



# Decentralization, Subsidiarity, Rodney King and State Deification: A Libertarian Analysis

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## **Abstract**

This paper posits that the government is indistinguishable from a robber gang except for the fact that it enjoys exceedingly good public relations (supplied to it, symbiotically, by the intellectual classes) and thus legitimacy. The paper attempts to see beyond this superficiality, and thus to interpret cases in which the state and an ordinary criminal interact *not* in this manner, but rather as the interaction of *two* criminal organizations.

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## **1. Introduction**

For the libertarian, the state is but a criminal gang (Spooner, 1966; Block, forthcoming a; Rothbard, 1965, 1982; Hoppe, 1998–1999). This is because it violates the basic libertarian premise of the sanctity of property rights and the axiom of non-aggression against non-aggressors. True, due to a century's long and particularly effective public relations campaign, most people do not quite see matters in this light. This is why, for example, they refuse to recognize taxation as the theft it is (Rothbard, 1970, 1994; Hoppe, 1992),<sup>1</sup> the inflation of the central bank and Federal Reserve system for the counterfeiting it is (Block, 1991; Hoppe, 1994; Cantor, 1997), and the military draft for the kidnapping it is (Rothbard, 1967; Block, 1969). Were any private individual or group to engage in such activities, the status of their deeds would be pellucidly clear. But, somehow, the government is seen differently.

For the monarchist (Hoppe, 1995, 1997, 2001), this is due to the divine right of kings. Strangely, there are even atheists who accept such a proposition.<sup>2</sup> Others accept the legitimacy of government actions,<sup>3</sup> but only if they stem from a democratic vote. Inconsistently, they do not at all accept as legitimate the deeds of the popularly elected Nazi party of the 1930s and 1940s. Many, even, cavil at the democratically elected Freedom Party of Austria in 2000 (Courtois et al., 1999; Rummel, 1996; Conquest, 1986, 1990).<sup>4</sup> Nor would they accept as licit a gang of 10 people that broke into a home occupied by a family of only four, and then “outvoted” them as to whether or not the gang could commandeer the family's possessions. Very strange.<sup>5</sup>

Libertarians, of course, are free of these popular prejudices. Not for them the deification of the state apparatus. No matter how powerful he may be, the emperor still has no clothes.

This goes for all and every aspect of government, certainly including all three levels in the federal system (Holcombe, 1994; Block, forthcoming b).<sup>6</sup> *All* are governmental agencies, *all* of them violate the libertarian axioms, and *all* of them must be condemned out of hand as acting in a manner incompatible with the libertarian legal code. It cannot be denied that federal governments typically kill more innocent people than do the states (Block, 1991, 1993a, 1996; Boaz, 1990; Friedman, 1989; Hamowy, 1987; Rothward, 1973; Szasz, 1985; Thornton, 1991),<sup>7</sup> and the latter typically exceed local municipalities in lawlessness.<sup>8</sup> But even cities and towns, with their victimless crime laws imposing such things as shopping hour legislation, and prohibiting pornography and prostitution (Bolick, 1993; McGee, 1993) are not at all free of guilt in this regard. So much for matters of principle.

## 2. Strategy

Of course, there are strategic considerations as well. On this level, matters are as clear as they ever are on empirical issues: subsidiarity is the goal. The libertarian thus tends to favor city government over state, and the latter vis a vis the federales. The lower the level of government that violates our rights, other things equal, the better. The reason is rather straightforward: this tends to produce a more libertarian society, for there is more competition between cities than states, and more between the latter than between federal governments. Competition, even in political venues,<sup>9</sup> leads to more freedom. People can vote “their feet” more easily against a town which violates freedom than from a state, and more easily from a state than from the federal government.

If, for example, a village enacts a rent control ordinance, thus ruining the housing market (Arnott and Mintz, 1987; Baird, 1980; Block, 1981, 1976, 1989, 1980, 1981, pp. 131–140, 1994, 1989, 1982, 1993b, 1998, 2002; Cragg, 1974; Downs, 1988; Grant, 1989; Johnson, 1982; Salins, 1980; Tucker, 1990),<sup>10</sup> it is relatively easy to move to the next town. This puts a crimp in the offending municipality’s policies, and gives their council an incentive to reform the error of its ways.<sup>11</sup> At the very least, it ensures that fewer people will be harmed by housing socialism. If a state takes its people down this particular garden path, it is harder to “vote with one’s feet” but it is still possible, as there are 49 other options. But when the federal government imposes such legislation, as it did in 1942, while there are of course other countries,<sup>12</sup> relocation to any of them is far more onerous. Thus there are more material checks on governmental depredations the lower toward the grass roots we move.

What happens, though, on the rare occasion where the federal government is actually acting in a more libertarian manner than its local counterparts? Something of this sort is alleged to have occurred when President Ronald Reagan threatened New York City with financial penalties if the latter did not rescind its rent control legislation.<sup>13</sup>

The libertarian analysis of this situation is a rather complex one that can be divided into two parts. First is the empirical issue of strategy. If the Reagan plan goes through, it thereby strengthens the hand of the federal government, with negative long run consequences for liberty, given subsidiarity. In addition it weakens a lower level of government vis a vis a higher one, to the same end. On the other hand, though, the eradication of rent control is of course a plus for the libertarian cause, as it safeguards the human rights of the property

owners in question, as well as, paradoxically for the non economist, the economic welfare of the tenants.

So which effect outweighs which (Healy, 1999, 2000; Pilon, 2000a, 2000b)?<sup>14</sup> This is an all but impossible question to answer. It depends upon essentially subjective conditions of time preference (Rothbard, 1993) for liberty. As this rate rises, Reagan's initiative becomes more advantageous, as we more heavily discount against the negative future implications for freedom. With a low time preference rate, we would be more likely to oppose this federal endeavor, and in effect sacrifice the immediate freedom of the New York City landlords and tenants for the enhanced future likelihood of the entire society. As well, the greater the tolerance for risk, the more we incline in the direction of federal interference.

The second consideration is a pure matter of principle. Here, the issue is crystal clear. Rent control is a rights violation, per se. Its eradication, by the devil himself if need be, is a step in the proper direction. It is no more and no less than a simple matter of justice to eradicate rent control, no matter what the consequences for future freedom. End of case. Anyone who opposes the elimination of rent control by the central government is to that extent not a full libertarian.

### 3. Objections

Let us now consider several objections to the foregoing.

**3.1.** Allowing the federals to control a city's housing stock will sound the death knell for the long run prospects for liberty. It is a denial of subsidiarity (Novak, 1978, 1985), which is the last best hope for human freedom.

Be this ever so true, and I have no reason to doubt its veracity, this objection is still beside the point. We have already conceded the power of the argument, under the rubric of strategy. However, we are now discussing a matter of libertarian principle, and this is therefore of no moment in that context.

**3.2.** The federal government is a far greater violator of liberty than is the local variety, if for no other reason than that the former resorts to aggressive wars, while the latter does not. Therefore, it is not merely a matter of expediency, but also of principle that we favor the latter in any altercation between them, even when, and this can only occur rarely, the former is in the right and the latter in the wrong.

My claim is that to make this argument is to deify, or de-vilify, the federal government. Assume there are two vicious criminal gangs, the greens and the grays. The greens are much larger and more powerful than the grays, and typically far more savage. However, on this particular day, a few members of the latter organization are terrorizing an innocent person. Just to be quixotic, a few members of the former group are contemplating rescuing this victim, and thwarting the evil plan of the grays. Who does the libertarian favor, as a matter of principle? To ask this is to answer it. Matters of libertarian principle are answered solely on the grounds of whether or not there is a violation of the non aggression axiom, entirely divorced from any ensuing results, e.g. utilitarian considerations. For example, if a terrorist threatens to blow up an entire city, unless we, the forces of justice, kill one innocent person, say, the young son of the mad bomber, we are obligated to refuse to do so (Block, 1999; Levin, 1999).<sup>15</sup> "Justice though the heavens fall!" is the libertarian motto.

The problem with this example is that most people instinctively take into consideration only the perspective of the innocent citizens who will be blown up. But this is only part of the story. Suppose there were a guardian angel, assigned to protect the life of the young boy, and the authorities came along to kill the lad, in order to save the city. Would this guardian angel have the right to kill any and all police who were attempting to seize the boy, in order to kill him, for this greater good? The son is completely innocent of all wrongdoing, certainly including his father's, and to kill him would be murder. Thus, to stop his attempted murderers, even with deadly force, would be justified.

Explains Rothbard:

"One of the great flaws in the orthodox negligence approach has been to focus only on one victim's [the city dweller's] right of self-defense in repelling an attack, or on his good-faith mistake. But orthodox doctrine unfortunately neglects the other victim [the son of the terrorist, in our example]. The [son's] right of self-defense is being grievously neglected. The proper focus in all these cases is: Would the [son] have had the right to plug the [cop] in his self-defense? . . . Surely, whatever our theory of liability, the answer must be 'yes'; hence, the palm must go to the strict liability theory, which focuses on everyone's right of self-defense and not just that of a particular defendant (Rothbard, 1990)."<sup>16</sup>

Whatever their past misdeeds, and no matter how much worse they are compared to those of the grays, on this particular day the greens are on the side of the angels, whatever their motivations. Thus in their struggle with the grays today, we favor the side of the greens.

But this is precisely the case with the feds and the locals. They are both criminal gangs. True, the former is far more powerful than the latter, and more vicious, and both are puffed up beyond recognition with moral legitimacy, thanks to the most able public relations campaign known to man. But for all their posturing, at the end of the day they are no different than the greens and the grays, two ordinary street gangs. It is the fallacy of deification of the state to elevate governments, at whatever level, to a higher moral plane than that which they deserve. No. An accurate analysis will see them as the low down (but puffed up) street criminals they are, and treat them accordingly. No matter how unexpected, if the feds actually do something consonant with liberty, then as a matter of principle they must be applauded and supported for it.

**3.3.** "If the federal government steps in to municipal affairs, and overturns a duly enacted rent control law, then it, in effect, is seizing control over local housing, and this must be opposed by libertarians as a matter of principle."<sup>17</sup>

If this were but true, it would indeed constitute a violation of the libertarian axioms, not merely a (possible) contravention of expediency. However, it is difficult to accept this interpretation of events. It would imply that the greens, even in their finest hour, where they protect an innocent person against the depredations of the grays, were guilty for so doing.

Take another case. The evil cattle rustlers make off with the property of an honest rancher. Along come the Lone Ranger and Tonto, who force the bad guys to disgorge their ill gotten gain and return it to its proper owner. Yes, there is a sense in which our heroic duo did indeed "seize" these cows. But to object to their rescue efforts on these grounds is surely quixotic. If we carried through consistently on this matter, no police force, even a private firm (Rothbard, 1973; Tinsley, 1998–1999), or any third party, could ever help any victim of theft. For to do so would necessitate, at least for a brief moment, "seizing" other people's property.

#### 4. Judicial activism

The same analytic framework applies to the question of whether strict constructionists, who base their opinions on the Constitution, or judicial activists, who find all sorts of penumbras and emanations in it (e.g., make up the law as they go along) are more compatible with libertarianism. As a matter of strategy, the very strong presumption is that strict constructionists will much more nearly cleave to libertarian principle. This is because the U.S. Constitution, for all its flaws,<sup>18</sup> is a document roughly congruent with freedom. But this is only an empirical generalization. It is possible to posit an alternative state of affairs. For example, were Murray N. Rothbard somehow appointed a Supreme Court judge (don't ask), there is little doubt that he would be very "activist." He would not limit himself to the Constitution, but would instead base his opinions on the far more libertarian axioms of private property and non-aggression, when the two lead to different results.

And what of libertarian principle? The point will now be readily understood: it is impossible to determine before the fact whether activism or constitutionalism will be more congruent with libertarianism. It all depends upon the specific decisions the judges are called upon to make. The point is, activism and constitutionalism are false alternatives (Barnett, 1987) for the libertarian. Sometimes the one, sometimes the other, will be called upon in order to cleave to principle.

Perhaps an analogy will better underscore this point. Which is better music: fast or slow, loud or soft, the violin or the piano? It all depends. These distinctions are simply irrelevant to aesthetical considerations; as are the differences between activism and constructivism, for libertarianism.

#### 5. Rodney King

In the following, we will discuss a fictional character named Ronny (not Rodney) King, in order to obviate objections regarding possible historical inaccuracy. Ronny, then, used his vehicle in a spectacularly dangerous manner, running scores of red lights, and traveling on city streets at speeds approaching 100 miles per hour. In a libertarian society, and even in the present one, anyone undertaking such irresponsible acts would be found guilty of endangerment, not to say attempted murder. After leading the police on a merry chase he was finally apprehended. He resisted arrest and was severely beaten. For the libertarian (and of course for others as well) the crucial question is, was this beating justified?

A radical argument to the contrary goes as follows: In the fully free society, there would be no government police force. Instead, all such services would be privatized. Accordingly, if the government police force should not even exist in the first place, then any act it does, whether issuing jay-walking tickets, helping old ladies across the street or rescuing cats, should not be undertaken. Ipso facto, it was unjust and improper for the police to chase Ronny King, stop him for speeding, let alone administer a severe beating to him.

The problem with this approach from the libertarian point of view is that it again deifies government. Let it be said once again, loud and clear: the government is nothing but a puffed up swaggering criminal gang. It has no super or Herculean attributes. In the scenario

as depicted, however, there was not one but rather two sets of criminals: the police, and Ronny King. Each is acting incompatibly with libertarian principles. This is so for the former merely for existing as a statist entity, not a private police force,<sup>19</sup> and for the latter for endangering and threatening pedestrians and other motorists.

Yes, typically, the police do more harm than any one criminal such as Ronny. But we have already established that the greens, even though more powerful than the grays, can on any one occasion be the “good guys.” And, in this case, if there is anything clear, it is that Ronny King was disturbing the peace, and the cops were acting so as to stop him. Objectively, the government forces of law and order were in the right, and Ronny in the wrong.

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### Notes

1. An anonymous referee of this journal warns that “readers not familiar with the Rothbard School” may have some difficulties in comprehending the lines of reasoning offered in this essay. This is why I have heavily cited Rothbard himself, plus Hoppe, a leading Rothbardian theorist. The thesis of this school of thought, insofar as any complicated philosophy can be quickly summarized, is that the government is different than *every* other institution in society in that it, and it alone has the power, and the legitimization, to initiate force against those who have not first utilized it, and to preclude competitors from operating in “its” geographical area. (True, the Mafia and private gangs also are guilty of launching uninvited border crossings, or violence, against innocent people, but these groups, in sharp contrast to the government, are widely seen as *illegitimate*.)
2. How else can we account for the fact that in this largely non and even anti religious epoch, the minions of the state are treated very differently than commoners?
3. The moral status of which they would dismiss derisively were it done by private people.
4. This political party is rejected by the masses for its very indirect links to Nazism. Yet, when Communists enter into the government of many western European countries, there are few objections from our leaders and pundits. The Communists, however, have killed far more innocent people than have the Nazis.
5. An anonymous referee of this journal stated: “Readers who envision the state’s proper functioning as being directed by democratic institutions would no doubt be more than a little put off by a paper that dismisses such opinions as ‘very strange.’” It cannot be denied that on the face of it, it is “very strange” to dismiss democracy, since this is indeed the political viewpoint taken by most people. However, a distinction must be made between “pure” democracy, of the sort mentioned in the text (10 robbers outvote a family of 4 and take all their possessions), on the one hand, and on the other hand what might be called “constitutional” democracy, wherein the constitution mandates that there are certain things that do not even come to a vote. For example, criminals taking all the possessions of the innocent family. The present German (and American, and other Western democracies) are of the latter format. That is, tyranny of the majority is at least somewhat limited by basic rules. In contrast, Nazi Germany was a “pure” democracy in that Hitler initially came to power through the ballot box, not via a coup d’etat, and yet his government was not constrained by virtually any constitutional rules whatsoever; it could and did do exactly as it wished, violating rights on a massive scale.
6. For a superficially libertarian treatment which exempts the local level of government from so critical an evaluation, see Holcombe (1994). For a rejoinder, see Block (forthcoming b).
7. Wars are fought by an entire country, not by separate subdivisions. As well, federal laws against addictive drugs are responsible for thousands of deaths.
8. That is, violations of the libertarian code.

9. This is not to accept the Chicagoesque-Public Choice notion that there is such a thing as a political marketplace, analogous to the economic one. For a critique of this doctrine, see Rothbard (1997, pp. 269–274).
10. For the general case against rent control, see Arnott and Mintz (1987), Baird (1980), Block (1972, 1980, 1982, 1993, 1998), Downs (1988), Grant (1989), Johnson (1982), Salins (1980), Tucker (1990).
11. This incentive is greatly attenuated by the fact that elections take place only every two or four years, and that the voters have no way to signal their pleasure or displeasure with any one act on the part of the councilmen; rather, there is an all or none package deal on the basis of which candidates are evaluated. In the market, in contrast, the dollar vote takes place every day, and can be fine tuned to specific products or services. As well, if the dollar vote is allocated wisely, the spender gains from this fact; there is no analogous situation in the political sphere. That is, the wise and the unwise voter share the same fate.
12. This constitutes the core of the argument against world government; if Big Brother takes over, there is nowhere on earth to go.
13. Prime Minister of England Margaret Thatcher, representative of the central government, had much the same relationship with the far more radically socialist town councils, particularly with that of London.
14. For a debate over the 14th Amendment between two libertarians, see Healy (1999, 2000) and Pilon (2000).
15. For a defense of this contention, see Block (1999). For a critique, see Levin (1999).
16. Material in brackets supplied by present author. Rothbard was primarily defending a victim of a good faith shooting on the part of one individual who was firing against an aggressor, and hit the victim by mistake. I have extrapolated his insights to fit into the case discussed in the text.
17. I owe this objection to Guido Huelsmann.
18. There was that little matter of the post office, unfortunately, to say nothing of slavery.
19. We overlook the fact that the police enforce victimless crime laws against the innocent perpetrators of acts having to do with sex, drugs, gambling, etc.

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