

CRITIQUE ON "PROPER GOVERNMENT"

After reading Paul Beaird's article (On "Proper Government", January 1976) I feel compelled to offer criticism both on the mediocrity of expression and the illogical development of his thesis. First I must comment that the level of expression in Beaird's article is not in keeping with the international status of Option Magazine. Mr. Beaird's statement is a dull restatement of arguments already known to most libertarians. His approach to the question is evasive and fails to get to the point.

Mr. Beaird makes the classic error of asserting a conclusion prior to a rhetorical question. A question which he fails to answer. On page 19 he asserts "The only use of force which the criminal deserves after his criminal action has been stopped is the corrective prescribed by a process of law, and that lies exclusively within the authority of the government". Not only does he fail to define the moral basis for this authority but he goes on to subtly confine retaliatory force to that which is taken only under direct physical attack. Thus, any action of defense beyond momentarily fending off an aggressor constitutes an invasion of the aggressor's rights. Ridiculous! If that is so, then what gives any other individual, or for that matter, government the moral authority to subpoena, incarcerate and compel restitution from the aggressor? Under this definition of retaliatory force (which Mr. Beaird leaves conveniently vague, apparently to better rationalize the knife of arbitrary statist authority wedged to our moral throats) he not only socializes the means of self-defense to a level of impotence but undercuts the moral position of third parties aiding in defense. If one cannot pursue an aggressor once he has broken away because this would constitute an infringement on the offender's right, then what is the status of third parties who are not themselves attacked? The illogicity of Beaird's position becomes obvious when his inferences are drawn to their "logical" conclusion. In Beaird's society, a murderer who had just hacked to death his victim could not be arrested by a private defense agency without the murderer's consent but only by a government agency.

As is often the case with misbegotten concepts at the political level, their roots ultimately lie in an impoverished ethical regulus and at greater depth in a faulted epistemological bedrock. For example, Mr. Beaird bases his thesis on the "immediate crime". In Mr. Beaird's mind there occurs a change in the nature of a crime "after" it has taken place. This change is significant enough to provide the epistemological and ethical basis for the jurisdictional monopoly of the State and its intercession as final arbiter between victim and offender. At least, this is what Mr. Beaird would seem to imply.

And it is to be noted that Mr. Beaird at this very point in his article slides into a self-serving elaboration of the criminal's right to protection from aggression. He does not address himself to the primary issue of what constitutes an "immediate crime". This affects his whole thesis. For example, a private defense agency must arbitrarily cease its action "after the crime has been stopped", or itself be liable to a justifiable (according to Beaird) charge of criminal aggression. Thus, Mr. Beaird's position sums up to one of (1) limiting retaliatory force for unstatused (i.e. unofficial) individuals to warding off an attacker to a mere standstill; and (2) lowering the status of a criminal act (once the flagrant violence is completed) to that of a civil suit. In Beaird's justice, a violator

only forfeits his own rights as long as the victim cannot fight him off to an uneasy draw! At that magical point the aggressor regains his full rights! (Imagine being viciously assaulted but once having regained the upper hand, the attacker self-righteously accuses you of encroaching on his rights. This is nothing more than a microcosm of the society we have today).

What Mr. Beard misunderstands is that a crime does not end with the cessation of initial violence, it continues as long as restitution is not made. Dividing a criminal action into attack, pursuit and arrest is descriptive but it does not change the basic nature of the relationship which exists between victim and offender. The initiator of force morally forfeits his rights until restitution has been made. The victim is entitled to take any action necessary to gain restitution or at least to subdue the threat of a repeated crime.

The basic ethical principle of libertarian philosophy is that an individual is rationally bound to live in his own self-interest. The very metaphysical character of human nature does not permit one to live qua human under the threat of force. To do so is to live as a slave i.e. a dehumanized existence. The threat of force can be either generalized as it is under the State or specific as in the case of a known criminal. In both cases, every individual has not only the moral right but an obligation to his own continued well-being to employ retaliatory force against an objective threat. There are no metaphysical, epistemological or ethical arguments which necessitate transferring or deferring one's self-defense to third parties even if they are sanctioned by "law". There is no moral basis for the apriori jurisdictional monopoly of the State consistent with individual rights.

Mr. Beard makes the marvelously absurd assertion that the State is not aggressing private defense agencies by preventing them from pursuing and apprehending the criminal suspect. All that the State is doing according to Mr. Beard is protecting the rights of the suspect and not encroaching on the right of the aggrieved victim. Here again, he infers the equality of the offender's rights to those of the victim. This is not merely a matter of advocating protection of an individual's rights in cases of uncertainty but an obvious ploy on Beard's part to create a sub rosa doctrine of non-forfeiture to lend moral validity to the authority of the State. He dares not make an open defense of the State authority but rather an implied "need" argument.

It is only after contriving this inferentially sub rosa case for statist intervention by artificially dividing a criminal action and dividing self-defense from restitution that he rhetorically asks "What gives the government authority over the original victim of the crime...?" Beard never answers the question! He merely resorts to an expeditious cataloguing of Ayn Rand and Murray Rothbard's approaches. No explicit resolution of the contradiction between individual sovereignty and the government-justice monopoly is offered. The ONLY specific limit "on a government's authority to act" mentioned is that of geographical boundary. Authority is thus limited to the extent of land one can terrorize with one's cannons!

Among the major problems in Mr. Beard's thesis are the concepts of legal process and competitive jurisdiction. Although he does not explicitly say so, he strongly implies that competitive agencies cannot work, thus, it is necessary to vest government with arbitrary authority over one contiguous territory. The

moral basis for this authority is nowhere explained. He even provides partial admission that contiguous boundaries only serve to defer jurisdictional conflicts to a larger scale in national warfare.

Morally and practically, Mr. Beard is wrong. No individual or group of individuals may morally claim an apriori authority over the lives of others unless there exist a covenant unanimously agreed upon by all involved. Thus, for better or worse, the concept of government of unconsented apriori authority (i.e. "jurisdiction") is morally undesirable for libertarians. It can only conflict with the ability to compete freely and peacefully in all types of endeavors and this must include military, police and adjudicative enterprises.

In practical terms, competitive defense agencies without contiguously defined jurisdictions can easily be superior to existing statist systems. Miss Rand's example of two competitive police agencies at odds is a convenient straw-man argument and represents the fallacy of raising a specific to the level of an absolute.

Private police agencies which indiscriminately defend clients against well-founded attempts by other agencies to bring violators to justice will end up dead - as they should. And in some cases - Might will triumph over Right. But even in an aberrant society, an equilibrium will eventually be established far less deadly than the existing situation.

In a relatively productive and rational society private police agencies will by necessity learn to be cautious about whom they arrest. They will consider the evidence, the amount of insurance and collateral their client is willing to provide to cover their risks and to cover damages should the complaint turn out to be false. They will also employ arbitration councils between agencies to extradite criminals. They will tend to avoid conflict as being bad for their business. Police agencies harboring criminals from justice may well become unpopular with their other clients. A well substantiated accusation by a rival police agency could acutely reduce the credibility of an agency acting arbitrarily. Although some criminals will escape to protected sanctuaries (as they do today) neighborhood police forces may concentrate on catching violators in the act; thus reducing the need for erroneous confrontations of the type Miss Rand posits. At the same time an armed "citizenry" will deter against agency abuses as well as preventing take-over by a strong agency.

The law will evolve under these circumstances to meet the challenge of human discord. There is every indication that the level of integrity and fairness in private courts and systems of arbitration will be a vast improvement over the present corruption and arbitrariness of existing government courts. Some agencies will integrate vertically courts, police and insurance firms, others will integrate horizontally. Competition will not necessitate constant warfare but will tend toward mutually beneficial recognition of just claims. Even the totally immoral and often irrational governments of contemporary nation states rarely risk war over trifles. It is not too much to suggest that defense agencies in a libertarian society will be any less reasonable. Even assuming the worse, an anarchistic society could do no more than to revert to statism!

There is no absolute argument requiring contiguous geographical jurisdictions for maintaining high standards of police protection and justice. And in fact,

there are many which strongly support the opposite view.

In conclusion, Paul Beaird's article is poorly argued and marked in its evasion of fundamental moral principles, it betrays a basic impotence in the entire minarchist position. Assuming that Mr. Beaird has marshalled the strongest position of the "Proper Government" school, a questionable assumption perhaps, but in view of this bit of puff, not an outlandish one.

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Note to the editor of Option:

I would be very interested in writing a full presentation of the anarcho-capitalist position for Option.

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