cannot be created, since it is its own antecedent condition" (p. 22). Thus this particular ground for the necessity of the state contradicts itself, and advocates of government are hoist by their own petard.

Jasay correctly recognizes that the real question is whether ordered anarchy (what we would call anarcho-capitalism) is possible or not, and this question "ultimately boils down to the issue of the enforcement of mutual promises without a final specialized enforcer" (p. 29). Jasay seems at home with the somewhat dubious field of game theory, but this helps to make him especially suited to criticize its irrelevance to the actual world. He argues that typical game-theoretical arguments are unrealistic and inapplicable to real-life situations, since "[a]nyone who has a name, lives in a place, does something for a living—that is, anyone tied into the fabric of society—would think twice before treating mutual promise as the single-play prisoner's dilemma says he must" (p. 33). We can,

therefore, expect that contracts can be self-enforcing, without the aid of a centralized enforcing agent, and thus at least some of the dilemmas that are claimed to be part of anarchy are chimerical.²

Indeed, as argued in chapter 2, "Is Limited Government Possible?," it is not proponents of anarcho-capitalism but rather those who advocate limited government who hold unrealistic views. Our author recognizes that "[t]here is a plethora of constitutional devices for 'rigging' rules and procedures in such a way as to clip the wings of the state" (p. 53). However, the real problem is not how to invent such devices but to find the conditions, if possible, that would be likely to be adopted and to stay intact long enough to do any good (ibid.). Jasay's economic reasoning here persuasively demonstrates why no such artificial restriction is likely to succeed, and why any government can be expected to have a tendency to grow (p. 57ff).

The other chapters of Part 1 are also interesting and insightful. "Frogs' Legs, Shared Ends, and the Rationality of Politics" (chap. 3) argues that politics generally cannot have rational grounds and cannot be rationally defended. This essay, however, seems more hastily written and more poorly organized than most others in the book. "The Twistable is Not Testable" (chap. 5), a review essay of Popper's *The Open Society and Its Enemies* (1962), shows Jasay at the height of his critical powers. In this piece, Jasay subjects Popper's own (socialistic) propositions "to the acid of the very method of which he is the champion" (p. 105), the test of falsifiability. Popper contended that "[g]enuine propositions are capable of being corroborated, and are criticized by a process of confrontation with the ascertainable facts of the case" (ibid.). However, Popper advocated both democracy and socialism; yet, as Jasay shows, this advocacy rests upon completely unfalsifiable building block descriptions, concepts, and judgments, such as "weak" and "strong." For example, these concepts are essential to the Popperian proposition that social institutions must be constructed to protect the "economically weak" from the "economically strong" (pp. 114–15). Thus, Jasay shows that Popper's socialism is indefensible by Popper's very own scientific standards.

In the course of this essay, Jasay also deflates the myth that Popper was a liberal (p. 114). Also of interest is Jasay's critical treatment of other prominent liberal economists and political theorists, notably James Buchanan, F.A. Hayek, and Robert Nozick. In "Hayek: Some Missing Pieces" (chap. 6), for example, Jasay argues that Hayek "has no complete theory of the social order to back up his liberal recommendations" (p. 120). In advocating that government should go beyond the maintenance of law and order to provide amorphous and endless "highly desirable" public goods, Hayek ends up supporting virtually unlimited government. Jasay will have none of this:

²Further, as Alfred G. Cuzán (1979, pp. 151–58) has insightfully pointed out, the existence of the state itself is evidence that anarchy is possible, for officials of the state "voluntarily" abide by certain hierarchies and rules, e.g., the American president is physically less powerful than his armies, yet they tend to obey him rather than *vice-versa*.

A theory of social order is incomplete if it makes no serious attempt at assessing the long-term forces that make the public sector grow or shrink. This can hardly be done without relying on a defensible theory of public goods. Hayek feels no necessity for one. Strangely, the question seems to have held no interest for him. (p. 125)

In other words, Hayek has not done his homework, and his half-baked political theory endangers the very freedom that he is viewed as upholding. (The critiques of Nozick and Buchanan are discussed below in Part 2.)

I have mentioned above that Jasay's work could be improved if it built more on and dealt more with contemporary Austrian theory, in particular Misesian economic theory as well as associated political theories, such as those of Rothbard. But this is unfair and somewhat ungrateful. We cannot rightfully criticize him for what he has not done, especially when what he has done is so significant. It might be better to say that, given his obvious acuity and talents, it seems a shame that he has not done so. One can only hope that we see more treatment and use of Austrian work in his further output.

For example, his discussions of the so-called public goods "dilemma" (pp. 20, 124) could have profited from the trenchant insights of Austrians Murray Rothbard (1962, p. 883; 1997a) and Hans-Hermann Hoppe (1993, chap. 1; 1998), among others. His discussion of why government will tend to grow (p. 57ff.) could also be usefully supplemented by recent Austrian politico-economic theory (Hoppe 1994a, pp. 319–51). Rothbard (relying on Schütz) criticized the empiricist assumption that only "verifiable" (or falsifiable) propositions are "scientific" and thus the existence of human action and even other human actors cannot be scientifically maintained, on the grounds that the principle of verifiability itself requires other human beings to exist to replicate experimental results (Rothbard 1997b, p. 33). This insight could have been used with profit in Jasay's Popper critique (chap. 5). Jasay's critiques of Nozick (pp. 170, 174, discussed below) and Hayek (chap. 6) could have also fit well with Austrian analysis.³

A more serious objection lies in Jasay's moral skepticism. His general skepticism serves him well as a critic, since it leads him invariably to put the burden of proof on those who advocate the state, and to find their proof wanting. However, his own skepticism goes too far and is itself unwarranted. It also undercuts his own positive theorizing, since even that, as tentative as it is, depends on some modicum of moral judgments or assumptions.

Jasay seems to believe that the only meaningful propositions are those that are subject to rational criticism, and that only falsifiable propositions that can be corroborated or not, fall into this category. One exception is that "value judgments" that are not merely *ad hoc*, i.e., that fit into some coherent hierarchy or system, can also be criticized if they are not internally consistent (p. 106). I may be too hasty here and may be unfairly attributing to him a kind of Popperian

³On Nozick, see Rothbard ([1982] 1998b); on the error in the Lockean proviso and Nozick's adoption thereof, see Hoppe (1993, p. 246); on Hayek, see Hoppe (1994b), and Walter Block (1996, pp. 327–50).

scientism that he means to present and critique rather than adopt. However, over and over, Jasay denigrates the idea that ends or values can be rational. Thus, “[w]hat is ultimately unfalsifiable, immune to rational criticism and useless except as a piece of gratuitous self-expression, is the stand-alone, ad hoc value judgment” (p. 106; see also pp. 16–17, 36 n. 2, 66).

Here is where perhaps the greatest improvement could be made to Jasay’s thought by careful consideration of important Austrian work. In particular, Hoppe’s extension of praxeology into the field of ethics, the importance of which cannot be overstated, demonstrates that there is indeed an unchallengeable, rational basis for ethics (Hoppe 1989, chap. 7; 1993; Kinsella 1994; 1997; 1996; Rothbard [1982] 1998b; [1973] 1978; 1985). In fact, in his skepticism and his subsequently deficient political theorizing, Jasay has more in common with Mises than just economics. For Mises himself, as Rothbard (1997c, pp. 78–99) has pointed out, as an opponent of objective ethics, presented a weak, and, ultimately, unsuccessful, utilitarian defense of liberalism.

The most important and interesting essay of Part 2 is “Before Resorting to Politics” (chap. 8), which Jasay admits is “the book’s most ambitious” (p. 6). In this chapter, he criticizes the consequentialism and other problems that, as he sees it, plague modern liberal theory. In its stead he “proposes three, admittedly sketchy, ‘principles of politics,’” which are “entailed in the liberal ethic” and which must be incorporated into the foundations of any coherent liberal theory (p. 147).

As noted above, however, Jasay does not seem to believe that normative propositions can be justified, and he does not really try to do so. He just uses the occasional “should” and normative premise where it is unavoidable, and appears to simply presume that the reader shares these (uncontroversial) premises, perhaps counting on the reader’s own goodwill or love of consistency. For example, he merely asserts that “[i]t is dubious in the extreme that a political authority is entitled to employ its power of coercion for imposing value choices on society . . . and on individual members” (p. 151). Yet the force of the normative concepts “dubious” and “entitled” here is diluted by the lack of even an attempt at justification.

Jasay’s argument is thus a hypothetical one—and I am not sure if he would disagree, for I am not sure he thinks anything better is possible—for it relies for its persuasiveness on the listener already valuing (for some reason) the goals of justice, efficiency, and order. Nevertheless, because most of these principles are certainly sound and justifiable anyway (for example, using Rothbard’s or Hoppe’s ethical theory), and because Jasay’s critical and analytical skills are so acute, much of interest emerges from this essay.

His three principles of politics are: (1) if in doubt, abstain from political action (pp. 147ff); (2) the feasible is presumed free (pp. 158ff); and (3) let exclusion stand (pp. 171ff). The justification of principle (1) begins with a vigorous critique of consequentialism. Jasay notes that most political action requires assessing the worth or value of various policies. Drawing on the idea that interpersonal utility and values are incommensurate, Jasay points out that we

can rarely know if any proposed government measure is really “worth it” or not (pp. 149, 151). Thus, government action, which necessarily employs the power of coercion, should be avoided where possible; the burden of proof should be on those agitating for it. This entails a corollary principle, “that applying coercion is legitimate when it is positively invited by the prospective coercee” (p. 156).

Next, in principle (2), “the feasible is presumed free,” Jasay asserts that “[t]he basic rule is that a person is presumed free to do what is feasible for him to do” (p. 160), as long as the proposed feasible action is not ruled out by his own obligations or the possibility of harm to others. We should live by right and not by permission, presumably in part because the former situation is more workable and efficient. If a feasible action is thus presumed free, then the actor need not prove that the action is permissible; rather, the burden is on him who challenges the permissibility of the action (*ibid.*). Otherwise, an actor might be unable to ever act since it would be essentially very difficult to prove a negative by showing that no one will be harmed.⁴

Incidentally, Jasay offers an interesting critique of Nozick’s conception of rights here. By viewing rights as “permissions” to do something, rather than as claims for performance by another, Nozick perhaps unwittingly endorses a system in which action is not presumed free, as action is undertaken with “permission” by others, which presumably must first be granted (p. 170).

I found the justification of principle (3), “let exclusion stand,” to be of most interest, especially the discussion of homesteading or appropriation of unowned goods. Jasay equates property with its owner’s “excluding” others from using it, for example by fencing in immovable property (land) or finding or creating (and keeping) movable property (corporeal, tangible objects). Thus, the principle means “let ownership stand,” i.e., that claims to ownership of property appropriated from the state of nature or acquired ultimately through a chain of title tracing back to such an appropriation should be respected.

The basic defense of the Lockean proposition that the first or original appropriator of property is entitled to appropriate it draws on his previous “feasible” principle (2) as well as his distinction between rights and liberties. Others have objected to the idea that one can appropriate unowned property on the grounds that such an action unilaterally (and thus unjustifiably) imposes on others moral duties to refrain from interfering.

The basic defense, however, is quite general and straightforward. It is that if a prospective owner *can* in fact perform it, taking first possession of a thing is a feasible act of his that is

⁴Interestingly, Hoppe (1989, chap. 7; 1993, chaps. 8–11) has used similar reasoning in his argumentation ethics, based on the concept of action inherent in argumentation, to show that any arguer necessarily values action and its precondition, property rights. However, unlike Jasay, who seems unsure whether he is really justifying his principles or merely stating a nice, workable system that he, as a private citizen, happens to prefer, Hoppe employs this reasoning to derive an objective, rationalist justification for private property rights.

admissible if it is *not a tort* (in this case not trespass) and violates no right; but this is the case by definition, i.e., by the thing being identified as “unowned.” (p. 173)

Thus, by treating individuals as being free to act unless it contravenes a right (claim) of another, there is simply no reason *not* to allow a person to appropriate unowned property. For who could object, if not another, prior owner? To be entitled to object is to be able to “exclude” the claimant, but the right to exclude is an incident of ownership, and the property is by presumption unowned. No one can validly object to my appropriating unowned property, then, because, assuming feasible actions are free, any objection itself must claim a right, and this itself raises a type of ownership claim.⁵

The beauty of this approach is that it avoids the troublesome “Lockean proviso,” which allows homesteading of unowned goods only so long as “enough and as good is left to others” (p. 188, n. 15; see also 195). Nozick, on the other hand, allowed appropriation of an unowned object only if it did not worsen the situation of others. However, Jasay points out, in a world with finite resources, this condition would make it impossible for any unowned property to ever be used, since any appropriation causes a loss of opportunity for others to homestead the object and thereby worsens their situation. By contrast, Jasay’s position “does not require that nobody loses as a result of first possession, as long as the losses were not vested interests” (p. 188, n. 15).

Jasay’s application of his appropriation rule to two basic types of appropriation is also worth study. These two types are “finding and keeping” and “enclosure” (p. 174). The former appears to apply primarily to movable objects that may be found, taken, and hidden or used exclusively. Since the thing has no other owner, *prima facie* no one is entitled to object to the first possessor claiming ownership. Other grounds opposing this might be that the thing was found at least partly by luck, and was thus undeserved. But for this to be relevant, there would have to be a general rule requiring the lucky in life to compensate the unlucky. However, such a rule rests on an unsupportable assertion.

For immovable property (land), possession is taken by “enclosing” the land and incurring exclusion costs, e.g., erecting a fence. As in the case with movables, others’ loss of the opportunity to appropriate the property does not give rise to a claim sufficient to oust the first possessor (if it did, it would be an ownership claim). However, for those who used to occasionally enjoy access to and use of the property, they do lose an actual benefit (pp. 176–77). Jasay admits that he cannot do full justice to this difficult issue, but offers a tentative solution. If some people previously used the property merely in passing, on an ad hoc basis, no right of theirs is violated by the homesteader enclosing it. However, if some identifiable, closed set of persons have used the property regularly enough to

⁵Similar reasoning is employed in my estoppel theory of rights to preclude someone from denying the rights that they necessarily presume exist in a certain context (punishment). This theory is related to and draws on Hoppe’s argumentation ethics. See Kinsella (1997; 1996). Hoppe’s insights into why the *first* appropriator has a better moral claim than latecomers is also of relevance here. See Hoppe (1989, pp. 141–44; 1993, pp. 191–93).

establish a precedent on which they rely, compensation must be paid them by the new owner (p. 177). (It is unclear why this regular use and "precedent" does not itself establish an ownership claim on behalf of the prior users; but Jasay is here speaking of borderline cases.)

Other chapters in Part 2 argue that rational choices by individuals in the state of nature can be expected to lead to enforcement of property rights and contractual promises (chap. 9). This chapter also shows that James Buchanan's interpretation of Hobbes and history is incorrect, and that proper understanding of both supports the idea that markets can exist prior to and without states, contra Buchanan (p. 198). In the last chapter, "Liberties, Rights, and the Standing of Groups" (chap. 11), one has to agree with his conclusion that "group rights" are problematic, and the proper bearers of rights are individuals.

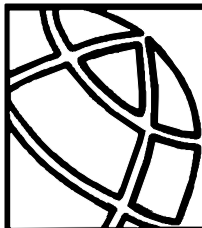
This is a thought-provoking book and I have only been able to touch upon some of the nuances and important insights it contains. Anthony de Jasay is a scholar and this work is an important contribution to economic and political literature; it should be read and studied by the serious student.

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US ISSN 0022-037X

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Issued October, January, April, July
North America (personal)--\$25.00, North America
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Macomb, Illinois 61455