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# ANARCHY DEFENDED: REPLY TO SCHNEIDER

RODERICK T. LONG

JORDAN SCHNEIDER'S ARTICLE[1] IS directed in part against a talk I gave in 2004 titled "Libertarian Anarchism: Responses to Ten Objections,"[2] in which I defended the moral and practical superiority of stateless over state-based legal systems. Schneider is unconvinced, maintaining that market anarchism[3] will be unworkable because of the absence of *legal objectivity*. Unfortunately, it's not entirely clear to me what Schneider takes a legal system's objectivity to consist in, or why this feature is supposed to be available to states but not to anarchies.

One of Schneider's suggestions is that rights cannot be objectively defined without an ethical foundation. Certainly; I agree. But why is this a problem for the objectivity of anarchist legal systems? I'm astonished to learn that it's because libertarian philosophy has "no ethics," is "self-admittedly baseless," and regards values as "oppressive"—an especially amazing claim for an article that lists in its bibliography both Rand and Rothbard, two libertarians (one minarchist, one anarchist) who based their accounts of rights squarely on neo-Aristotelean ethical theory[4] (as do I, for that matter).[5] This charge seems to be a non-starter, so I shall say no more about it.

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RODERICK T. LONG is professor of philosophy at Auburn University and editor of the *Journal of Libertarian Studies*.

[1]See Schneider's "Contra Anarcho-Capitalism," on page 101 in this symposium issue. All page references are to this article unless otherwise noted.

[2]Long (2004a).

[3]Schneider uses the term "anarcho-capitalism," but I prefer "market anarchism," for reasons I explain in Long (2006b).

[4]See, for example, the opening chapters of Rothbard (1998).

[5]See my seminar on the "Praxeological Foundations of Libertarian Ethics." Online at: http://tinyurl.com/36wq3z. I suspect Schneider relies a bit too

## OBJECTIVITY AND MARKETS

Another of Schneider's suggestions is that objectivity is somehow a special problem for *markets*. Since "no verdict issued from a private, business-interested court can have more weight than any other," Schneider writes, justice must be "removed from the realm of whim—the market" in order to establish "*disinterested*, objective law" (p. 105).

Well, I'm all for disinterested, objective law. But how exactly does transferring justice from the market to the state ensure that desideratum? It's not as though the political realm is famous for its freedom from "whim." Schneider assures us that the market is "inherently subjective" because "propelled by the interests of those operating within it" (p. 106). What is *government* propelled by? Schneider cites Ludwig von Mises for the claim that markets are driven by subjective interests. But Mises's point is about *human action as such*, not just market activity. Unless government actors are members of a different, superhuman species, merely transferring legal services from one arena of human activity to another offers no gain in objectivity.

Certainly we need to do our best to ensure the objectivity of the legal process; but what is the appropriate *means* for doing this? One way, promoted by such thinkers as Plato, would be to make sure that its administration is solely in the hands of wise and impartial people. But so far nobody has figured out a way to guarantee such a result; on the contrary, those in political power seem to have a worse than average reputation for duplicity and self-serving.

If we cannot secure objectivity through reliance on superior *people*, a more promising approach might be to rely on institutional *structures* like checks and balances; this was, famously, the method selected by America's founders. But as I argued in my original talk, market anarchism is *precisely* the principle of checks and balances taken to its logical conclusion. We would not expect to achieve objectivity in science by putting all research into the hands of a single monopoly insulated from criticism; on the contrary, it is through *competition* among different theories and research programs that truth emerges. Competition, as Mill and Hayek have shown, is a

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trustingly on Schwartz (1989) and other high-church Randians for her characterizations of libertarianism—which is a bit like relying on the Lord of the Inquisition for unbiased information about Jews and Protestants.

discovery procedure. If we want *objective* law, it is precisely to anarchy, not to government, that we must turn.[6]

Government, Schneider maintains, "can only use power in retaliation" (p. 106). Would that it were so! But clearly this claim, *as stated*, is false, since governments use power in nonretaliatory ways all the time. What Schneider presumably means is that government *should* use power only in retaliation. But first, this is actually impossible, since governments by definition are territorial monopolies that forbid competition, which makes the notion of a purely retaliatory government a contradiction in terms; but second, *even leaving aside this point*, and granting the theoretical possibility of a purely retaliatory government, how are we to achieve this goal? Not simply by writing solemn phrases on parchment; the Soviet Constitution, for example, "guaranteed" the freedoms of speech, press, and assembly,[7] but such *de jure* promises were not notably honored *de facto*. Constitutional guarantees must take *structural* and *institutional* forms (such as, once again, checks and balances), not merely written ones, in order to be effective. What market anarchists claim is that *competition* is an especially effective type of constitutional structure.

In my original talk I argued that a monopoly of legal services, like any other monopoly, will suffer from informational and incentival perversities. It's not clear how Schneider proposes to solve the *informational* perversities; but with regard to the *incentival* ones, she suggests that the "[a]buse of power and price inflation issues Long raises could be remedied by considering those living under the monopoly as 'shareholders' with a legitimate say in pricing policies and election of the 'company's' governing policies" (p. 108, n. 9). Well, um, yes, but isn't that called representative democracy? Isn't that the system under which much of the world is already living? And aren't high taxes and abuse of power still very much with us?

And there's a reason. The problem with Schneider's proposed solution, from a market anarchist standpoint, is that it offers a much more diluted version of accountability than that offered by markets. On the market, if I find a particular firm inefficient, obnoxious, or prohibitively expensive, I can withdraw my custom immediately. By contrast, on the political "market," I have to wait, say, four years, and

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[6]For a fuller elaboration of this point, see Long (1998).

[7]It also guaranteed workers' right to unionize, and the inviolability of private homes. It's really quite a funny document.

then try to convince 51 percent of my neighbors to vote against the "firm" also. (And there is usually just one rival firm available, and it may be even worse.) Any given customer's impact is far less, and so most customers' rational incentive is to put fairly little research or effort into political affairs.

## DO WE NEED A "FINAL ARBITER"?

The fatal problem for anarchy, Schneider charges, is that "no objective, final arbiter of disputes exists" (p. 107). But here again I ask the same question: how is this any less true of *government*?

Who, for example, is the "final arbiter" in the U.S. system? The president? He can be impeached. The Congress? Its laws can be declared unconstitutional. The Supreme Court? Its rulings can be ignored (as Andrew Jackson did), or it can be bullied into acquiescence (as Franklin Roosevelt did). The voters? They can be disenfranchised by state law. The state governments themselves? Ask Jefferson Davis. Sovereignty does not reside at any single point in the governmental structure; any ruling by one part can in principle be appealed, or overruled, or simply ignored, by another—*just as under anarchy*. If most of the time the various components of government achieve relatively harmonious coordination, what enables them to do so is not a "final arbiter."

Schneider quotes James Buchanan asking "What happens [viz., under anarchy] when mutual agreement on the boundaries of property does not exist" (p. 104)? Well, what happens under *government* when "mutual agreement on the boundaries of property does not exist"? After all, governments are composed of people, not impersonal robots; and being part of a government doesn't make people any less likely to have disagreements about property boundaries. What happens, then, if, say, a legislature makes a determination about property boundaries (e.g., via eminent domain), and a court strikes it down as unconstitutional? Well, sometimes such disagreements lead to violent conflict—civil wars, coups d'état, and the like—but usually they don't, because the existing incentive structures tend toward cooperation. Economic theory and historical evidence alike indicate that the answer is much the same under anarchist legal systems.

A government is not an individual; it is a large number of different people, with different interests, interacting. And no one member of that group, unless he or she is a Kryptonian, can by his or her own personal might secure compliance from the others. Moreover, all the members of government combined possess insufficient might of

themselves to subdue all those they rule, as well.[8] Thus no government can achieve anything unless there exists a substantial degree of cooperation, both *within* the government on the one hand, and between the government and the governed on the other. If such cooperation were impossible without some higher agency to direct and enforce it, then the higher agency itself would be impossible for the same reason. *There is never a "final arbiter." There is no such thing, actual or possible, on God's green earth*.

What *is* possible, and often actual, is that an existing pattern of institutions and practices proves stable and self-reinforcing—that people act in ways that give one another an incentive to keep cooperating, for the most part. Certainly no legal system can function unless most disputes end up getting practically resolved one way or another. But in real-world legal systems (whether state-based or stateless), most disputes do not go unresolved forever—not because there is a "final arbiter," but because the patterns of activity in which most of the participants engage or acquiesce don't allow the indefinite continuation of disputes. If Schneider wants to *call* those patterns of activity a "final arbiter," that's fine by me; I don't want to wrangle over terminology. But *that* sort of "final arbiter" is perfectly consistent with anarchy.[9]

Schneider cites favorably Buchanan's notion that government should be an "instrument that is external to the participants (potential violators all)" (p. 106). But that is *precisely* the myth upon which the "no final arbiter" critique of anarchism rests—the fantastic notion of government as occupying an Archimedean point *outside* the patterns of social activity that it constrains, when of course it is actually *constituted* by such patterns. It's a good thing that social cooperation doesn't in fact, *pace* the minarchists, require a government "external to the participants," because *there cannot be such a thing* as a social institution of any sort existing "external to the participants"—as Buchanan, one of the founders of public choice theory, ought, of all people, to know![10]

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[8]See La Boétie (1975) for the classic exposition of this point.

[9]For more discussion of the incoherence of the "no final arbiter" objection to anarchism, see Long (2003a, 2003b, 2004b, 2006a, and 2008); cf. also Cuzán (1979).

[10]For defenses of market anarchism within the context of public choice theory, see Stringham (2006).

## THE STABILITY OF ANARCHISM

Like many critics of market anarchism, Schenider charges that an anarchist legal system will either collapse into chaotic conflict or consolidate into a unified government—or, most likely, the former followed by the latter. The standard reply is that peaceful resolution will be more likely to prevail than violence because war is more expensive than arbitration (and private security agencies, lacking the power to tax their clients or ban their competitors, will not be able to externalize the costs of enforcement as governments do). Schneider counters that "violence will not be expensive for a bandit court if it can 'out-violence' another court and force it to bear the costs of the violence" (pp. 106–07).

Quite true; once an organization *succeeds* in being able reliably to externalize the costs of its violence—i.e., once it is, or is well on its way to becoming, a government—then its incentives become warlike rather than pacific. But the question is how easy it is for a security agency to *achieve* that status, starting from an initial position of free-market anarchy. The path *toward* such a status is a violent one, and therefore expensive; as its premiums mount, customers have an incentive to defect, while noncriminal security agencies have an incentive to combine against it. It is no objection to the stability of a system to say that *if it fails* it is no longer stable; that is virtually a tautology. It is precisely because states can *already* externalize the costs of their violence, while firms in a competitive market *as yet* cannot, that violence is more to be expected from the former than from the latter.

To support her predictions of violence under anarchy, Schneider offers a number of examples of societies in which weak or absent governments have led either to the rampaging reign of "young males" or to takeover by brutal dictatorships (pp. 104–05). But her examples are often puzzling. One concerns *lions*, which as nonhumans devoid of reason are of course incapable of developing legal systems of any kind, whether state-based or stateless, and so are surely irrelevant in a discussion of human society. Another is the Weimar Republic, which as a bureaucratic and all-intrusive regulatory regime seems ill-suited to serve as an example of weak or absent government. And I suspect it would come as quite a shock to the oppressed and brutalized peasants of nineteenth-century Latin America to learn that they were "loosely governed." (It's also unclear why "young males" should be more of a problem under anarchy than under government.)

In any case, giving a few examples of unsuccessful anarchies no more refutes anarchism than naming a few especially nasty governments (say, Hitler's Germany, Stalin's Russia, Mao's China, and Pol Pot's Cambodia) by itself refutes archism—or than, say, reeling off a list of British authors proves that all authors have been British. I hypothesize, however, that the reason that minarchists suppose that a handful of unsuccessful anarchies disproves anarchism, while nobody thinks that a handful of unsuccessful or undesirable states is a decisive objection to the state as such, is that while minarchists recognize, indeed insist, that states can *differ in constitutional structure*, with some structures more favorable to positive results than others, they tend to assume that all anarchies have the *same* constitutional structure, namely *none*.[11] But if, as I've argued, constitutional structure consists in institutions, practices, and patterns of social activity, then anarchies can differ from one another in constitutional structure just as much as states can.

Why, then, does Schneider say nothing about the numerous cases where weak or absent governments have *not* led to civil chaos or dictatorship? There is by now quite a lot of historical research available on relatively successful anarchic or near-anarchic societies and legal systems, many of which remained stable for longer periods than the United States has thus far even existed, and many of which appear to have grown *less* violent over time, as economic incentives slowly transformed traditional norms concerning retaliation.[12]

I was surprised to see my own words invoked on behalf of dismissing all this historical evidence: "Even Long admits that his conception of order may 'not [be] enough for a complex economy,'" Schenider claims, and concludes that this supposed admission on my part renders my "examples involving wandering cows and bickering neighbors useless" (p. 104).

But *I made no such admission*. In the passage in my original talk from which Schneider quotes, I was arguing that the traditional Hobbesian case against anarchy depends on three premises, all false: (a) that there can be no social cooperation without law, (b) that there can be no law without coercive enforcement, and (c) that there can be no coercively enforced law without a state. My examples, borrowed

[11]This certainly seems like a plausible diagnosis of, e.g., Paterson's 1993 critique of anarchism.

[12]See, for starters, Anderson and Hill (2004); Bell (1992); Benson (1990); Berman (1983); Friedman (1979); Hasnas (2008); Long (1994a, 1994b, 2002); Peden (1977); Stringham (2007); and Wooldridge (1970).

from Ellickson 1991, of "wandering cows and bickering neighbors" were intended to rebut premise (a) by providing examples of social cooperation without law. And it was social cooperation without *law*, most emphatically *not* social cooperation without the *state*, that I admitted might not be "enough for a complex economy." But my case against (a) was only one prong of my three-pronged argument; Schneider neglects the other two prongs, which defended the possibility of law without coercive enforcement, and of coercively enforced laws without the state. Certainly *those* are consistent with a complex economy, since *historically they have been so*.

In addition to her predictions of violent takeover, Schneider also suggests a likely nonviolent route from anarchism to the state: she quotes favorably William Barnett's suggestion that competition among legal policies would lead to the most successful policies being dominant, so that courts applying those policies would outcompete rival courts, "putting them out of business, and you are left with fewer and fewer courts" (p. 107), eventually culminating in a unified state.

But this objection—which incidentally appears to contradict Schneider's earlier worry that agreement on legal norms will be too hard to achieve under anarchy!—also appears to conflate competition among *agencies* with competition among *ways of doing things*. In real life, when one firm's services prove more popular, rival firms don't necessarily go out of business; instead, they typically respond by *offering similar services themselves*; that's why, for example, PCs feature the "windows" interface that was pioneered by their rival, Macintosh, or likewise why Burger King's products bear a more than passing resemblance to those of McDonalds. And the same thing happens with competing courts as well. I ask again, why not look at the *actual history* of polycentric legal systems to see how they in fact operate? The Law Merchant is an excellent example of a nonstate legal system that prospered because it offered a more regular and uniform set of legal norms than those of existing governments—yet there was no tendency for this convergence on legal norms to reduce the number of courts.

But here I am, once again, astonished to see my own words being pressed into service of the anti-anarchist cause: "Even Long," Schneider insists, "unwittingly supports" the minarchist prediction that a free-market legal system must inexorably evolve into a state—because I cite "the emergence of the Law Merchant in the late Middle Ages, a system of commercial law that was backed up by threats of boycotts" (p. 108). Yet how on earth does the emergence of

a successful *nonstate* legal system support claims of the inevitability of *state* legal systems?

Perhaps Schneider is thinking that as competing courts converge on a shared set of norms, they thereby become parts of a single monopoly institution. But first, if providing similar services turns competing firms into components of a single firm, then why aren't McDonalds and Burger King to be regarded as a single firm? Or Visa and Mastercard? Or DC Comics and Marvel?

Second, even if such courts did thereby become parts of a single institution, it wouldn't be a *monopoly*—and so not a *state*—so long as competitors were not forbidden. (It may be replied that such a unified institution would find it easy to forbid competitors and thereby *become* a monopoly; but against this see Caplan and Stringham 2003.)

And in any case, third, while it is often in the interest of competing firms to offer *similar* services, it is not necessarily in their interest to offer *identical* services, since each will naturally seek to achieve some competitive edge. Moreover, the same types of services will not always be popular with the same customers; different court systems will most likely be popular with different constituencies, as when Muslims living in non-Muslim countries frequently resort, when permitted, to Shari'a law to resolve disputes among themselves.

In conclusion, I cannot see that Schneider has made a successful case for her claims that a stateless legal order must lack some form of objectivity available to states, that it must suffer from the absence of some indispensable "final arbiter" available to states, or that it is any more subject than states to violence or instability.

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