

The Facts of Reality: Logic and History in Objectivist Debates about Government

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The man
Of virtuous soul commands not nor obeys.
Power like a desolating pestilence
Pollutes whate'er it touches: and obedience,
Bane of all genius, virtue, freedom, truth,
Makes slaves of men, and of the human frame
A mechanised automaton.
— Percy Bysshe Shelley (quoted in Stephens 1990, 19)

Preface

This paper is a contribution to the long-running anarchy/minarchy debate.¹ It is in five parts. Part I responds to a critique of anarchism by David Kelley. Part II revisits individual rights, the protection of which is at the root of the debate. Part III examines the proposition ‘government is justified because it protects rights.’ Part IV looks at the premise ‘government is essential to protect rights,’ while Part V reconsiders some of Ayn Rand’s historical views in light of the evidence discussed.

A note about terminology: in this essay, rightly or wrongly, the words ‘state’ and ‘government’ are used interchangeably to refer to any geographically-defined monopoly on the use of force—including ‘limited government’ or ‘minarchy.’ ‘Anarchism’ refers to *libertarian anarchism*, the philosophical advocacy of a future society without such a monopoly.²

Part One: Kelley and the Necessity of Government

Anarchy is order: government is civil war.
— Anselme Bellegarrigue (quoted in Woodcock 1962, 258)

The anarchy/minarchy debate is now into its fifth decade and no

doubt merits a full-length essay in its own right. Many contributors deserve attention, but this section will limit its focus to the views of one leading Objectivist intellectual who has attacked anarchism in print: David Kelley.³

While the criticism in what follows is rigorous, I sincerely hope that it will not be construed as antagonistic. Anarchists and minarchists share an overarching goal, individual liberty. Disputes about how to achieve it should not be allowed to mask how much we have in common or how much we might achieve by working side by side (*cf.* Block 2004, conclusion).

When I first read David Kelley's essay "The Necessity of Government," I decided that, because it was written in 1974, when Kelley was still a student, I would leave it lie, though I did mention it in a note (Dykes 1998b, n. 48). In 2000, however, the essay was republished unchanged on the Internet,⁴ which presumably means that Kelley still defends the views expressed. Since he is the author of some important works in philosophy and was the founder of The Objectivist Center (formerly The Institute for Objectivist Studies), "The Necessity of Government" merits close attention.

The first thing one notices is that while Kelley constantly refers to logic, his essay is not very logical. He begins by employing a fallacy. He derides anarchism as a "simple-minded theory," displaying such little wisdom that "[i]ts antipathy to law apparently extends even to the laws of thought" (Kelley 1974, 243). It takes no great skill to recognize this for what it is: an attempt to belittle one's opponents by casting doubt on their abilities, but without offering any evidence. In other words, 'attacking the man' or, in logic, the fallacy *argumentum ad hominem*. Kelley might protest that the evidence soon follows, but what he points to as logical errors in anarchism would be—if true, which they are not—examples of incorrect identification, which are matters of fact, not of logic.

Before addressing anarchism's alleged logical errors, Kelley asserts: "An anarchist is one who wishes to place coercion, the use of force and the ability to use it, on the market" (243). This is both misleading and mistaken. It is misleading, because it does not distinguish between legitimate and illegitimate uses of coercion or

force. On the one hand, defensive force, e.g., to defend oneself from unprovoked attack, is perfectly legitimate. On the other, initiations of force by muggers or thieves, say, are clearly illegitimate. The distinction may be obvious, but in view of popular misconceptions about anarchism, it is important to clarify the two very different meanings of the words coercion and force.⁵

Kelley's assertion is mistaken, because "placing coercion on the market" is *not* an anarchist position. An anarchist is one who wishes to *eliminate* coercion. What anarchists seek in fact is to open protection of individual rights, arbitration of disputes, and judgment of wrongdoing, to any person or persons who may choose to offer these services and, further, to allow anybody who wishes to offer or to avail themselves of these services to do so freely—without interference from any group calling itself 'the government.' And the premises underpinning those objectives are firstly, that to *prevent* the free offering of these services is to initiate force. Secondly, competition is invariably more efficient and productive of excellence than any state monopoly has ever been or ever could be. Thirdly, present government provision of these services is costly, ineffective and frequently unjust. And, finally, non-governmental provision of protection and arbitration is how things used to be done, most effectively, in history—and still is today in some parts of the world.

It is ridiculous to call the anarchist objective "placing coercion on the market." What anarchists actually seek is to place protection, arbitration, and justice *back* on the market—with the express intention of driving coercion out of human society.

On the basis of his misstatement of the anarchist position, Kelley goes on to allege that "anarchists overlook a crucial difference between this coercive service [government preventing the initiation of force] and all other economic goods and services." However, no clear description of this "crucial difference" is forthcoming. We are first distracted by a long digression to the effect that "[o]ne has no right . . . to restrict the actions of someone just because they are immoral," which, although true in certain contexts, has little bearing on the point at issue. Thereafter, whenever the subject of coercion is raised, we are referred back to "in just the respect mentioned" (244)

or “the proviso mentioned earlier” (245) yet it is hard to see what this proviso is. It may be “the market is unjustifiable if it allows the violation of individual rights,” but we are immediately told that fortunately “the market does not allow this.” We are then told that the use of coercion by government is a service that may be considered an economic good, but when its use is morally improper, “it does violate individual rights”—which nobody would dispute. Next we are told that the value of this service is restricted by “the moral principle forbidding its use against persons who have not themselves used force against others,” which is a basic principle of *anarchism*. After that comes the admission: “If [government] power is exercised improperly . . . it violates rights,” which we have already been told. To repeat, the “crucial difference” we are waiting to have explained—between a coercive service and other goods or services—is not spelled out in any coherent manner, if at all.

Kelley’s case becomes more clear in the second paragraph of page 245. We are there told that “Coercion . . . has the potential for violating rights if used improperly . . . [therefore] its use cannot be determined . . . by market forces. . . . Power to coerce . . . must be placed in another institution altogether, outside the market and the sway of subjective value preferences. This institution must have strict control—a monopoly, in effect—over the use of force, since its function is to take force off the market. . . . This institution all men call government.”

There is much to object to here. To begin with, Kelley again fails to distinguish, at this point anyway, between legitimate and illegitimate uses of force, something crucial to the argument whichever side one speaks for. The issue of the *non-initiation* of force, which was of such great significance for Rand, and which has been adopted as a first premise by many libertarians, is hardly addressed in the essay.

Next, the sole reason offered for a state monopoly on coercion is the allegation that coercion “may be used to violate rights” if left to market forces. This is hardly persuasive. The assertion that something *might* happen does not justify the monopoly on force Kelley recommends. He would be more convincing if he offered evidence that what he fears has indeed occurred. Instead, he has just told us

rather the opposite: that the market per se does *not* violate rights, but that coercion “may be used improperly” by government.

Here, Kelley is quite right. When justice was provided by non-state customary law, it was non-coercive, quick, efficient and cheap. Once states arose and imposed government-made law on their own and other societies, justice became either unavailable, or coercive, slow, inefficient, costly, and often cruel besides.

Further, violation of rights and improper use of coercion have actually been the *norm* under government. The various governments of the United States, for example, have breached the rights of their citizens—whether black slaves or businessmen, Native Americans or everyday consumers—throughout their history. The U.S. federal government has also expended incalculable blood and treasure using coercion improperly by making war on its own people or by making war on, or provoking into war, others around the globe who posed no possible threat to it or to its citizens.

Kelley claims that his government would be “outside the sway of subjective value preferences.” In 1974, one might have allowed that to pass. But by the year 2000, there was a whole new school of economic thought to contradict him—Public Choice.⁶ Bruce Benson has in fact demonstrated that “subjective value preferences” are precisely what drives all state bureaucracies, a subject that will be addressed in Part Three. Suffice it to say here that there is no evidence to suggest, and no reason to suppose, that the people who run governments are likely to be *more* objective than their fellow humans involved in markets. If anything, the evidence we have implies the contrary.

More to the point though, Kelley’s argument is logically defective. He asserts that the market has the potential to violate rights, and that therefore the means of rights violation, coercion, must be placed in the hands of a coercive institution, a government monopoly, which itself has the potential to violate rights (and has done so throughout history). This is a clear self-contradiction, a proposal to use coercion to eliminate coercion. Proudhon ([1851] 1989, 74) described something similar in his day as attempting “to correct an abuse by an abuse.” Tolstoy ([1900] 1990, 25) was even more emphatic, pointing

to “the simple self-evident truth that evil cannot be abolished with evil.”

Kelley’s argument also involves a non sequitur. It does *not* follow from any (undemonstrated) potential for rights violation in the market, that one is justified in erecting an institution outside the market, which, with a monopoly on coercion, would have far more potential for rights violation than the market—a *potential that history shows to be actual*. As the British political philosopher, Norman Barry (1986, 129)—commenting on Rand’s frequent denunciations of government violation of rights—has pertinently asked, “if government is the main rights-violator, how can it be entrusted with the task of rights-protection?”

To continue: Kelley charges that a second failure of “anarchist logic” is the “assumption that the market would exist without the government.” One must first reiterate that this is (putatively at least) an issue of fact, not of logic. But the more significant objection is that there is no failure at all: anarchist thinking in this respect is based on the historical and contemporary facts that markets did and do emerge and function without government.

The most obvious example, alluded to by Sechrest (1999, 112; 2000, 183), is the Law Merchant. The collapse of the Roman Empire after 400 C.E. virtually extinguished European commerce. When trade began to revive, a system of customary law arose spontaneously to facilitate local and international trade (Trakman 1983, ch. 1; Benson 1990, 30ff; 2002, 127ff; Rothbard [1970] 1977, 5; cf. Kropotkin [1898] 1987, IV). Merchants set up their own courts to resolve their disputes, effective procedures were copied, and gradually a common, entirely private and entirely objective *lex mercatoria* (merchant law) spread, and was recognized, throughout Europe and beyond. All the basic principles of modern commercial law, national and international, are derived from the non-state Law Merchant.

The Law Merchant was also universally obeyed. The judges were merchants themselves who were intimately familiar with the kind of cases they ruled upon: their judgments were sound. Moreover, no one would deal with a trader who refused to abide by the decision of a merchant court. The judges had no means to enforce their

decisions, but the boycott sanction was so effective it removed any need for compulsion. The Law Merchant thus “shatters the myth that government must define and enforce the ‘rules of the game’” (Benson 1990, 30; cf. Rothbard [1973, 1978] 1996, 224).

Another relevant example is that of the sixteenth- and seventeenth-century Huron Confederacy in what is now Ontario. The settled, agricultural Hurons had no government, yet traded their corn with other tribes for such things as furs, dried fish, meat or shell beads, and were so good at the business that their language was a *lingua franca* across a span of a thousand miles or more (Trigger [1969] 1990, 44). Similar activities took place elsewhere in North and South America and in other parts of the world. But there were no *governments* directing trade because none existed to do so.

Lest someone object that primitive trade did not constitute ‘real’ markets, Leopold Pospíšil ([1971] 1974, 241) has confirmed that the Stone Age Kapauku people he studied so intensively in New Guinea “were not only individualistic and wealth oriented, but also used true money and the institutions of sale, savings, interest, speculation with capital gains, and true markets whose prices were dominated by the law of supply and demand.” The Kapauku had no government.

Nor is there a government supervising international trade today, although, as Johan Norberg (2003, 12) has commented, “politicians come running after it with all sorts of abbreviations and acronyms (EU, IMF, UN, WTO, UNCTAD, OECD) in a bid to structure the process.”⁷ The vast markets of international commerce were and are created entirely by the traders themselves and are carried on peacefully on a global basis without any need for government. On the relatively rare occasions when disputes arise, they are dealt with by private bodies such as the International Chamber of Commerce (Benson 2002, 134). It is also worth noting, as has Colin Ward, that even government-run businesses—such as the 200-odd national post offices—cooperate worldwide on a daily basis without needing any overseeing authority to supervise them (quoted in Woodcock 1977, 319).⁸

But perhaps the most telling evidence that commerce does not need government is provided by black markets. As with the earlier

prohibition of alcohol, the banning of recreational drugs in the United States has led to an immense unsupervised market worth more than the GDP of many countries. There was and is plenty of mayhem involved, but that was and is caused either by the law itself or by its enforcement. In Belarus, a totally corrupt dictatorship, as much as 85% of GDP is outside state control in black or 'grey' markets.⁹ In developing nations generally, between 50 and 75% of citizens "work outside the protection of the law" (Norberg 2003, 94). In Peru, Hernando de Soto (1989) has shown in his brilliant study *The Other Path* that virtually all the necessities of life can be obtained informally in unsupervised, private markets operating entirely outside the state's slow, cumbersome, costly and oppressive legal system. Kelley's assumption that markets could not exist without government is refuted by readily available, incontrovertible facts.

It is also refuted by common sense. If one wishes to earn one's living as a trader, it is imperative to maintain good relations with trading partners: "For it is only by being known to others as one who is disposed to abide by constraints [including "constraints against fraud and the non-fulfillment of contracts"] that one will be known to others as a person with whom they can establish stable, peaceful and mutually beneficial relationships" (Mack 2001, 105; cf. Trakman 1983, 1–2, and *passim*). Businesspeople have never needed state officials to tell them that, nor do they need supervision today to make sure they abide by it.

There are other matters to object to in Kelley's article, but this paper will look at one more only: Kelley's assertion that "wherever men . . . [have found] themselves without government . . . they have done something . . . damaging to the anarchist hypothesis: they have formed new governments . . . monopolistic 'protection agencies'" (Kelley 1974, 247). He offers no evidence for this claim, which is contradicted by historical and contemporary fact. To begin with, Franz Oppenheimer and others have shown that all governments were originally established by force. No government has been created by the spontaneous desires of groups that did not have them. The U.S. government, for example, which might be cited *contra*, was actually imposed on the people of the Thirteen Colonies by a minority

comprising some 3–5% of the widely-scattered population, the vast majority of the latter being *legally excluded* from voting (Spooner [1867] 1973, 79–80; Martin 1973, 14). Further, the new government immediately showed that, despite all its rhetoric, it was no different from any other state: it imposed taxes and, when some of its citizens protested, moved against them with massive force (Washington and the ‘Whiskey Rebellion’). Subsequently, successive U.S. administrations pursued their ‘manifest destiny’ (their quest for *lebensraum*) in exactly the same manner as all previous states—by armed force—with scant regard for the philosophy of the Declaration of Independence and even less for their much-touted Constitution. Most of the present territory of the U.S. was either seized with “ruthless ferocity” from the original inhabitants (Nock 1950, 93; Brown 1971, *passim*), was acquired as spoils of war in 1819 and 1848, or was sold to the U.S. government—without aboriginal consent—by the French government in 1803, and by the Russian government in 1867. As for the American Civil War, was there any difference between President Lincoln going to war ‘to preserve the Union’ and King George III going to war to preserve his colonial empire?

But to return to our topic, far from free people establishing ‘monopolistic protection agencies,’ Benson (1990, 2) has recorded the fact that state provision of law-making and justice “was not the historical norm”: all early societies resolved disputes by means of non-state, customary law. Other scholars have pointed to instances in nineteenth-century North America where, beyond the reach of Congress, settlers, wagon trains and mining communities set up voluntary schemes of law and justice, *not* governments (Anderson and Hill 1979). In modern Somalia, when government collapsed in 1991, war did break out between rival gangs, but the people themselves turned to cooperation, bringing about a return of peace. According to recent accounts, Somalia is now a better place for business than South Africa. For example, Peter Maass (2001) reported in *The Atlantic Monthly* on what he called “a curious miracle”:

the very absence of a government may have helped to nurture an African oddity—a lean and efficient business

sector that does not feed at a public trough controlled by corrupt officials. . . . Everything is based on trust, and so far it has worked, owing to Somalia's tightly woven clan networks. . . . Until a century ago, when Italy and Britain divided what is present-day Somalia into colonial fiefdoms, Somalis got along quite well without a state, relying on systems that still exist: informal codes of honor and a means of resolving disputes, even violent ones, through mediation by clan elders.

Anarchists, familiar with human history and customary law, would never call this a "miracle"; it is merely confirmation of what they have known all along. People are rational and, in the absence of state coercion, soon learn to do the rational thing: they avoid costly violence and cooperate with each other peacefully. As Robert Axelrod ([1978] 1990, 174) noted at the end of his study *The Evolution of Cooperation*: "no central authority is needed: co-operation based on reciprocity can be self-policing."

Kelley (1974, 248) concluded his own essay by claiming that anarchism is "riddled with logical errors" and "vulnerable to the historical facts about what men *have* done." However, on the evidence presented above, it seems clear that he would have been better advised to level such accusations against his own youthful paper before allowing its republication in 2000.

Part Two: Individual Rights

There is nothing to take a man's freedom away from him, save other men.
— Ayn Rand ([1938] 1995, 101)

Some years ago, I was informed by a prominent Objectivist that, "[c]orrectly or not, Objectivists apparently hold that rights come into existence simultaneously with the state . . . they would not exist in a 'state of nature.'"¹⁰ The "Objectivists" in question were not named, but Murray Franck's essays in favor of taxation certainly incorporate this conception, at least implicitly, because for him "government is inherently necessary to define rights *ab initio*" (Franck 1994, 9).

Franck and the unnamed Objectivists thus seem to have joined forces with legal positivists such as Stephen Holmes and Cass R. Sunstein, who make rights entirely dependent upon the state: “Statelessness spells rightlessness” (quoted in Palmer 2001, 38).

Leonard Peikoff (1991, 351–52) has hinted at a different but not dissimilar position. He wrote: “If a man lived on a desert island, there would be no question of defining his proper relationship to others. . . . the issue of rights would be premature. . . . When men do decide to form . . . an organized society . . . [that] is the context in which the principle of rights arises.” This might be construed as support for an alternative position, that rights come into existence only with *society*—a view I have encountered outside the Objectivist fold—although Peikoff himself was actually addressing the *relevance* of the issue of rights to pre-societal humankind.¹¹ In this paper, the two theses (state or society generating rights) will be referred to as “emergent” theories of the origin of rights.

A: Problems with Emergent Theories of Rights

Whether widely held or not, both ‘state’ and ‘society’ theories of the origin of rights are highly problematic. In the first instance, from an Objectivist standpoint, the idea that rights emerge with the state was certainly not Rand’s view. She stated that “the source of rights is man’s nature” (1963b, 94) and upheld the philosophy of the Declaration of Independence: to wit, that men are endowed with inalienable rights, to secure which governments are instituted, deriving their just powers from the consent of the governed. Rand’s essay “The Nature of Government” endorses this view explicitly (1963c, 110).

Three points are immediately relevant here. First, governments could hardly be instituted to protect rights if rights did not already exist. Second, if government authority is based on “the consent of the governed,” such a grant of authority implies that ‘the governed’ had the authority first, and the sole basis for *their* authority would be rights. Third, Rand specifically states that “the government as such has no rights except the rights *delegated* to it by the citizens” (110),

which clearly implies that rights precede government and contradicts the notion that rights come into being with the state.¹²

A different problem with the ‘state’ emergent thesis arises when it is considered historically or anthropologically. There are numerous societies on record in which individual rights were or are clearly recognized and protected despite the absence of anything that could be called a state. The thesis thus ignores a mass of evidence that directly contradicts it. Herbert Spencer ([1884] 1969, 172–73), for example, in *The Man versus the State*, commented at length on early, rights-respecting, stateless societies around the world—from Tasmania and Patagonia to Polynesia and Ceylon—and concluded: “So alien to the truth, indeed, is the alleged creation of rights by government, that, contrariwise, rights having been established more or less clearly before government arises, become obscured as government develops.”

Other problems are common to both emergent theses, the ‘society’ version as much as the ‘state’ one. For example, both imply that the individuals who compose society, or who are governed by the state, are of secondary importance. For, clearly, if rights emerge only with society or state, they therefore *depend* on society or state—an odd conclusion to reach in an individualist philosophy like Objectivism.

It might be objected that in reality there are no such *entities* as society or state, both consist of larger or smaller groups of individuals, hence society or state cannot be superior. But an emergent view of rights still implies—unwittingly or not—that the collective is superior to the individual, because there are no rights in its absence.

There are also considerable dangers inherent in the emergent theses. In the state version, the danger lies in an accommodation with statism. For if one accepts that rights come into existence only with the state, one is half-way to conceding the statist’s position—the primacy of the state. On the other hand, if rights are supposed to emerge only in society, we face the danger that they may be treated as mere social conventions. As such, they would be very hard to protect. For if rights *depend* on society, it would be difficult for an individual righteously to defend *his or her* rights against the superior might of the collective.

That these dangers are not imaginary is readily supported by history. From the ancient Greek *polis* to the nations of today, wherever states have been established, state and/or society have eventually assumed superiority over the individual. One need only recall the judicial murder of Socrates. Or consider the French Revolution. Article 2 of the 1789 “Declaration of the Rights of Man and of Citizens” states explicitly: “The nation is essentially the source of all sovereignty” (quoted in Paine [1792] 1973, 350). By “nation” was meant “the people” but it was the collective, not the individual, which was stressed, an emphasis that has continued in France ever since. Even the United States—a country supposedly established for the express purpose of protecting individual rights—has seen governments at all levels gradually assert primacy in every area of life. And while rights were being whittled away, pastors, intellectuals and politicians bombarded the citizenry with sermons, books and speeches about alleged debts or duties owed to their fellow citizens, or exhortations to work, not for themselves, but for society: “And so, my fellow Americans: ask not what your country can do for you—ask what you can do for your country” (John F. Kennedy, Inaugural Address, 20 January 1961).

It may be that this new ‘Objectivist’ view has arisen as a defensive reaction to the criticisms of anarchists such as Roy Childs who pointed to a contradiction between the inalienable individual right to liberty that Rand advocated on the one hand, and the government monopoly on the use of force she espoused on the other (Childs [1969] 1994, 145ff). For, if it could be plausibly established that rights only emerge with the state, Objectivist proponents of limited government could claim that there is no contradiction. However, they could not do so without rejecting the ideas of the philosopher who created their philosophy.

B: The True Source of Rights

Enough has been said, one hopes, to cast serious doubt on ‘emergent’ theories of the origin of rights. So, what would constitute a better thesis? This paper will now examine some alternative ideas

on the origin of rights with the intention of re-establishing the human individual as their sole source.

The procedure to be followed is empirical. The paper simply looks at the phenomenon of life and notes certain characteristics that are evident to any unbiased observer. The first is that there is no life apart from living beings. There is no separate life force or *elan vital*. Life and living being are integrated and inseparable. Indeed, life may properly be described as the *integrity* of each living organism: it is both what it strives for and its cohesive force. The truth of this is most apparent at death, when the integrity of the organism ceases and it literally *dis-integrates*.

The second aspect of life to note, one inextricably intertwined with the first, is that life is purely individual. Living entities, without exception, are individuals. Life is individually generated and individually sustained. Whether one is examining amoebas or elephants, colonies of ants or coterries of aunts, one is always examining larger or smaller collections of *individuals*.

Thus far, we have considered living beings externally. When we consider them internally, a more appropriate word for 'individual' is 'self.' From an internal perspective, we see that the business of life is about *selves*. As Rand (1957, 939) wrote in John Galt's speech in *Atlas Shrugged*: "Life is a process of self-sustaining and self-generated action." The most profound implication of *self*-sustenance and *self*-generated action is that the action is undertaken *for that self*. Which means, that the point of each life is that life. Which means, that life is an end in itself.

It is immediately apparent that without the primordial driving force of *self*-sustenance and *self*-generation, evolution would not, could not, have taken place and there would be no life. The magnificent working out of the potentials in reality that eventually became humankind was directed from beginning to end by the irrepressible internal drive for self-fulfillment built into every living thing. Its life, its *self*, was the sole purpose for which it existed,¹³ a motivation confirmed, not contradicted, by a concomitant drive for self replication.

Men and women share these basic characteristics of living entities

to the full. Our lives are fully integrated aspects of our beings; each of us is an individual from birth to death and each one of us is an end in himself or herself: each human being is the sole purpose for which he or she exists. At the same time, however, we differ radically from other living entities in that our distinctive mode of survival, the faculty of reason, is volitional. We have to *choose* our path through life. And that, as Rand stressed so emphatically, necessitates a code of values, an ethics, to guide our choices and actions. Morality is integral to “man’s life qua man.”

From the facts that each human life is individual and an end in itself, two things follow. First, each life is lived for its own sake, for the sake of its possessor. From that we derive ethical egoism. Second, if each life is an end in itself, it does not exist to serve the ends of any other thing or body. And that is the source of individual rights. In Rand’s words, “every human being is an end in himself, not the means to the end or the welfare of others . . . therefore . . . man must live for his own sake, neither sacrificing himself to others nor sacrificing others to himself” (1963a, 27).

To elaborate: if each human life is an end in itself, no man or woman owes any unchosen obligation to any other human being. His or her sole allegiance is to his or her own self, his or her own life. So the only correct course for each one of us is to live our lives for our own sakes, what we call ethical egoism, or the pursuit of happiness. As Max Stirner ([1845] 1982, 180) put it, “every one is an egoist and of paramount importance to himself,” or more succinctly: “Nothing is more to me than myself!” (5).

Secondly, the fact that they are ends in themselves clearly implies that human beings cannot properly serve as the *means* for any end outside themselves; they are not here to serve as building blocks for any other purpose. Therefore, every man and woman is entitled by the mere fact of being born human to live their lives *unharm*ed and *unimp*eded by other human beings (the right to life). And because life requires sustenance, each is equally entitled to pursue values unimpeded (the right to liberty), to acquire life’s necessities and luxuries unimpeded (the right to property), and to retaliate in kind unimpeded should force be initiated against them (the right to self defense).

A further vital implication of existing as ends-in-themselves, and of the right to life which thence arises, is that each human being is the exclusive *owner* of his or her life: “every man has a *Property* in his own *Person*. This no Body has any Right to but himself” (Locke [1690] 1988, 287). The seventeenth-century Leveler, Richard Overton, had earlier made the point more conclusively: “For every one, as he is himself, so he has a self-propriety, else he could not be himself” (quoted in Palmer 2001, 70).¹⁴ Hence, self-ownership cannot be denied without contradiction.

The crucial issue of self-ownership—which is merely a clearer and more comprehensive expression of the right to life—suggests an addition to Rand’s definition of rights. *Viz.*: in political philosophy, a person’s ‘rights’ refer to the moral principle that affirms the inviolable self-ownership of individual human beings and defines and sanctions their freedom of action in a social context.

Because each human life is an end in itself, not the means to any other end—whether that end be parental, familial, societal, governmental, or divine—and because each human life is wholly owned by that individual alone, rights are *inalienable*, i.e., “that which we may not take away, suspend, infringe, restrict or violate—not ever, not at any time, not for any reason whatsoever” (Rand 1946, 12; quoted in Binswanger 1986, 211). The vital implications of inalienability are that all human beings have an absolute obligation to observe and respect other people’s rights at all times, and simultaneously that all human beings have an absolute right to defend their lives, liberty and property against anybody who attempts to restrict or violate them.

Thus, the correct answer to the anti-egoists who demand, “Why should I respect other people’s rights?” is firstly moral: ‘Other people exist to serve their own ends, not yours.’ And, secondly, practical: “If you do not respect other people’s rights, you will suffer the consequences.” It is an illustration of Rand’s precept that the moral and the practical are the same thing. To respect rights is to be both moral and practical. In contrast, if a man breaches another person’s rights, he suspends his own rights until restitution is made. So we say to anti-egoists, “Breach rights and you make yourself an outlaw. As such, you put your own life in jeopardy, and that may lead to your death.”

It is important to note that an individual's own rights are not alienated when he or she breaches the rights of someone else. Rather, offenders place themselves in a condition of enforceable indebtedness to the persons harmed. The condition is created by the *victims'* rights, which entitle them to seek redress immediately. Any initiation of force thus brings about an instantaneous, self-induced *suspension* of the initiator's rights, for, clearly, the rights of victims would be valueless if they were not entitled to demand or implement immediate rectification of the harm done to them. The moment restitution is made, however, the initiator returns to the status quo ante, with all rights fully reactivated.¹⁵

It can be seen that the common source of egoism and rights eliminates the clash between them which has been asserted by philosophers such as Robert Nozick (1971).¹⁶ Some of the issues pertaining to that alleged clash were addressed by Eric Mack in a paper delivered at the 1998 Objectivist Center Summer Seminar in Boulder, Colorado, later published in revised form in *Reason Papers*. Mack approached the matter from a different angle, but reached the same conclusion as this essay.¹⁷ He stated: "Every living human being is an end in himself. This is a claim more fundamental than either the doctrine of egoism or the doctrine of rights. . . . [F]or each human being it has two main implications. . . . The first . . . is that each person ought to discover, promote, and sustain his well-being . . . which is of ultimate value for this agent. The second . . . is that no agent ought to treat any other individual as a means to his ends. . . . So the second more specific articulation of the core idea that every person is a moral end-in-himself is that each person possesses rights over himself which others are obligated to respect." Referring to John Hospers's description of Rand's ethics as "two-pronged," Mack (1998, 12–13) added: "Neither the doctrine of egoism nor the doctrine of rights have priority over the other. And because they are distinct implications or specifications of the understanding that each person is a moral end-in-himself, neither doctrine is reducible to the other." Ergo, there is no clash between egoism and other people's rights.

To summarize, life is individual and each individual life is an end-

in-itself. Human individuals, as volitional agents, require an ethics to guide their choices and actions. As ends-in-themselves, their chosen course through life should be ‘two-pronged.’ They should devote themselves to their own pursuit of happiness and, simultaneously, respect everybody else’s right to do the same.

William Godwin, the eighteenth-century British anarchist philosopher, phrased the matter helpfully when he said that what are called “rights” are of “two kinds, active and passive; the right in certain cases to do as we list; and the right we possess to the forbearance . . . of other men.” A few pages later he expressed the passive aspect more forcefully: “no man must encroach upon my province, nor I upon his” (Godwin [1793] 1971, 84, 89).¹⁸ Rand (1963b, 94), the reader will recall, described rights as “positive” and “negative,” but “active” and “passive” seems richer and more elegant.

C. Rights—Individual, Natural and Objective

We have seen that rights stem from the fact that human beings are ends in themselves. This alone is sufficient to show that the source of rights is neither state nor society; it is the human individual.

But the matter does not end there. Rights are more often than not referred to and understood *abstractly* as moral principles. But it can be seen from the above that these principles are abstracted from the external, observable, physical *entity*, which is humankind. Rights are indeed moral principles, but they are at the same time deeply rooted in individual human beings—who form part of the objective natural world.

That the individual is the true fountainhead of rights becomes more apparent when one looks at the actual functioning of individual men and women. Just as life itself is totally integrated in each person, so are the various elements that combine to make up their nature: human beings are living *organisms*. Mind and body, for example, are distinguishable for purposes of analysis or discussion, as are emotion and thought, pleasure and pain, etc.; but all of these are aspects of individual humans and have no separate existence. The functions of consciousness can similarly be separated out by abstraction—

sensation, perception, concept formation, volition, desire, the subconscious, memory, etc.—but none of these exist apart from conscious human beings.

The most important single aspect of human consciousness is volition, for without the capacity to will there could be no action and hence no human life. Similarly, the most important aspect of volition is freedom, for without the freedom to focus, choose, act, etc., volition is not possible. Free will *consists* in the mental freedom that operates within volition. But this freedom of mental action is not something separate or external to volition, it is integral: it is a moving, working part, as essential to volition as the heart is to blood circulation or as oxygen is to brain functioning. Freedom is thus an *organic* aspect of humanity's defining characteristic, reason, and is as deeply rooted in each man and woman as life itself.

Is there any significant difference between freedom viewed in this light—as an integral, essential and fundamental aspect of reason—and freedom viewed as a social or political right? I do not think so. However, it might be objected that I am resorting to what Ronald Merrill (1991, 117) called “the classic meaning switch cheapo”—that I am referring to the essence of reason as freedom, then quietly substituting the more usual meaning of freedom, political liberty. No such subterfuge is intended. I maintain, rather, that the essence of reason—free will—and its socio-political counterpart—the *right* to freedom—are really the same thing, but seen from internal or external points of view. The two are separable for the sake of analysis, but the separation is merely a shift of perspective: man observing or being observed, as subject or object, as individual or as social being.¹⁹ (It is analogous to individuals becoming *selves* when considered from an internal perspective). Freedom of will *is* freedom of action, and because each human being is an end in him- or herself, each has a *right* to that freedom. As Rand (1963c, 107) expressed it: “Since man’s mind is his basic tool of survival . . . the basic condition he requires is the freedom to think and to act according to his rational judgment” (quoted in Sechrest 1999, 89).

Because property (aside from the self) is external, not integral, it might seem difficult to treat the right to property in a similar vein. Or

perhaps not. We are engaged in a continuous exchange with our environment. Every second of our lives we draw from it the means of our survival. We cannot be cut off from it even for a minute. In Galt's Speech, Rand (1957, 985–86) stated that rights are “conditions of existence required by man's nature for his proper survival.” She also said that “without property rights, no other rights are possible” (1963b, 94). And since oxygen is the first condition of our existence, it is our first external property. Food, clothing, and shelter follow, varying according to individual circumstances. In this regard as well, then, the natural needs of our survival, and our *right* to pursue them, are really the same thing, differing only in the perspective from which one views them.

True, Rand said elsewhere that a right is “a moral principle defining and sanctioning a man's freedom of action in a social context” (93). This might lend credence to the view that rights come into existence only in a social setting, since a principle is general, not particular. But rights are just one of several principles in a code of ethics. Others are virtues—such as rationality and productiveness, honesty and justice—all of which may or may not have a social dimension: it depends on the context. For example, one can cultivate one's garden rationally and productively alone, yet honestly admit—being just to oneself—that one needs some help.

A code of morality is abstract. But the principles of morality are derived from the facts of human life and are valueless if they do not relate directly to the concrete nature of real men and women. The fact that a right can be abstracted to serve as a social principle should not be permitted to obscure or diminish the equally important truth that, like other moral principles, rights are rooted in, and drawn from, the actual physical nature of individual human beings, and from the essential physical conditions that make their lives possible: only particulars exist. This is what Rand meant by “the source of rights is man's nature,” and this is why it is correct to refer to rights as “natural rights.” Rights are part of a natural being, and thus exist objectively in nature, and they are also part of human nature, part of what a human being *is*.

No one can seriously dispute that we are social beings, but we are

first and foremost individuals, “entire unto ourselves.” Pursuing life for his or her own sake, each human being is primarily unique, an entity complete in itself. The existence of others is as essential for happiness as it is for procreation. It also creates a myriad of opportunities denied to a solitary person. Yet the social dimension of human life must not be allowed to detract from its starting point, the primacy of the individual.

In sum, just as there can be no such thing as consciousness without a conscious being, neither can there be any such thing as a right without a person who gives rise to it and thereafter possesses it. A right is an integral aspect of a human being in the same sense that motion is an integral aspect of a moving entity.

Plainly, as already noted, rights can be considered abstractly, apart from the human beings who give rise to them, but they cannot be *divorced* from those beings. To borrow Aristotle’s analogy regarding the convexity and concavity of circles, a right is “distinct by definition but by nature inseparable” (*Nicomachean Ethics*, 1.13.1102a 31).

Thus, it seems meaningless to say that rights come into existence only in the presence of other people, whether society or state. To borrow once more from Aristotle, he spoke of the possession of virtue as “compatible with being asleep” (1.5.1095b 32) and said of our senses, “we had them before we used them, and did not come to have them by using them” (2.1.1103a 31). In other words, a talented pianist does not lose his or her talent in the absence of a piano; nor would an honest man lose his honesty if he chose to live in a hermit’s cell; and a space explorer would still have rights even if he got lost and never saw another human being.²⁰

It is true that rights, in their passive sense, are only *activated* in a social context, because only then are they honored or potentially under threat. But to claim that they do not exist otherwise is to cut them off from their source and make them floating abstractions. Thus, when Barnett (1998, 73) asserts that “in the absence of other persons, rights serve no purpose,” he is missing half the picture. Rights may be *inactive* in certain circumstances, but that does not make them purposeless or nonexistent. They should be seen rather as *ready and waiting*.

Part Three: Justifying Government

If submissiveness ceased, it would be all over with lordship.
— Max Stirner ([1845] 1982, 196)

Any dispassionate historical or philosophical investigation of the phenomenon we call ‘government’ must eventually come to some such evaluation as the one offered by the Italian anarchist Errico Malatesta ([1891] 1995, 23–24), though not necessarily in such blunt terms:

The basic function of government everywhere in all times, whatever title it adopts and whatever its origin and organisation may be, is always that of oppressing and exploiting the masses . . . [and] of defending the oppressors and exploiters: and its principal, characteristic and indispensable instruments are the police agent and the tax-collector, the soldier and gaoler—to whom must be invariably added the trader in lies, be he priest or schoolmaster, remunerated or protected by the government to enslave minds and make them docilely accept the yoke.²¹

How is this state of affairs, which exists everywhere in the world, to be *justified*?

The answer given by some Objectivists is that government is justified because it protects rights. It is, for example, the view of Oyerly (1994, 9) and underpins the essays of Franck (1994; 2000). It was also the stand of the late Ronald Merrill, who said as much to me in a private letter (23 October 1997), adding that it was David Kelley who had “put him right on the matter.” Certainly the conception plays a lead role in Kelley’s recorded lecture “Government versus Anarchy.” Rand (1963c, 109) began it all perhaps in “The Nature of Government,” when she asserted that protecting rights under an objective code of rules is government’s “only moral justification.” But no matter how many people believe that government is justified because it protects rights, when subjected to what Proudhon ([1851] 1989, 291) called “the drill of philosophy” the proposition turns out

to be fraught with difficulties.

A. Why Justify?

The need to justify government has been an element of political thought since ancient times. For if a group of men (it has usually been men) claims the authority to make laws for the rest of their society, as well as the authority to enforce those laws and to punish those who break them, the question arises, ‘What is the basis of that authority?’ A good answer is imperative, else why should anyone obey? And many answers have been given, from impure but simple might to Divine Right. But the answer that has dominated political thinking since the eighteenth century has been that the authority of government is based on consent—“to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed,” as Jefferson’s famous words would have it (*cf.* Locke [1690] 1988, 330). Virtually every election in the world since 1776, whether genuine or rigged, has been based on the principle of “the consent of the governed,” which is usually seen as the foundation of, and justification for, modern democracy.

Nonetheless, grand though it may sound, the “consent of the governed” is more illusory than real. To start with, the evidence for *universal* consent—which the consent principle requires if government is to be fully justified—has never been sought and would be impossible to obtain.²² So the consent principle is invariably allied with (or replaced by) the notion of ‘majority rule,’ a pragmatic, amoral fiction that flatly contradicts consent: it allows mere weight of numbers to nullify dissent. As Jefferson’s younger contemporary William Godwin ([1793] 1971, 220) contemptuously described it: “that flagrant insult upon all reason and justice, the deciding upon truth by the casting up of numbers.” Godwin also made clear the weakness of the consent principle: “if government be founded in the consent of the people, it can have no power over any individual by whom that consent is refused” (102)—a truth reiterated across the intervening centuries by such thinkers as Herbert Spencer ([1850] 1995), Lysander Spooner ([1867] 1973) and George H. Smith (1992; 1995). It is presumably the

highly visible fragility of the consent principle that has led to the search for an alternative justification for government, represented here by the idea that government is justified because it protects rights.

Before we can switch our philosophical drill to full power, other factors have to be considered. Government is largely a matter of force; its edicts are *enforced*. As George Washington is reported to have said, “Government is not reason, government is not persuasion, government is force” (quoted in Minto 1998, 4). Leaving aside rights violators—who are the objects of justice, not of coercion—what government enforces is often against the will of the persons coerced. Even the most minimal government yet imagined envisages excluding citizens from activities they could perfectly well carry out for themselves. So any rationale for government must justify all use of force outside the sphere of justice. Spencer’s “law of equal freedom” bears directly on the core of this problem: “Every man has freedom to do all that he wills, provided that he infringes not the equal freedom of any other man” ([1850] 1995, 95; cf. Barry 1986, 104). If he hasn’t infringed, no one may act against him. Hence Spencer’s famous “right to ignore the state” ([1850] 1995, 185ff). John Stuart Mill ([1859] 1955, 11–12) said much the same thing in his celebrated essay *On Liberty*: “the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. . . . Over himself, over his own body and mind, the individual is sovereign.” So did Albert Jay Nock ([1935] 1950, 36) whose legendary king Pausole had but two laws: “hurt no man, then do as you please.” Thus, if individuals have not harmed anybody, *no one* may act against them.

Rand (1963c, 108) thought she had the answer here, in that the monopoly on the use of force she advocated was a monopoly on *retaliatory* force: “force may be used only in retaliation, and only against those who initiate its use.” In other words, only those who were themselves morally in the wrong would be the objects of coercion: justice would be done.

However, it is important to bear in mind what Rand wrote about rights in this regard: “Man’s rights can be violated only by the use of physical force. It is only by means of physical force that one man can

deprive another of his life, or enslave him, or rob him, or prevent him from pursuing his own goals, or compel him to act against his own rational judgment. The precondition of a civilized society is the barring of physical force from social relationships . . . if men wish to deal with one another, they may do so only by means of *reason*: by discussion, persuasion and voluntary, uncoerced agreement” (108). It is thus regrettable that Rand went on to recommend a state monopoly, for, as has frequently been remarked during the anarchy/minarchy debate, to establish and enforce a state monopoly prior to any rights violations is to *cast aside* “reason, discussion, persuasion and voluntary, uncoerced agreement.” The establishment of a state monopoly *is itself* an initiation of force.

Linda and Morris Tannehill ([1970] 1984, 33) made this abundantly clear in *The Market for Liberty*:

A government, in order to be a government . . . must maintain a monopoly in those areas which it has pre-empted. In order to insure its continued existence, this monopoly must be coercive—it must prohibit competition. Thus, government, in order to exist as a government at all, must initiate force in order to prohibit any citizen(s) from going into business in competition with it in those fields which it claims as exclusively its own. . . . Any attempt to devise a government which did not initiate force is an exercise in futility. . . . Government is, by its very nature, an agency of initiated force. If it ceased to initiate force, it would cease to be a government and become, in simple fact, another business firm in a competitive market.

Randolph Bourne ([1918] 1998, 14) put the matter with eloquent brevity: “The State is a jealous God and will brook no rivals.”

The word justify means in this context “to make just; to prove or show to be just or right” (*Chambers English Dictionary*). The argument that government is justified because it protects rights is evidently designed to answer the Tannehills’ objection and to vindicate government. “Just” is the key word in Jefferson’s formulation,

because no person could reasonably be expected to obey an unjust government.

Clearly then, the whole issue is one of morality: how are enforcers of a state monopoly to prove that their actions are ethical *in fact*, and, equally important, how are they to persuade ‘the governed’ that the authority imposed upon them is just, legitimate, and morally binding? George H. Smith (1997, x), in his important introduction to Oppenheimer’s book, *The State*, stresses that the citizens’ acceptance of its legitimacy is in fact *imperative* for the state, because: “Like Santa Claus, the State can exist only as long as people believe in it.”

B. Rand’s Arguments²³

Rand’s arguments in support of a government monopoly on retaliatory force are not very persuasive. She wrote: “The use of physical force—even its retaliatory use—cannot be left at the discretion of individual citizens” (1963c, 108) and asserted that if it were, society “would degenerate into mob rule, lynch law, and an endless series of bloody private feuds and vendettas.” She went on: “men need an institution charged with the task of protecting their rights under an *objective* code of rules. *This* is the task of government . . . its basic task, its only moral justification and the reason why men do need a government” (109). However, as Sechrest (1999, 91) and Block (2000, 150–55) have pointed out, Rand offered no evidence for her ‘mob rule’ assertions—which are contradicted by the extensive historical and anthropological evidence referred to throughout this paper. There have certainly been many instances of mobs running amok, but these have invariably taken place within states and have almost invariably been occasioned by the actions of the states themselves.

Sechrest (1999, 96) also notes that Rand’s anti-anarchism arguments contain a strong element of self-contradiction. Rand posited that victims of robberies would go berserk if there was no government, but that the same people would have a “finely-tuned sense of justice” if there were. As I have pointed out elsewhere (Dykes 1998b, part 3), there is a great deal of inconsistency between

Rand's 'benevolent universe' premise and her view of how people—the most significant part of that universe—would behave in a stateless society.

Rand's one specific argument for a government monopoly on force is, "a government holds a monopoly on the legal use of physical force. It has to hold a monopoly, since it is the agent of restraining and combating the use of force" (1963c, 109). The problem here is that her argument is circular: 'A government holds a monopoly on force. It *must* hold a monopoly because it is *the* agent—i.e. the *sole* agent—for combating the use of force.' Which is to say that it is a monopoly and has to be a monopoly because it is a monopoly. Even though what Rand probably meant to say was, 'Government cannot effectively combat force without a legal monopoly on the use of it,' one remains unpersuaded, since her proposition still requires demonstration.

In the absence of evidence or persuasive argument, one is forced to conjecture, and the thinking behind Rand's essay "The Nature of Government" appears to be along these lines:

- i) Individuals have rights, the prerequisites for life in society.
- ii) All experience, whether historical or day-to-day, shows that organized protection of rights is essential.
- iii) Protection of rights cannot occur without objective law.
- iv) Objective law cannot arise if 'governments' compete; agency A's law would differ from agency B's, etc.
- v) Therefore, protection of rights has to be a state monopoly.
- vi) State monopolies are per se wrong, but *this* monopoly is permissible because it is the only way to achieve the objective law that is essential to protect rights.²⁴
- vii) To ensure that rights are in fact protected, the state monopoly on the use of force will be purely retaliatory, and will be rigorously controlled by a constitution.
- viii) Because our end is good, and our means constitutionally controlled, we can live with something which is, in all other circumstances, evil.

The key point in the above is vi) because, elsewhere in her work, Rand (1962a, 5) emphatically rejected the concept of monopoly as a

“socialistic fallacy,” which could only arise as the result of government intervention. She also recommended the work of “the best economists” (presumably Ludwig von Mises and Henry Hazlitt), who had exposed the evils of state-imposed monopolies. Yet, in promoting limited government, she *endorses* a monopoly, one which, like all others, cannot be established except by uninvited state intervention. And the great problem for those Objectivists who join her in this endorsement is that the establishment of such a monopoly is, as shown above, an initiation of force: the state monopoly is established prior to any breach of rights by individuals. Further, a state monopoly not only breaches individual rights—by eliminating liberty of choice—it also conflicts with Rand’s principle of barring force from social relations: a state monopoly, to *be* a monopoly, must be both absolute and *enforced*.

It is a great pity that Rand did not elaborate on her advocacy of a state monopoly on force for, if the analysis just presented is correct, it shows that her reasoning reduces to the unworthy rationalization that ‘the end justifies the means.’ The argument outlined is no different from: “We are elected to protect liberty. The enemy is at the gates. We have insufficient troops. To protect liberty we must conscript.” But one cannot defend liberty by destroying it. The contradiction is blatant. If an action is morally *wrong*, it does not become morally *right* by being carried out for a good purpose.

The proposition that government is justified because it protects rights is no different. It repeats the ‘end justifies means’ pattern of argument outlined above, only in different terms and more succinctly, apparently attempting thereby to sidestep the crucial issue of the initiation of force entailed by a state monopoly. Although intended to be reasonable and just, the assertion tries to deflect attention from the state’s breach of rights by pointing to the state’s moral end of protecting them. Ergo, the proposition rests on the false assumption that an end can justify the means used to attain it. As we saw in discussing Kelley’s essay on ‘the necessity of government,’ one cannot *employ* coercion under the banner of *eliminating* coercion.

This conclusion is not avoided by asserting that a state monopoly is *in fact* the sole way to create objective law, because falsifying

examples abound, for example, the Law Merchant. Nor can one escape by claiming that the protection of rights is an exercise of *justice* (which, in itself, is not coercive), therefore a government is not using coercion when it retaliates against wrongdoers. For in rejecting a state monopoly, one is not necessarily objecting to its activities—some of which can be just, appropriate, or essential—but to the arrogation of those activities by the state, which history, logic and ethics tell us is not necessary, highly immoral, and very dangerous. As Sy Leon ([1976] 1996, 84) has expressed it: “although some of the goods and services provided by government are essential, *it is not essential that they be provided by government.*”

C. Does Government Protect Rights?

Logical deficiency aside, the proposition ‘government is justified because it protects rights’ is fatally flawed on factual grounds. Government does not *in fact* protect rights. There are several reasons why this is true. The most obvious is that since all governments were established by force for the purpose of exploiting subject peoples, protecting rights never has been, and never could be, part of their remit. Oppenheimer ([1914] 1997, 9) after a detailed historical study, demonstrated that “[t]he State . . . is a social institution forced by a victorious group of men on a defeated group . . . [for] no other purpose than the economic exploitation of the vanquished by the victors. . . . No primitive State known to history originated in any other manner” (*cf.* Paine [1792] 1973, 404, and Spooner 1992, 20–21). Oppenheimer ([1914] 1997, 14–15) also pointed out that there are only two ways in which human beings can obtain the means of survival, work and robbery. He called work (and trade) the “economic means,” and robbery—“the unrequited expropriation of the labor of others”—the “political means,” then pointed out that the state is merely “an organization of the political means.” Clearly, a monopoly established by force and supporting itself by expropriation cannot be a rights protector. As Isabel Paterson ([1943] 1993, 121) noted: “Right as a concept is necessarily opposed to force; otherwise the word is meaningless . . . the rational and natural terms of human

association are those of voluntary agreement, not command.”

Further, being an instrument of coercion, the state is always more ready to use force than persuasion in pursuit of its goals. This is well illustrated by government’s preference for punishing the criminal rather than seeking restitution or compensation for the victim, the latter being the prime objective of justice in the customary law societies that preceded government. How are our rights protected or restored by another’s punishment?

When it comes to such ‘protection of rights’ as government does offer, state law agencies suffer from all the faults that afflict coercive monopolies in any sphere: stifling of initiative, poor service, interminable delays, high prices, corruption, and the ‘insolence of office’ so aptly described by Barnett (1998, 238ff) as “enforcement abuse,” i.e., no protection at all. Further, government agencies are ‘not-for-profit’ and, as Sechrest (1999, 97) has observed, “[i]t is an inescapable economic fact that not-for-profit organizations, whether public or private, exhibit a strong tendency to be ineffective and inefficient.”

Moreover, Benson (1990, part II) has shown that, structurally, the inefficiency of state-imposed law and justice is *systemic* (cf. Rothbard [1973, 1978] 1996, 127). No matter how ‘noble’ its intentions may once have been, state law-making and law-enforcement invariably turns into a *political* process—dominated by pressure groups and self-serving bureaucracies—a process that creates powerful incentives and disincentives for law enforcement officials who end up working actively *against* justice. For example, in the U.S., police success is measured by arrest rate (Benson 1990, 131). This gives officers a strong incentive to focus on ‘soft’ targets such as vice and drugs—where arrests are numerous and easy (136)—and to avoid the vastly more important field of crime *prevention*, which yields no arrests at all.²⁵ Similarly, state attorneys are rewarded on the basis of successful prosecutions. This leads them increasingly to rely on plea bargaining, which, while allowing villains to get off more lightly, produces politically desirable or career-enhancing statistics more rapidly (137ff). Virtually everything driving the state legal system works against the original subject of law, the wronged victim, who has to “fend for himself every step of the way” (147).²⁶

It might be argued that these systemic defects could be remedied, but the evidence of history suggests that, no matter how carefully bureaucracies are designed, their exclusion from the self-correcting mechanisms of the market leads inevitably to inefficiency and malfeasance. Rose Wilder Lane ([1943] 1993, 42) directed us to the heart of the matter: “Being absolute, and maintained by police force, a Government monopoly need not please its customers.”

D. Additional Problems

Five serious difficulties with the proposition ‘government is justified because it protects rights’ remain to be discussed. To start with, if one reflects on this ‘justification’ for government—under which the consent of the governed is deemed irrelevant—one soon realizes that the proposition evinces a quite startling arrogance. It assumes that ordinary people are incapable of looking after themselves. It assumes that those who establish governments have superior wisdom and virtue. It assumes that this imagined superiority entitles these “shepherds of the people” (Proudhon [1851] 1989, 130)²⁷ to regard their own personal views as fitting for all other members of society, to ignore everybody else’s contrary opinions or alternative goals, to abandon reason and persuasion, and to *force* their diktats on their fellow citizens. ‘Arrogant’ is hardly a strong enough term for such attitudes; ‘tyrannical’ is more appropriate.

Next, when one looks behind the proposition, in search of its origins so to speak, it seems clear that it is founded in altruism. Those who impose government on society claim to be doing good, protecting rights. They claim to be acting, not for themselves, but for the benefit of all other members of society. The only suitable adjective for such motivation is ‘altruistic.’ Yet Objectivism rejects altruism. So this justification for government is automatically ruled out on ethical grounds, and by simple consistency as well.

Third, a free life is genuinely free only if its adoption and practice comes unforced from within the individual. In the words of Michael Bakunin ([1882] 1970, 30): “The liberty of man consists solely in this: that he obeys natural laws because he has *himself* recognised them as

such, and not because they have been externally imposed upon him by any extrinsic will whatever, divine or human, collective or individual.” Liberty granted and protected from outside by a self-appointed ‘government’ is not liberty. Worse, the process founds society on a premise of coercion: state-made law is force. The process is also self-defeating; you cannot force people to be virtuous. As Thoreau ([1849] 1986, 387) observed: “Law never made men a whit more just; and, by means of their respect for it, even the well-disposed are daily made the agents of injustice.”

Fourth, if the imposition of government is justified because it protects rights, a similar imposition by any other body is equally justified. The Mafia, for example, making you ‘an offer you can’t refuse’ to protect your person and property (a ‘protection racket’) is acting on exactly the same moral basis as government. Indeed, as Harry Browne (1973, 92–96) showed, the only difference between the Mafia and the U.S. government in the 1970s was that the Mafia was much smaller and, by many orders of magnitude, less violent. Nock ([1935] 1950, 50) had made the same point earlier: “Taking the State wherever found, striking into its history at any point, one sees no way to differentiate the activities of its founders, administrators and beneficiaries from those of a professional-criminal class.”

Tom Paine ([1792] 1973, 420) wrote that “all assumed power is usurpation,” and the last, insuperable problem with the proposition ‘government is justified because it protects rights’ is that the rights themselves prohibit taking decisions about their protection away from the individuals whose rights are to be protected (*cf.* Sechrest 1999, 108). The right to liberty ‘trumps’ everything. It forbids the infringement of that liberty by *anybody*, no matter what they call themselves. So the supposed justification is, in truth, usurpation.

Thus, the most suitable way to conclude this section is to paraphrase a statement made by Kelley (1974, 244): action is *unjustifiable* “if it leads to the violation of individual rights.”²⁸

Part Four: Non-State Protection of Rights

Liberty is the mother, not the daughter of order.
— Pierre-Joseph Proudhon (quoted in Barry 1986, 15)

Sechrest (2000) referred to a number of historical examples that undermine the widely-held thesis that government is essential to protect rights—in England, Iceland, Ireland, New Guinea and California, some of which have already been referred to in this paper. In this section, some of these examples are amplified, and additional ones are provided.

A. The Principles of Customary Law

One of the more interesting aspects of Benson's book, *The Enterprise of Law*, is the marked likenesses he found between the customary laws of widely-separated societies. Two cultures he discussed were early Anglo-Saxon England, and the twentieth-century Kapauku people of New Guinea. The early Anglo-Saxons had no state, but nonetheless had a long-lasting and viable social system characterized by a great concern for individual rights. Protection was provided by kindred or neighborhood groups called "tithings" whose members had reciprocal agreements to help each other in times of trouble and to join the hue and cry in pursuit of thieves, murderers, etc. Groups of tithings formed a 'hundred' in each of which was a 'hundredsman,' a respected individual who organized the hue and cry, and a court presided over by a judicial committee drawn from the men of the tithings. There were separate shire courts for disputes between members of different hundreds (Benson 1990, 21ff). Offenses were treated as torts and resolved by restitution.

Although records of Anglo-Saxon England are sparse and incomplete, the still extant Kapauku people were intensively studied by Czech-born Yale anthropologist Leopold Pospíšil ([1971] 1974, xii) between 1954 and 1962. Like all early societies, the Kapauku had no government, yet enjoyed a thriving culture based on individual rights. Protection was provided by kinship groups and arbitration (with restitution as the main form of resolution) by competing law speakers and dispute resolvers called *tonowi*. Private property was integral to

Kapauku life, even the forest being divided up into privately-owned strips (Benson 1990, 15ff; Pospíšil [1971] 1974, 66). In both Anglo-Saxon and Kapauku society, anybody who refused to accept the judgment of court or *tonowi* risked being declared an outlaw, and outlaws could be killed and their property taken with impunity. This ultimate sanction was sufficient to ensure compliance in most cases.

Having examined the laws of these and other stateless societies, such as the Yurok of California and the Ifugao of the Philippines, Benson (1989, 7ff, 13ff) offered an intriguing analysis of their common characteristics. These consist of

- 1) primary rules characterized by a predominant concern for individual rights and private property; 2) responsibility of law enforcement falling to the victim backed by reciprocal arrangements for protection and support in a dispute; 3) standard adjudicative procedures established in order to avoid violent forms of dispute resolution; 4) offenses treated as torts and typically punishable by economic payments in restitution; 5) strong incentives to yield to prescribed punishment when guilty of an offense due to the reciprocally established threat of social ostracism; and 6) legal change arising through an evolutionary process of developing customs and norms. (Benson 1990, 21; italics omitted)

These characteristics were clearly revealed in stateless Medieval Iceland. The basis of that society was privately owned and privately managed property in land (Byock 2001, *passim*); protection was provided by mutual aid within families and kindred groups, and by reciprocal arrangements with local chieftains called *godar* (216, 242); prosecutions were brought privately and were usually resolved through negotiation and compromise (282); restitution was the prime means of resolving disputes and/or wrongdoing (223); and fear of ostracism helped preserve peace (211, 226, 229).

Near identical customary laws have been recorded by anthropologists in African stateless societies. Among the 900,000 strong Nuer of the Upper Nile basin, for example, disputes were settled by

arbitration conducted by 'leopard-skin chiefs.' Reparation was the standard solution, even for serious offenses like homicide, payment being made in cattle, the Nuer's most prized possession (Evans-Pritchard 1940, 121, 153). Among the much smaller Manda tribe, people within each chiefdom "paid recognised scales of compensation for injury to person and property," while "killings between unrelated persons were . . . compensated by the handing over of a female child" (Buxton 1958, 88–89).²⁹

It is important when studying the mores of less technologically advanced peoples to recognize that, spiritually, they were often our equals. The Nuer, who drank fresh blood, went around stark naked and washed themselves with cattle urine, nonetheless recognized and extolled virtues such as courage, generosity, patience, pride, loyalty, stubbornness and independence (Evans-Pritchard 1940, 90). They also tried to settle disputes quickly because "the people on both sides had got to mix" and "Corporate life is incompatible with a state of feud" (156).

It is also important to recognize that the customary laws of such societies were intelligently thought out and applied, and were based on centuries of experience of living together. Peace and order were active *values* even among people prone to fighting or warfare. This is clearly reflected in expressions used by the 800,000 Tiv people of what is now Northern Nigeria. Anthropologist Laura Bohannan (1958, 41) reported: "Any act which disturbs the smooth course of social life—war, theft, witchcraft, quarrels—'spoils the country'; peace, restitution, successful arbitration 'repair' it." The Tiv even have a proverb to the effect that "any dispute can be settled unless the parties want to fight" (48).

In answer to the assumption of those Objectivists who follow Rand in believing that rampant subjectivity would be the norm in the absence of government, it has to be stressed that since the few, simple principles of customary law are known, understood and honored (usually) by everybody in the society, they are clearly *objective*.³⁰ As Pospíšil ([1971] 1974, 4) noted, criteria are objective when "part of a general custom known to all." Customary laws are also proper *laws*, not mere totems of little consequence: they cannot be broken with

impunity. Another scholar has written: “Customary law is real law. . . . It has real normative force” (Reynolds 1994, 58).

Further, the consistency rightly desired by Marsha Enright (2000, 137) seems to arise naturally. The Ancient Icelanders, Medieval Irish (Peden 1977), early Anglo-Saxons, Yurok, Ifugao, Kapauku, Nuer, Manda and Tiv all had common law codes despite living in widely dispersed communities. It is also vital to note that these voluntary codes cost very little to implement, restored the victim or the victim’s family—since fines and damages were paid to them, not to a state treasury—and, through restitution rather than punishment, allowed guilty parties both to remain productive, and to restore their own position in society once their debts to the victims had been paid.

How different this allegedly ‘primitive’ customary law from today’s state provision of justice under which everybody profits but the victim; where the guilty do not have to recompense those they have harmed (and are further rendered unproductive by imprisonment, partly at the victim’s expense); and where most victims never see justice done due to inefficient state police, venal or incompetent judges, slow and complex court procedures, or simply because the state legal system is so expensive that few people can afford to seek its protection (Benson 1990, 309; Barnett 1998, *passim*).³¹

Nor are disputes *resolved* in the state system. Unlike private arbitration, which tries to draw the litigants jointly towards a permanent resolution of their dispute, “the adversarial court system does not seek a compromise to which both parties *voluntarily agree*; it *forces* a solution that at least one, and perhaps both, of the parties find unsatisfactory, virtually guaranteeing future confrontations” (Benson 2002, 143). We may contrast this with Ancient Iceland. Although the sagas tell of rough justice and exploitation of weaker folk, such events were recorded for their unusualness, because they were *not* the norm. The norm was compromise: “In the give-and-take of the Icelandic court system, a compromise solution was the usual outcome of a lawsuit” (Byock 2001, 282).

The pursuit of mutually acceptable solutions to disputes is actually universal in customary law societies. For example, among the Tiv: “Two men of equal standing, unable to agree, seek out some elder and

ask him to arbitrate; they often go to several in succession until they have heard a solution pleasing to them both” (Bohannon 1958, 57). And when compromise is reached, and both parties agree to a solution, no other arbiter is needed. This approach dispenses with that minarchist shibboleth, the alleged need for a final arbiter or supreme court, allegedly capable of deciding better than the parties involved what the solution to a dispute should be. Obviously, in cases of homicide, rape or theft, the guilty may be less inclined to accept the verdict agreed between the aggrieved and the judge; but when the issue is deciding levels of compensation, rather than depriving wrongdoers of life or liberty, one of the more remarkable facts recorded by anthropologists about customary law societies (as Benson noted above) is the high degree to which the guilty accept the judgment against them (*cf.* Benson 1990, 18).

B. Absence of Violence in Stateless Societies

Rand joined Hobbes in believing that lack of government would lead to a war of all against all. It is therefore very important to realize that the evidence we have from anthropology leads to virtually the opposite conclusion. Introducing Peter Kropotkin’s famous work *Mutual Aid*, John Hewetson (1987, 3–4) wrote that:

accounts of . . . primitive societies are surprisingly uniform. Everywhere they are found to be characterised by sociability, mutual trust and absence of violence and strife within the group. Thus the African pygmies never steal or kill, no such act having occurred within the memory of their eldest member. . . . Another writer speaks of the Matumbi Pygmies of the Congo in similar terms. They never kill or steal among themselves, are very gentle and hospitable, show great courage in hunting and have no social aspirations. The Kalahari Bushmen were exterminated by the Dutch [not completely—ed.]; yet they are described as being entirely free from cruelty and vindictiveness, upright and faithful in their dealings, kindly and light-hearted and careless of the morrow.

They were as innocent of tribal organisation, chieftainship or central authority as of criminality in their deeds.

The Veddahs of Ceylon are “as peaceable as it is possible to be. They are proverbially truthful and honest.” . . . The Semang of Malaya have no form of government. “Freedom, but not licence, is the principle of the Semang group, and the characteristic of each individual.” . . . The Negritos of the Phillipine Islands are wholly pacific, any member of any other tribe being welcomed in each others’ homes. . . . Similarly, Eskimos cannot understand the profession of soldiering, and have no words for murder and theft.³²

That such cooperativeness can be achieved in our own era was shown by the fascinating Peckham Experiment that began in London, U.K., in 1935. The scientists involved wanted to study human health, or rather the functioning of healthy human beings. They therefore built a large, airy Health Centre, with a swimming pool and all sorts of facilities for exercises, games, drama, etc., and invited 2,000 local families to participate. The basic premise was ‘do as you please,’ for the scientists realized that function “demands an entirely free environment for its full expression. *Full function without full freedom is impossible*” (Comerford 1947, 22).³³ The results were as impressive as they were instructive. Professional visitors—doctors, social workers and so forth—were “baffled by the sight of spontaneity working harmoniously.” With no leadership or organization, they had expected “chaos and uproar” but found instead an “undeniably and visibly smooth-running affair.” The author concedes, “whilst spontaneity and freedom of action do ultimately achieve a state of law and order as smooth-running as any discipline could have affected . . . this does not happen overnight. The first six months, the transitional stage, did make the Centre something of a bear garden.” But, he concludes, a “society . . . if left to itself in suitable circumstances to express itself spontaneously works out its own salvation and achieves a harmony of action which superimposed leadership cannot emulate” (49–50). The lesson is that we all possess reason; it is not the

exclusive domain of office holders.

To close this section, I refer again to Isabel Paterson, who reminded us of the popular seventeenth- and eighteenth-century notion of the Noble Savage. The first literate visitor to America, Christopher Columbus, wrote to the King and Queen of Spain: “so tractable, so peaceable, are these people . . . that I swear . . . there is not in the world a better nation. They love their neighbours as themselves, and their discourse is ever sweet and gentle, and accompanied with a smile; and though it is true that they are naked, yet their manners are decorous and praiseworthy” (Brown 1971, 20). As contacts increased, Europeans, who “assumed that without government every man’s hand must be against his neighbour, and every kind of crime would be committed by everyone” were astonished to observe that North American natives, who “practiced most of the lay virtues,” such as courage, hospitality, truthfulness and loyalty, had no government: “it was a profound shock to discover that crime was rather less prevalent among savages with no government than in a society with authoritarian government minutely applied.” Hence, the idea that “savages were peculiarly noble by nature” (Paterson [1943] 1993, 63–64). It is strange that over the centuries since 1492 so few among supposedly civilized and educated European and American intellectuals have realized that the nobility of the ‘savages’ was *owing to* their lack of government, and that the Hobbes/Rand assumption is simply false.

In sum, the ‘war of all against all’ is a myth based on (intentional?) misinterpretation of the past. It looks at the bloody history of *states* and confuses that with the generally peaceful history of *humanity*, which, being uneventful, is of little interest to historians or dramatists—and entirely unhelpful to proponents of government. Although the belligerence of warlike tribes like the Nuer may seem to contradict him, the last word here goes to Kropotkin ([1898] 1987, 21), perhaps the most able nineteenth-century critic of the Hobbesian myth: “Far from being the bloodthirsty beast he was made out to be in order to justify the need to dominate him, Man has always preferred peace and quiet. Quarrelsome rather than fierce, he prefers his cattle, the land, and his hut to soldiering.”

C. State Involvement in Law

It has to be stressed, contra Franck (2000, 150), that in early Anglo-Saxon England there was no state involvement of any kind in law for the simple reason that there was no state. Kings at that time were temporary war leaders who played no part in lawmaking or justice. They did come to take such roles, as kingship became permanent, but it was not until after the Norman Conquest in 1066 that their involvement became significant. Eventually, their intrusion into law became so tyrannical that in 1215 King John was forced to sign Magna Carta—an early form of ‘constitution’—one of the purposes of which was to restore rights previously enjoyed under Anglo-Saxon customary law (Spooner [1852] 1976, 20ff, and *passim*).

In this regard, British historian Dennis Hardy (1979, 4) has reminded us of the ‘Norman Yoke,’ which was for centuries as enduring a bad memory in English history as, for example, the British conquest of 1763 remains to most French Canadians. The memory “rested on the original portrayal of an Anglo-Saxon society where people lived as free and equal citizens, governing themselves through representative institutions. This ideal form of society was brought to an end in 1066 when the Normans replaced egalitarianism with the tyranny of an alien king and landlords.”³⁴

Since it is commonly asserted by Objectivist scholars that states are established to create objective law and to protect rights, it is useful to examine how they actually became involved in law, a process well illustrated by the origins of kingship in Anglo-Saxon England. As previously remarked, kings were at first temporary war leaders. But because rival kings competed incessantly for land and booty, England was in a virtually constant state of war, so kingship gradually became a permanent institution. To support it, and to pay for war, kings needed money. Customary law fines (paid to the victim) were an obvious target, so the later Anglo-Saxon kings began to push their way into the fields of law-making and justice to obtain a share of the spoils. After the Norman Conquest, this incursion accelerated rapidly and, eventually, what had been torts (wrongs against individuals) in Anglo-Saxon times became under the Normans ‘crimes against the

state' so that fines went to the crown, not to the victims (Benson 1990, 43ff).

The fiscal intent of state involvement in law is shown most clearly by the royal legal invention of "theftbote," which made it a crime to settle an offense privately—and thus deprive the crown of its profits (62)—a concept still with us.

In later centuries, the British crown also forced its way into commercial law. Again, this had nothing to do with protecting rights; it was due to royal ambitions in power, wealth and prestige and was brought about by an arbitrary ruling from the celebrated judge Lord Edward Coke, in 1606, to the effect that the Law Merchant was subservient to Royal law (61).

Finally, though not until the nineteenth century, the British crown took over policing as well, though Benson comments that the latter was not accomplished without considerable opposition (73–75). The main reasons for resistance were fears of a 'police state'—already well-established in several countries on the Continent—and the fact that private policing in Britain already did the job pretty well: "The evidence given by association officers and public officials to public enquiries was overwhelmingly of the view that private action had brought about marked local improvement in such things as the level of crime" (Davies 2002, 167). Experience in coming decades would show that the voluntary private system had actually done the job much more cheaply and more effectively than the new, tax-funded "Peelers."

To summarize, the founding of the British state had nothing to do with creating objective law or protecting rights, and the U.S. state is its direct descendant.

It is interesting to note from the above the *exploitative* motivation for state involvement in law, exploitation of subject peoples being the prime purpose Oppenheimer had shown for the establishment of states. It is also intriguing to note that war is not just the health of the state, as Randolph Bourne ([1918] 1998, 21) observed, it was the state's original reason for being.

D. Non-State Law and Order in the Americas

Sechrest (2000, 179ff) has remarked that remoteness of time and place can render evidence in support of anarchism less than persuasive to proponents of limited government. For example, Robert James Bidinotto (1994, 8) has dismissed the statelessness of Medieval Iceland as “nostalgia.” However, aside from the significant Anderson and Hill paper already referred to—which describes non-state law among Western settlers, and in wagon trains and mining camps—there is plenty of evidence closer to home, so to speak.

It was assumed by Rand, as by Hobbes, that a society without government would be plunged into a war of all against all. Yet one of the best sources of evidence that both of them were mistaken can be found among the Northern Iroquoian peoples who dwelt—and whose descendants still dwell—in what is now upper New York State, scarce half a day’s drive from Rand’s former home in Manhattan.

The Cayuga, Mohawk, Oneida, Onondaga and Seneca, and the constituent tribes of the Huron confederacy in Ontario, had existed as cohesive societies without government for centuries prior to the arrival of Europeans. Their secret was a true freedom involving genuine equality and consent. Among the Huron, “No man could be expected to be bound by a decision to which he had not willingly given his consent” (Trigger [1976] 1987, 54). Among Iroquoians generally, “[t]he implementation of the decisions of . . . councils required securing the consent of all those involved, since no Iroquoian had the right to commit another to a course of action against his will” (102). Far from a war of all against all, Iroquoian society was characterized by “a respect for individual dignity and a sense of self-reliance, which resulted in individuals rarely quarrelling openly with one another.” It was also marked by “politeness and hospitality to fellow villagers and to strangers” and by “the kindness and respect they showed towards children” (104).

Even Jesuit missionaries, who were appalled by various aspects of Huron life, such as their sexual “license,” freely acknowledged the cooperativeness and tranquillity of Huron communities, in which thousands of people lived crowded together in smoky longhouses full

of dogs, mice and fleas. Jean Brébeuf SJ, for example, writing in the 1640s, commented at length on the “love and unity” that existed among the Hurons and “their kindness towards each other” even in times of great stress (Trigger [1969] 1990, 72). A hundred years later, Pierre Charlevoix SJ confirmed the “harmony” which characterized the domestic and community life of the many interior tribes he visited (Trigger [1985] 1986, 24).

It is true that, like Europeans, Iroquoians engaged in constant inter-tribal warfare, but this usually consisted of small-scale raids and was waged, not for conquest, but for the prestige of individual warriors, as vengeance for past attacks, and to obtain victims for sacrifice. Their wars were thus unlike European wars, which were usually launched for territorial gain and for the exploitation of conquered peoples. The origins of most Iroquoian conflicts were ancient blood feuds, but the futility of these had become well recognized. The Huron confederacy was in fact composed of four tribes apparently once hostile to each other, and it had made peace with former enemies such as the Petun tribe, who lived further south. Among the main purposes of Huron confederacy councils were to “prevent disputes between members of different [Huron] tribes from disrupting . . . unity” and to “maintain friendly relations with tribes with whom the Huron traded” (Trigger [1976] 1987, 59). The Huron were well aware that “no tribal organisation and no confederacy could survive if internal blood feuds went unchecked. One of the basic functions of the confederacy was to eliminate such feuds . . . indeed, between Huron, they were regarded as a more reprehensible crime than murder itself” (60).

Alas, the lessons Native Americans could teach were usually wasted on Europeans. Frenchman Samuel Champlain was typical. His ambition was to change the native inhabitants from stateless, church-less, freedom lovers, into obedient Catholic citizens of a European monarchy, by force if necessary. In his own words, he despised their “filthy habits, loose morals and uncivilised ways” (Trigger [1985] 1986, 199) and, as a soldier and aspiring vice-regal official “was unwilling to see in their noncoercive social order anything but chaos and barbarism” (Trigger [1976] 1987, 301–2).

Sorbonne-educated French anthropologist Pierre Clastres studied American native peoples in great detail but came to quite different conclusions from those of Champlain. He spent several years in the 1960s and 1970s in Paraguay and Venezuela, living with native tribes whose lives had changed little since Europeans arrived. He was thus able to observe customary law societies free of the prejudices that had warped the vision of missionaries and conquistadors. As one commentator had remarked in that respect: “The white man, whether a missionary or a trader, is firm in his dogmatic opinion that the most vulgar European is better than the most distinguished native” (quoted in Kropotkin [1902] 1987, 89).

In his book, *Society against the State*, Clastres ([1974] 1977) tackled this prejudice head on—particularly the variant that sees statelessness as a ‘primitive’ stage on the way to an inevitable ‘civilized’ stage in which society is equipped with government and organized religion. In point of fact, Clastres writes, statelessness *cannot* be the precursor of a governed society because the nature of customary law precludes the domination of all by one or a few: “there is no king in the tribe, but a chief who is not a chief of State. What does that imply? Simply that the chief has no authority at his disposal, no power of coercion, no means of giving an order. The chief is not a commander; the people of the tribe are under no obligation to obey. *The space of the chieftainship is not the locus of power*, and the ‘profile’ of the primitive chief in no way foreshadows that of a future despot. There is nothing about the chieftainship that suggests the State apparatus [was] derived from it” (174).

Interestingly, most chiefs fully understood their role in relation to the rest of the tribe:

The great cacique Alaykin, the war chief of a tribe inhabiting the Argentinian Chaco, gave a very good definition of that normal relationship in his reply to a Spanish officer who tried to convince him to drag his tribe into a war it did not want: “The Abipones, by a custom handed down by their ancestors, follow their own bidding and not that of their cacique. I am their leader, but I could not bring harm to any of my

people without bringing harm to myself; if I were to use orders or force with my comrades, they would turn their backs on me at once. I prefer to be loved and not feared by them.” And, let there be no doubt, most Indian chiefs would have spoken similar words. (176)

To prove the point, when some chiefs did try to impose their rule on the Tipu-Guarani, the people soon overthrew them (181–85).

Another fascinating part of Clastres’s study is his interpretation of the ordeals that accompany passage into adulthood in many tribes. Clastres sees the resultant scars as a form of ‘writing on the body,’ deliberately devised to prevent the development of tyranny. The tribes were illiterate, so could not write down the wisdom of their elders. The scars were therefore invented as a way of constantly reminding everyone in the society of its fundamental law of equality, which forbade domination of the rest by any one person or group. Visible to all on the body of every man, the scars, and the law, could never be forgotten. In Clastres’s words, “Archaic societies, societies of the mark, are societies without a State, *societies against the State*. The mark on the body, on all bodies alike, declares: *You will not have the desire for power; you will not have the desire for submission*” (157).

It is important to remember when reading passages such as those above how completely mistaken Rand was in her view of early societies. In *Capitalism: The Unknown Ideal*, Rand (1967, 36) wrote of

the *tribal premise* of primordial savages who, unable to conceive of individual rights, believed that the tribe is a supreme, omnipotent ruler, that it owns the lives of its members and may sacrifice them whenever it pleases to whatever it deems its own “good.” Unable to conceive of any social principles, save the rule of brute force, they believed that the tribe’s wishes are limited only by its physical power . . .³⁵

It is evident that this mistaken thinking underlay Rand’s politics, as did her own experiences during the Russian revolution, when she and

her family were robbed in the dark at gunpoint by a bandit gang (Branden 1986, 30). We must regret the impression made on her young mind that what she had experienced was ‘anarchy.’ That said, one wonders whether her views might have changed had she studied anthropology, or had read Kropotkin’s *Mutual Aid*, or had listened more attentively to her friend Isabel Paterson ([1943] 1993, *passim*) who, though mistaken in several ways, had a much better understanding of early societies.

In fairness to Rand, one should add that she was not alone in her ignorance of early societies. Mises (1944, 40) wrote: “The chieftain of a small primitive tribe is as a rule in a position to concentrate in his hands all legislative, administrative, and judiciary power. His will is the law. He is both executive and judge”—words that assert virtually the exact opposite of the truth.

Returning to North America, it may surprise those who assume that people without governments immediately set them up, that the early seventeenth-century settlers in the Thirteen Colonies seem rather to have been guided by memories of Anglo-Saxon customary law, a basic principle of which, trial by a jury of one’s peers, had been enshrined in Magna Carta. The newcomers did not turn to *government* as they carved out their increasingly remote farms and villages. Instead, an Anglo-Saxon form of reciprocal protection and tort law was the norm in their early years, with restitution to the victim as the prime form of dispute settlement. Modern-style police, prosecutors, courts and punishment by imprisonment did not exist. They soon did, however. Public officials in the colonial judicial systems had low status and pay as a result of private law enforcement, and the revenues expected by colonial governments from fines did not materialize due to private settlement of disputes. Burgeoning officialdom in several colonies therefore sought to develop public prosecution as a means of increasing judicial revenues, an exact repeat of the policies pursued by kings in late Anglo-Saxon and Norman England (Benson 1998, 94–95; *cf.* Rothbard [1973, 1978] 1996, 88).

While governments in the American colonies did succeed in imposing English-style state lawmaking and justice, the colonists themselves seem not to have absorbed the lesson too deeply. Writing

not long after the 1776 Revolution, which he witnessed first hand, Paine ([1792] 1973, 399) recorded:

For upward of two years from the commencement of the American War, and to a longer period in several of the American states, there were no established forms of government. The old governments had been abolished, and the country was too much occupied in defense, to employ its attention to establishing new governments; yet during this interval, order and harmony were preserved as inviolate as in any country in Europe. . . . There is a natural aptness in man, and more so in society. . . . The instant formal government is abolished, society begins to act. A general association takes place, and common interest produces common security.

In this regard, it is worth noting nineteenth-century attempts, such as those by Josiah Warren in Ohio and New York, to establish anarchist communities. None lasted, for a variety of reasons, but one at least did endure for a quarter-century or more, Modern Times (later Brentwood) on Long Island. In the words of historian James J. Martin (1970, 86):

“Modern Times” as an experiment in practical anarchism is not easily evaluated. In a sociological sense, it is significant that no account, even including those of its critics, has ever made mention of the presence of crime as a community problem. The lack of disorder or violence in the absence of constituted authority for this extended period is a challenge to promoters of the widespread belief that organized society on any level without such formality is doomed to chaos.³⁶

As an aside, Warren would have been fascinated by the anarchic societies that have sprung up in our own day in shanty towns around cities in Africa, India, and South America, such as the *barriadas* of Peru. The official view of these unofficial settlements is that they are the breeding grounds for every kind of crime, vice, disease, and of

social and family disorganization. Yet, according to William Mangin and John Turner,

[t]en years of work in Peruvian *barriadas* indicates that such a view is grossly inaccurate: although it serves some vested political and bureaucratic interests, it bears little relation to reality . . . Instead of chaos and disorganisation, the evidence points to . . . thousands of people living together in an orderly fashion with no police protection or public services. . . . Employment rates, wages, literacy, and educational levels are all higher than in central city slums (from which most *barriada* residents have escaped) and higher than the national average. Crime, juvenile delinquency, prostitution and gambling are rare, except for petty thievery, the evidence of which is seemingly smaller than in other parts of the city. (quoted in Ward [1973] 2001, 69)

While Warren was pursuing his restless experimentation in the American East and Midwest, on the other side of the continent gold miners were prospecting their way north from Mexico to the Yukon in a vast, 'lawless' wilderness. Although the miners were all born in places with established states, when they found themselves in the stateless wilderness they did not turn to *government*, but to their own spontaneous forms of law and justice. In Gregory Gulch, Colorado, for example,

“[a] mass meeting of miners was held June 8, 1859, and a committee appointed to draft a code of laws. This committee laid out boundaries for the district, and their civil code, after some discussion and amendment, was *unanimously* adopted in mass meeting, July 16, 1859. The example was rapidly followed in other districts, and the whole Territory was soon divided between a score of local sovereignties. . . .”

“No council, no justice of the peace, was ever forced upon a district by an outside power.” . . . [But when, later] outside

laws were imposed upon the camps, there is some evidence that they increased rather than decreased crime. One early Californian writes, “We needed no law until the lawyers came,” and another adds, “There were few crimes until the courts with their delays and technicalities took the place of miners’ law.” (Anderson and Hill 1979, 19–20)

Other sources paint a similar picture: “Thousands of men hitherto unknown to each other . . . were thrown suddenly together, unrestrained by conventional or domestic obligations. . . . It is to be wondered that chaos and anarchy were not at first the result of such a state of things; but such was never the case in any part of the country.” Again, “the men of the various camps dwelt together in peace and good fellowship without any representatives of the United States government in their midst. Legal forms and judicial machinery were as nearly non-existent as it is possible to be in a civilised country. . . . The unwritten, unformulated law that ruled each camp was the instinct of healthy humanity to mete out equal justice to all. There was no theft and no disorder; few troublesome disputes occurred about boundaries or water rights. . . . Throughout this Arcadian era there was not only no theft, but the bonds of fellowship were strong and sincere among all the miners of the camps. In some districts . . . the entire flush period from 1849 to 1853 was marked by such unity” (Ross [1901] 1969, 42–44).

Even more significant for the anarchy/minarchy debate, there was a time when there were four competing court systems in Colorado: “Appeals were taken from one to the other, papers certified up or down and over, and recognised, criminals delivered and judgments accepted from one court by another, with a happy informality. . . . And here we are confronted by an awkward fact: there was undoubtedly much less crime in the two years this arrangement lasted than in the two which followed the territorial organisation and regular government” (Anderson and Hill 1979, 19–21). In other words, the mayhem predicted by Hobbes, Rand et al. simply did not happen. In fact, as the sub-title of Anderson and Hill’s paper suggests (“*The Not So Wild, Wild West*”) and as other revisionist historians

have shown, the ‘lawless’ Old West was actually far more peaceful than much of the U.S. today, where ‘law’ rides triumphant (Benson 1990, 312–23; 1998, 97–101, and *passim*).

Part Five: Randian Interpretations of History

Convictions are more dangerous enemies of truth than lies.

— Friedrich Nietzsche ([1878] 1954, 63)

Ayn Rand (1961, 23, and *passim*) saw the adoption of the United States Constitution as the culmination of a long process that began with the rediscovery of Aristotle’s writings in the twelfth century—an event, she maintained, which ignited the Renaissance and led eventually to the birth of modern science, to the Enlightenment of the eighteenth century, and to the Industrial Revolution.

However, when one considers the historical facts presented in this paper, the origins of the U.S. appear in a different light. The country was *not* the direct descendant of the Renaissance or solely the offspring of the Enlightenment. Neither did it spring fully formed from the brows of the Founding Fathers. It was rather the result of a gradual process of state creation that began in late Anglo-Saxon England and accelerated rapidly after the Norman Conquest. The more significant institutions, legal principles, and governmental practices enshrined in the U.S. Constitution (a chief executive, a sovereign legislature, a state court of last resort, state-appointed judges, majority voting, standing armed forces, tariffs, taxes, the regulation of commerce, and execution for treason) had nothing to do with the Enlightenment. They were introduced or devised long before 1776 or 1787: not by Jefferson or Madison, but by British monarchs, aristocrats, parliaments, or state-appointed judges, such as Blackstone and Coke, whose prime concern was not to secure liberty, but to preserve or extend state power.

It is true that many among the Founding Fathers were well-intentioned. They set out to provide for the common defense, prevent tyranny, inhibit the power of factions, secure justice, leave merchants free to go about their business, and to eliminate the inter-colonial feuding that had sprung up under the loose Articles of

Confederation. However, the majority of them were also deeply distrustful of ‘The People’ whom they claimed to represent: they feared ‘mob rule.’ The framers of the Constitution were thus determined that their new federal government be *strong* (Nock [1935] 1950, 145).

Protecting the natural rights of the populace, though much heralded, was a secondary concern: vide the evasion of slavery,³⁷ or the extremely narrow franchise.³⁸ Or consider the Bill of Rights, which was tacked on later, in 1791, solely as the result of public clamor (much of it unenfranchised) during the campaign for adoption of the Constitution—in other words, ‘by popular demand.’ Patrick Henry was right to “smell a rat.” The framers of the Constitution—who had been appointed to modify the Articles of Confederation—not only arrogantly ignored their terms of office in what Randolph Bourne ([1918] 1998, 32) called “one of the most successful *coups d’etat* in history,” they were first and foremost *statists*.³⁹ They set out to create a powerful *state*, albeit one with limited, defined powers and, initially, possibly the least domineering mankind had yet known.

Another area of Rand’s thought that calls for re-evaluation is her insistence on the influence of ideas on human history, particularly those of Aristotle. For example, she asserted that in the Middle Ages, “Wealth was not earned on an open market . . . wealth was acquired by conquest” (Rand 1961, 13) and that, the “prelude to the Renaissance was the return of Aristotle via Thomas Aquinas” (23). But when one examines the medieval era closely, it is plain that the recovery of trade and the spontaneous creation of the Law Merchant—both of which predate Aquinas—were the real preludes to the Renaissance. Private trade, protected by private law, created the wealth which generated the great ‘rebirth.’ It was *rulers* who acquired their wealth by conquest, not merchants. The merchants’ wealth, and the Renaissance it led to, had much more to do with private law than with Aristotle.

Similarly, Rand maintained that the Industrial Revolution was the result of Aristotle’s influence (23). In point of fact, the Industrial Revolution came about due to a happy accident. The Norman invaders of England had grabbed all the land, because at that time

land was almost the sole source of wealth. Later, as trade grew more important, the Norman state moved to profit from this new form of wealth with regulations, tariffs and monopolies. Thus, the Industrial Revolution did not begin in London, or the other old-established corporate towns, because trade in them was governed and innovation stifled by state regulation and state-dominated guilds (as it was all over Europe). The Industrial Revolution began rather in the English countryside, in villages like Birmingham, and in small new towns like Manchester and Glasgow, because the tentacles of the growing British state had not yet reached them.⁴⁰ The new factories created another novel form of wealth, one unknown to the state, and hence not yet exploited by it. The cotton millers and metal bashers, and the pin makers made famous by Adam Smith, were not following Aristotle, they were simply *free*.

It is evident that philosophical and other ideas do influence history, but not always in the manner Rand thought. Human needs are constant, whatever intellectuals may think or say, and the need for freedom is born again with each generation regardless of the tyrannies mankind may suffer under. What the evidence alluded to throughout this essay leads one to realize is that freedom under customary law is man's natural condition. Here one can indeed quote Aristotle: "For men of pre-eminent virtue there is no law—they are themselves a law" (*Politics*, 1284a 13). Any study of stateless societies reveals the truth of that, for only in a genuinely stateless society, ordered by customary law, is each individual truly sovereign.

It was not until states arose to curtail humanity's natural freedom that the kind of intellectual influence Rand had in mind came to the fore. Locke's *Treatises*, for example, were written to defend individuals and their property against the growing power of the British state, and did for a time help toward that end. But Locke's efforts would have been thought most curious by ninth-century Anglo-Saxons, Medieval Irishmen and Icelanders, sixteenth-century Iroquoians, or the twentieth-century Kapauku, for all of whom individual freedom and private property were as natural and necessary as breathing, and for whom domination by a state lay in the future. Rand's analysis of history using the symbols Attila and the Witch Doctor is evocative,

but its main concern is with political and religious power. There are wide and equally vital areas of social, economic and legal history, and of anthropology, for which her analysis is not germane.

It is true, too, that sound ideas have periodically succeeded in stalling the growth of states, even forcing them into retreat. The repeal of Britain's Corn Laws and other free trade measures in the nineteenth century are cases in point, as was the influence of F. A. Hayek and others on Margaret Thatcher, which led to a brief respite for the British people in the 1980s. But states never give up much, they cannot afford to. The lack of necessity for their existence eventually becomes obvious, so states must constantly seek to take over or control things that *are* essential, or to start wars, in order to justify their existence.⁴¹ The result is, in Sechrest's words, "if government exists, it grows" (2000, 173). When in times of peace citizens turn against states—and remember that states are merely groups of people who take their livelihood from others by force—they retreat and look for fresh pastures. They are like the Hydra, cut off one head and another soon grows in its place.

So it has been in Britain. Faced with the free trade movement of the nineteenth century, the British state side-stepped into factory regulation and further empire building. In the latter quarter of the twentieth century, having failed so glaringly as a builder of empires and owner of industries, it moved into fresh fields of economic regulation, the environment, and political correctness. The result? In the twenty-first century, the British state is expanding as rapidly, and stifling enterprise just as effectively, as when it claimed the right to own the entire economy. The work of thinkers such as Locke, Smith, Lord Acton or Hayek may have checked it from time to time, but from 1066 to the present day the British state has never paused in its thus far successful efforts to expand in power and domestic influence. In the words of Mises (1944, 109), still true today: "We must acknowledge the fact that hitherto all endeavors to stop the further advance of bureaucratization and socialization have been vain."

Rand (1961, 23) also spoke of "the rise of *Statism* in the Roman Empire."⁴² In point of fact, the whole history of Rome is about the growth of a state, Rome was *always* statist. And it thrived, as states

always have, on wealth taken by force from its citizens and neighbors. When that wealth ran out, the Roman state collapsed. But Roman concepts of state-imposed law and empire were preserved by the Roman Catholic Church, reinforced with the notion of Divine Right, then re-introduced when powerful warriors such as Charlemagne and William the Conqueror began emulating their Imperial Roman predecessors. Modern Western political history actually consists of a series of re-runs of the Roman Empire, on larger or smaller scales. The Roman state was reborn in various guises in the Middle Ages and later, and each modern clone has grown through exploitation of its citizens and neighbors in exactly the same manner as its ancient progenitor.

The genius of modern wealth creation has thus far outstripped state growth, so the fate of Rome is unlikely to be repeated soon (though it has been in the British and Soviet empires). But if state power continues its present aggrandizement, one can reasonably predict the collapse of the USA and other Western states in the not-too-distant future. Like causes produce like effects. Alternatively, if the embryonic European superstate continues to grow, one may rather anticipate permanently warring blocs as in Orwell's *1984*. Neither scenario is *inevitable* of course, and if lovers of liberty can accelerate and extend their influence, the near 1000-year expansion of Western statism might even be reversed. It will be a long, hard fight but, as Nicolas Walter has written, though it is "a struggle we may not win and which may never end . . . [it] is still worth fighting" (quoted in Woodcock 1977, 171).

Conclusion

Our youth ought not to be instructed to venerate the constitution . . . they should be led to venerate truth.

— William Godwin (quoted in Woodcock 1962, 270)

Much ground has been covered in these pages. Our conclusion will therefore be brief. A devoted fan of Ayn Rand since 1963, I am sympathetic to those who uphold minarchy or limited government. For thirty years, I did the same. But when in 1992 enforced early

retirement gave me the leisure to read more widely, and after a friend, the British libertarian Kevin McFarlane, suggested I should read Bruce Benson's *The Enterprise of Law*; I suddenly felt one day like Keats's Cortez, staring out over an unknown horizon with the 'wild surmise' that social life without government might be possible. In the years since, everything I have read has made that surmise seem more and more like the *true facts of reality*: "a state of affairs that is and works whether or not anybody recognises it" (Mises 1944, 113).

Sechrest (1999, 87) has noted psychological elements in the anarchy/minarchy debate. This seems eminently correct, for children are usually raised to revere their country's history and its form of government. Thus most Britons are loyal to their monarchy and most Americans unquestioningly support the Uncle Sam they are accustomed to. As Nock ([1935] 1950, 44) observed wryly: "There appears to be a curious difficulty about exercising reflective thought upon the actual nature of an institution into which one was born and one's ancestors were born." It may be that this 'inheritance factor'—unconscious, and therefore impervious to reason—has always been the greatest obstacle to the spread of ideas.

Be that as it may, the facts of reality that advocates of limited government must confront are these: 1) History and anthropology show beyond question that government is *not* essential to protect rights. 2) History and contemporary commerce demonstrate that government is *not* the precondition of a free market. 3) History and anthropology show that government is *not* necessary for the creation of objective law. 4) Systems of customary law all over the world prove that an imposed final arbiter is *not* needed for a successful society. 5) Logic, ethics and evidence do *not* support the contention that government is justified because it protects rights. 6) History and contemporary life reveal clearly that government does not *in fact* protect rights. In sharp contrast—while there is much more work to be done to make the case complete—what the facts of reality *do* show is that an Objectivism-based, libertarian anarchism is the true way forward for humanity.

Paine ([1792] 1973, 438) told a delightful story in *The Rights of Man*:

It is related, that in the canton of Berne, in Switzerland, it had been customary from time immemorial, to keep a bear at the public expense, and the people had been taught to believe, that if they had not a bear, they should all be undone. It happened some years ago, that the bear, then in being, was taken sick, and died too suddenly to have his place immediately supplied with another.

During the interregnum the people discovered, that the corn grew and the vintage flourished, and the sun and moon continued to rise and to set, and every thing went on the same as before, and, taking courage from these circumstances, they resolved not to keep any more bears; “for,” said they, “a bear is a very voracious, expensive animal, and we were obliged to pull out his claws, lest he should hurt the citizens.”

This paper has been written in the hope that someday the scales will fall from all our eyes and that government—a very voracious, expensive institution, armed with much more than claws to hurt its citizens—will eventually be looked back upon with the same amused astonishment with which we now contemplate the stranger dinosaurs, or the bears of Berne.

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Notes

1. Part 1 of this paper is published here for the first time. The other parts contain material, much revised and expanded, previously published in Dykes 1998a, 1998b and 2000, as well as a great deal of new evidence and argument.

2. Libertarian anarchism, originally proposed by Murray Rothbard et al. as “anarcho-capitalism,” is to be sharply distinguished from the communal or communist anarchism (CA) of Proudhon, Kropotkin, Tolstoy, etc. (For a classic

statement see Kropotkin [1910] 1993). Unfortunately, CA was tainted by a lunatic fringe whose random violence contributed greatly to the popular misconception of anarchism as “malign chaos” (Woodcock 1962, 7ff; Miller 1984, 1ff), a misconception perpetuated today by the mindless nihilists who disrupt trade conferences, etc., under the misappropriated banner of ‘anarchism.’ For an accessible summary of CA’s dark side, see Tuchman 1966, 63–103. I have borrowed the name ‘libertarian anarchism’—which I think is an improvement on anarcho-capitalism—from Roderick T. Long (2004) partly in response to a suggestion from Jeffery Small.

3. Part 1 of this paper originally included critiques of essays by Murray I. Franck and Robert James Bidinotto. Both were cut for reasons of space. They will be published separately at <<http://www.libertarian.co.uk>>.

4. 29 July 2000. The essay was forwarded to me without a web address, and I have since been unable to discover its provenance. A note with it said “This article originally appeared in the April 1974 issue of *The Freeman*, when David Kelley was a graduate student in philosophy at Princeton University.”

5. This passage added following a suggestion from Kevin MacFarlane.

6. UPR correctly noted that Public Choice came on the scene in 1962, but that it was still not very influential in 1974.

7. Norberg’s book shows that all problems with trade are caused by states.

8. Chris Tame reminded me of Rothbard’s observation that nation states exist in a condition of anarchy vis-a-vis one another. He added that opponents of anarchism must explain why wars—which on the Rand/Hobbes thesis should be constant—are relatively rare, and why free countries never attack one another.

9. Jaroslav Romanchuk, private communication, 2000.

10. Private letter, 12 November 1997. The author did not wish to be named.

11. This clause is due to a reminder by Larry Sechrest.

12. Objectivist writer David Oyerly (1994, 12; 1995, 1–3) maintains that Rand in fact rejected the consent principle—despite her explicit endorsement of it.

13. UPR challenged: “What, then, about the evolutionary drive to produce and protect one’s progeny?” But that drive is an element of selfhood, not distinct from it, hence the added clause.

14. Cf. Palmer’s instructive essay, especially 74–81.

15. This passage elaborated following constructive criticism from Jeffery Small.

16. The matter was discussed in a “Working Paper” circulated in 1995 by Fred D. Miller Jr. I much appreciated being sent a copy.

17. I first attempted to put these thoughts on paper in 1995 in “Repolishing Rand’s Great Gem,” an unpublished essay written in response to Miller’s “Working Paper.” However, the core idea that ‘being an end-in-itself implies both egoism and rights’ had occurred to me earlier as a straightforward derivation from Rand’s description of human beings as ends-in-themselves (Rand 1963a, 27).

18. Godwin’s anarchism was based on utilitarianism, not on rights. He thought government was incapable of achieving the greatest good for the greatest number.

19. Sechrest commented that since both intrastate freedom and socio-political freedom involve *action*, they are equivalent, without being identical.

20. For an alternative view of these matters, see Bidinotto 2005.

21. Nietzsche ([1883–85] 1957, 41) shared Malatesta’s view. In *Zarathustra*, he called the state “the coldest of all cold monsters . . . whatsoever it saith, it lieth; whatsoever it hath, it hath stolen.”

22. UPR observed that there would presumably be outlaws or curmudgeons in *every* society who would refuse to consent or conform to any law or custom.

23. Rand’s arguments are dealt with much more fully in Dykes 1998b, Part 1.

24. For a telling critique of the premise that only a government can create objective law, see Tannehill and Tannehill [1970] 1993, 116ff.

25. In Britain, the soft targets tend to be motorists. In the U.K. in 2002, there were a third more motorists in jail than burglars (*The Daily Telegraph*, 22/01/04, 3; *The Sunday Times*, 8/02/04, 1/7).

26. Mises (1944, 80) came to similar conclusions.

27. Proudhon was the first philosopher to call himself an anarchist. His superb tirade “To be GOVERNED . . .” is quoted and analyzed in Miller 1984, 6–7.

28. The ethics of emergencies is a separate and distinct issue.

29. I am indebted to Colin Ward for the reference to this work.

30. Peter Saint-Andre criticized me for claiming that the Law Merchant and other customary laws are entirely objective without providing a definition of what I mean by “objective” law. Since Rand did not define objective law, other than to contrast it with bureaucratic whim, we cannot turn to her for guidance. I therefore propose this definition: an objective law is a moral principle (and its derivatives) known to all adults of sound mind in a community and accepted by them as a rational and binding guide for dealings with other people.

31. Barnett’s study clearly shows, by implication, that far from establishing the rule of law, the state actually *destroys* it.

32. Pospíšil’s work ([1971] 1974) on Alaskan Eskimos differs on this point.

33. Colin Ward drew my attention to Comerford’s book.

34. Enright (2000, 138) is factually wrong to assert “anarchy evolved into . . . feudalism.” Feudalism evolved in Europe during the late Roman Empire, becoming widespread after the eighth century when Frankish kings started empire-building. In England, feudalism proper did not occur until after 1066, when it was imposed by the Normans. It wasn’t anarchy that led to feudalism, it was the emergence of permanent kingship. Just as there can be no dictatorship without a state, there could be no feudalism without a kingdom.

35. Quoted in Blankertz 2002. My thanks to Stefan Blankertz for the reminder.

36. An identical tranquility blessed the anarchist colony of Whiteway in Gloucestershire U.K., established in 1898, where just one minor scuffle disturbed the peace during nearly forty years (Shaw 1935, 188–89). The only violence came from the local government—which seized property in lieu of taxes.

37. UPR advised: “harsh though it sounds, the scientific thought of the day considered blacks to be sub-human and thus devoid of individual rights.” If so, why did Madison not want “to admit in the Constitution the idea that there could be property in men” (Johnson 1997, 157). UPR added that women were thought at that time to lack the experience required for public affairs, hence their exclusion from them.

38. UPR: “Is it not possible that, by restricting voting . . . those founding fathers sincerely believed that they were protecting rights from the passions of ‘the mob?’” Certainly, but they were also contradicting their own avowed principles by excluding the governed from consent.

39. UPR objected to this, but see note 42.

40. This was not the only reason, but was the most important. See Ashton 1948, 48 and *passim*.

41. State growth is aided by the assiduously cultivated misconception that for something to be right and proper it has to have an “official” sanction—a notion that leads to attempts by legislators and state officials to stamp their imprimatur on every aspect of life. I believe it was Proudhon who first made this point.

42. By “statism” Rand (1967, 192) meant “the principle that man’s life belongs to the state.” In this paper, statism means advocacy of the necessity and legitimacy of the state and, by implication, of its primacy in human affairs.

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