

CHAPTER 7: FREEDOM AND GOVERNMENT

In Chapter 6, we considered the *social ethics* of Objectivism — the principles by which *individuals* should act toward each other. In this chapter, we turn to Objectivism’s *politics* — the principles by which a *society* should be organized. The politics rests on the conclusions of the social ethics, especially the trader principle and justice, because society is only organized by the actions of individuals. However, the focus of the politics is different from that of the social ethics, because its primary concern is not how one should act to gain values, but how society may be organized to provide the best context for fruitful interaction with others.

The trader principle excludes both a life of dependence and a life of coercion, both mooching and looting. We saw that for us as individuals, neither one is a means to a successful life. But a looter, a social predator, is dangerous to us in a way that a beggar is not. We can always ignore a pan-handler or importunate relation, going our own way and leaving the moocher to go his; a mugger with a gun is another matter. Speaking more generally, we can ignore any inducement to act against our own interests, except coercive ones.

The use of force prevents a person from acting on his independent judgment. Because it is both physical and against a person’s will, coercion is the most fundamental intrusion one can make on another person. No idea can kill without being accepted and physically enacted. The shot of a gun or the stab of a knife kills in an instant. Even if it does not kill, coercion interferes with a person’s basic means of survival. As we saw in diagram 6.6, this means that each individual needs freedom from the use of coercive force, for himself. We also saw that each individual benefits when others have that same freedom from force. The need for protection from force, both for ourselves and for others, is the reason we need governmental and legal institutions, and the principles of politics on which they are based.

Political philosophy is a normative study: it is concerned with how social institutions *should be*, not only how they *have been* historically. Traditionally, rights have been seen as arising from many sources: for example, in the *Declaration of Independence*, Jefferson wrote that “we are endowed by our creator with certain unalienable rights...,” citing God as the source of our rights. In fact, there is only one basic normative standard: man’s life, which is the value of his own life to each individual. There is no value outside, beyond or deeper than that. As with the rest of the Objectivist ethics, it is upon the value of one’s own life that we should found our political principles. Only by doing so can we ensure the consistency of politics with our needs as individuals.

Freedom and Rights

Political philosophy is concerned specifically with the institutions necessary for individuals in a social context to achieve the values their lives require. In light of the Objectivist social ethics, it is clear that the goal of such institutions should be to permit and secure a society of independent traders. The essential means to this goal is to ban the initiation of force. Notice the parallel between the structure of politics and that of ethics: in that broader context, one's goal is to achieve happiness, and the means is to live by reason. In both cases, we need more specific principles that provide us with guidance in dealing with the many concrete issues that can arise. In ethics, these principles are *virtues*; in politics, they are *rights*.

A right is a moral principle defining and sanctioning freedom of action in a social context. This definition slightly alters that which Ayn Rand offered in her essay, "Man's Rights."¹ There, Rand went on to comment that:

The concept of a "right" pertains only to action, specifically to freedom of action. It means freedom from physical compulsion, coercion, or interference by other men.

Thus, for every individual, a right is the moral sanction of a *positive*—of his freedom to act on his own judgment, for his own goals, by his own *voluntary, uncoerced* choice. As to his neighbors, his rights impose no obligations on them except of a *negative* kind: to abstain from violating his rights.²

Freedom in the Objectivist view is most fundamentally freedom from coercion. As long as one is free from force, one is still able to exercise one's capacity to choose one's actions rationally. This is what the classical liberals of the Enlightenment and the 19th century meant by freedom.

Critics of classical liberalism have argued that this characterization of freedom is too limited. They point out that we are constrained by our social circumstances and abilities. To put it in modern terms: an American autoworker can afford a trip to Hawaii, whereas a Chinese peasant farmer cannot: is the autoworker more free than the peasant? More generally, aren't the wealthy more free than the poor?

They are, *if* we take "freedom" simply to be the possession of more options, more resources or capacities, more wealth. But why should we take "freedom" to mean things that we already have concepts for, concepts such as "power," "ability," and "opportunity"?³ The trouble with equating freedom with absolute power and total opportunity is that, while it allows us to compare the "freedom" of two people, no one can ever be said to be truly "free." Everyone is limited in his capacities; even the wealthy find resources are scarce for some

things they would like to do, such as buying an island in the Bahamas, or traveling to the moon. By contrast, objective freedom, freedom from coercion, is a real condition that anyone can attain. Furthermore, as we saw last chapter, it is the liberty one needs in order to pursue one's values. A Chinese peasant farmer may be poor, but it is only in a context of freedom from coercion that he will be able to attain the wealth of the American autoworker. The autoworker's wealth depends on his freedom, and could not long persist without it.

Diagram 7.1 examines two threads of the Objectivist argument for rights. In a general way, we might say Objectivism holds that rights are the social conditions required by man's nature as a rational being. But this remains in need of clarification. Any universal moral truth that one can express in terms of "man" may also be expressed distributively, as concerning each individual subsumed under "man." In view of this, our best way of understanding the "needs of man" is by understanding the needs and interests of the individual. One cannot avoid the argument in diagram 7.1 by saying that man's nature requires rights, because the argument in diagram 7.1 is the reasoning behind that very claim.

To establish the propriety of a rights-respecting society for each of us, we must show 1) that each of us needs freedom; and we also have to show 2) that each of us should respect the freedom of others. Fortunately this is not difficult at this stage in our ethical theory. In establishing the trader principle, we have already developed the key premises we need to establish both points (1) and (2). Diagram 7.1 presents them:

Premise 1a states that **to the extent one is subject to force, one cannot act on the basis of reason**. This was premise 3 of diagram 6.6 (non-coercion), and we assessed the evidence for it there. Here, we note that we can infer directly from this conclusion that **to pursue his life by means of reason, an individual needs freedom from force**. This is **Premise 1**, which is the argument from one's *own* need for freedom.

The second line of reasoning picks up the other side of the coin: one's lack of any need to use force to gain values. **Premise 2a** is a summary of the trader principle: **one should interact with others only through trade**. As we saw last chapter, trade is voluntary, while force acts against the will of the victim. Taking this into account, we can conclude from premise 2a that **an individual does not need to use force against others, except in self-defense (Premise 2)**. This is, in essence, the same as saying that there are no conflicting fundamental interests between individuals.

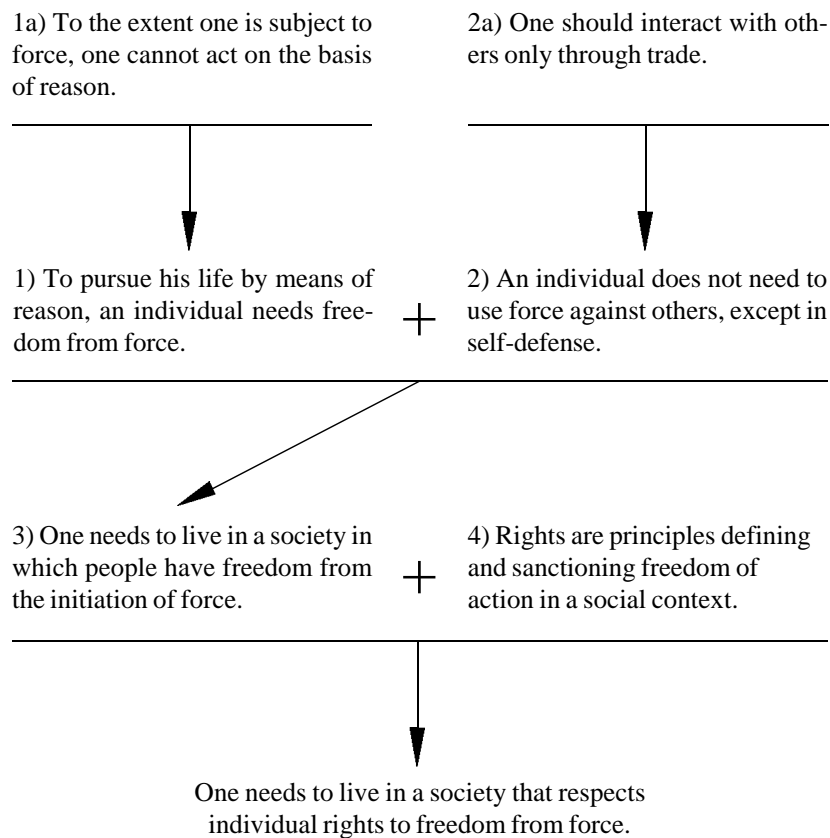
Together, premises 1 and 2 allow us to conclude that the initiation of force against others is never a means to values in society, and is always a threat, both in terms of the needs of the victim of force and in terms of the long-range interests of the person who initiates force. This means that **one needs to live in a society in which people have freedom from force (Premise 3)**. In essence, premise 3 reinterprets the non-coercion principle in terms of the way in which

society should be organized.

So one needs freedom; what does this have to do with rights? **Premise 4** restates the definition of “rights”: **rights are principles defining and sanctioning freedom of action in a social context**. Like any definition, premise 4 is inductive.

Diagram 7.1: Freedom and Rights

Inductive evidence: 4) Political practice, law.



Notice that what “rights” refers to abstractly is a collection of principles, not innate features of man. A right is a principle that defines an aspect of human action over which a person should be free.⁴ Freedom of speech and the right to pursue one’s happiness are examples of this, and as we will see it is true of rights as such. The point to note here is that the ability to take those actions is part of the person’s nature; the rights are not.

As principles, rights are not inherent in things or actions. Contrary to Thomas Jefferson, we are not naturally “endowed” with rights; rather, we recognize that rights properly apply to us in virtue of our natures, in the normal context of life. Thus, to say that a person “has rights” is just a manner of speaking. Similarly, it would be a loose figure of speech to say that an imprisoned criminal has “alienated” his rights; rather, those principles have different implications in the case of a criminal because of the way he has behaved. Nevertheless, rights are objective: they identify facts about how human beings should deal with each other in order to best promote their own individual lives. Rights are like basic principles of engineering for social organization.

Premise 4 points out that rights identify actions that we should be free to perform. This alone does not tell us how to properly determine which actions should be included, and which excluded. By combining premise 3 with premise 4, we can see what is the freedom that rights protect: an action is free when it is free from the initiation of physical force.

Together, premises 3 and 4 allow us to **conclude that one needs to live in a society that respects individual rights to freedom from force**. Rights define actions that it is morally appropriate to leave free from force. For instance, one recognizes another’s right to work, because this is consistent with non-coercion, but one does not recognize the right of another to commit murder, because murder is a species of coercion.

Notice that we conclude with a principle that characterizes actions that *society* should take. Of course, any society is nothing more than the individuals that make it up; its actions are their actions. What our conclusion means is that we need for individual rights to be a norm consistently upheld in society. As we will see when we discuss law and government, it also means that in view of the widespread threat that organized coercion poses to our freedom, we need to organize institutions to enforce respect for our rights. After all, one’s objective, individual rights are inalienable insofar as they identify fundamental facts about human nature, but if society at large ignores them, then they do one little good.

Recognizing the fact that rights are principles allows us to see more clearly what it means, on the Objectivist account, to say that one should *respect* the rights of others. It means that one should act with integrity on one’s principled recognition that the freedom of others is in one’s self-interest, so long as they reciprocate that recognition. Some philosophers think rights are weak and paltry claims if they do not amount to religious injunctions, but what could be

more powerful than an objective principle that connects human freedom to one's deepest needs and dearest values?

Individual rights are the essential principles of political and legal *justice*. We remarked in Chapter 6 that it is a matter of justice to determine what people *deserve*. The trader principle tells us that people deserve what they have earned by their own accomplishments or potential for accomplishment. Rights define the most general regard that people deserve. Rights are the most general because anyone with the capacity to live by reason, production, and trade merits respect for their rights, so long as that person respects the rights of others.⁵ The antithesis of objective political justice is the doctrine of "positive rights," which holds that others' needs are superior to one's own claim to one's life and produce. As we can see, "positive rights" are not rights at all, since they do not identify actions that should be free, but instead amount to claims to the action, and especially the productive work, of others.⁶

Like all moral principles, rights are absolute, but contextual. In the context of normal life, strangers have the right to pass unmolested. In a combat zone during wartime, by contrast, no such right applies. In addition, as the context of normal life expands to include new technologies and new types of activities, the principles of rights that apply to it should expand as well. For example, today a person may buy a claim to a portion of the radio spectrum, and as owner, he has a right to it. But this depends on technological context: the idea of the radio spectrum as property had to be invented, and the principle of non-coercion had to be extended to apply to it (indeed, in our own discussion we have yet to extend the principle of non-coercion even so far as property: that is the task of diagram 7.2).

Philosophy abounds in scenarios in which rights and self-interest appear to conflict. Many are absurd and most of the rest are rare in real life. Those that occur in normal life, and not in a different context such as a war or a lifeboat, usually involve a misunderstanding of what rights are and what obligations follow from them. For example, imagine finding oneself lost in a blizzard. One stumbles upon a cabin that is posted with a "No Trespassing" sign. An apparent dilemma emerges: should one respect the right that the sign announces, or freeze to death out in the snow?

But this is a false dilemma, one that results from taking rights to be categorical injunctions against certain types of action, rather than contextual principles based on self-interest. Respecting the other's rights in this case would mean being willing to pay compensation for trespassing, and supporting a court system that would hold one accountable. It would not mean sacrificing one's life to avoid infringing on a property claim. Plainly, one's need to respect the rights of another does not trump one's need to preserve one's own life. The fact that life does not normally require such actions, as we have seen, underlies the propriety of respecting rights. When the context is radically different, then the principles

that follow from it will naturally be different as well.⁷

The Objectivist argument for rights depends on a large context of ethical theory and induction from human nature. Couldn't there be a more direct approach to showing the propriety of rights? Several libertarian philosophers in recent years have argued that rights are founded on our recognition of the fact that others are moral ends-in-the-themselves.⁸ Every living thing is an end-in-itself: its life is its own ultimate value. This, however, is only part of the point these philosophers intend. Man is also a conceptual being, who must choose his actions on the basis of moral principles. He is thus a *moral* end-in-himself. Might this status alone give every person the right to a sphere of action in which to pursue moral ends? Would denying him rights wipe out morality?

There is nothing in morality itself, nor in moral action itself—as distinct from the facts of social life—that imposes a duty on others.⁹ To understand the full import of the fact that others are moral ends-in-the-themselves we must consider the kind of facts we been discussing in this book: facts about rationality, free will, needs, values, and the role of moral philosophy in human life. Since, as we have seen, those facts do not entail a moral duty or obligation to others except in virtue of the ability of people to live by reason, production, and trade, there are no grounds for moral obligations based *directly* on the fact that others are moral ends-in-the-themselves.¹⁰

Noting that people are moral ends-in-the-themselves is a satisfying rhetorical device that resonates with one's benevolent sense of others as independent individuals worthy of generosity, sensitivity, civility and rights. It may even seem obvious that one should respect others' rights, since in daily life we experience the value of dealing with others by trade in almost every interaction. None of this, however, allows us to leap directly to rights theory without first attending to the more fundamental ethical issues of value and virtue that underlie it.

Property Rights

Legal theorists have distinguished many kinds of rights, and even created some new ones as new technology and circumstances have arisen. The United States Constitution distinguishes a variety of rights: the right to freedom of speech, to bear arms, to due process of law, and so on. Many theorists see no clear connection between these rights and are as happy to speak of "rights" (such as welfare "rights", or the "right" to health care) that impose positive obligations on others in the same breath as individual rights, which consist only in negative obligations to refrain from interfering with others.

Objectivism, on the other hand, has a unified theory of rights. As Ayn Rand put it:

The right to life is the source of all rights—and the right to property is

their only implementation. Without property rights, no other rights are possible. Since man has to sustain his life by his own effort, the man who has no right to the product of his effort has no means to sustain his life. The man who produces while others dispose of his product is a slave.¹¹

Objectivism's theory of rights is unified in two ways: 1) like any moral principles, rights serve the ultimate value of life; 2) because one's freedom in a social context can only be violated by force, all rights identify freedoms to forms of non-coercive action. We saw in Chapter 5 that, in essence, Objectivism has only one virtue: rationality. We need further principles of action —other virtues— to apply the principle of rational action in the various aspects and contexts of life. Similarly, Objectivism recognizes only one fundamental right: the right to one's life, free from force. The right to “life, liberty and the pursuit of happiness,” so hallowed in American tradition, should be understood as nothing more or less than this one right. We need further principles of rights to apply the right to life to the situations we encounter in society: freedom of speech because we need to communicate, freedom of assembly because we need to gather together for social purposes, and so on.¹²

Of these principles that apply the right to life in the more particular circumstances of human life, the most fundamental kind are one's property rights. Property rights are moral and legal claims to the use of objects, primarily material objects. These are the most fundamental both because we need to be able to use property if we are to engage in production and trade — and thereby acquire material values—, and also because any other right we might exercise depends on the right to use some property, just as most non-material values require material means of some sort. For instance, one exercises freedom of speech through the press, which requires the ownership of means of printing, such as printers and computers. To exercise freedom of assembly, one must be able to use the space in which one assembles.

Diagram 7.2 presents two lines of argument for property rights, (A) and (B), that correspond to these two points:

The first line of argument proceeds from the need to produce and trade material values. **Premise A1** states that **in order to live successfully, one needs to satisfy one's needs by producing and trading for material values**. This simply restates conclusions we reached in discussing productiveness and trade. Note, however, that in the sense of this premise, “material values” include both values that fulfill fundamental material needs, such as food, and other values that take material form, such as objects of art.

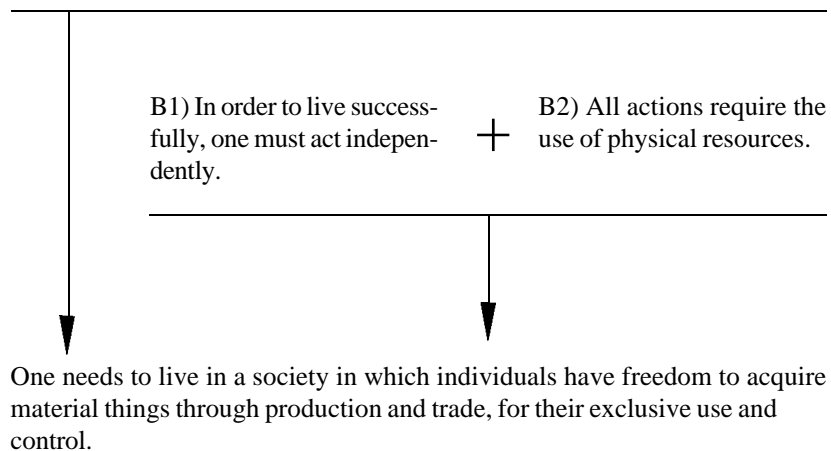
Premise A2 adds the inductive claim that **to the extent that one cannot dispose of what one produces or obtains from trade, one cannot satisfy one's needs by production and trade**. This claim has widespread evidence in

the field of economics, and of course in one's personal experience. Production and trade require the ability to use and dispose of material goods, not just the ability to create them. As evidence of this, we have the cases of oppressed societies, such as China during its "Great Leap Forward" of the late 1950s, where freedom of exchange was curtailed while production was itself explicitly encouraged. The result in the "Great Leap Forward" was the failure of both production and trade, and widespread starvation ensued. We equally have numerous examples, such as the trade entrepôts of Hong Kong and Singapore, where freedom to engage in exchange—in their case overseas mercantile exchange—resulted in the production of values on a fantastic scale. There are many other examples, but the point of them all is that production in a social context requires the freedom to own and trade material goods if it is to be fruitful.

Diagram 7.2: Property Rights

Inductive evidence: A2) economics, personal experience

A1) In order to live successfully, one needs to satisfy one's needs by producing and trading for material values. + A2) To the extent that one cannot dispose of what one produces or obtains from trade, one cannot satisfy one's needs by production and trade.



Together with the point that coercion is not a reliable means of obtaining values (of which we were reminded in diagram 7.1), premises A1 and A2 give us one line of argument to the **conclusion** of diagram 7.2: **one needs to live in a society in which individuals have freedom to acquire material things through production and trade, for their exclusive use and control.**

There is a second line of argument for property rights that derives from one's need for independence in pursuing all one's values. **Premise B1** reminds us that **in order to live successfully, one must act independently.** This summarizes the arguments for the virtue of independence that we discussed in diagrams 6.1 and 6.5. **Premise B2** adds the obvious point that **all actions require the use of physical resources.** This observation underlies the point we noted in Chapter 3, that material values are logically fundamental. Together, premises B1 and B2 give us a distinct line of argument to our **conclusion.**

In introducing the idea of rights in diagram 7.1, we noted that rights refer primarily to actions. This is true of property rights as well. People normally consider property rights to be *claims* on things, such as the title to a house or car, or one's ownership of clothes, groceries, and so on. In our society, the ownership of property conveys only restricted freedom to use and dispose of the goods in question. Property rights identify and sanction that freedom. Thus, property rights are the rights to acquire, use, and dispose of physical goods free from coercive interference or restriction. Without the right to those actions, legal ownership is a vacuous concept.

In this century, perhaps no aspect of individual rights has been as neglected by governments and philosophers as property rights. This neglect is a symptom of a deeper philosophical disease: the widespread acceptance of the mind-body dichotomy. This false distinction between the exalted realm of spirit and the base realm of matter is reflected, for example, in the 20th Century approach to rights, with its commonplace distinction between personal and economic freedom. In current American constitutional jurisprudence, it is widely believed sufficient that one be allowed to think what one likes, regardless of one's freedom to act in the world on that basis. In fact, one's spiritual values require material form, just as one's mind is a part of one's body. Because of this, one's right to property is the basic means of securing one's freedom of thought. As evidence, consider the fact that while the press is protected in many capitalistic, welfare state societies, historically countries that have not recognized property rights have neither upheld the freedom of the press.¹³

Government and Law

We have concluded that we need freedom from the initiation of physical force, including the freedom to use and own property, to be respected in society. We need this respect for ourselves, and we need to accord it to others.

On the other hand, we have noted that it is perfectly appropriate to use physical force in defense of oneself or one's property. So the application of the principle that people have rights has a certain complexity: it is far easier to determine if one person is *using* force on another than to determine whether or not that use of force is *justified*.

Furthermore, there is no guarantee that people will act for their long-term self-interest and thus abjure the initiation of force. Historically, there have always been plenty of people who have been attracted to theft or the idea of holding power over others, or who adopt a social cause that induces them to try to force others to conform. To handle these complexities, we need a method for establishing whether a given instance of force is legitimate. The law provides this method. But law is a body of principles: it cannot directly affect actions in the world. So we also need an institution to implement judgments based on law, and to protect us from powerful predators. This institution is government.

A government is an institution that establishes social rules within a geographic area, enforces them coercively, and cannot be challenged with impunity.¹⁴ We may describe government as possessing “exclusive” control over the use of force, but this is in reality a short-hand for dominance. A government possesses final legal authority over the use of force in its territory, but in practice force is often exercised in self-defense as well as by criminals, without prior authorization of government. The subjects of a government may consider it legitimate, or they may not. Some governments rest on popular sovereignty, others are tyrannies.

As with any institution, the first question one should ask of government is whether it should exist at all. Do the facts of reality indicate that we need government? Libertarian anarchists argue that the coercive powers vested in any government are a threat to the liberty of the people and should be abolished. They suggest that we instead create a “marketplace” for rights protection. Speaking roughly, in such a system it is supposed that one would hire courtrooms, judges and police as one needed them, or perhaps in an “insurance” package. Competition among various “justice agencies,” proponents hold, will guarantee the rule of law and fair play.¹⁵

The trouble with this view is that rights are the precondition of a true marketplace: economic theories of the beneficence of competition assume a context of rights in which one can use and dispose of one's goods. Furthermore, competition over the power to enforce law usually takes an unpleasant, if familiar, form: war. It is not clear how the competition that has always existed among governments, rebels, and criminals could be different from the “competition” that is supposed to shape the law in the anarchist utopia, yet that competition has not often resulted in forms of governance that correspond well to the anarchist proposal. In an anarchy, there are no rules to restrain the competition, to prevent the use of the military power that modern states employ to secure their positions.

After all, what is being competed over is the power to set social rules. The victor determines what those rules will be.

In fact, it is the very danger of the process of competition for power that gives us reason to form a government that is strong enough to withstand challengers, yet structured so as to protect our rights. We need an institution charged with securing our rights: the alternative is to leave our rights vulnerable to the strongest thug, the most well-armed generalissimo. A limited government is that institution. It must be a government because government fulfills two essential functions: it makes possible an objective, rights-based system of law, and it provides the power to reliably enforce that law. We examine these points, respectively, in Diagrams 7.3 and 7.4.

Diagram 7.3 presents the argument that law requires government:

Premise 1 rephrases the conclusions of diagrams 7.1 and 7.2: **individuals have rights to freedom from force**. As we have noted, this is the basic principle of the Objectivist politics. It serves as the normative premise of our argument.

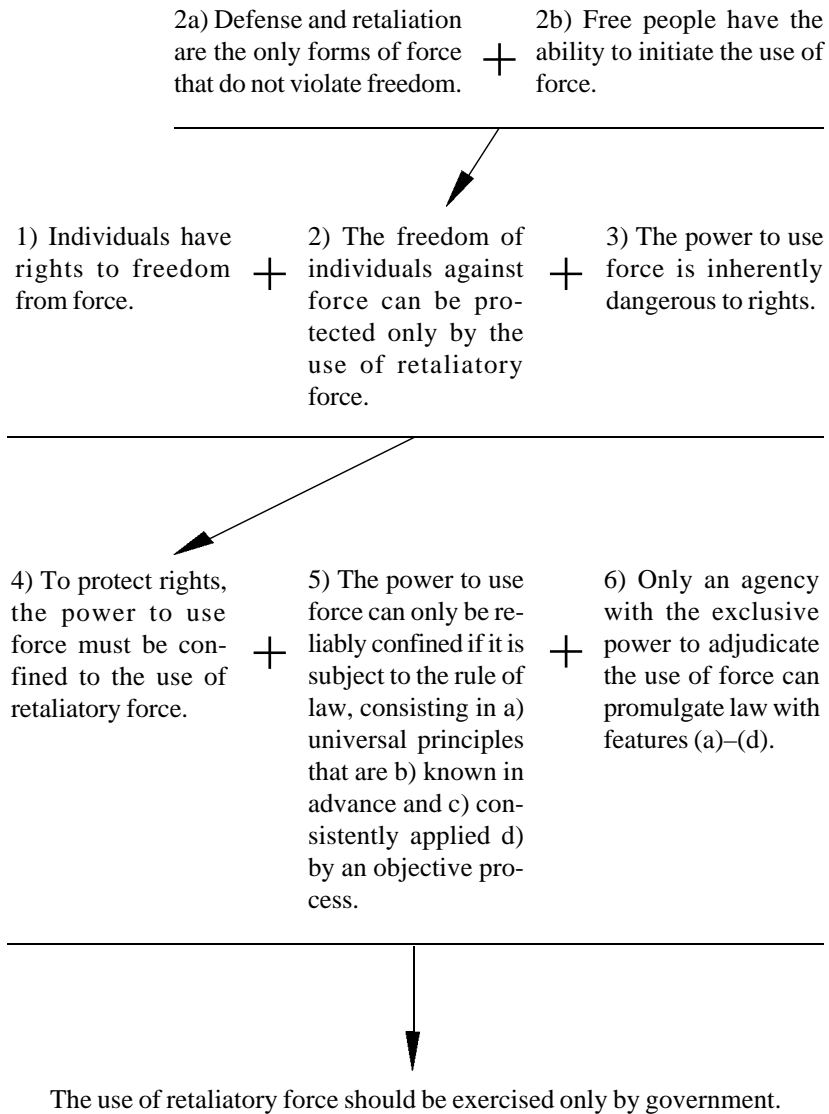
The line of argument that leads to premise 2 establishes the form of force that government should use, namely: retaliatory force. **Premise 2a** states that **defense and retaliation are the only forms of force that do not violate freedom**. This is an inference from the nature of freedom. Freedom is violated by the initiation of physical force. But one may properly defend oneself and one's property by force, if one is being attacked. In addition, it is proper to use force in retaliation for an act of force, to recover lost property or to punish a violent wrong-doer. After all, others only merit respect for their freedom as long they themselves offer that respect.

Premise 2b states that **free people have the ability to initiate the use of force**. This premise is inductive. In a society based on freedom, people will always be able to initiate force if they choose to attempt it. The stranger on the sidewalk can always punch his neighbor, for example. Many violent acts are facilitated by tools that have other, peaceful uses. For instance, explosives have many productive uses, but can easily be used to attack people and their property as well.

The only way to absolutely rule out the initiation of force by others, or at least to restrict it to minor forms such as bare-handed attacks, would be to restrict people's freedom to engage in activities that enable them to initiate force. But to do so would be to restrict their freedom to engage in non-predatory activities, activities which are properly within their rights. Consider for instance a ban on the possession of overt weapons. Many weapons have uses other than inflicting force on people. A knife can be used to initiate force, for example, but it has many other uses as well, including cooking, carpentry, self-defense, and so on. Furthermore, a weapon is as much a means to legitimate self-defense as it is a means to the initiation of force. So we can see that it is not possible to render man

Diagram 7.3: Government and Law

*Inductive evidence: 2a), 5) & 6) legal theory, history 2b) medicine
3) History, political theory*



incapable of initiating force without deeply infringing on his freedom to pursue his own life and happiness.

We can infer from premises 2a and 2b that we need to deal with the human ability to initiate force, without inappropriately restricting our freedom. Besides defending ourselves when the need arises, our only other method of conclusively responding is by retaliating against and enforcing appropriate punishments on those who use force.¹⁶ **Premise 2** states this intermediate conclusion as follows: **the freedom of individuals against force can be protected only by the use of retaliatory force.**

A pacifist might argue that premise 2 neglects the possibility of moral suasion: since force is not a reliable means of gaining values, could we not reliably appeal to the self-interest of a violent offender, and avoid the use of force altogether? The trouble with this is, as Mao ZeDong said —and who should know better?— “Power flows from the barrel of a gun.”¹⁷ In other words, moral suasion cannot be counted on to stay the hand of a predator who chooses to disregard the pacifist’s arguments. By contrast, the predator’s violence *can* be counted on to end the pacifist’s life. It is in the putative pacifist’s interest to back up his moral suasion with the more formidable protection of retaliatory force.

Premise 3 adds another inductive premise: **the power to use force is inherently dangerous to rights.** To the extent that people can use force with impunity, they are also able to use it to encroach on the freedom of others. The history of monarchy is ample evidence of this principle: in the traditional monarchy, the ruler’s power is justified by his guardianship of the people, and his role in enforcing the law. History abounds in monarchs who, being in a position of dominant power, abused their trust. We have seen a similar process in democratic states, where politicians have been able to extend the reach of the state into every aspect of life, on the basis of specious promises to improve the public welfare or stave off a threat to security. In genuine situations of anarchy, premise 2 is played out on a daily basis, as the dominant gang of the moment extracts what it can from its subjects.¹⁸

Together, premises 1, 2, and 3 allow us to infer that **to protect rights, the power to use force must be confined to the use of retaliatory force.** This is **Premise 4.** This is to say that unless that power is so confined, it is as likely to prove of harm as of help.

Premise 5 describes the means of achieving this end: **the power to use force can only reliably be confined if it is subject to the rule of law, consisting in a) universal principles that are b) known in advance and c) consistently applied d) by an objective process.** This is an inductive claim drawn from centuries of legal practice. The rule of law is the basis of an objective, rights-respecting legal code.¹⁹

The rule of law consists in law that is (a) *universal*, so that everybody has a determinate standing before it. It must be (b) *known in advance*, because

one cannot be held responsible for violating a principle one could not have known of. It must be (c) *consistently applied*, simply as a matter of logic: to do otherwise would introduce whim and subjectivity to any attempt at adjudication. Finally, it must be (d) applied *by an objective process*. This means a process of established procedures and methods, based on the analysis of facts. This is another preservation against whimsy and distortion, and is essential to ensuring that the law proceed in a rational manner.

The rule of law is not *sufficient* to ensure that the use of force is restricted to retaliation, but it is *necessary* to it. Each basic aspect of the rule of law is a prerequisite of any attempt to enforce consistent political principles. Since rights are a species of consistent political principles, the rule of law is a prerequisite for a political system that respects rights. Some political philosophers have held that the rule of law is sufficient to ensure a just political system.²⁰ This represents an inversion of logical priority, since the worth of the law derives from its role in a rights-based political order, not on any intrinsic merit it possesses. Certainly the rule of law is not itself enough to guard one against tyranny; oppressive laws may be as universal, and may be applied as objectively, as any other sort.

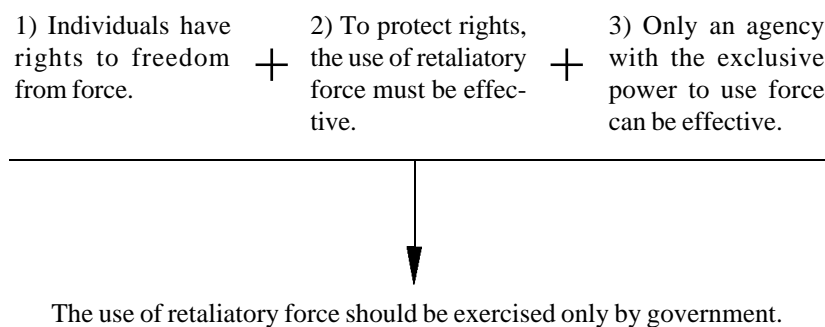
Premise 6 adds the following claim: **only an agency with the exclusive power to use force can promulgate law with features (a)-(d)**. The reasoning behind this is inductive, and is based on historical and political experience. We can capture the underlying causality by the following thought experiment: imagine that two distinct agencies attempted to apply unrelated legal systems to one population. It would not be clear which legal system applied to which person, item, or act. The uncertainty about the law in any case where the two had different provisions would mean that in fact the law would not be consistently applied by an objective process. Thus the rule of law could not hold, to say nothing of the potential conflicts that would erupt among the respective officials attempting to enforce the two different sets of laws. As an instance of this, consider the overlapping church and feudal legal systems of the Middle Ages, which were in violent conflict with one another almost continually.²¹

Together, premises 4, 5, and 6 allow us to infer the **conclusion** of diagram 7.3: **the use of retaliatory force should be exercised only by government**. A government, by this line of argument, is necessary because it provides the framework in which the use of force can be subjected to law.

Government also allows for the enforcement of law, by means of the effective application of retaliatory force. This second line of argument is represented in Diagram 7.4. It begins with **Premise 1: individuals have rights to freedom from force**. As in diagram 7.3, this provides the normative force to our argument. After all, we are not interested in politics for its own sake, but in order to secure our freedom to live.

Diagram 7.4: Government and Efficacy

Inductive evidence: 2) & 3) history, political theory



Premise 1 combines with premises 2 and 3 as an argument for the establishment of government. **Premise 2** states that **to protect rights, the use of retaliatory force must be effective**. This is obvious. If the use of retaliatory force is not effective, then it can hardly deter crime, nor enforce punishments and compensation for crimes committed.

Premise 3 states the additional inductive point that **only an agency with the exclusive power to use force can be effective**. If criminals can resist the imposition of retaliatory force with impunity, then it can hardly be said to be effective. An agency that cannot be resisted with impunity is one that has the exclusive ultimate power to use force. Such an agency is a government. In history, we see that societies in which freedom has flourished have had effective, if limited government. Civil wars and other anarchic situations have tended to result in the decay in law enforcement and rights protection. Thus, we again have our **conclusion: the use of retaliatory force should be exercised only by government**.

If retaliatory force should be exercised exclusively by the government, what about self-defense? This argument from effectiveness could not lead us to conclude that the government should have exclusive control over that use of force, because self-defense is used in cases of immediate need. If a murderer breaks into one's house, one does not have time to wait for the police to show up. In many cases, only the threatened individual or others at hand are in a position to effectively use force in defense. In such cases, the only effective protection can come from those on hand to provide it.

The role of government in establishing law requires that we qualify the right to use force in self-defense. The role of the law is to ensure that all uses of force are objectively monitored so that any initiation of force can be properly punished. The basic means in law of doing this is to establish procedures for the use of force, and to require that any use of force be shown to fall within the law. For this reason, except in emergencies, the individual must subject his desire to act in self-defense to due process of law. One should not arrange a retaliatory assassination on one's own, for example. If there is time for planning, there is time for a hearing before the law. Any time one uses force in self-defense, one will naturally be required to prove the claim of self-defense in court. Thus, to ensure the rule of law, the government will *oversee* acts of self-defense, while recognizing that, for reasons of efficacy, they must be permitted.

To be effective, government need not be monolithic, except in its ultimate, enforceable legal procedures. It may—and probably should!—be composed of various branches or agencies. It may allow substantial room for private provision of arbitration, detectives and guards. Within limits, it could have competing courts or police agencies. It can incorporate federalist decentralization. Nevertheless, to enforce the rule of law, a government needs a unified set of procedures, founded in law, that establish which branch of government or agent is entitled to use force in which circumstances. To do this, the system of government must be overseen by a central government of some sort with the power to enforce its rules against foreign threats and domestic criminals.

Limited Government

In forming a government, or revising an existing one, a central concern is to see that it does not become the source of coercive oppression that so many governments have become. As diagram 7.5 quite straightforwardly shows, a government that is itself an agent of coercion is improperly constituted:

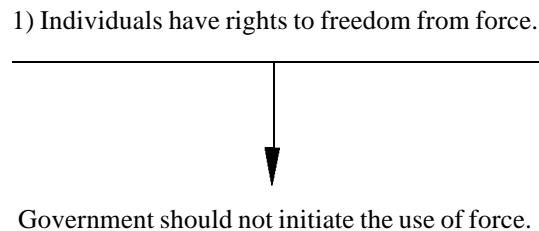
Premise 1 of diagram 7.5 repeats the first premise of diagram 7.3: **individuals have rights to freedom from force**. Although government is an institution that enforces rules coercively, i.e., by using force, it is subject to moral principles. One of those principles is premise 1, which directly implies that **government should not initiate the use of force**. This **conclusion** follows because government is a social institution. Being human, its members are no different from other people in their need to adhere to correct moral principles, in this case, the principle of respecting rights.²²

Achieving a government that fulfills its proper function without overstepping its bounds is a challenging matter, and has been the subject of an immense body of political theory. Not least among this material is the doctrine of separation of powers, and the concept of a government constituted in terms of strictly enumerated powers. These were both employed in the founding of the

United States of America, and although implemented imperfectly, have showed promising results. Exploration of the means of limiting government takes us beyond the scope of this book. Here it is sufficient to note the importance of the principle that government should be so restrained so that it remains the guardian of freedom that it should be.

Diagram 7.5: Limited Government

Inductive evidence: No new evidence.



Conclusion

We have now established the essential principles of the Objectivist politics: that people's rights to life, liberty and property should be respected by all, and that we need a limited government to secure those rights against threats foreign and domestic. From this base, we can discern the outlines of a fresh approach to politics and law, that extends the founding principles of the United States in a rigorous and fully consistent manner. The work to extend this conception of politics, and the other principles of the philosophy of Objectivism, can take the systematic understanding of the system as its launching pad.

-
- 1 Ayn Rand, “Man’s Rights” in *The Virtue of Selfishness* 93. Rand’s definition of “right” is: “A ‘right’ is a moral principle sanctioning a man’s freedom of action in a social context.” Our definition notes that rights define ranges of action (e.g. freedom of speech, or e.g. all non-coercive action), and leaves the identification of “man” as the rights bearer implicit.
 - 2 Ibid.
 - 3 See Kelley, *A Life of One’s Own* 66–71 for an extended comparison of these different conceptions of freedom.
 - 4 One might think of a right as identifying a *range* of actions rather than an *aspect* of human action. Freedom speech gives us a right to a way in which we act: communication. This is an aspect of the total variety of human action possible. It also subsumes a range of actions: talking to Joe, writing to Jane, etc. etc.
 - 5 Why are rights more general than other principles of desert? Consider the following story: Jane goes shopping in Joe’s store, because it is next to her house, but finds he offers shoddy merchandise. As a trader, she buys elsewhere, but treats Joe with civility as a matter of basic benevolence. She happens to learn that Joe is an activist for an influential millenarian cult when he rudely lectures her for refusing a pamphlet on the proximate end of everything. In time, Jane knows Joe well enough to conclude that he is not a reasonable person: he practices deception, has little regard for his customers or workers, is lazy and dogmatic. Even at this stage, when Jane would have nothing to do with Joe, would boycott his store, and would even condemn him morally for his irrationality, still she should recognize that Joe has the right to live free from force, so long as he does not initiate force himself.
 - 6 See Kelley, *A Life of One’s Own* for a thorough Objectivist critique of “positive” rights. See also Smith, *Moral Rights and Political Freedom*, 165–184 for a discussion of positive rights from an Objectivist perspective.
 - 7 It is an implication of the Objectivist ethics that if one found oneself in a situation in which it plainly was in one’s self-interest to not to respect the property or life of another, then one should follow one’s self-interest. However, life in society is a complex, long-term process. On top of the rarity of such situations in general, there would remain the epistemological problem of identifying them with certainty. Furthermore, as we remarked last chapter, over the course of one’s life one should develop a character which may cause one attend more to opportunities for trade than to opportunities for predation. One’s character will thus tend to make it even more difficult to recognize an opportunity for predation, and to act effectively on it. So, far from preparing one to act as a rapacious wolf, the ethics of self-interest, in the normal context

- of life, would tend to cause one to default to respecting the lives and property of others, even in occasional cases where such respect was not warranted.
- 8 As exemplars of the ends-in-themselves argument, see Robert Nozick, *Anarchy State and Utopia* (New York: Basic Books, 1974) 50, basing his individualism on the “meaning of life” resident in each individual, and Eric Mack, “Personal Integrity, Practical Recognition and Rights,” *The Monist* 76 (Where: who, when*) 101–118. Here (and in several other essays, *cite?) Mack argues that one is obligated to respect the rights of others out of recognition of their status as moral ends-in-themselves.
- 9 It is an interesting philosophical puzzle whether conflicts of interest could exist between moral ends-in-themselves. Since we know of only one species of moral ends-in-themselves, this must be a hypothetical rather than empirical matter. Imagine the life of a vampire, for instance, who depends daily on the fruits of predation from others (this example is due to Eyal Mozes). As a rational being, could the vampire come to rely on trade with donors of fresh blood? If he had no blood transfusion technology, or if the donors refused all offers of “blood money,” the vampire would need to assault them to get the blood. Since one’s reason is the basis for one’s need for morality, it might be argued that all moral beings can necessarily live by production and trade. However, as the vampire example shows, the ability to live by production and trade depends on other facts in addition to one’s rationality and need for morality, such as one’s dietary requirements and one’s level of technological sophistication.
- 10 One argument that Mack has used is to note that A’s claiming rights as moral principles, while denying them to B, is inconsistent. Since morality is presumably uniform and universal, A’s position cannot be moral. Of course, the weight in this argument is due to the idea that morality must be uniform and universal. In medieval Christian morality, rulers were considered to have rights and prerogatives distinct from those of their subjects: this was not inconsistent with the idea of morality. In any case, it is hard to see why any person should have a duty to hold to a morality that is not in his self-interest. As we have seen, in Chapter 4, the need for morality is a *founded* in one’s self-interest. Again, there is no short-cut to rights to be found here.
- 11 Rand, “Man’s Rights,” “93
- 12 Certain economists and legal theorists discuss rights as bundles of claims. For instance, ownership of a car includes the right to use it, the right to sell it, the right to dispose of it. If one rents the car, one only acquires the “use-right.” This is a valid method of analysis of different forms of contact and claims. However, the fundamental right to life is not built up as a bundle: it may be analyzed as one, but its role in ethics is as a whole.
- 13 c.f. Milton Friedman, *Capitalism and Freedom*, (*on effects of communism etc. on freedom of speech)

- 14 This definition is due to Roger Donway. Ayn Rand's definition is similar, but less precisely phrased: "A government is an institution that holds the exclusive power to enforce certain rules of social conduct."
- 15 Cites on anarcho-capitalism*. E.g. Randy Barnett *The Structure of Liberty* (Oxford: Clarendon Press, 1998). See also Bruce Benson *The Enterprise of Law* (Where: who, when).
- 16 Punishments for crime might include compensation to the victims as well as measures recommended out of concern for justice or to deter future crime. This is a topic for more specialized analysis than we can offer here.
- 17 Mao on power from gun (cite*)
- 18 Beirut, Lebanon in the late 1970s, or Somalia in the early 1990s, are instances of "genuine anarchy," i.e. situations where no effective government exists.
- 19 Cites on basis of rule of law claims *
- 20 Friedrich Hayek is the most notable exponent of the sufficiency of the rule of law for justice. (Cite*)
- 21 Some anarchist theorists (e.g. Benson*) cite the persistence of both the church and feudal legal systems in the Middle Ages as evidence of that competing governments could coexist fruitfully. Since the rise of capitalism and the eclipse of these systems in favor of national legal systems were concurrent, while the industrial revolution occurred only after the Church had lost its effective independence, especially in the Protestant North, the facts of the case support the Objectivist argument on anarchism, not the anarchist theory. There is a distinct lesson one can draw from European history, a lesson on the value of decentralization of power and the dangers of autocracy, but this is not *prima facie* evidence for anarchism either, since neither centralization nor autocracy are characteristics of the classical liberal form of government.
- 22 This is an area where interesting research is ongoing, particularly on various means of financing government without explicit taxation. Ayn Rand suggested a charge for contracts, or a lottery. The former concept has been more developed in terms of citizenship fees that entitle the payer to various government services.

