



GERARD CASEY

LIBERTARIAN ANARCHY

against the state




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James Garvey is Secretary of the Royal Institute of Philosophy, UK. He is the author of *The Twenty Greatest Philosophy Books* and *The Ethics of Climate Change*, also published by Continuum.

Jeremy Stangroom is co-editor, with Julian Baggini, of *The Philosophers' Magazine* and co-author of *Why Truth Matters*, *What Philosophers Think* and *Great Thinkers A-Z* (all Continuum).

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GERARD CASEY



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80 Maiden Lane
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I have been thinking about these matters for some years now and some of my thoughts have been published in different forms in various outlets. I have reused some of this material, integrating it into the larger narrative, and I am grateful to the publications involved for permission to republish. Particulars are noted where appropriate.

I make no claims to novelty for anything I have said but console myself with the thought expressed by one of my heroes, St Thomas More, that an absolutely new idea is one of the rarest things known to man. Rather than strive for novelty, I have attempted, perhaps unfashionably, to say what I think is true. I could, of course, be wrong since attempt, alas, isn't necessarily the same thing as achievement.

Everything that I have read in preparation for writing this book (at least in the last year or so) is listed in the Bibliography and I cannot sufficiently express my gratitude to those who wrote this material, both those whom I consider to have illuminated the issues in ways I find congenial and those whom I consider to have proposed really tough and interesting alternatives to my position. If I have misquoted anyone or, even worse, failed to credit someone's words or ideas, I apologise and will do my best to rectify matters as and when appropriate.

I very much appreciate the help of Patricia Casey, Jason Walsh and Peter White in reading and commenting on the manuscript. Apart from picking up numerous typographical errors, they also forced me to make this book something written in a language that has some connection with idiomatic English rather than being expressed in that strange and incomprehensible academic dialect I have learnt over too many years in what some wit once called 'the graves of academe'.

1

INTRODUCTION

The criminal state

States are criminal organizations. All states, not just the obviously totalitarian or repressive ones. The only possible exceptions to this sweeping claim are those mini-states that are, in effect, swollen bits of private property, such as the Vatican. I intend this statement to be understood literally and not as some form of rhetorical exaggeration. The argument is simple. Theft, robbery, kidnapping and murder are all crimes. Those who engage in such activities, whether on their own behalf or on behalf of others are, by definition, criminals. In taxing the people of a country, the state engages in an activity that is morally equivalent to theft or robbery; in putting some people in prison, especially those who are convicted of so-called victimless crimes or when it drafts people into the armed services, the state is guilty of kidnapping or false imprisonment; in engaging in wars that are other than purely defensive or, even if defensive, when the means of defence employed are disproportionate and indiscriminate, the state is guilty of manslaughter or murder.

For many people, perhaps most, these contentions will seem both shocking and absurd. Some will immediately object that taxation is clearly not theft. They may say as Craig Duncan does¹ that since you do not have legal title to all your pre-tax income the state commits no crime in appropriating that part of your income to which it is entitled. The problem with this objection is that it completely begs the question – *is the state entitled to part of your income?*

The libertarian contention that taxation is the moral equivalent of theft can be true, Duncan believes, only if people have a moral right 'to keep and control all their earnings'² but this claim, he thinks, is beset with fatal problems. To illustrate this point, he rehearses the tragedy of Annie the antiques dealer who has to hand over 20 per cent of her earnings to the owner of the premises she rents to conduct her business. If Annie were to claim that she had a right to all her earnings and should not be obliged to fork over the 20 per cent, the building owner will respond that without his premises, she would not have been able to make any sales in the first place. 'Something similar', says Duncan, 'is true of government taxes'.³ If it were not for the state's enforcing contracts, protecting property rights, keeping the peace, printing currency, preventing monopolies and so on, you or anyone else would not be able to go about your daily business. So, the argument goes, by analogy the state has a moral entitlement to a portion of your earnings, at least to an amount sufficient to cover the costs of the services the state provides.

This analogy is so weak it not only limps, as most analogies do, but it positively staggers around on one leg. First of all, Annie presumably has made an agreement with her landlord and did so freely. If she does not want to hand over 20 per cent of her earnings to him, she can try to renegotiate the contract or take her business elsewhere. In stark contrast, the average citizen has made no agreement with the state. The state unilaterally determines the amount that citizens must 'pay'. Citizens are not at liberty to take their 'business' elsewhere since the state forcibly excludes competitors who might be willing to supply more cheaply the services provided by the state. Duncan's analogy, if it has any force at all, has it only if it runs in the opposite direction. On the libertarian way of thinking about it, taking commercial relations as the norm, Annie Citizen is forced to do her business in premises of her landlord's (the state's) choosing, paying whatever rent he (the state) determines he deserves, and her landlord (the state) can legitimately use violence to prevent someone else offering her a better deal.

Some will reject the charge of false imprisonment or kidnapping that I lay against the state. People are put in gaol, they will say, only if they are convicted of committing a crime; the fact that they are in gaol means they are criminals. The state is not only not doing anything wrong in putting them there, it is doing something positively good by protecting us from these miscreants. This objection, of course, draws our attention firmly to the question of which courses of conduct actually constitute crime. While most people will agree that murder, robbery, kidnapping and assault are crimes involving, as they do, gross interference with the lives, liberties and properties of others, it is not entirely clear just what awful deed is being done by Tom, Dick and Harriet when, for example, they smoke pot in the privacy of their rooms and why it should require violent intervention by the state to prevent it.

Through taxation, the state aggresses against the property of the individual and, through the variety of compulsory monopolies it enjoys, the state aggresses against the free exchange of goods and services in the area of which it claims control. Murray Rothbard writes that 'the State, which subsists on taxation, is a vast criminal organization, far more formidable and successful than any "private" Mafia in history'. He makes the point that 'it should be considered criminal' not according to some idiosyncratic conception of criminality but 'according to the common apprehension of mankind, which always considers theft to be a crime'.⁴ As the satirist, H. L. Mencken, notes, 'The intelligent man, when he pays taxes, certainly does not believe that he is making a prudent and productive investment of his money; on the contrary, he feels that he is being mulcted in an excessive amount for services that, in the main, are useless to him, and that, in substantial part, are downright inimical to him.'⁵

Unless you work for the state, your direct encounters with it are likely to be unpleasant. Think of being manhandled at an airport and made to feel as if you were a criminal but not wanting to protest in case the securicrats deem you a security threat and detain you. If you have ever had to deal with the state's bureaucrats in, let us say, an

immigration department, you will have firsthand experience of what Shakespeare calls 'the insolence of office'. Perhaps you are one of the thousands of people who have been pulled over by a man in uniform for 'speeding' in an area where the speed limit is set arbitrarily low, when it is patently obvious that the function of the speeding ticket is not, in fact, to promote road safety but simply to raise revenue? If you are an employer, are you happy that you are obliged to act as an involuntary unpaid tax collector, removing large chunks of your employees' wages for remittance to the Tax Office while also being forced to bear the costs in time and money of this collection and remittance?

What makes these encounters unpleasant in a way that your dealings with commercial bodies are normally not unpleasant is that, as Jan Narveson puts it, 'agents of government have a relation to you that nobody else normally has'. If you get poor service in a restaurant, you can protest. If your mobile phone refuses to function, you can take it back to the store and demand an exchange or get your money back. But if you do not like what you are made to go through at an airport do not even think of protesting; and if you think you pay too much in tax, just what do you propose to do about it? 'Government', as Narveson says, 'can "do bad things to you" and they can make it stick. . . . The law, literally, is on their side: They claim, indeed, to be "the law." If you disagree – well, too bad for you!'⁶

Societies governed by states are divided into those who rule and those who are ruled.⁷ Rulers associate in a mutually beneficial symbiotic relationship with those who can be useful to them, granting them privileges such as monopolies or quasi-monopolies or allowing them to operate in ways not available to the mass of individuals or genuinely private businesses. For example, because of state guarantees to underwrite banking defaults and because deposits are treated legally as loans, banks – all banks – are allowed to operate in bankrupt mode. This privilege – literally, this private law – is not accorded to ordinary businesses. Much of what is described as capitalism is actually a contemporary form of mercantilism in which certain economic actors, usually powerful and wealthy ones, seek and obtain privileges from the

state in return for their support. Capitalism (mercantilism) of this sort is simply an extension of the state's activities and so, from a libertarian perspective, is indefensible.⁸ Not only is it indefensible it is also wildly incompetent, as witnessed by the current, sustained (2008–12) global financial crisis induced primarily by the actions and policies of states, state agencies and their friends who operate businesses (especially banks) that are considered too big to fail.

Libertarianism and anarchism – an overview

Anarchy is the position in which the members of a society naturally finds themselves when they are not subject to the power of a state. The theory that argues for the desirability of such a condition is *anarchism*.⁹ Anarchism comes in two varieties: philosophical and practical. Philosophical anarchists argue for the illegitimacy of the state regardless of whether or not any of the alternatives to it are productive of better outcomes for individuals apart, of course, from the enhancement of liberty. Practical anarchists, on the other hand, argue that anarchy is feasible, that its outcomes would be better as a whole for all (though not, of course, for state dependants) and that efforts should be made to bring it about. Of course, there is nothing to stop someone being both a philosophical anarchist and a practical anarchist; nonetheless, in this book, I shall present the argument for anarchism primarily in its philosophical variety.¹⁰

The standard political options in modern democracies are liberalism and conservatism. Though they differ from each other in many respects, both are content to use the power of the state to promote their policies. Liberals are content to use the power of the state to enforce their economic views on all in respect of what they consider to be the appropriate distribution of goods and services while they claim as large a liberty as possible for personal, especially sexual, morality.

Conservatives, on the other hand, generally wish to have as much liberty as possible for economic activities while recruiting the power of the state to enforce their moral views on others. Libertarians differ from both contemporary liberals and conservatives in that they reject the use of force in all cases except where it is necessary to resist or punish aggression. For libertarians, liberty operates as a fundamental principle across the whole range of human endeavour in contrast to both liberals and conservatives who are selective about the areas in which liberty is allowed to hold sway.

It might be as well to clarify one popular misconception right at the start: libertarianism is *not* the same thing as libertinism. It is true that libertarianism will not admit the physical restraint or physical punishment of acts that do not aggress against others but it nowhere implies moral approval of such acts or rules out their restraint by other methods such as exhortation, boycotting or loudly expressed disapproval. Take, for example, the issues of pornography, prostitution, adultery and homosexuality. In dealing with issues such as these, the libertarian invokes the distinction between the immoral and the illegal. The crux of the matter is not whether pornography, for example, is immoral or degrading or whether it is a uninhibited expression of spontaneous sexuality. Such matters are relevant to determining the morality of pornography; they are irrelevant to the question of whether or not pornography should be legally prohibited. The only question here, for the libertarian, is whether the law should be used to enforce a particular morality where the issue in question does not pertain to the matter of defending people against aggression directed at their persons or property. The libertarian answer is clear – the law has no business enforcing purely moral considerations. Libertarians may well find such activities morally reprehensible (or not) but they will argue that it is no part of the law to prohibit or regulate such activities unless they involve aggression.

Libertarians reject state control or regulation of the media for whatever purpose. From the libertarian point of view, publishers, reporters, writers, commentators and film directors are responsible for what they write, tell or show and individual readers and viewers

are responsible for what they are prepared to read or to see. If you do not want to see something, do not look. If you do not want to hear something, do not listen. TVs and radios come with switches that turn them off as well as turning them on. If you feel really strongly about some issue or other, say a particular TV programme, you may organize a non-violent boycott of the show's advertisers or write a letter of protest to the station manager – you may use any non-violent method you choose to achieve your aim. But you may *not* initiate aggression and you may *not* recruit others, including the state, to act aggressively on your behalf.

While libertarians may be willing to concede that the use of many chemical substances is individually and socially harmful, they will oppose attempts to proscribe or regulate either drug-taking or drug commerce. This for two reasons. The first, principled, reason is that such proscription or regulation is a violation of individual liberty; the second, consequentialist, reason, is that history shows that such attempts at proscription and regulation inevitably make a bad situation worse. Alcohol prohibition of the 1920s was an unqualified disaster and today's so-called war on drugs is no more successful in reducing the incidence of drug-taking. (Isn't it remarkable that whereas in the good old days we used to wage war on countries, nations or states, now we wage war on inanimate objects like drugs and abstract nouns like terrorism?) The 'war on drugs' merely increases the price of drugs to consumers and profits to retailers, corrupts those charged with enforcing the anti-drug laws and ensures that large numbers of people who otherwise would not come to the attention of the police receive a first class criminal training at the public expense in state-run penal facilities. Legal and physical compulsion is not a sound foundation upon which to build the moral character of individuals or a better society.

What of compulsory school attendance? Libertarians reject it. State-enforced school attendance is a form of involuntary incarceration that violates the rights of both parents and children. Only the parents or guardians of children and the children when they are old enough to assume responsibility for themselves can make such decisions. What

goes for compulsory school attendance goes even more for military conscription. Conscription is sometimes justified on the grounds that we need it to defend our countries. Unless we equate our countries with the states operating in our countries, and putting to one side the obvious point that if there are no states there would be no states to attack or be attacked, the libertarian will argue that conscription is a form of involuntary servitude – more bluntly, a form of slavery – and so is to be rejected on libertarian grounds.

Immigration? Libertarians, for the most part, will support immigration. There's nothing special about the territory of a particular state. If someone is willing to hire or sponsor an immigrant that should be the end of the matter. The availability of tax-supported social welfare for immigrants tends to skew arguments on this issue but then welfare, whether individual or corporate, is not something that your average libertarian is likely to be supportive of in any case. Bailouts for businesses? Libertarians reject them. No one is entitled to demand that others be forcibly required to support his business, whatever that business may be, whether farming, shoemaking or banking.

It should now be apparent how the libertarian is prepared to analyse a whole range of practical matters – trade tariffs, wage floors and wage ceilings, military interventions abroad, fiscal policy, gun control and nuclear power. When it comes to considering whether to recognize actions or behaviours as criminal, we must ask if they involve aggression against the person or properties of others. If not, whatever view one may entertain of their morality or desirability, they should not be the subject of legal prohibition.

Roadmap

This book has a limited number of objectives: to show the anti-libertarian character of states and state action, to argue for the presumption of liberty, to make the case for libertarian anarchy, to show that law does

not require state sponsorship and to demonstrate the illegitimacy of the modern state by means of an attack on the representative nature of democracy and the validity of state constitutions.

In Chapter 2, I exhibit the criminal character of the state, illustrating this by looking at where the state comes from and showing what it does, particularly in the matter of war-making and tax-exaction. The state is said to be necessary for many things – the provision of roads, water, public services and so on – and while it can be and has been shown that none of these things requires a state to provide it, there is always one set of services that the defender of the state will retreat to when pressed, namely, that the state is necessary for the provision of justice, law and order. If I can show that justice, law and order can be provided without a state, then the state begins to look like the Wizard of Oz, a small man with a megaphone pulling levers behind a curtain. Chapter 3 outlines an account of liberty that is consistent with the moral character of human action without which human life is meaningless. In Chapter 4, I give an account of anarchy and conclude that the combination of liberty and anarchy is antecedently persuasive. Chapter 5 attempts to show, both theoretically and practically, that it is possible to have law without a state. I show how law originates spontaneously as a concomitant attribute of every society and has no necessary connection to a state. In Chapter 6, I undermine the most popular justifications for the modern democratic state – that in this form of the state we really rule ourselves and that constitutions provide a solution to the perennial problem of political consent.

Perhaps the deepest and most pervasive illusion of statisticians is that we can escape from anarchy and that the means of escape is the state. But can we? I hope to show (briefly) in what follows that in fact we always live in some condition of anarchy at some level or other and that the only decision we have to make is what kind of anarchy we want to live with. Will it be the political anarchy of competing state branches *within* states and the anarchy of competition *between* states on the international stage, or will it be the emergent order of libertarian

anarchy that is the natural condition of human beings who take their freedoms (and their corresponding responsibilities) seriously?¹¹

I am painfully aware that there are many issues of importance I will not have touched on in the book. You will probably find the phrase 'But what about . . .?' forming in your head from time to time as you read. I can only plead in extenuation that in a book of such modest proportions I have had to be extremely selective in my choice of topics. Others faced with a similar problem would, no doubt, have chosen to do things differently, keeping some things that I have eliminated and eliminating some things that I have kept, but *quod scripsi, scripsi*, what I have written, I have written.