The libertarian minimal state: a critique of the views of Nozick, Levin and Rand

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The Libertarian Minimal State?

The concept of limited government libertarianism has lead somewhat of a bandit life in intellectual circles.

This is the view that laissez faire capitalism is the only just economic system, that all men should obey the libertarian axiom of non aggression against non aggressors, a system based on self ownership and private property, and that the sole legitimate function of government is to protect persons and property against force or the threat of force; and that to attain this end the only proper role for government is to maintain armies to keep foreign bad guys off our backs, police to keep local villains from violating our rights, and courts to determine who is the good guy and who is the bad guy.

Nozick

In intellectual circles, the most famous defense of such limited government libertarianism is Nozick (1974). This author argues that even if we begin with the free market anarchism adumbrated by the likes of Rothbard, 1965, 1970, 1973, 1978, 1982; Hoppe, 1989, 1992, 1993a, 1993b; Peden, 1977; Barnett, 1998; Friedman, 1979, 1989 we will still arrive at the position of limited government[1], without violating a single solitary principle of theirs. In other words, free market anarchism is a disequilibrium state, and only limited government libertarianism attains the exalted status of equilibrium.

How is this miracle accomplished? Simple. Assume that there is a government, or a dominant private defense agency, and a group of smaller and anarchistically oriented "defense agencies." What guarantee does the government or dominant corporation have that these smaller

private market court, police and army firms will follow legitimate procedures? It has none. Under anarchy, they are free to do as they please. Therefore, in order to safeguard its own citizens, it will have to seize a monopoly of law, defense and protection of private property away from these potentially tyrannical commercial endeavors. Having done this, however, the dominant firm is honor bound to give something back in return. And this is to extend to them, and to their clients, the same protection it affords to its own clientele: the enshrinement of the libertarian non aggression axiom, and the protection of persons and legitimately owned property.

This thesis, too, has been subjected to withering and exhaustive criticism[2]. For one thing, there can be no such thing as "government" in Nozick's starting off position. There can only be free market defense agencies in this libertarian Garden of Eden. Remember, he is attempting to derive limited government libertarianism from anarchism; he cannot start out with this cloven hoof already in the picture. Of course, there can be a "dominant" defense firm, in the sense that one of the members of this industry is larger than the others, has more wealth, more customers, etc. However, this large firm has no legal inner track as compared to the others. That is, it has no more right to impose its views of what constitutes proper procedure on its smaller competitors than they have to gang up on it, and impose their perspective on the dominant firm. Just because there is a danger that the small firms may one day utilize improper procedures in ferreting out justice does not give a warrant to the larger one to initiate violence against them. If Nozick's contention held water, then we would be justified in engaging in the preventive detention of all black male teenagers, since they typically commit a disproportionately high percentage of all crimes. Certainly, the initiation of violence that the dominant firm will commit on the smaller ones is incompatible with Nozick's supposed derivation of limited government from anarchism

without violating the non aggression axiom.

Levin

Levin (1982) also offers a justification of limited government libertarianism. But if Nozick's is widely known and celebrated, the exact opposite holds true in this case. In his little gem of an article, unjustifiably ignored, Levin offers a unique defense, based on Hobbesian considerations. It is easily as sophisticated as Nozick's, yet it too is a flawed one.

Levin's thesis is that it pays to cede our swords to an emperor sworn to protect persons and property and otherwise uphold the libertarian axiom in a way that it does not pay us to give him our plows. In one fell swoop this philosopher accomplishes two tasks: shows that limited government libertarianism is justified, but that the welfare state (e.g., plows) is not.

Why is it that rational men would undertake the first act, but not the second? It is not, as might be expected, that the sovereign is a better fighter than he is collectivized farmer. On the contrary, Levin specifically disavows this interpretation. Rather, the reason for this divergence is that, in giving up one's sword, a man signals to others his peaceful intentions. Thus, it is not a matter of helping the sovereign to uphold law and order. Were it so, then peace keeing and growing food would be on more of a par. In contrast, there is no such signaling device which ensues when men give up their plows to their sovereign. This, in and of itself, cannot grow wheat, as giving up implements of war can actually, in effect, "grow" peace.

States Levin (1982, p. 341): "The sovereign's fundamental right is to secure us all against attack -- primarily each other's attacks -- and we give him our swords for this security." Just so that there can be no chance of misinterpretation, and because the Levin argument is easily of the intellectual standing of the more well known Randian and Nozickian attacks on anarchy, it is

worthwhile to quote Levin (1982, p. 344) at greater length:

"If we make the first bargain, Jones[3] will have the liberty to use our swords to do what we once did with them; if we make the second bargain, Jones will have the liberty to use our plows to do what we once did with them. But there is a big difference between the two bargains. As soon as you and I give our swords to Jones, and assuming our confidence in Jones is well placed, neither of us needs his sword any longer. You cannot attack me nor I you, so I no longer need my sword to protect myself and neither do you need your sword. The act of contractual surrender has eliminated the need which in the past we used our swords to meet -- namely, fending off attack. This is what we expected to happen when we surrendered our swords, and why we surrendered them. It is not that we expect Jones actually to do, authorize, or coordinate all our old fighting for us; rather, since Jones has monopolized the means of fighting, we expect fighting to stop. It is this latter expectation that underlies the security we look forward to in civil society. Jones has the liberty to use our swords, but the whole idea is that now this liberty need never be exercised.

"By contrast, giving Jones our plows will have no like effect. The need to gather food -- the need which up to now we have severally used our plows to meet -- will persist after the surrrender. The total amount of harvesting that must be done if you and I are to eat -- to be secure against hunger -- will remain the same even if we surrender our plows to Jones in exchange for his promise to use our plows to feed us. Someone is going to have to do the harvesting, whether each of us individually or our sovereign Jones. Jones's ability to protect us from hunger is enhanced only a very little by his simply having our plows, and cannot compare to his aiblity to ease our fear of attack that is created by his simply having our swords. The point of surrendering one's sword does not, therefore, apply to surrendering one's plow, or indeed to any other liberty but those whose surrender eliminates their need."[4]

Ingenious as is this argument, there are several flaws in it. First of all, starting with some minor ones, while Levin posits that his argument applies mainly or "primarily" to attacks on us from each other, there is no warrant for such a conclusion. On the contrary, his argument applies solely to internal safety, and not at all to the attack on us from foreigners stemming from abroad. For in order to defend the realm against outsiders, it will not do, merely, for the sovereign to have all of our swords. He has only two arms, despite his vast pretensions; at most he can use two swords. He needs us if the foreign bad guys are to be held at bay, in much the same manner as he needs us to plant and harvest our crops.

This, of course, is only a minor problem, perhaps almost even unworthy of mention,

except for the fact that bringing in the international perspective allows us to launch a reductio ad adsurdum argument against Levin. To wit, his argument even if correct, proves far too much. For what is true in the domestic arena is the case, also, internationally, perhaps even more so. For if we fear domestic attacks, how much more are we afraid of the foreign variety. At least others in the same country as us are in part our friend, neighbors and family members. The same cannot of course be said for the "foreign devils." They are evil per se, they are untrustworthy, we never met a foreigner we liked, they are interested in only "one thing," our total annihilation, etc. So, if Levin sees reason for giving our swords to Jones, the local sovereign, how ever much more powerful would our motivation be for giving them up to a world dictator on these grounds. For then we would not only have domestic tranquility, we would also have world peace. Since the latter encompasses the former, it must be preferable.

But it is the rare limited government libertarian who will with equanimity so blithely accept the prospect of world government. He knows full well that to do so would unleash forces beyond our control. If there were a Hobbesian type world sovereign he might well determine that the relatively wealthy U.S. should give up many of its "plows" to the countries in the third or so called "developing" world[5]. If this were run, somehow, on a democratic basis, he knows we would be overwhelmed by votes from China and India, countries not particularly well known for their adherence to free enterprise.

And yet the argument is logically compelling. If anarchy between men in a Hobbesian state of nature is problematic, then so is the present state of anarchy which exists between the various nations of the globe. If Levin is correct in the domestic context, his argument cannot possibly be rejected at the world level. Let us search, then, for other flaws, lest we be compelled

to favor, of all things, world government[6].

This brings us to the second fallacy in the Levin model, that which it holds in common with all other theoretically constructed societies[7]: it fails to deal with the fact that there never was, historically, any agreement or social contract, or compact between anyone. Let us stipulate for the moment that Levin is correct in the difference he points to between swords and plows. He still cannot reach his conclusion that any real world government is warranted. Just because rational men would theoretically give up their right to self defense to the sovereign, doesn't mean that any of them actually did. But unless the latter is true, the sovereign has no right to demand anything (e.g., taxes, loyalty, obedience) from the free men inhabiting the territory he claims as his own. That is, he has no right as a libertarian, and we are here concerned with limited government libertarianism[8], not with any other kind of state apparatus. Coulda, woulda, shoulda, it matters not one bit that Levin has pointed out a reasonable distinction between plows and swords. Unless and until the citizenry actually agree to cede their power to a sovereign, his power is illegitimate. And yet, if we have learned anything from Spooner (1966), it is patently false that any such contract, constitution, agreement, whatever, has ever been signed. At most, the merest handful of people affixed their signatures to the Declaration of Independence, but why this should be thought to be binding on hundreds of millions of non signatories must remain one of the great mysteries of legal philosophy. In contrast, Levin (1982, p. 340) slips too quickly from the theoretical to the actual: "... since all the covenantors have agreed to create a sovereign ..." They have never agreed to do any such thing.

The third fallacy is, if anything, even more problematic. The core of the Levin argument is that merely by giving up our swords, we pretty much guarantee domestic tranquility, not

because the sovereign will keep the peace (no one man could possibly undertake such a task), but due to the fact that the main cause of strife is the fear that if I disarm, you will take advantage of me, and vice versa, so that if we both disarm, why, then, all will be sweetness and light.

Put in this way, it is easy to see the difficulty. While Levin has no doubt put his finger on one antecedent of strife, fear of aggression, this is hardly the sole causal agent. Others that various commentators have mentioned include high time preference rates (Banfield, 1977), age, race, poverty, and large variations in wealth (envy). As well, there are sociobiological explanations for why people engage in criminal activity[9]. The point is, giving up our swords to an emporer who himself will do nothing to stop crime, will not protect us, given these many other causes of crime. Even a complete eradication of the fear of invasion will not be sufficient to reduce aggression to zero levels. Further, even after we all give up our weapons, we can still fight each other with fists, feet, teeth, head butts, etc. With no swords, by definition we need not fear that they shall be employed against us. But what about these bodily weapons. The "98 pound weaklings" amongst us will hardly feel safe. According to the Levin argument, they will be tempted to launch attacks upon the rest of us; and we, fearing them, will tend to think in terms of first strikes. This path leads back to the Hobbesian jungle, not to safety courtesy of the sovereign.

Let us put this into other words. Government is only inefficient if it does something. This much we can concede to Levin. If, strictly speaking, government does nothing at all, then we are forced to "concede" that it is not such a bad thing; actually, not a bad thing at all. In Levin's model, government doesn't really do anything[10]. Rather, everyone gives the emporer their sword, and he just sort of sits on them. One might say that the sovereign is innocently

providing "sitting" services[11], but even this would not be strictly true. For the Levin - Hobbes scenario, he is forcing people who have not committed any crime to give up their weapons, and this is surely incompatible with libertarianism. Such a government would not be needed, in any case, for the people could with as much effect throw their swords into the ocean. It cannot be objected in his defense that the sovereign provides the "service" of forcing people to give up their weapons, one, because this is a rights violation, and two, because, according to the theory, they agree on their own volition to do this in any case. The sovereign in this model serves as, in effect, a duex ex machina: he isn't really needed, he can be dispensed with. No wonder he is pretty inoffensive. Say what you will about the anarcho libertarian position, it doesn't really object to non existing governments, only to existing ones.

On the other hand, perhaps we are misconstruing Levin. Maybe the sovereign, in his system, is really actively engaging in the internal protection of his citizenry. If so private defense agencies are necessarily more effective than governmental ones[12]. The latter comes to the fray with two strikes already against it. First, government, by definition, consists of a monopoly of force within a given geographical area. But this is per se invasive. If the given government is "legitimate," under the libertarian legal code, it has no warrant to prevent competition with it by yet another "legitimate" government. If it allows this, it ceases to be a government at all, and instead enters the lists of private defense agencies, for that is all that a market firm which provides protection is: a "government-like" entity which does not prevent competition, even within "its" geographical area.

Nor does a private defense agency force anyone to subscribe to its services in the first place, nor, as in the case of the Levin sovereign, to give up swords which were not used for

invasive purposes.

Having taken a critical look at Levin's core defense of limited government, let us analyze several others of his views on this subject.

To begin with, Levin (1982, p. 339) "assume(s) that 'right' and 'wrong' are ill-defined in the state of nature, acquiring application only upon creation of 'civil society' by an original agreement."[13] But this wins the argument for limited government libertarianism vis a vis anarcho capitalism merely by assumption. One could, with even more reason, simply invert this: maintain that right and wrong are ill defined under government. Indeed, a strong case can be made for this, when we consider all the philosophical problems created for the libertarian by the state: should he use the public streets, school, libraries, roads? should he avail himself of the "benefits" of rent control, or other regulations, when it is in his interest to do so?[14] By co-mingling monies through its tax subsidy system, the state, moreover, makes it well nigh impossible to attain full justice through privatization and return of stolen tax revenues.

How, in any case, can it be denied that, absent any "agreement" establishing an emperor, it is wrong to initiate violence against non aggressors or their legitimately held property? Certainly, no such position is compatible with libertarianism. But Levin is attempting to derive a limited or libertarian government. It ill behooves him to start out with premises which directly contradict this philosophy.

Levin (1982, p. 340-341), following Hobbes, posits a decidedly non libertarian ruler:

"Citizens will normally be free to raise their children, contract, and, so to speak, use their plows as they see fit, but only because the sovereign lets them... he may without injustice seize your plow should he deem it 'expedient.' Nor does he lose this right if he errs about what is necessary for peace; if we reserved the liberty to contest his judgment, we would remain in the state of nature."

This is limited government? It would appear from these words that we have the choice only between free market anarchism and totalitarianism. Now this, to be sure, is one of the arguments of the anarcho-capitalists[15]. But to see it embraced, at the outset, by a critic of this philosophy is at least somewhat surprising.

Lastly, Levin (1982, p. 353) delivers himself of the opinion that "The probability of a rogue sovereign is small, in turn, because it is in the sovereign's perceived interest to act as the contractors hope he will." On the face of it, this is a curious viewpoint indeed. Certainly, it flies in the face of the overwhelming preponderance of the evidence (Rummell, 19xx; Conquest, 1986, 1990). Rogue sovereigns (Clinton? Hitler? Stalin? Lenin? Mao? Roosevelt? Kennedy? Pol Pot? Idi Amin? Trudeau? Castro? the Shah? Saddam Hussain? Milosevic? Bush? Johnson? Nixon?) seem almost the rule, not the exception[16]. Hoppe (1995) has done yeoman work in showing Levin's claim to be more true for monarchies than democracies. That is, hereditary kings with in effect a private property interest in "their" countries have a greater incentive to rule in a long run manner, so that they may be able to leave this property to their heirs. In contrast, presidents and prime ministers are in office for only a fixed term; they cannot bequeath control to their children[17]. Hence, they are likely to act in a short term high time preference manner; e.g., take what they can immediately in a quick bout of pillage, for "in the long run we are all dead." But even Hoppe would not go so far out toward the edge of the limb as to claim we can have any confidence in the benevolence of dictators, at least as compared to competing market defense agencies.

Rand

By far the most famous advocate of this system was Ayn Rand. In her view: "(to be

added) ."

The problem with this is that she has been answered eloquently and fully by several libertarian anarchists (Rothbard, 1965, 1970, 1973, 1978, 1982; Hoppe, 1989, 1992,1993a, 1993b; Peden, 1977; Barnett, 1998; Friedman, 1979, 1989; Anderson and Hill, 1979). This is the view that laissez faire capitalism is the only just economic system, that all men should obey the libertarian axiom of non aggression against non aggressors, a system based on self ownership and private property and that it is a requirement of justice that all government functions -- including those of protecting persons and property against invasion -- be privatized.

Far from the "blank out" posited by Rand, these authors have specified in vivid and even excruciating detail the precise functioning of a private industry dedicated to defense of person and property. Rand leaves off by offering a scenario where a, the client of court-police firm A sues b, the client of court-police firm B. Mr. a and Mr. b refuse to take their cases to any one court, but insist on patronizing their own, A and B, respectively. To make matters worse, A and B disagree in their assessments, each finding in favor of their own clients. At this point Rand throws up her hands in dismay, at the propect of peaceful dispute resolution and settlement. But this is precisely where Rothbard, 1965, 1970, 1973, 1978, 1982; Hoppe, 1989, 1992, 1993a, 1993b; Peden, 1977; Barnett, 1998; Friedman, 1979, 1989 begin. They note that there are two possibilities: First, A and B will have already anticipated such a scenario, and taken steps to resolve it beforehand, by agreeing, in advance, to be bound by the decision on this matter by a third court, C. In other words, what started out as a dispute between a and b, but has now become an altercation between A and B, will finally and peacefully be resolved by the "supreme court" C. Alternatively, even if they have somehow not anticipated such an eventuality, when

now faced with it, they will agree to have it arbitrated by a third party, C. In this case, there will not be any more chaos than with a government system such as that employed by the U.S. Indeed, there will be less, since C (and A and B as well for that matter) are chosen by a market process where a great weight is placed on consumer sovereignty. In contrast, Supreme Court judges in the U.S. are chosen (indirectly) by a political process, which is vastly inferior.

Or, second, they will not agree. If both refuse to mediate their dispute, their only recourse is to fight, precisely the alternative predicted by Rand. But the story does not end here. For suppose there are two types of courts: those who will mediate, when they find themselves on opposite sides of a decision from another court (call them the "legitimate" courts), and those who will not (call them the "bandit" courts). The latter, it is clear, will have to fight in every case. The former, only when faced with one of the latter. The point is, there will be a competitive advantage enjoyed by the legitimate courts vis a vis the bandits. Fighting is expensive. A firm that regularly engages in such activities will suffer additional costs for ammunition, tanks, planes, to say nothing of combat pay for its employees. Bandit courts will have to fight all of the time, legitimate ones only some of the time. There will be a tendency, therefore, for the legitimate firms to out compete the bandits. But, apart from Ayn Rand and her ilk, such a state of affairs is easy to anticipate. This furnishes yet an additional reason for expecting bandits to be very much the exception to the rule.[18] For if even would be or potential bandit courts realize they are likely to be consigned to the dust bin of economics, they will be less likely to start on this path than otherwise.

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Endnotes

1. Nozick also maintains that we will not travel past limited government toward a welfare state, but this is a contention which does not concern us at present, since we are here focusing attention only on the debate between anarcho libertarians and limited government libertarians.

2. See on this Barnett, 1977; Childs, 1977; Evers, 1977; Rothbard, 1977; Sanders, 1977.

3. Levin's name for the Hobbesian dictator

4. Says Levin (1982, p. 348): "If I feel safer, you will feel safer from a preemptive attack by me, and I will actually be safer (from a preemptive attack by you) because I feel safer."

5. A more accurate name for them would be retrogressing countries. On this see Gwartney, 1996.

6. Our leader, in this case, would not be names "Jones," but rather Boutros Boutros Gali, U Thant, Kofi Annan or some such.

7. See Rawls (1971) in this context.

8. Apart from distinguishing this phrase from anarcho libertarianism, this phrase is a redundancy, in that only the libertarian philosophy is compatible with limited government.

9. Axelrod, R., 1984; Axelrod R., and Hamilton, W.D., 1981; Barkow, J. H., Cosmides, L., and Tooby, J., 1992 ;Daly, M., and Wilson, M, 1988; Dawkins, 1995; Dawkins,1976/1989; Frank, R. H., 1988; Pinker, 1997; Ridley, 1986; Trivers, R., 1985; Wilson, E. O., 1975; Wright, R, 1994.

10. Am I misinterpreting Levin? After all, he does speak as follows (1982, p. 346): "If you and I give our swords to Jones, we will be greatly deterred from fighting by our awareness of Jones's preparedness to use his relatively great power against transgressors of the peace."

My claim is that this short statement is out of step with the general thrust of his remarks; that the essence of his case if that we give up our swords by that fact alone shall we be safe. I do not deny that he also at times speaks as if the sovereign will have to do a bit more to safeguard us, and thus is ambivalent on this point, but I take his concept of the do nothing sovereign as the core of his position and the activist one as adventitious.

11. This would be about as limited as a government could be.

12. Levin (1982, p. 350) full well appreciates the "inevitable failure of command economies." However, he applies this only to plows, not to swords. Why not to both? Levin (1982, p. 350, ft. 19) is "assuming that anyone who knows as much as Rawl's contractors know (sic) knows enought not to be a socialist." Levin knows this, too, but, again, only for plows, not for swords.

13. This is in sharp contrast to the view Levin (1982, p. 338) correctly ascribes to Nozick: "Nozick assumes that we have certain rights that neither the state nor anyone else may violate." And again (Levin, 1982, p. 343): "Hobbes's sovereign <u>creates</u> 'mine and thine,' while Nozick's individuals have property rights even in the state of nature."

14. In "Anarchy, State and Rent Control," <u>The National Review</u> (date??, page #?) took Nozick to task for suing his landlord under this enactment.

15. Even Mises (1966), no anarchist he, argues strongly that the state must fully embrace free enterprise or slide down into socialism; that is, that all compromises between these two extremes are unstable.

16. See the Mises Institute book 19xx for an analysis of the <u>least</u> offensive of the U.S. presidents.

17. This applies even to political "dynasties" such as the Kennedys, Bushes, etc.

18. Speaking of "bandits," it is difficult to refrain from giving this appellation to governments, not private defense firms. Governments are responsible for killing tens if not hundreds of millions of innocent people (Conquest, 1986, 1990). And not only during war time where people of other countries are put to death. Governments, too, slaughter their own citizens on a massive scale, innocents whom, in the view of statists even of the limited variety, it is their duty to protect (Rummell, 19xx)..