

Anarchy vs Minarchy: Two One-Sided Exchanges

My Response to David Osterfeld

The limited-government libertarian, however, maintains that the libertarian anarchist has placed himself in a dilemma. For permitting the market to operate in the choice of such things as police protection and legal codes means that justice will be determined by the highest bidders. But this, in turn, means that a libertarian legal code will emerge from an anarchist society only if the society, itself, is overwhelmingly libertarian. But if there were sufficient demand for, say, the suppression of nude swimming or marijuana smoking, an individualist anarchist society would produce laws prohibiting such activities as well as defense agencies willing to enforce them.

(David Osterfeld, *Freedom, Society, and the State: An Investigation Into the Possibility of Society without Government*), Lanham, MD: University Press of America, 1983)

Osterfeld points out that there is no guarantee that anarcho-capitalist institutions would generate libertarian law, especially in a society where most people held some non-libertarian beliefs in common. In a footnote he correctly reports me as recognizing the distinction between anarchism and libertarianism, while incorrectly asserting that I extricate myself from the dilemma by refusing to classify myself as a libertarian. He also mistakenly claims that I am a utilitarian.¹

His more fundamental mistake is in seeing this as an argument for the minarchist side of the debate. Once you set up your limited government, you too have no way to guarantee that what it produces will be libertarian law. If law is made by direct democracy, the majority might vote to ban heroin or prostitution. If it is made by representative democracy, the representatives might so vote, especially if the position is supported by most voters. If the law is to be kept free by the courts, the courts might come down on the wrong side.

The only complete solution to this problem is to cheat, to define your preferred system in terms of outcomes as well as institutions. Thus a libertarian anarchist might say that the society he advocates is an anarchist society that produces libertarian law,² and similarly for a libertarian minarchist. In either case, once the institutions actually come into existence, they will not be constrained by how their advocates defined them.

There is, however, a partial solution on the anarchist side of the argument, one I sketched in the first edition of *The Machinery of Freedom* and, in more detail, in the third. The market for law in an anarcho-capitalist society will tend to produce economically efficient law for reasons related, but not identical, to the reasons that other markets tend to produce efficient outcomes. Libertarians believe that freedom works, that libertarian law is closely, if not perfectly, correlated with efficient

¹ “David Friedman is one of the few individualist anarchists to recognize the distinction between libertarianism and anarchism, and he extricates himself from this possible dilemma by refusing to classify himself as a libertarian.”

“David Friedman who, like his father Milton, is a utilitarian.”

Osterfeld also writes: “While the natural rights anarchist believes that laws against drugs, pornography, prostitution, and the like, are immoral, Friedman sees nothing inherently wrong with them.” It apparently did not occur to him that I might both believe that such laws were wrong and that, in the best set of institutions I could construct, there would be some possibility that they would exist. (Osterfeld 1983, webbed at <https://mises.org/library/freedom-society-and-state>)

² As I point out in Chapter XXX, this is Rothbard’s argument for why his system will produce libertarian law. If it does not it isn’t anarchy — proof by definition.

law. If that belief is correct, there will be a strong tendency for the market to generate libertarian law.

So far as I know, no comparable argument exists for the minarchist side of the debate, no good reason, short of assuming that everyone has become a libertarian, to expect law produced by political mechanisms to be either efficient or libertarian.

Neither anarchy nor minarchy is necessarily libertarian. But anarchy comes closer.

Unfortunately, after I discovered Osterfeld's comments on me and wrote my response, I discovered that the author had died in 1993.

My response to Brad DeLong

Back in 2013 I came across a piece by Brad DeLong critical of my views. It argued that there were good reasons why anarcho-capitalist ideas did not appear until the nineteenth century, reasons illustrated by how badly a stateless society had worked in the Highlands of Scotland in the 17th century. I wrote a response and posted it to his blog, then waited for it to appear.

I eventually discovered what I should have realized earlier — that his post had been made nine years earlier. It is not surprising that my comment did not appear. The issues are no less interesting now than they were then, so here is my response:

Your argument rejecting a stateless order on the evidence of the Scottish Highlands is no more convincing than would be a similar argument claiming that Nazi Germany or Pol Pot's Cambodia shows how bad a society where law is enforced by the state must be. The existence of societies without state law enforcement that work badly — I do not know enough about the Scottish Highlands to judge how accurate your account is — is no more evidence against anarchy than the existence of societies with state law enforcement that work badly is against the alternative to anarchy.

To make your case, you have to show that societies without state law enforcement have consistently worked worse than otherwise similar societies with it. For a little evidence against that claim I offer the contrast between Iceland and Norway in the tenth and eleventh centuries or northern Somalia pre-1960 when, despite some intervention by the British, it was in essence a stateless society, and the situation in the same areas after the British and Italians set up the nation of Somalia, imposing a nation state on a stateless society. You can find short accounts of both those cases, as well as references and a more general discussion of historical feud societies, in my *Legal Systems Very Different From Ours*. A draft is webbed.³

So far as the claim that the idea of societies where law enforcement is private is a recent invention, that is almost the opposite of the truth. The nation state as we know it today is a relatively recent development. For historical evidence, I recommend *Seeing Like a State* by James Scott, who offers a perceptive account of the ways in which societies had to be changed in order that states could rule them.

³http://www.daviddfriedman.com/Academic/Course_Pages/Legal_Systems_Very_Different_13/Book_Draft/LegalSystemsDraft.html

As best I can tell, most existing legal systems developed out of systems where law enforcement was private — whether, as you would presumably argue, improving on those systems or not is hard to tell. That is clearly true of, at least, Anglo-American common law, Jewish law and Islamic law, and I think of Roman law as well. For details again see my book.

In which context, I am curious as to whether you regard yourself as a believer in the Whig theory of history, which views it as a story of continual progress, implying that "institutions A were replaced by institutions B" can be taken as clear evidence of the superiority of the latter.

And from the Real World

In chapter 56 of the third edition of *The Machinery of Freedom* I discuss how a stateless society might defend against an aggressive state, which I regard as the hardest problem for such a society. One of the possibilities I raise is having people voluntarily train and equip themselves for warfare for the fun (and patriotism) of it, as people now engage in paintball, medieval combat in the Society for Creative Anachronism, and various other military hobbies.

A correspondent sent me a real world example of that approach — the Estonian Defense League, civilian volunteers trained in the skills of insurgency. They refer to it as "military sport." Competitions almost every week.

Estonia's army of 6000 would not have much chance against a Russian invasion but the Estonians believe, with the examples of Iraq and Afghanistan in mind, that a large number of trained and armed insurgents could make an invasion expensive. The underlying principle, reflected in a Poul Anderson science fiction story⁴ and one of my small collection of economics jokes, is that to stop someone from doing something you do not have to make it impossible, just unprofitable. You can leverage his rationality.

Estonia has a population of 1.3 million. The league has 16,000 volunteers. Scale the Wikipedia number up to the size of the U.S. and you get a militia of about four million. The League is considered within the area of government of the Ministry of Defence, which presumably provides its weaponry; in an anarchist equivalent the volunteers would have to provide their own, or get them by voluntary donation. But the largest cost, the labor, would be free.

Switzerland has a much larger military, staffed by universal compulsory service, but there are also private military associations that conduct voluntary training in between required military drills. Members pay a small fee that helps fund the association and use their issued arms and equipment for the drills.

⁴ The story is "Margin of Profit." I discuss it in an essay for a work in progress, a book or web page containing works of short literature with interesting economics in them. The essay is currently [webbed](#).