

# *The Libertarian Reader*

*Edited by*

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ROWMAN AND LITTLEFIELD  
Totowa, New Jersey

1982

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*Dissolving the Problem of  
Public Goods:  
Financing Government without  
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Among those who regard liberty as the highest, or primary public value, there are some who believe that government is, by its very nature, a morally unacceptable institution.<sup>1</sup> Others hold, as I do, that government is precisely that institution that should be established so as to protect and preserve the liberty at issue in this context, namely, the liberty accorded to human beings when their fellows refrain from initiating force in human encounters.<sup>2</sup> The first group, "anarcho-libertarians," share something with statist: the belief that government *requires* the initiation of physical force (and its threat). The anarchists conclude from this that no government is justifiable, whereas statist conclude that the allegedly required coercion is justifiable. There are some libertarians, however, who reject the premise that government entails the initiation of coercion. To make out their case, they face some unique problems. Of these I wish to take just one, namely, whether it is possible to provide government with financial support adequate for its task without relying on any institutional coercive measures such as taxation, which is the expropriation of wealth from citizens by force for purposes of funding the work of governments.

The services provided by governments are commonly regarded as public goods, since, if provided, such services can be enjoyed even by those who would not

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choose to pay for them. The most frequently cited example of such a public good is national defense. Once it is secured, everyone can easily benefit without having to contribute to the cost of production. As John Rawls notes, "A citizen receives the same protection from foreign invasion regardless of whether he has paid his taxes."<sup>3</sup> Such public goods, then, might never be produced if we relied on voluntary support, since too many members of the community might count on a free ride, believing that *their* support of national defense isn't required in order for it to be produced and thus available to them. As Rolf Sartorius observes, if

each agree[s] to cooperate contingently upon others doing likewise [then] . . . each reasons that either enough others so agree and the public good thus becomes available to him free of charge, or enough others do not and thus there would have been no point to agreeing in the first place.

Individuals would not voluntarily cooperate toward [the support of government], and observing the principle that no one may be deprived of his property without his consent would prevent the state from compelling him to do so, either by way of compulsory taxation or conscription.<sup>4</sup>

The conclusion facing the nonanarchist (or archist) libertarian is that either we have such public goods as national defense—and governmental compulsion of payment for them—or we must do without such goods. Both of these are unacceptable for those libertarians who regard government, in its proper form, an essential and valuable institution of a human community.

The problem of public goods—i.e., that there can be so many who plan on free riding that the goods may not be produced at all—is easily dismissed when we are not speaking of political matters. Some public goods, so called, have nothing to do with politics, citizenship, or government. People walking in "public" places, namely where many who live nearby or far gather or commute, are free riders in their enjoyment of the way others dress or look, yet no one worries about this because there is no assumption here about such benefit being essential. If others find it too costly to make themselves good-looking at their own expense, so be it. Similarly, if it costs too much to produce television signals capable of being received by those not paying for them, they might not get produced; but again, television signals are by no means essential public goods. National defense and other political values, however, are demonstrably essential for the very survival and functioning of a free society, at least in terms the nonanarchist libertarian conceives of human community life. This is why the public goods problem must be solved before the libertarian who considers government vital can rest assured that his conception of political life is possible, let alone preferable, to all others.

To a large extent the public goods/free rider problem grows out of the familiar assumption of contemporary economic theory, namely, that everyone is a utility maximizing individual, motivated solely by the desire to pursue private gains. Assuming that a public good is one that an individual would desire, but only at the minimal expense (of his wealth or time) necessary for its attainment, then any opportunity to become a free rider would be seized. This may not require, according to Mancur Olson, "the selfish, profit maximizing behavior that economists usually find in the market place . . . [since] even if the number of a large group were to neglect his own interests entirely, he still would not rationally contribute towards the provision of any collective or public good, since his own contribution

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would not be perceptible."<sup>5</sup> It seems, however, that this result still requires something akin to the economists' assumption, since without it we can easily imagine some citizens contributing to the provision of the public good as a matter of principle. Moreover, we can imagine that recognition and discussion of the public goods problem would spur the members of the group in question, if all were not solely eager to secure for themselves what they value at the lowest cost, to make arrangements to overcome the problem. This is what frequently happens when a group of people engage in the selection of a restaurant for dinner—some of them, realizing that not everyone's preference can be satisfied, simply withdraw from the discussion about what restaurant to choose. When a check is brought for the entire group, those who had lower priced meals will often agree to an even divvying up of the bill. The value of keeping things going, of fraternity, and of related matters that correspond in some measure to public goods is great enough to forgo the chance of getting the best possible deal on the meal.

As Richard Tuck has noted, "the free-rider problem is not in fact a problem of political theory alone—it is merely a particular application of a general logical problem," that of the paradox of the Sorites: "One stone does not make a heap; but the addition of one stone to something that is not a heap can never transform it into a heap." Tuck argues that "we have to treat minute increments as non-negligible, even though the Sorites argument seems to establish that they ought to be treated as [negligible]." With respect to public goods, Tuck observes that "universal confidence in (say) stable property ownership or continued personal freedom is desirable; . . . a particular defection from such a universal practice in the interest of local utility would not sap that confidence, though iterated defection would."<sup>6</sup> And except on the assumption of narrow selfishness, whereby everyone is obsessed with getting away with a free ride, such iterated defection need not be counted upon.

The solution that I am proposing, however, does not depend on how many members of society would defect just in case they could get away with it. Rather, I want to suggest an approach to understanding the nature of government as a public good that would undercut the problem associated with the provision of such public goods as national defense by the recognition that the provision of other, nonpublic (government provided) goods depends on providing the former, as well. Let me first sketch how this suggestion solves the problem of government financing.

The key to this idea is that a libertarian government would provide crucial yet unique private goods as well as public goods, and this would make it possible to secure the financing of government voluntarily. The provision of the private goods can be linked directly to the consumer, who would need to pay for it. Yet, given that the private good is a uniquely political good, providable only by or within the framework of a political/legal institution such as government, it would afford the opportunity to collect support for the public good that is also required. For example, the protection of contracts is a private good that government provides at some level of the adjudicatory process in contractual disputes. (Even if a dispute is handled by a private arbitration board, the government/legal framework must be there "in the wings" to assure due process in such matters as arrest, trial, imprisonment, and seizure of property, should the decision of the arbitrators be rejected by one of the parties.) The national defense that government would provide is, of

course, the classic public good. But government provides both goods, and payment for the former would also serve to fund the latter. In an imperfect analogy, this is similar to the way in which Coca Cola buyers pay for the overhead and security provisions at the bottling plants even though, if asked to contribute money for these purposes, they might well refuse—on standard public goods grounds!

In spelling this proposal out a bit, let us first recall that the justification and need of government arises from the objective value to all members of society of living with others without personal militarization, ad hoc adjudication of disputes, and the general insecurity that goes with lawlessness. Individuals who recognize the value of social life readily acknowledge the value of establishing an agency to provide them with the protection and preservation of their rights in the context of a system of objective law.<sup>7</sup>

Take contracts, for example. One of the benefits of social life is the possibility of extensive promise making for a variety of purposes—artistic, commercial, romantic, scientific, educational, recreational, athletic, and so forth. Sometimes relations among human beings are such that trust, danger of bad reputation, loss of friendship, etc., do not adequately assure against loss of value, against inadequate return on considerable investment, or against the performance of outright victimization and injury. Some of these concerns can be handled by turning to insurance agencies. But sometimes, when matters are important and complex—and they very frequently are—satisfaction is obtainable only through legal protection, e.g., against the violation of rights. Here, it is not simply some service, but some service *aiming at justice*, that is sought. Contracts are one way of insuring against serious loss and supporting efforts toward recovery, but by means that remain attentive to human dignity, that is, to the fact that no one is officially permitted to abridge the natural human rights of individuals in the community. Justly upholding the terms of contract is one government service. Government is the institution of a community specifically responsible for maintaining justice among members as members. This task is frequently accomplished only by the use of physical force, which government, by virtue of its unique adherence to the principle of due process—e.g., stringent rules of evidence, clear and present danger, probable cause, speedy and fair trial provisions, etc.—is established to carry out.

Promise breakers could have good reason for breaking their promises, but they would have even better reason to reassure their trading partners about the recovery of investment or avoidance of serious losses. Thus, even in usual utility-maximizing terms, members of society would ordinarily find it beneficial to secure the private good of government protection and enforcement of contracts (even if government is involved only as the ultimate protector—see the above discussion of arbitration). Especially in a human community in which traders do not know each other personally, then, the prospect of entering into enforceable contractual relationships is of considerable objective value to practically everyone.

For these and related reasons, it is plausible that the private good of having one's own liberty protected and preserved in the context of contractual relationships would be one of the most widely sought services of government in a free society. Every valid contract imposes a burden on the legal system and its administrators, for the "machinery" for interpreting and enforcing contracts, should disputes arise, must be in place. So providing this protection requires expenditures on the part of government. A system of contract fees, collected at the time of the signing or

registering of contracts—from the most simple trades to elaborate corporate arrangements—with provisions for further payment in case of special services generated throughout the period of the contractual relationship, would provide funding for this government activity. Even the faintest appreciation for the staggering number of contracts drawn in contemporary societies within the span of just one day will suggest the revenue-obtaining potential of government work.

Like contract protection, other governmental services are deliverable to individuals, so fees for the services rendered could be established. Among such potentially individualized services are securing criminal justice and defending private homes and businesses or supervising such defense by private security agents so that due process of law is preserved.<sup>8</sup> Not only would it be possible to require payment for particular services rendered, but, if criminal actions are involved, burdens could be distributed in line with the determination of legal responsibility. For example, court costs could be imposed on guilty parties, and criminals could be required to cover other costs, such as police services.

For government to be able to carry out these functions, however—to stand ready for purposes of adjudicating disputes, defending persons and property, issuing warrants for arrest, seeking reparations, imposing penalties or imprisonment—it must be stable and secure. Government, in other words, has overhead costs, including those associated with providing for the defense of the system of laws itself. Foreign aggression, usually aimed at the country as a whole, is obviously a threat to this system. Once a country has been conquered, the foreigners take over the administration of justice and, with appropriate alterations (though by no means with even very dramatic ones), continue the business of state, good or ill. Against this eventuality a government should protect the community, including itself—or, the institution of government must be so constituted that its protection of its own functions is provided for as a necessary means towards its provision of the protection and preservation of the rights of its citizens. Accordingly, its charges for the provision of its various services would reasonably include some amount to cover the cost of defense against foreign aggression. In this respect, the situation would be much like Coca Cola paying for security guards and other overhead costs from earnings from the sale of such clearly individually consumed goods as bottles of Coke.

It might be thought that in this way the principles of a free society, as conceived along libertarian lines, would be breached. First, would not everyone be required to pay for services? Second, would not those who might wish to compete in the provision of government's private services be forcibly excluded?

Regarding the fear of reintroducing coercive financing, it must be observed that entering into contractual agreements, for example, is an entirely voluntary matter. Anyone can, literally, simply accept a handshake or friendly wink and not bother with contracts, just as one can avoid marriage vows and simply leave it at being lovers. Yet the existence of a legal system makes possible the legal protection of relations beyond the state of promises, should one desire this firmer protection. And such private goods, obtainable from government, would reasonably carry the burden of supporting the public good of national defense.

But what about the objection that in a free society government could not legitimately bar others from providing, say, contract protection. And then those others could offer it at a lower price, not having the national-defense overhead

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costs to worry about. So government would lose its private-goods customers, and this would still leave us with the public goods problem.<sup>9</sup>

This objection, usually advanced by economists with an anarchist libertarian viewpoint, can be met by noting that government is the political institution which is established and authorized to pursue justice in the social realm, making it a monopoly both in the sense of classic natural monopolies and in the sense of the requirement for internal integrity in the administration of justice. That is, on the one hand, the same services provided outside the legal framework would not be as valuable without provisions of due process of law. On the other hand, the ethical justification of establishing government implies that in human relations, where disputes often arise and sometimes culminate in conflict, an institution be invoked which is capable of providing for the most peaceful, least rights-violating procedures required for problem solving. In short, there will very likely be greater demand for government-backed arbitration proceedings, and the very logic of establishing government (from the ethical point of view of why they *should* be established) would generate this demand.<sup>10</sup>

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Outside the context of a libertarian conception of government, this solution might be challenged on grounds, among others, that governmental costs are enormous and the very existence of deficit spending in most modern societies indicates that not even taxation can secure enough funding for government. In libertarian theory, however, the scope of government is severely confined to securing the protection and preservation of Lockean natural (individual human) rights. That is, only protecting and preserving everyone's Lockean rights are legitimate governmental concerns.<sup>11</sup> Although such a service is a public good that can be made private in its particular delivery (as detailed earlier), it is still a public good in the sense of its provision being good for members of the community as such, for citizens as citizens. But because there is a definite constraint on what constitutes such a public good, it should be plausible, at least, that its provision will not involve so much cost as is now commonly associated with governmental operations that range from some bona fide public goods—e.g., criminal law and national defense—to such nonpublic goods as national public radio, mail service, and the printing of money.<sup>12</sup>

In short, then, competition in providing *legal* protection and adjudication of contracts would be impossible because this good is not solely an economic but also a political good, the provision of which requires the existence and maintenance of an integrated legal system, including national defense.<sup>13</sup> To prohibit the provision of this good apart from the legal system is tantamount to prohibiting vigilante groups, lynching, and similar paralegal processes which always involve third parties whose rights are seriously endangered without the full protection of due process of law.

The fee-for-services-plus-overhead solution is not the only one that could be invoked to finance the administration of governments in a free society. As Ayn Rand has suggested,<sup>14</sup> emergency funds could be raised through lotteries or by appealing for contributions, e.g., in time of war. The integrity of the system would be evident all along, so a genuine threat to the system requiring military action could be demonstrated readily in public debate conducted by a free press, the educational and scientific communities, and so forth. When it is recalled that liberal democratic regimes are closest to the polity envisioned by libertarians (and

they have all along received relatively solid popular support) the probability of support for the libertarian system—including extraordinary support in times of trouble—may also be assumed. But what is crucial is something else, namely, that it is not inherently impossible to secure the public good of the maintenance of justice, including the protection and preservation of the rights of citizens from domestic and foreign aggression, without disregarding those very values.

There is, of course, no guarantee that a government of a libertarian society *would be* voluntarily financed. Spells of neglect could settle in, or there could be periods during which government is not needed, when the world of the anarchist libertarian might be realized, at least for a brief period.<sup>15</sup> Yet, whenever the challenge is posed to provide such a guarantee, it must be noted that coercive funding of government is anything but a guarantee against governments' going bankrupt, waging unsuccessful and unwarranted wars, neglecting various related obligations, etc. Richard Tuck observes:

It has been customary for political theorists to accept that [the free rider-public goods] argument is a good one, and to direct their energies toward devising strategies to cope with it. The most popular has undoubtedly been some mechanism of social coercion, despite the fact that such mechanisms characteristically depend on cooperative action by the people concerned, and that the argument is therefore likely to turn into a *regressus ad infinitum*.<sup>16</sup>

If the false and impossible ideal of guaranteed provision of public goods is rejected, as it should be, then the solution offered along lines sketched above will have to be assessed comparatively.<sup>17</sup> It will have to be judged in accordance with how well it would secure for members of human communities the values they should seek from a legal system, granting that all such proposals carry risks of abuse and neglect, risks the elimination of which from human affairs is not only impossible but dangerous to pursue.

### Notes:

\*Discussions with Rolf Sartorius, David Friedman, and Lester H. Hunt have helped me in formulating my case, which isn't to say that they would be satisfied with the result. I wish to thank Marty Zupan for her advice, support, and editorial assistance in my completion of this essay.

1. See, e.g., Murray N. Rothbard, *Power and Market* (Menlo Park, Calif.: Institute for Humane Studies, 1970). See also his essay in this volume, "Society without a State."

2. I provide a moral case for such a libertarian government, as well as a case against the anarchist libertarian position, in *Human Rights and Human Liberties* (Chicago: Nelson-Hall, 1975).

3. John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), p. 267.

4. Rolf Sartorius, "Limits of Libertarianism," in R. L. Cunningham, ed., *Liberty and the Rule of Law* (College Station, Texas: Texas A & M University Press, 1979), pp. 92-122.

5. Mancur Olson, *The Logic of Collective Action* (Cambridge, Mass.: Harvard University Press, 1965), p. 64.

6. Richard Tuck, "Is there a free-rider problem, and if so, what is it?" in R. Hanson, ed., *Rational Action* (Cambridge, Eng.: Cambridge University Press, 1977), pp. 152-56.

7. Perhaps I should say that they *should* and probably will acknowledge the value of such an agency. This brings up the issue of how a government is properly established, something

that comprises a crucial feature of the libertarian framework but is beyond the scope of the present essay. But see my "Human Rights, Feudalism, and Political Change," in A. Rosebaum, ed., *The Philosophy of Human Rights* (Westport, Conn.: Greenwood Press, 1980), pp. 207-51.

8. In some cases, the possibility of differentiating in service delivery may depend on technological developments, although it is more likely that it would simply require people's willingness to modify standard commercial practices to the services in question. Skeptics may wish to check out the method of customer differentiation devised by a private provider of fire protection. See Robert W. Poole, Jr., "Fighting Fires for Profit," *Reason*, May 1976, pp. 6-11.

9. See, e.g., David Friedman, *The Machinery of Freedom* (New York: Harper & Row, 1973), chapter 34.

10. Machan, *op. cit.*, *Human Rights and Human Liberties*.

11. For the view that libertarian natural rights are not the familiar Lockean rights which impose only negative duties on others—e.g., the obligation to refrain from initiating physical force against others—but that they instead "involve providing people with positive benefit," see James W. Nickel, "Is There a Human Right to Employment?" *Philosophical Forum* 10 (Winter-Summer 1978-79): 164. But this view is mistaken, and the mistake stems from the belief that human rights are rights against government as distinct from rights that should be respected by all and for the protection and preservation of which governments should be established. See my "Wronging Rights," *Policy Review* 17 (Summer 1981): pp. 37-58.

12. I develop the argument for this in "Rational Choice and Public Affairs," *Theory and Decision* 12 (September 1980): 229-58.

13. For more on this see, David Kelley, "The Necessity of Government," *The Freeman* 24 (April 1974): None of this precludes the free operations of security services, arbitration groups, etc., which are ultimately accountable to government and do not undertake the enforcement of decisions independently of government.

14. Ayn Rand, "Government Financing in a Free Society," in E. S. Phelps, ed., *Economic Justice* (Baltimore: Penguin Books, 1973), pp. 363-67.

15. Certain periods of individualist anarchism have occurred throughout human history. See, for an example, Joseph R. Peden, "Property Rights in Celtic Irish Law," *Journal of Libertarian Studies* 1 (Spring 1977): 81-95

16. Tuck, *op. cit.*, "Free-rider Problem," pp. 147-48.

17. Further details and refinements of this and related tasks of a libertarian political system are, of course, required but it is usual for those to emerge only after the basic framework proposed is deemed workable. The political science and legal elaboration of libertarianism presuppose the basic plausibility of the general system.