

Justice Without Initiating Force: Is It Possible?

by
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Objectivism holds that the proper role of government is to protect its citizens by preventing or punishing the initiation of force. In so doing, the government should never become the initiator of force. Although this ideal is stated frequently in Objectivist literature, I do not recall reading details on how to establish such a government. I have thought about it a lot, but to my dismay I have not been able to think of a way for government to effectively do its job without initiating force in some circumstances.

In the spirit of theoretical physicists, let's conduct a thought experiment. Imagine a large number of people living within a certain geographical region, but having no government whatsoever. How would such a people live? Well, if every person in this society were peace loving, good, and rational, there would be few problems. Each person would respect other people and their property. There would be occasional misunderstandings about contracts, accidents, and so forth. But the use of mutually agreeable arbiters or experts would probably solve most problems. In this society, there would be very little need for government.

Now, let's get real and introduce some bad guys. These people would be killers, thieves, thugs, and other unscrupulous people. Also, let's scatter varying levels of irrationality into even the good citizens such that they no longer see eye to eye on many matters. What would the victims of crime do in this circumstance? If there were a way to counter these attacks with force, it would be perfectly acceptable since they would be defending themselves rather than initiating force. However, suppose the perpetrator gets away. What recourse would the victim or his family have? Well, they could track down this lowdown person and exact some sort of restitution from him. However, rational men would recognize a number of problems with this form of justice. Here are a few:

1. What if the wrong person gets tracked down and punished?
2. What retaliatory measures could appropriately be taken against the perpetrator?
3. What if the criminal were deserving of incarceration, but not of death? How would this be handled?
4. If the victim has to work for a living, how could he devote time to a manhunt or afford to hire another person to act as his representative?

These and other problems would prompt some of the citizens to call for a consistent form of justice that could be applied throughout their society. In order for this new, consistent form of justice to be executed, the citizens would recognize that some sort of institution imbued with much power would be necessary. This power would have to come from the consent of the citizens themselves. Let's call this institution "the government." It would

essentially act as a disinterested third party in cases where force is initiated against one citizen by another citizen.

Also, to make sure everyone understands what is expected of them and the actions for which the government will take harsh measures, written rules that are both understandable and rational would be needed. Let's call these rules "the law."

Of course, the citizens would recognize that even this two pronged approach of government and law would not be perfect. But it would result in a more consistent application of punishment against bad people, and it would also help protect good citizens from false accusations and possible undue harm or even death.

But these citizens now have a problem. They want to establish a government that punishes people for initiating force, which means the government itself cannot initiate force lest it have to punish itself. So, how do they go about establishing this new institution? It would be quite simple if all citizens agreed with the concept of government and law. However, what if some citizens opposed the creation of the government? If only the bad guys opposed it, nobody would much care. But, what if some of the other citizens opposed it? There could be several reasons for this. Perhaps they have not had any problems and don't consider it worth the time and effort. Perhaps they fear that an institution with this much power would eventually turn against its citizens and end up causing more harm than good. Perhaps they understand that the government would require substantial resources and don't believe the citizenry would voluntarily fund it sufficiently. This would result in the government either shutting down, doing an ineffective job, or forcing the citizens to fund it through taxes. All are reasonable and legitimate concerns.

The pro-government citizens would then be faced with a choice. Do they drop their plans due to a lack of unanimity? Do they go ahead and create the government, but give it strict orders that they have no jurisdiction over the anti-government citizens? Or, do they establish the government and apply the law to all citizens whether they want it to or not? The first option would not be acceptable, as they would still be left with the same old problems that prompted them to start this initiative in the first place. The second option would basically render the government useless and would be hard to implement. Most likely the last option would be selected and justified by claiming that government will be good for everyone, except the criminals, whether they believe it or not.

Of course, if the latter option is selected, these citizens have taken the first step toward initiating force against other citizens. The government would be forcing the citizens who voted against its formation to abide by its newly implemented law or face the consequences. Some would argue that if these anti-government people just continue being the good people they have always been, there is nothing for them to fear. For the most part this would be true, but there is still a problem.

Let's take our thought experiment to the next level, that of enforcement. What actions should the government take to enforce the law? Under what circumstances should they be

allowed to detain people or even incarcerate them? For example, suppose a person is attacked and robbed. He reports this crime to the authorities in hopes they can track down the attacker, punish him, and maybe even recover his money. The authorities get a description, follow some leads, and eventually find the person they believe to be the attacker. However, the law clearly states that a person is innocent until proven guilty in a court of law. Since the suspected attacker has not yet been proven guilty, he is presumed innocent. Can this person be detained until his trial? If so, and it is later shown in court that he was not the right person, then force has been initiated against this person. If not, then the criminal justice system would be rendered useless. How could you effectively try and punish someone when he is free to leave at any time before or during his trial?

Obviously, there is a difference between the type of force initiated by the attacker and the authorities. The former initiated force with intent to do harm. The latter initiated force with intent to correct a previously inflicted harm. However, it is an initiation of force nonetheless. The citizens could attempt to correct this situation by making restitution to falsely arrested people by repaying lost salary, lost time, etc. However, there would most likely be enormous pressure put on law enforcement officers to be damn sure that they do not arrest someone without overwhelming evidence. To some extent, this is good. But, it could effectively end up being the same as if a person could not be arrested until they were proven guilty. Another problem could be the cost of restitution and how to determine the proper amount. Suppose a businessman was about to close a \$10 million deal, but due to a mistaken identity, he was detained and the deal falls through. Would he be due \$10 million dollars? Well, enough of that. You get the point.

There are other examples of how an effective government may need to initiate force against its citizens. One is government financing. If there is not enough voluntarily contributed money for it to fulfill its proper role, should it be allowed to forcibly collect taxes? Murray I. Franck covered this topic in great detail in several former issues of this newsletter, so I will not discuss it here.

So, is there a way to implement an effective government without initiating force in any way? Should Objectivism reconsider its position on this matter and allow government initiation of force in some well-defined situations? Murray I. Franck took this position in relation to government financing. Hopefully, Full Context will publish some of your comments.

Randy Finch is an engineer living and working in Alabama. He earned his BS and MS from the University of Louisville. He enjoys creating computer software and writing articles about computer programming. He has had over 60 articles published in magazines, journals, newsletters, and conference proceedings. He also enjoys reading, writing, and discussing philosophy, particularly Objectivism. Interestingly, Randy was born on February 2, 1955, exactly 50 years to the day after Ayn Rand was born. Also, notice that the name Ayn Rand can be created with just the letters in his first name (if the "a" and "n" are used twice). If anyone knows of any significance to these coincidences, please let him know.