

CONTRA SPOONER

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The inability of modern philosophers to furnish any kind of argument for the maintenance of a government is a notorious weakness. In Lysander Spooner's writings, it becomes an odd strength. Throughout such writings as *No Treason, A Letter to Thomas F. Bayard*, and "Natural Law," Spooner asks why taxation and participation in the workings of the state should be compulsory. He concludes that there is no legitimate reason, and that government is the instrument of robbery, slavery, and murder.¹

There are only two alternatives for the reader of Spooner's philosophy: embrace anarchism, or develop some kind of response. Since Spooner avoids historical or empirical argument, any response, to be convincing, must be crafted in pure philosophy, without resort to practical or empirical arguments. Since modern philosophers provide little help constructing such a response, I will turn to the ancient thinkers.

Aristotle's arguments, although not an adequate defense of the institution of government, show that many of Spooner's claims are not arguments at all, but mere premises. Even the briefest survey of the culture of the ancient Mediterranean will show that Spooner's arguments are not only unnecessary, but false. Ancient writings expose Spooner's philosophy as mere rhetoric.

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I would like to thank Walter Block for help in the preparation of this article. I am solely responsible for the views expressed herein.

¹Lysander Spooner, "Natural Law," in *The Lysander Spooner Reader* (San Francisco: Fox and Wilkes, 1992), pp. 11–24; and Lysander Spooner, *No Treason and A Letter to Thomas F. Bayard*, ed. James J. Martin (Colorado Springs, Colo.: Ralph Myles, 1973), *passim*.

HOBBS AND SPOONER

Many modern philosophers who argued in favor of the institution of government—e.g., Rousseau, Montesquieu, and Locke—used species arguments. The most famous is Thomas Hobbes, who lived during the upheaval of the English Civil War, but died before its completion. Hobbes's argument consists of a pessimistic view of human nature coupled with an emphasis on the harm people do to one another. Hobbes begins with the state of nature, a primeval time in which there is no law and no order. The damage that people do to one another is unbearable. Hobbes describes life in the state of nature as "solitary, poor, nasty, brutish and short."² If anarchy ceases and a king comes to power, the ruler will organize the area in which he rules to benefit himself. However, the order that results is better than anarchy. Hobbes concludes that even a bad king is better than none at all, and that rebellion is never justified.

Hobbes's argument fails on two grounds. First, it is unlikely that there ever was any such state of nature as the one Hobbes describes.³ Second, even if there was any such state of nature, Hobbes's argument justifies keeping bad rulers. Since good rulers have often come about by overthrowing bad ones, Hobbes's argument is only an exhortation to stagnant government and a justification of tyranny.

Spooner's philosophy does not permit even the slightest growth of tyranny. Spooner (1808–1887) was a lawyer in Massachusetts, an abolitionist in the days before the Civil War, and an entrepreneur. He founded a private post office, the American Letter Mail Company, which competed with the United States Post Office until it was shut down by a congressional act in 1844. Spooner extensively defended his private post office in such pamphlets as "Who Caused the Reduction in Postage? Ought He to Be Paid?" He also was an early opponent of prohibition, and the author of "Vices are Not Crimes: A Vindication of Moral Liberty."⁴

²Thomas Hobbes, *Leviathan* (Oxford: Clarendon Press, 1909).

³There is simply no archaeological or philological evidence to support the state of mad chaos described in Hobbes's *Leviathan*. Nonetheless, it is inappropriate to describe Hobbes as a deficient philosopher. The science of anthropology was underdeveloped at the time, and ideas about the Neolithic Era were crude even among the intelligentsia. Indeed, many philosophers used Hobbes's specious state-of-nature argument.

⁴Lysander Spooner, "Who Caused the Reduction in Postage? Ought He to Be Paid?" http://www.lysanderspooner.org/bib_new.htm; and Lysander Spooner,

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Spooner's philosophy is not based on any *state* of nature, but on what he calls the *law* of nature. This, as outlined in his letter to Thomas Bayard and elaborated in *Natural Law or The Science of Justice*, is that each man should live honestly, hurt no one, and give each man his due. In other words, the law of nature is a cessation of stealing, killing, wounding, and threatening. Spooner repeatedly stresses the basic, immutable, and universal nature of this law. Moreover, he says that it is easily learned, and that most children have some sense of it even before they can articulate it. He even goes so far as to say that it is difficult for human beings to live with each other without learning this law.⁵ Spooner is so convinced of the immutability, universality, and necessity of this law that it is difficult not to agree with him. Who, after all, would disagree that men should live honestly?

ARISTOTLE AND SPOONER

It is here that contrasting Spooner with Aristotle becomes especially fruitful. In Book One of the *Nicomachean Ethics*, Aristotle stresses that different disciplines require different degrees of certainty. It would be foolish, he admonishes, to expect from ethics the same precision and certainty as we expect from geometry. By Aristotle's reasoning, Spooner has committed a grave error. In insisting that the law of nature is immutable, certain, and self-evident, Spooner has ascribed to ethics an inappropriate degree of certainty. When he attributes to the young the ability to discern this rule, he again falls afoul of Aristotelian methods. Aristotle warns that ethics is not a pursuit appropriate for the young, but for the more experienced. The fact that the young are able to discern Spooner's law so quickly and easily—assuming they are—casts aspersions on its acceptability.

Of course, Aristotle is not the final word on ethics, and an argument should not be dismissed simply because Aristotle disagrees. In this case, though, there is good reason to believe Aristotle, and thus to doubt that Spooner's law of nature is as universal as he claims. There are examples of laws that were once deemed "universal" which are now no longer so regarded. The heroes of the Homeric era all seem aware of a different universal law: the law of hospitality. This law

"Vices are Not Crimes: A Vindication of Moral Liberty," in *The Lysander Spooner Reader*, pp. 25–52.

⁵Lysander Spooner, *Natural Law or The Science of Justice*. http://www.lysanderspooner.org/bib_new.htm.

urged a householder to feed strangers, give them a guest-gift, and escort them on their ways. It was polite to feed and house the guest even before asking his name. All the Homeric heroes were aware of this code, and only Polyphemus the Cyclops ignores it, with ruinous results.

While the law of hospitality does not preclude Spooner's natural law, other practices common among the Homeric heroes do. Odysseus and his men sack the city of the Ciconians on their way home from Troy, and no one seems to think it contrary to any law of nature. When Odysseus argues against sacking the city, he does so on purely pragmatic grounds. No one in the Homeric world seemed to think negatively of simple acts of piracy. Sacking cities at random, however, does break the law of nature that Spooner posits, which raises an important question: If the law is so universal, why were the Greeks ignorant of it?

In fact, Aristotle may have come up with a truly universal and natural law: the law of non-contradiction. In *Metaphysics* 1005b, he says that "the same thing cannot at the same time belong and not belong to the same object and in the same respect." Aristotle argues that the law is "the most certain principle of all" and that it is impossible to think it false.

In essence, if you argue with someone who does not believe in the law of non-contradiction, Aristotle says that your opponent will prove that he believes the law as soon as he says a word, for the word can only mean one thing at one time in one respect. If your opponent says nothing, you win the argument by default. The proof of the law of non-contradiction appears in *Metaphysics* 1006a20:

We can, however, demonstrate *dialectically* even that this view is impossible, if our opponent will only say something; and if he says nothing, it is absurd to seek to give an argument [*logos*] for our views to one who cannot give a statement [*logos*] about anything, in so far as he cannot do so. For such a man, as such, is from the start no better than a vegetable.

The argument that any law is a natural law is simply not an argument. Anyone can say that his or her law is "natural." What proofs, then, do they offer? What proofs could they offer? There is only one. If everyone obeyed the law at all times, then the law could be accepted as universal, for, as Aristotle says in Book II of the *Nicomachean Ethics*, it is impossible to habituate against nature. The comparison with Aristotle has already exposed Lysander Spooner's argument as faulty. The law of nature is not natural at all.

THE NATURE OF CONTRACT

Murray N. Rothbard has argued successfully that there is a way to derive natural law from pure reason.⁶ However, while his arguments allow for the possibility of natural law, the argument that any particular law should be followed simply because the arguer posits that it is “the law of nature” is still invalid.

Nevertheless, it is from this foundation of natural law that Spooner builds his argument in *No Treason VI: The Constitution of No Authority*. He begins with a premise that if the Constitution has authority, its authority is contractual. However, he argues, the Constitution is not a binding contract, for it was written by men long since dead. Moreover, even those men did not sign it as a contract. No one has. The Constitution has never been signed, sealed, witnessed, or delivered, as the law requires important contracts to be handled. Therefore, the Constitution cannot be a contract and is binding on no one.⁷

That the Constitution is binding on no one has grave consequences. Since the statutes and the representatives who make such statutes all derive their authority from the Constitution, Spooner effectively challenges the authority of every statute on the books. If the legal code of the United States has no authority, then those who enforce the law by meting out punishments or by collecting taxes are nothing but robbers and murderers.

Can the Constitution be a contract without being signed? While contracts do not figure prominently in the writings of Homer or Aristotle, contracts are of the utmost importance in the oral tradition recorded in the pentateuch. In the Bible, God makes several covenants: one with Adam, one with Noah, one with Abraham, and so on. Of all these covenants, only one was signed: when God made his covenant with Noah, he put his bow in the sky as a sign. Even this sign, however, was not really a “signature.” Yet, the Biblical authors and countless Jews, Christians, and Muslims have viewed these contracts as valid. Spooner argues that, since the founding fathers who created the contract are dead, even if they had signed it, they could not make it binding upon their children. However, none of the covenants that God makes are renewed each generation, yet they are considered binding.

⁶Murray N. Rothbard, *The Ethics of Liberty* (New York: New York University Press, 2002), pp. 3–8.

⁷Spooner, *No Treason and A Letter to Thomas F. Bayard*, p. 23.

Covenants between deities and people may seem like an unfruitful comparison with a contract among citizens to form a government. In a sense, however, the comparison is even more appropriate than a comparison with Aristotle, for the Bible was and is a much more familiar and authoritative document to most Americans than are the writings of Aristotle. Like the contrast between Aristotle's perspective and Spooner's perspective, the contrast between Spooner's perspective and the Biblical one also points out the flaw in Spooner's argument. Spooner and the Biblical authors have different ideas about what constitutes the validity of the contract. To whom will they appeal? From where does the contract derive its authority?

Spooner's formulation of the law of nature does not mention contracts. If it did, it could hardly stipulate that contracts must be signed, sealed, and delivered. Such a law would only be binding on those cultures with writing, seals, and means of delivery. Indeed, the rules around contract are made by government and by statute. However, Spooner cannot use government or statute as a basis for his insistence on the primacy of contract, since he is attacking the foundation of American government, the Constitution.

GOVERNMENT AND THE HABIT OF EXCELLENCE

Since he argues that the Constitution has no authority, then soldiers and tax collectors are robbers and murderers. He dismisses the argument that the apparatus of government is there to protect the governed by asking why any band of robbers and murderers would want to protect its victims. In short, Spooner asks why the institution of government should be tolerated at all.

Aristotle has an answer that overwhelms Hobbes's frightened dependence on any kind of leader, and Rousseau's enigmatic deference to the general will. In Aristotle's schema, excellence is acquired through habit. It is the purpose of government to teach good habits. Like any good teacher, the government rewards good habits and punishes bad habits. Now, as for Spooner, or any other person who does not wish to pay taxes, either he wants to acquire good habits or he does not. If he does, he should not complain that he has to pay taxes to fund education. If he does not want good habits, then he must want bad habits. There is a term for one who desires bad habits: a vicious man. According to Spooner's own schema, it is perfectly acceptable, even desirable, to wage war against the vicious.

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While Aristotle's argument might not be compelling, its precursor might be. Aristotle's argument bears certain similarities to one found in Plato's *Protagoras*.⁸ It begins with a *muthos*, a story in which human beings are scattered about the Earth. However, they lack the art of living in cities, so they are no match for the animals, who hunt them down. Therefore, Zeus grants each human a share of respect and right. By means of these, men can live in cities. However, if there is anyone who does not have an adequate share of respect and right, his neighbors, friends, and, ultimately, the state all try to teach him. The teaching can take the form of punishment. However, if there is someone who cannot learn respect and right, his fellow citizens drive him from the city as a pest. Since respect and right are needed for everyone's survival, it is necessary to see that everyone learns it. Since it is in everyone's interest to teach respect and right, the state collects taxes to aid in teaching.

According to this argument, the people who do not want to pay taxes are those who do not care whether everyone knows respect and right, and consequently do not care if the city they live in flourishes or perishes. Since, according to the *muthos*, their lives are dependent on the prosperity of the city, it is logical to infer that those who do not wish to pay their taxes do not care if they live or die. If, however, Spooner does not care whether he lives or dies, and therefore taxes do him no good, his liberty will not be impinged upon. The state will come and punish him, but even if they kill him, he will have no complaint, for he does not care whether he lives or dies. So with anyone else, if they do not pay taxes, they must not care for their own lives. The state does nothing by its punishment that wild animals will not do in the absence of government.

The Protagorean-Aristotelian argument rests on two premises. First, respect and right are necessary to survival. And second, the community can teach them. Although it is beyond the scope of this article to prove these premises, the Protagorean-Aristotelian arguments do show

⁸Edward Schiappa argues that many of Plato's and Aristotle's theories may have been inspired by Protagoras. For example, Schiappa argues that Aristotle may have formulated the law of non-contradiction so carefully in order to fortify his arguments against those of Protagoras, who rejected the law of non-contradiction. Schiappa does not suggest that Aristotle's justification of government may be grounded in Protagorean thought, but it is still possible. See Edward Schiappa, *Protagoras and Logos: A Study in Greek Philosophy and Rhetoric* (Columbia: South Carolina University Press, 1991).

how to answer Spooner's question of how taxes can legitimately be collected. The answer is that the collection of taxes is never coercive, because anyone who resists paying them does not care for his own welfare.

CONCLUSION

Aristotle's arguments show the flaws in Spooner's claims. First, while Spooner's law may be an excellent law, it not the law of nature. Comparison with ancient epics such as the *Odyssey* shows that there have been other candidates for the status of "law of nature" that have been widely accepted, but which run contrary to the law of nature proposed by Spooner.

While Spooner's arguments on the nature of the contract are convincing within the context of the modern, English-speaking world, comparison with the ancient world reveals his ideas on contracts to be based on the very institution he attacks: the government. Protagorean and Aristotelian arguments reveal that there is, in fact, a purpose to government much nobler than theft and murder. The Protagorean-Aristotelian arguments also show that the end of government is beneficial to those who desire their own welfare, and not at all repugnant to those who do not.

Thus, while his position on natural law and the primacy of contract are unsupported, Spooner deserves credit for raising the important question of why citizens should accept a government's existence.

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