

John Hospers: Review of John T. Sanders,
THE ETHICAL ARGUMENT AGAINST GOVERNMENT (1980)
Washington, DC: Universtiy Press of America

Academicians have typically been proponents of Big Government. Whether this is because they believe, often with reason, that they would not do well in the marketplace or whether they are so enamored of their own ideals for others that they use the strong arm of the law to force these ideals upon all the rest of the populace "for their own good," is a matter for conjecture. At any rate, every year numerous books appear by professors of philosophy and political science proposing that everyone should have an equal, or almost equal, income, no matter in what line of work they are engaged or whether they engage in any work at all, and in which they decide at length how they (as rulers of state or powers behind the throne) should "with justice" dispose of the earnings of others. Ignoring the manner in which the United States became prosperous, they take the productivity of America as a given, with which they need no longer be concerned: how goods are produced is of no particular interest to them, but how these goods once produced should be distributed is of almost exclusive concern.

It is not the workers of the world who have motivated the bloodiest revolutions of history, but the intellectuals, who have not shrunk from imposing regimes of utter terror in order to see their ideals practiced at a national or world-wide scale. The "proletariat" have only been cannon-fodder for these utopians, whose ideas emanate usually from the halls of academe. Though constantly agitating for higher wages themselves, they have recommended in their published works that everyone earning high wages should give them up for the benefit of the "less advantaged" (lumping all these together without considering how they came to be in that position). Though not wanting to be regulated themselves, and rightly resentful of any attack on their freedom of expression, they have been indifferent or hostile to the fate of business enterprises (on whose incomes they nevertheless depend), and seldom objected if those engaged in the means of production were so heavily regulated that many of them were forced into bankruptcy. Government, the principal impediment to prosperity through the free market, has been seized upon by the intellectuals as an ally, and in their principle cooperative venture, the public schools, they have sought to mold the next generation.

Against this background, Professor Sanders' book comes as a breath of fresh air. When an academician speaks out against the institution of government, he can be expected to be snubbed by his colleagues and made ineligible for promotions; but no such considerations have deterred Professor Sanders from speaking his mind. He has written a work which endeavors systematically to exterminate root and branch every argument in favor of the necessity for the State, and to leave that institution with no shred of justification. The same model that Rawls employs in A Theory of Justice, that of rationally self-interested participants in a constitutional convention who are engaged in deciding what kind of governmental institution (if any) to have, is used here to reach an entirely different kind of conclusion instead of a welfare state in which the State owns most of the means of production, the State has no place at all - not for control of the economy, not for banking or coinage, not for welfare, not even for police or courts or armies. This conclusion is unabashedly radical and quite breath-taking. It seems to fly in the face of common sense and to be "out of touch with reality," chiefly because very few graduates of public schools have bothered to read the rather extensive literature that has been developed on the subject (they are more inclined to read one another's works). That schemes have been worked out, though not always as extensively as Sanders', for the elimination of the State, capable of answering plausibly all or most of the arguments brought against it, may well come as news to most readers of Sanders' book.

It is not on economic matters that Sanders' book dwells, although this is probably the chief stumbling-block to the acceptance of his anti-government views. He leaves this to others, and this may be considered a defect of the book but for the fact that such a plethora of books has appeared in the last few years denigrating or eliminating the role of government in the economy. Sanders rather aims for the jugular by concentrating on arguments designed to eliminate government from those areas where most people, even those who oppose it in the economy, would nevertheless think it must be retained: in the court system, in the police, and in the armed forces.

To make a no-government position plausible it is not only necessary to show how government has failed in the functions that have been allotted to it (or which it has now usurped); it is also necessary to show that no-government could fulfil those same functions better. Since no-government societies have not (to put it mildly) been prevalent in the modern world, such conclusions are more in the nature of speculations about how such a society might (hopefully) function than established conclusions about how it would. Though Sanders does a good job with this, and brings out

many aspects of the market which have been widely ignored or distorted, I shall play devil's advocate and pose a few questions that might be asked by an advocate of government, at least of the "minimal State," of someone espousing a no-government position.

1. Sanders gives numerous reasons why the State has not been either efficient or moral in the matter of enforcing the law, and recommends competing free-market police services as an alternative. But the enforcement of the law is different from the making of laws. Under limited government, for example, if department-store police or campus militia, F. B. I. etc., guards began to torture suspects, they would be stopped by the municipal police, who enforce the law (of the city, state, nation). It is possible that the enforcement of laws could be farmed out to competing agencies, just as the Federal government now farms out defense contracts rather than trying to make the weapons itself. But what of the making of the laws that are to be enforced? To allot this also to private agencies is a much more problematic affair.

The anarchist's answer is that there would be no "law of the land" in the sense of one set of laws imposed on everyone; rather, each defense agency would operate by its own rules, and individuals would subscribe to one or another of these agencies depending partly on what rules they wish to see enforced. But several problems arise about this:

(a) Consider a subscriber to a defense agency who merely wishes to be protected against assaults to person and property. But he can be defended only if thieves and murderers are caught. The victims are protected, but what of the aggressors? What if a subscriber to a defense agency is robbed and a representative of the agency attempts to arrest a suspect, and the suspect says, "I never joined your agency and I never consented to its rules. You have no jurisdiction over me. Get lost!" If he belongs to another agency, one of its representatives may attempt to protect him from being arrested (kidnapped?) by the first agency; if he belongs to none, he must go it alone without such protection. In the latter case he may receive no justice from the first agency, only summary incarceration; in the former case a nasty situation may arise between the agencies, neither of which recognizes the legitimacy of the other, and there is considerable probability that even if an open fight does not break out, knowledge of which agency has the most guns will predominate over justice, and the stronger agency will win the day.

A whole train of questions arises in this connection: who shall guarantee that there is a fair trial, or that there is a trial at all? (Wouldn't it be cheaper for the agency, which after all is in the market competing for the lowest possible rates, to give only the pretense of a trial, or no trial at all, or simply

get rid of its prisoner, who after all is not a subscriber to the arresting agency and doesn't from the agency's point of view - need to have his wishes recognized?) And if there are trials and some persons are found guilty, presumably there must be prisons or at least work farms. Who will operate these? The agency itself? What is to keep it from running the prison in the cheapest possible manner? Who will guarantee the rights of prisoners while incarcerated by the agency, particularly if the agency does not subscribe to any rules of habeas corpus? (After all they are in the business of protecting their own subscribers, not outsiders.)

(b) Different agencies will be likely to enforce very different sets of rules. One agency whose paid members are puritans will enforce rules against pornographic literature and films; not only will they do this against their own subscribers (a service which presumably won't be needed because their membership consists of persons already hostile to pornography), but against outsiders who may believe that possessing pornographic literature is not something that people should be arrested for. Still another agency consists of people in the Bible belt who have subscribed to that agency because they want all non-Fundamentalist Christians arrested and tried. As long as there are different agencies with differing rules and regulations, no one knows by which agency he may next be victimized, possibly for something (such as adultery) which he doesn't even consider to be a crime. It would be nice if all agencies enforced the same set of rules, but in view of the great diversity of human passions and convictions, including those they would force on other people as well as those they are willing to live by themselves, it is far more likely that individuals of varying convictions, including assorted moral busybodies, would form agencies with the specific purpose of enforcing their views of right and wrong, including of individuals who did not share their convictions. Which agency would win any dispute (or battle) would then depend on which agency had the greatest clout, or was the strongest one in that area.

2. Analogous questions could be asked about "free market justice" administered by private competing courts. Defense agencies would probably be associated with arbitration agencies, whose task it would be to adjudicate disputes between competing parties. But if one agency prohibits a certain kind of action and another does not, how are they to proceed? What if they cannot agree on so much as procedural rules to be adopted in trying cases? Doubtless it is more to their mutual interest to adjudicate a case than to resort to open warfare (wars are expensive), but there is no one body of law they can use as a standard by which to adjudicate cases: one, for example, considers prostitution a

crime worthy of severe penalties, and another considers it an innocent pastime; if Agency A has arrested a member of Agency B for prostitution, how shall Agency B prevail on Agency A to release the alleged prostitute? It may not always be the case that the argument has ended, now begins the fight, but if both agencies know which one has the most firepower, will that not be an inducement for the weaker agency to give in to the stronger, whether or not its decisions are just?

3. The issue of international relations is still more difficult. Who would pay for defense against nuclear attacks? To say that each family should take care of its own defense may be plausible in the case of warding off burglars, but not in the case of warding off missiles. Even cooperative defense, such as a greatly expanded version of neighborhood patrols, would have its problems. There would, for example, be a recurring problem of free-loaders -- when others are paying for the defense why should I? no one would miss my small contribution -- and unlike the case of fire insurance those who didn't pay for the common defense would be protected as much as those who did. Moreover, with different persons paying into different defense agencies, each agency might well have a different strategy for protection against foreign aggressors (even a different concept of who the most probable aggressors are), and so the various strategies might get in the way of each other. Besides all that, if one national government, such as that of the United States, were to declare itself out of business as a government (having been converted to anarchism), and dismantle its defense establishment along with it, predatory nations could be expected to take advantage of this unique opportunity before any private defense systems were set in action. Such a move, then, would have to be taken by all nations simultaneously in order to be affective. The chances of even one nation declaring itself out of business is almost infinitely remote; and the chances of all nations doing the same thing jointly are even smaller.

These, then, are a few of the problems attending the no-government position. Perhaps they can be overcome. At any rate, they are much more likely to be discussed now that Professor Sanders' instructive and challenging book has appeared.