

MUST WE ABOLISH THE STATE?

By Arthur Shenfield

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The traditional theory of the free market economy clearly distinguishes it from a system of anarchy. Men are to be left free to buy, to sell, to produce, to consume, to save, to invest, to lend or to borrow, as they think fit in the circumstances in which they find themselves. But this freedom needs to be protected by a constraining power. Otherwise the freedom of one man will reduce or extinguish that of another. This constraining-protecting power is the State.

On this view the free market economy rests upon the enforcement of Herbert Spencer's Law of Equal Freedom: "Every man has freedom to do all he wills, provided that he infringes not the equal freedom of any other man." The sentiment, from the point of view of maximum freedom for all, is impeccable; but as Dr. Murray Rothbard, quoting Clara Dixon Davidson, has pointed out, the proviso in Spencer's statement is redundant. For if every man has freedom to do all he wills, it follows that no man is infringing any other man's freedom.¹

However, in the economist's exposition of the nature and operation of the free market economy, far more attention has been given to the analysis of market freedom than to the agenda of the constraining-protecting State. For the most part economists have been inclined to say that the State's function is essentially to prevent the subjection of one man to the force or fraud of another, leaving the details to lawyers or political scientists and passing comfortably on to more interesting subjects. Thus Mises tells us, "An anarchistic society would be exposed to the mercy of every individual. Society cannot exist if the majority is not ready to hinder, by the

application or threat of violent action, minorities from destroying the social order. This power is vested in the state or government. State or government is the social apparatus of compulsion and coercion. It has the monopoly of violent action. No individual is free to use violence or the threat of violence if the government has not accorded this right to him. The state is essentially an institution for the preservation of peaceful interhuman relations. However, for the preservation of peace it must be prepared to crush the onslaughts of peace-breakers."² But though Mises devotes a very great deal of space in *Human Action* to the acts of the State, he is almost wholly concerned with its ill-conceived, counter-productive acts, or with acts serving particular interests against the general interest. It is the exposure of the errors of State intervention in the free market, not the exposition of the details of its proper agenda, which mainly interests him.

Of course it is true that economists have had a good deal to say about taxation, antitrust, corporation and trade union law, the regulation of monopolies, and the social cost-versus-private cost problem. But more than not, like Mises in *Human Action*, they have concerned themselves with what the State ought not to do much more than with what it ought to do. Many years ago this indicated to Lionel Robbins a lacuna which needed to be filled. Thus when he sought to make clear that the liberal economy, with its constraining-protecting State, was a plan (i.e. a system of order), he first said, "The system of rights and duties of the ideal liberal society may be thought to be a good plan or it may be thought to be a bad plan. But to describe it as no plan is not to

understand it at all. The idea of a coordination of human activities by means of a system of impersonal rules, within which what spontaneous relations arise are conducive to mutual benefit, is a conception, at least as subtle, at least as ambitious, as the conception of prescribing positively each action or each type of action by a central planning authority: and it is perhaps not less in harmony with the requirements of a spiritually sound society. We may blame the enthusiasts who, in their interest in what happens in the market, have paid too little attention to its necessary framework. But what shall we say of those who argue perpetually as if this framework did not exist?"³ But then he added a footnote which indicated that it was a prime function of the champion of the liberal economy to advance the study of the agenda of the State. Thus ". . . in the opinion of the author, it is in the discovery of improvements in the admittedly defective framework of the present that one of the most important paths of future reform consists. It is not certain that on every possible occasion the mechanism of markets will function satisfactorily. But experience suggests that in most cases where it does not investigation shows that there is some deficiency in the law. These deficiencies are often apparently trifling. To discover them is a dull matter involving hard work and little emotional satisfaction. But it is difficult to exaggerate the practical significance of such studies. It is only necessary to compare the radically different evolution of industrial structure in England and in Germany to realize how important apparently unimportant differences in the law may be."⁴

Whether the traditional exponent of the free market economy directed his attention to the things that the State ought, or to the things that it ought not to do, he clearly assumed that the existence of the State was legitimate, and hence that there were legitimate tasks to be assigned to it. This also applied to reputable non-economist exponents of the free society. Thus when Herbert Spencer wrote *The Man Versus the State*, he did not mean that the very existence of the State was an enemy to man. He meant only that the State had become, or was becoming, man's enemy because of its growing intervention into activities which were not its rightful concern.

While economists and political philosophers in the 18th and 19th centuries were expounding the nature of the free market and the free society, certain others, following a quite separate track, were advocating the abolition of the State, in the interest variously of some notion of freedom, of justice, or of brotherly love. These were the anarchists of yesteryear. Some, like Bakunin and Kropotkin, were clearly anarchists in the fullest sense. Others, like Godwin, Proudhon and Tolstoy, whose intellectual confusion was as marked as their enthusiasm, seemed most of the time to be complete anarchists, but from time to time also seemed to have some place of a kind for a reformed State in the vague utopias that fired their imagination.

Now a new phenomenon has presented itself. In recent years anarchists have arisen of an entirely

different stamp. Their track is essentially the same as that of the traditional exponents of the free market economy. They seek to maximize the freedom of economic activity because they have the same, or almost the same, aims as the classical economists and their successors. Unlike the anarchists of yesteryear, they uphold the virtue of private property and understand its role in the free market and the free society. They are analytical economists of high competence. They are keen observers of the performance of the State, and they rest their conclusions upon arguments worthy of respect to show why the State can be only a constraining, never a constraining-protecting, power for human freedom.



The leading exponents of this neo-anarchism are Dr. Murray Rothbard, whom I have quoted above, and Dr. David Friedman. There have been American anarchists in the past (e.g. Benjamin Tucker and Lysander Spooner), but these were generally of the old breed. If they have had an American forerunner at all, it has been Albert Jay Nock, the author of *Our Enemy, The State*;⁵ but Nock's economics was embryonic and his influence on the intellectual world was slight. Rothbard, whom Mises was once heard to describe as the most gifted student that he had during his American period, has presented his theory of anarchism mainly in his *Power and Market*; Friedman in his *Machinery of Freedom*.⁶ Both books are persuasively written and cogently argued. In this, as in almost everything else, their anarchism is poles apart from the turgid confusions of the anarchists of former times.

Their argument runs as follows.

The Neo-Anarchists' Case

First, all known States, including in particular the State in modern western society, have been instruments of violence against man's freedom and prosperity. In the past many States made no bones about it. The modern western State pretends to be the protector of freedom and the promoter of prosperity, but in fact it is the same tyrant and robber that all States have been. Its "progressive" taxation is a blatant exercise in robbing Peter to pay Paul, who fails to see that he too is robbed in the process. Its "welfare" activities keep the "poor" poor, and at the same time bite into their liberty and into that of those who pay for their "welfare." Its interventions into the markets for goods and services are calculated, whatever the pretense, to serve particular interests against the general interest; but being usually fickle in inspiration and crude in execution, they often fail to serve even the particular interests effectively, thus leaving the citizenry in general both less well off and less free. It assumes the management of its citizens' monetary system, but constantly defrauds them by inflating the currency, and it shamelessly engages in "bucket shop" activities when it seeks to borrow from them.

Secondly, the modern State fails to discharge the elementary duty, which even some despotic States managed to do in the past, to protect its citizens from the force and fraud of each other, as distinct from its own force and fraud. The American citizen now walks in his city at night, and not infrequently by day, at his peril. If he wishes to be safe in his home, he had better keep a fierce animal to deter marauders or live in a high-rise complex with its own private guards. If he runs a bank, or any other business handling sizeable sums of cash, he had better invest in the services of private protective agencies, for the State's police will do little for him. If he has a claim against another citizen in contract or tort, he will find the State's machinery of civil justice intolerably slow, clumsy, costly and capricious. Hence, in a growing number of cases he already finds it better to dispense with the State's system and either to settle his claim by agreement or to call in aid the services of a private arbitrator. Thus there develops a growing reliance upon private police and private justice to oust the public policing and public justice which the State is supposed to provide.

Thirdly, it is an illusion to believe that the State can be cured of these defects, for they are of its very nature. The State is not an entity apart from the rulers. It is the rulers themselves, be they kings or democratic politicians or bureaucrats. How can the rulers not seek to serve the interests of those whose suffrages, or money, or bayonets keep them in power? How can the rulers be granted a monopoly of force and yet use it without seeking the benefits of monopoly for themselves? If the only effective antidote to monopoly is open entry for potential competitors, why should the State's monopoly of force be a unique exception? If the tendency of unchallenged monopoly is to become inefficient and

unproductive, why should the State's monopoly of policing and the dispensation of justice be otherwise?

Fourthly, the State is not needed for the purposes which the traditional exponents of the free market assign to it. The free market can protect its own freedom. The idea that the free market can supply everything except its own protective framework of law is false. There is a market in law and protection as in everything else; and as with everything else the market is the most efficient provider.

It is in the elaboration of this fourth point that our neo-anarchists present their most interesting ideas. How would the market provide law and protection? Since there would be a demand, a supply would be forthcoming. Private protective agencies would arise to offer their services to the citizens. A citizen would choose his agency as he now chooses his insurance company. The protective agency would provide physical protection both against fellow-inhabitants of his territory and against enemies external to it; and for this it would acquire the necessary weapons and hire the necessary personnel. It would also provide a system of law and of courts for the settlement of disputes. Its purpose would be to protect its clients against force and fraud just as the State is supposed to do. If two contending parties both subscribed to the same protective agency, its law and its court would determine the issue. If they subscribed to different agencies, each might invite the other to plead before his own agency's court. If either declined so to do, the issue would be determined by a court of appeal adjudicating between the two courts and their two systems. As in the case of all free markets, there would be competition for business.

Does this scenario appear to embody a large element of fantasy? No, say our neo-anarchists. How did the famous Law Merchant arise, if not by the free trial and error of European merchants? Before the State came in with its jackboots and adopted the Law Merchant as its own, the law continually adapted itself to the needs of its free market. It was not exactly the same in London as in Amsterdam or in Hamburg, but rules developed for the settlement of disputes between merchants in the various centers. And how about modern international law? There is no world State to enforce it. No doubt the Hague Court has jurisdiction to construe it, but it has no power to make any party conform to it. Yet States do settle most of their disputes without going to war. Furthermore, if a State is essential to protect one American's rights against incursion by another American, why is no North American State necessary to protect a Canadian's rights against incursion by an American? Canadians and Americans settle their disputes peacefully in Canadian or American courts, not in North American courts. So too with Argentinians and Uruguayans, Belgians and Dutchmen, Swiss and Austrians, and so on.

The system of private law and protection will work, it is contended, because unlike the State system, which may pretend to protect property, it

will be truly built on the rock of the complete sanctity of private property. What is a market, if not a mechanism for the disposition and redistribution of private property rights? Given the sanctity of property, markets will arise for the supply of every element in it, be it protection or legal adjudication, and such markets will be as flexible as property requires, and as effective.

Distinguishing Old and New Anarchists

Since anarchism arouses instinctive hostility in the minds of the great majority of us, let us look more closely at the differences between the new anarchists and the old. With some variations and exceptions, the old anarchists were distinguished by the following:

- a) a hatred for private property
- b) an intoxication with utopianism
- c) an addiction to violence



Though Marx had the greatest contempt for the anarchists, their hatred for private property, at least in the means of production, was akin to his. The State was power, evil, maleficent power. Its power rested on the command over property of the ruling classes, royal and bureaucratic, aristocratic, or bourgeois. Hence freedom and brotherly love, sweetness and light, could come only when property was abolished. In naivete and analytical incompetence this could hardly be surpassed. But it is the kind of trap into which those tend to fall who view societies as wholes instead of looking inside them to see what the individuals who make them up are doing and seeking. In the old anarchists there was not a

glimmering of understanding of how the myriads of decisions applying scarce resources to limitless human wants could be taken without property rights and in the absence of State power. But of course they were not conscious of the problem, for it was wished away in their utopianism.

Of all the aberrations of the human mind, utopianism is surely intellectually one of the most contemptible and in its results one of the most destructive. Dreams of a perfect world in which all men love each other and in which Adam's problems after the expulsion from Eden melt away, are the effluvia of sick minds, all the more dangerous because they often seem to be noble. Because they wish away the problems of the world, utopians are angered to find that somehow the world remains a vale of tears. Hence the utopian, loving all mankind, is impelled to bring a sword to destroy those who stand in the way of the earthly paradise.

By its nature utopian anarchism attracts some innocent fools (e.g. possibly Vanzetti) but many men of profoundly evil propensities (e.g. probably Sacco). How hateful a man was Tolstoy, loving humanity in general but hating and terrorizing all around him, his wife, his mistresses, his children and his servants! Of course the man who loves humanity in the abstract but hates men in the flesh is a familiar type. We all know the Park Avenue socialist, who preaches equality in general but manages to enjoy his fortunate inequality while it lasts. His real motivation is hatred for others (and often a well-merited self-disgust), but he masks it with a spurious love for the poor and downtrodden.

Because the old-time anarchist was intoxicated with utopianism and in most cases addicted to a mindless violence, he was never able to take command of affairs. The only country where anarchism became a serious, and organized, political movement of any consequence was Spain, a singularly barren region for political enlightenment. But in the end the Spanish anarchists were no match for the communists in intrigue and cunning, or for General Franco in organization. Hence since 1939 they have faded from the scene.

With good sense the world rejected the old-time anarchism. Will it, or ought it, to reject the new? I shall argue that it will and it ought, even though the new anarchism is poles apart from the old. Yet I believe that the new anarchism will attract growing attention in circles both intelligent and free from the taint of utopianism. For the degeneration of the modern western State has surely not yet run its course. "We shall tax and tax and tax and spend and spend and spend"⁷ and the end of this process is not in sight. Inflation will again and again be declared an enemy, but at the first whiff of corrective recession, it will be embraced as a friend and its rate will accelerate. The State will intervene more and more in the market and the citizen will find that his control over his own life will become less and less. In their bewilderment most citizens will acquiesce in a totalitarian solution, thus fastening the State even more tightly around their necks; but many will be attracted to the belief that the State

is indeed as the neo-anarchists describe it, and is indeed incurable.

Mistaken though I believe this belief to be, I welcome, with one qualification, the arrival of neo-anarchism upon the intellectual scene. It has not merely added a new dimension to anarchism, which is of interest to students of the history of political thought, but it has also added a new dimension to the study of the State itself. Its intellectual foundations are substantial, and it merits respectful consideration.

My one qualification relates to Dr. Rothbard's unfortunate propensity to cast a benevolent eye upon the behavior of certain elements in the New Left, upon the hippies and the yippies, the flower people and their like; and also upon the violence of the anti-war demonstrators in the Vietnam days. This is an aberration and unworthy of Dr. Rothbard's admirable intellect.

A free society will no doubt have no laws against behavior which harms only the person concerned. But a good society will certainly have strong conventions against certain types of behavior, and its members will highly prize self-restraint as a governor of their behavior. The idea that liberty means not merely that men are to be free to do what they will, but also that they are right to do so, is a naive misconception. If it were followed through, it would produce an unfree society. As Burke said, "Their passions forge their fetters." As for the Vietnam war, Dr. Rothbard would do well to bear in mind that in our small world some day his private protective agency may have to defend him even further away from his home than Vietnam.

The Failures of Neo-Anarchism

However, though I welcome the arrival of neo-anarchism on the intellectual scene, I believe that it fails to survive close scrutiny.

First, in the world as it is the abolition of the American State, or of any State outside the communist orbit, would make its people the immediate prey of one or the other of the predatory communist powers. Thus neo-anarchism is hopelessly impracticable unless it begins in the totalitarian States.

Secondly, it is unreasonably optimistic to believe that competition among the various protective agencies will perpetuate itself. On the contrary there will be powerful incentives for one or other of the agencies to seek a monopoly by merger or by outright hostilities. Once it is a monopoly, it becomes a State. There is no sufficient consideration in the neo-anarchists' presentation of how such a tendency would be thwarted.

Thirdly, though the great majority of interhuman problems can be best resolved on a property basis, there are some that cannot. Consider neighborhood effects. Many, such as the rancher-farmer case or the upstream-downstream case familiar to us in the literature, can certainly be resolved by the definition of property rights and their market interchange. But take the case of air pollution by automobiles. Here it is impossible to identify either the property right or the person infringing it. There are numerous

problems of a similar type which are not susceptible of solution by the definition and interchange of property rights.

Fourthly, in the neo-anarchistic view, property arises legitimately when a man first takes possession of the original unused resources of nature and brings them into use, and property is legitimate only insofar as it can be traced back to such original possession and use. Obviously a vast array of property rights has arisen from violence to this principle. Many are descended from acts endorsed or blessed by the State in the past which are thus *ipso facto* illegitimate on the view, though they may take the form of a home, a plot of land, a share in a corporation's stock, or the like, which could continue to be recognized after the disappearance of the State. But much property is at present nothing other than a right to a share in what the neo-anarchists regard as the State's depredations or power to depredate. When the State disappears, the latter rights would also disappear, apparently without compensation. As for the former rights, the prescription is unclear. At times the common sense view appears to be taken that they would be recognized, the new regime starting, as one would expect, from where it starts. At other times, however, it seems to be suggested that only those rights would be recognized which could be traced back to an original legitimate act of possession of a natural resource, which would open a Pandora's box of monumental proportions. As an illustration, take the case of the abolition of slavery. Accepting the principle that slave-owning is inherently illicit, a State might yet reasonably decide to compensate slave-owners for the loss of property which had been previously held to be lawful. This was the way of slave emancipation in the British Empire, but not in the United States. It is arguable that the British way was the better, and indeed might have been readily agreed to by the North if the South had not entered into armed rebellion. Of course the neo-anarchists would say that the taxation raised to pay the compensation would be itself a further act of robbery. Be that as it may, if the State disappears, compensation is not possible. The slaves simply leave their masters and, if necessary, join a protective agency to defend their freedom. But what about the wealth created by the slaves' work before emancipation? Must this remain in the hands of the ex-slave owners? The answer is unclear. This is exactly the case of a multitude of existing property rights which can be traced to some act of depredation in the near or remote past. Where there is a State, legitimacy has a clear meaning. Where there is not, it does not; and this can be a fatal defect in the system.

Fifthly, the projected court system appears to have a fatal defect of its own. In its proceedings there would be no subpoena power for, as Dr. Rothbard puts it, "any sort of force used against a man not yet convicted of a crime is itself an invasive and criminal act which could not be consonant with the free society we have been postulating."⁸ Without the power to subpoena witnesses or documents no court can be effective, nor for that matter

can justice be served. Yet this is not a defect easily remedied, for Dr. Rothbard is no doubt right to view the subpoena power as inconsistent with the principles of his system.

Sixthly, if high intelligence and eternal vigilance are necessary to keep the limited State limited, and if it is argued that such intelligence and vigilance will not be forthcoming, how will the intelligence and vigilance required for peaceful and beneficent anarchy be forthcoming? Although I have said that the new anarchists are poles apart from the old, there is here, I fear, a whiff of utopianism.

The truth is that the limited State, the government of laws, not of men, envisaged by the Founding Fathers of the American Republic, remains the hope of man. We know now that keeping the limited State limited is a very difficult task. We may agree with the neo-anarchists that there are powerful forces which lead to its degeneration into the interventionist State and thence into the totalitarian State, which are familiar to our generation. But after all the American limited State remained essentially sound, despite the blemishes worked into it in the 19th and early 20th centuries by populist and kindred influences, for almost a century and a half. It was not until the poison of Roosevelt's New Deal entered its bones that it became truly degenerate.

A record of very fair success for a century and a half is not to be sneezed at. By contrast, anarchy has no record to attract us or inspire us. If we can choose anarchy, we can also choose a new and better try at the limited State. We can do better than James Madison and his colleagues, not because we are wiser than they, but because we stand on their shoulders. Thus we know now, as Madison could not know, what immense evils can arise from the undefined power to regulate the currency which the Constitution allotted to Congress. We can improve on that by establishing fundamental rules which would prevent the governmental inflation of

the currency. In the fields of taxation, education, welfare, industrial regulation and others, rules would not be insuperably difficult to devise effectively to remove the State's power to undermine the free society. Of course no constitution made by man will endure if there is an insufficient will to sustain it. That is why eternal vigilance is necessary. A constitution for a limited State is not a medicine which, once taken, will keep the polity of man forever sound. It needs to be taken again and again. As the English historian, the late F.S. Oliver, described it, it is an endless adventure. It is an adventure in which we may fail again and again, but it is not an adventure in which we must fail.

The way ahead is dark. The degeneracy of the modern State may lead us into totalitarian servitude. But if we have the resolution to choose freedom, our choice will be the limited State, not anarchy.

¹Murray Rothbard, *Power and Market* (Menlo Park, Calif.: Institute of Humane Studies, 1970), pp. 159-160.

²Ludwig von Mises, *Human Action* (Chicago: Henry Regnery Co., 1963), p. 149.

³Lionel Robbins, *Economic Planning and International Order* (New York, New York: Macmillan Publishing Co., 1937), pp. 228-229.

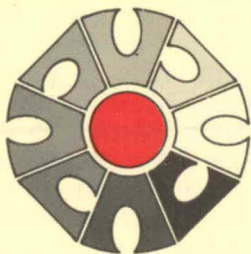
⁴Robbins, *op. cit.* p. 229.

⁵Albert Jay Nock, *Our Enemy, The State* (Caldwell, Idaho: Caxton Printers Ltd., 1935). Unlike Spencer, Nock really did mean that the State was by nature man's enemy.

⁶David Friedman, *Machinery of Freedom* (New York, New York: Harper and Row, 1973).

⁷Per Harry Hopkins, President Franklin Roosevelt's confidant and alter ego.

⁸Rothbard, *op. cit.*, p. 4.



Center for constructive alternatives®

"Private Versus Public Education: Parental Control (1776) or Big Brother (1984)" February 2-7, 1975

A century ago, while the average man knew fewer things than men know today, the few things he knew had an ordered place in his mind. He knew more about the nature of things, or the first causes of things, and therefore, more about philosophy. What has happened to American education? Why can't Johnny read? And why is Johnny, who can't read, graduating from college? Why is creativity and imaginativeness squeezed out of most American students by the fourth grade?

We might well ponder Eric Voeglin's stern judgment of modern education: "the art of adjusting people so solidly to

the climate of opinion prevalent at the time that they feel no 'desire to know.' " Public education has failed us — will we now fail to save private education?

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