

Privatizing Government, in the Interim

Walter Block*

Loyola University

Abstract

At least for the anarcho-capitalist libertarian, it is a no-brainer to assert that the government, all of it, should be ended, and its legitimate functions, those that would continue to exist in the free society (roads, libraries, education, etc.), privatized. Its illegitimate institutions, such as concentration camps, the Federal Reserve, the Securities and Exchange Commission, the Food and Drug Administration, and so on would of course be completely ended. But what about right now, before any of this change is at all likely to take place? What should be the attitude of the advocate of laissez-faire capitalism toward these illegitimate institutions? Oppose them? Support them? These are the questions with which the present paper attempts to wrestle.

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I. Introduction

How shall the libertarian deal with government services, while they are still in operation, before full privatization? This question makes a strong assumption: that one day, government services will indeed be privatized,¹ and our society will arrive at a sort of free market nirvana in which all sales, rentals, loans, and other transactions will take place between private parties. Given that this change is not likely to occur anytime soon, why should we even bother ourselves with speculations regarding a situation that might never occur, and, if it does, will be in the far future? One reason is the pure pleasure of applying libertarian theory to a vexing problem: what to do in the meantime. How shall we treat this aspect of the marketplace while

* I thank Andy Loo for asking me challenging questions, as is his wont, which led me to write this article. I am also very grateful to the referee of this journal, who posed the challenges I attempt to answer in the fourth section of this paper. All errors and infelicities are, of course, my own responsibility.

¹ One day soon? Hardly. But, hopefully, one day.

holding true to our principles? Another reason is that if we have a plan, now, for how to deal with this eventuality, even if it only takes place in the far future, we might reduce the time it takes for this to occur. A third reason is that there are examples of deregulation all around us,² and it would be good to adopt the Boy Scout motto, “Be prepared,” for the next eventuality in this regard.

Section 2 asks how Rothbard responds to this challenge. Section 3 wades into the deep waters of deontological libertarianism. Section 4 wrestles with the question, should we be button pushers in the hard cases? Section 5 concludes.

How does Rothbard (1995) respond to this challenge?³ In his view, we should divide the targets of privatization into two classes and treat them very differently. In the first category are institutions that are evil *per se*; they would not exist at all in the fully free society. Examples include military units abroad, central banking, torture chambers, jails that house victimless criminals, concentration camps, the alphabet soup of regulatory agencies,⁴ and so on. With regard to these, the desiderata should be not efficiency, but rather its exact opposite, inefficiency. We do not want evil pursued effectively. Given that these enterprises must be undertaken, by stipulation, at least for the present, the libertarian goal would be to have them function as ineffectively as possible, so that the least harm is perpetrated on innocent people. Rothbard states in this regard:

It is important to divide government operations into two parts: (a) where government is trying, albeit in a highly inefficient and botched manner, to provide private consumers and producers with goods and services; and (b) where government is being directly coercive against private citizens, and therefore being counter-productive. Both sets of operations are financed by the coercive taxing power, but at least Group A is providing desired services, whereas Group B is directly pernicious. On the activities in Group B, what we

² For example, there was airline deregulation. Rent control has been phased out in many communities. Also, marijuana, for recreational use and not only as a medicine, has been legalized in several states, and more of the same seems to be in the offing.

³ All mentions of this author refer to this one publication of his, unless otherwise specified.

⁴ As stated in the US Declaration of Independence, King George (and his followers in the US government) has “erected a multitude of New Offices, and sent hither swarms of Officers to harass our People, and eat out their substance” (emphasis added).

want is not privatization but abolition. Do we really want regulatory commissions and the enforcement of blue laws privatized? Do we want the activities of the taxmen conducted by a really efficient private corporation?

Certainly not. Short of abolition, and working always toward reducing their budgets as much as we can, we want these outfits to be as inefficient as possible. It would be best for the public weal if all that the bureaucrats infesting the Federal Reserve, the SEC, etc. ever did in their working lives was to play tiddlywinks and watch color TV.

The second class of government institutions are those that provide goods and services that would also be produced in the free society, such as schools, roads, mail delivery,⁵ museums, parks, and opera halls. These, too, should be fully privatized to make them more efficient and compatible with the nonaggression principle of libertarianism (Rothbard 1978). But, suppose they cannot for some reason be returned to the rubric of *laissez-faire* capitalism (Meyer 2015). Or, suppose they can be, but only after a few or many more years. How shall libertarians view them in the interim? Shall we urge them, help them, support them, so that they can become more efficient? Or should we undermine them, since they are not, even now, compatible with the fully free society? Rothbard favors the former. As long as we must suffer under their inept operation, we should at least grin and bear them. Suggesting that they become less efficient, or actively working toward that end, would only make things worse for the innocent people forced to rely on their services during the period before privatization. Thus, for example, it should remain a crime for anyone to “liberate” a book from a public library.

This author writes as follows:

What should be done in the meantime? There are two possible theories. One, which is now predominant in our courts and among left-liberalism, and has been adopted by some libertarians, is that so long as any activity is public, the squalor must be maximized. For some murky reason, a public operation must be run as a slum and not in any way like a business, minimizing service to consumers on behalf of the unsupported “right” of “equal access” of everyone to those facilities. Among liberals and socialists, *laissez-faire* capitalism

⁵ Well, mainly in a bygone era, before the advent of electronic communication of all sizes, types, and varieties.

is routinely denounced as the “law of the jungle.” But this “equal-access” view deliberately brings the rule of the jungle into every area of government activity, thereby destroying the very purpose of the activity itself. For example: the government, owner of the public schools, does not have the regular right of any private school owner to kick out incorrigible students, to keep order in the class, or to teach what parents want to be taught.

The government, in contrast to any private street or neighborhood owner, has no right to prevent bums from living on and soiling the street and harassing and threatening innocent citizens; instead, the bums have the right to free “speech” and a much broader term, free “expression,” which they of course would not have in a truly private street, mall, or shopping center. Similarly, in a recent case in New Jersey, the court ruled that public libraries did not have the right to expel bums who were living in the library, were clearly not using the library for scholarly purposes, and were driving innocent citizens away by their stench and their lewd behavior. (Rothbard 1995)

In this vein, we should not demand of public universities that they cease and desist from their rank discrimination against stupid people by imposing entrance requirements based upon ACT or SAT scores. These exams are similar to IQ tests, and vitiate against those applicants located at the lower end of the bell curve. But this system is hardly fair, in that these people, too, pay the taxes that keep these schools running. Why should they be forced to donate money at the point of a gun and then be deprived of the opportunity to avail themselves of the services their money, in part, makes possible?

Rothbard takes the exact opposite position with regard to the costs and benefits of higher learning institutions:

The City University of New York, once a fine institution with high academic standards, has been reduced to a hollow shell by the policy of “open admissions,” by which, in effect, every moron living in New York City is entitled to a college education. That the ACLU and left-liberalism eagerly promote this policy is understandable: their objective is to make the entire society the sort of squalid jungle they have already insured in the public sector, as well as in any area of the private sector they can find to be touched with a public

purpose. But why do some libertarians support these “rights” with equal fervor?

But, there is an “open admission” policy for governmental parks, roads, streets, museums, libraries, post offices and indeed for a plethora of other goods and services supplied by government. It cannot be denied that were “open admission” applied to other prestigious public universities such as Berkeley, UCLA, the University of Massachusetts, or any of the Big Ten schools, this would spell their death knell as world-class seats of higher learning. However, it is difficult to see why libertarians should not actually rejoice at such a prospect. Most of the professors, at least in the social sciences at these universities, are inveterate politically correct Marxists, socialists, Keynesians, and feminists. They are responsible in large part for the absence of free thought at institutions of this sort.⁶ That libertarians are to regret that they would be taken down a peg or two—alright, a few dozen pegs—does not seem to be the exact conclusion we should draw from these considerations.

Rothbard is highly critical of a strategy of undermining public institutions in the interim period:

But why do some libertarians support these “rights” with equal fervor? There seem to be only two ways to explain the embrace of this ideology by libertarians. Either they embrace the jungle with the same fervor as left-liberals, which makes them simply another variant of leftist; or they believe in the old maxim of the worse the better, to try to deliberately make government activities as horrible as possible so as to shock people into rapid privatization. If the latter is the reason, I can only say that the strategy is both deeply immoral and not likely to achieve success.

It is deeply immoral for obvious reasons, and no arcane ethical theory is required to see it; the American public has been suffering from statism long enough, without libertarians heaping more logs onto the flames. And it is probably destined to fail, because such consequences are too vague and remote to count upon, and further because the public, as they catch on, will realize that the libertarians all along and in practice have been part of the problem and not part of the solution. Hence, libertarians who might be sound in the

⁶ And for trigger warnings, safe spaces, and the rescinding of speaking invitations to those not in favored, protected, groups.

remote reaches of high theory, are so devoid of common sense and out of touch with the concerns of real people (who, for example, walk the streets, use the public libraries, and send their kids to public schools) that they unfortunately wind up discrediting both themselves (which is no great loss) and libertarian theory itself. What then is the second, and far preferable, theory of how to run government operations, within the goals for cutting the budget and ultimate privatization?

Simply, to run it for the designed purpose (as a school, a thoroughfare, a library, etc.) as efficiently and in as businesslike a manner as possible. These operations will never do as well as when they are finally privatized; but in the meantime, that vast majority of us who live in the real world will have our lives made more tolerable and satisfying.

Well, yes, one justification for this policy of undermining statist institutions is the “old maxim of the worse the better,” so as to maximize the chances of ending this evil institution. Whether it will work or not, however, is surely an empirical issue. This is not a matter of praxeology, of apodictic certainty. I happen to be sympathetic with Rothbard’s rejection of this strategy, but I cannot see my way clear to dismissing it as sharply as he does, as necessarily counterproductive.

II. Deontological Libertarianism

An alternative way of looking at these matters is not through the prism of pragmatism, utilitarianism,⁷ and the best strategy of promoting libertarianism. This philosophy is preeminently an aspect of deontology. So I ask, instead, is undermining statist institutions, whether in group A, which are evil per se, or group B, which are not, incompatible with the nonaggression principle? It is difficult to answer this question in the affirmative.

Consider “liberating” a book from the public library.⁸ One justification for such a criminal act on the part of the “liberator” is that the money that paid for this reading material was taken from him in the form of taxes, and this act is only a means of seizing back one’s

⁷ For a critique, see Cleveland 2002.

⁸ I would never advocate such lawlessness in any country I might live in or visit. This might well be illegal, and I have no wish to become an outlaw. Consider, then, a library in Nazi Germany, or the bad old USSR, both of which, we may safely assume, are illegitimate governments, if ever there were any.

rightfully owned property.⁹ But it is possible to go further. As Rothbard (1978, p. 49) himself states: “If you wish to know how libertarians regard the State and any of its acts, simply think of the State as a criminal band, and all of the libertarian attitudes will logically fall into place.” Well, how are we justified in treating “criminal bands?” Must we as libertarians deal with them while wearing kid gloves, as it were? Are we required to break down their activities into two categories, the intrinsically evil and those that would exist in a free society, and react to them very differently along the lines set out by this author? Posit that in addition to their nefarious activities, the gang also is responsible for a few good things: it offers after-school tutoring programs, it gives free dinners to the deprived, and so on. Are we or are we not justified in undermining, opposing, interfering with, these good works? It is difficult to see how we are estopped (Kinsella 1992, 1996) from doing so. After all, yes, these are good deeds, but they are being undertaken by outright criminals. Money is fungible. If we seize the gang’s dinners, or their pencils, crayons, and coloring books, the nonaggression principle has not at all been violated. And their nefarious activities have been opposed.

III. Should We Be Button-Pushers in the Hard Cases?¹⁰

We now turn to a series of difficult questions regarding the shift from government institutions to private institutions.

1. Libertarians support privatizing hospitals. Before an operation, should someone be able to liberate its equipment to be sold as scrap metal?

Yes, but that would be just about the worst possible outcome. The USSR faced a similar challenge in how to privatize its farms, factories, mines, and so on. Assuming scrap metal is worth only a small fraction of hospital or any other such equipment, a much better solution would be for the “someone” to liberate it as is, and not as scrap metal. But, if the stark choice were that these capital goods

⁹ The taxpayer would presumably prefer to be repaid his own money, but if this is impossible, taking it back in the form of such a fixed resource might be the next best option.

¹⁰ An unusually active referee of this journal poses a series of very challenging questions. He says: “I hope you can address some of these more difficult questions, all for a hypothetical country.” This section is devoted to posting and then responding to them. I assume arguing that the government of this “hypothetical country” is an evil one.

were either privatized as scrap metal, or stayed as is, and remained under the control of the evil state, then the libertarian would presumably opt for the former.

2. Libertarians support ending the current prison system. In what way would you support ending it? Should we press a button and instantly send all prisoners home? Or should there be a transition plan where jailers are required to unlock the cages before the prisoners are sent home?¹¹

There are two kinds of prisoners: those who have violated the nonaggression principle and those who have not. The latter are all “victimless criminals.” Their only “crime” was to have purchased or sold a good or service such as an outlawed drug or prostitution, on a voluntary basis, between consenting adults. They should be immediately freed. Then, there are others, real criminals, guilty of such heinous acts as murder, rape, theft, and kidnapping. Assuming *arguendo* that the apparatus of the state court system found guilty of these crimes only those who actually committed them,¹² these criminals should not be freed at all, by anyone. They, after all, have been acting “governmentally.”¹³ The point here is that the only reason the state itself is an illicit institution is because it violated the nonaggression principle. But that is precisely what the private criminal has done, too. So, in a sense, even though the private criminal has none of the public legitimacy of the state, he is still acting in a manner typical of this organization. So, no, jailers should not unlock the cages of any of these prisoners. They should remain in jail to serve out the sentences mandated for them by libertarian punishment theory.¹⁴

¹¹ Here is another way of phrasing this question: “Should a button be pushed and jailers told not to show up to work, or should there be a transition plan where the jailers have to go to work one last time to unlock the cells?”

¹² This is very much a heroic assumption on my part. Obviously, if there are prisoners found guilty of actual crimes who are yet innocent of them, they, too, should be freed.

¹³ They do so in two ways. One, they tax people against their will. Two, they demand a monopoly privilege over law giving (Jasay 2008).

¹⁴ See on that: Block 1999, 2002–2003, 2003a, 2003b, 2004a, 2004b, 2006a, 2009a, 2009b, 2011; Block, Barnett, and Callahan 2005; Gregory and Block 2007; Kinsella 1996; Morris 1968; Nozick 1981, pp. 363–73; Olson 1979; Rothbard 1998, p. 88; and Whitehead and Block 2003. In the view of Rothbard (1998, p. 88, fn. 6): “It should be evident that our theory of proportional punishment—that people may be punished by losing their rights to the extent that they have invaded the rights of others—is frankly a *retributive* theory of punishment, a ‘tooth (or two teeth) for a tooth’ theory. Retribution is in bad repute among philosophers, who generally

The greater challenge here concerns the victimless criminals. If we “push the button” and the jailers all walk off the job, immediately, without freeing these prisoners, they will languish in jail. One response is that private wardens should open their doors, and should do so immediately. But, suppose the transition period takes some time. Are these prisoners to wait? Not at all.¹⁵ Another response is that, yes, the guards should engage in one last act: opening their jail cells. Suppose a slave master lowered a slave down into a gigantic pit so that he could do a job down there. Then, afterward, the former would have hauled back onto the surface this valuable piece of property of his. But, just as the master was to pull the slave back up to safety, word came to him that slavery was ended. A law-abiding citizen, he then let go the rope, and the (now ex-) slave plunged down into the bowels of the earth to his death. What would the libertarian say about this scenario? It is clear that the (now ex-) slave master was guilty of murder. If so, then he has a duty to keep pulling on that rope so as to bring the (now ex-) slave up to the safety of the surface of the earth. In similar manner, the prison guard has an obligation to engage in one last act as a government employee: open the prison cells of those who should not have been there in the first place.

3. Suppose someone is voluntarily in a government-run psychiatric ward and that without government, a flourishing voluntary and noncoercive and charity-financed psychiatric ward would exist. Suppose someone is in a difficult situation—say, within 24 hours of attempting suicide—that they will be cured of 24 hours from now. What would you say to the person liberating the ward of the books and other equipment that the statist doctors are using?

It is not true that *everything* done by minions of the state is evil. If a policeman stops a rape or murder of an innocent person, that act, looking at it out of context, is a virtuous one. Unhappily, that policeman’s salary is financed from monies mulcted from taxpayers

dismiss the concept quickly as ‘primitive’ or ‘barbaric’ and then race on to a discussion of the two other major theories of punishment: deterrence and rehabilitation. But simply to dismiss a concept as ‘barbaric’ can hardly suffice; after all, it is possible that in this case, the ‘barbarians’ hit on a concept that was superior to the more modern creeds.”

¹⁵ This is similar to the issue of freeing the slaves. If we and only we have the power to do so, but we stall, then we are guilty of the crime of false imprisonment (kidnapping), for this duration.

against their will. But that one act of the cop, looked at in isolation, is surely one not only compatible with the nonaggression principle, but a paradigm case of such. What this challenge poses is something of the same order: the statist psychologist is now saving an innocent person's life. Surely, this act should not be interrupted by the "liberator" any more than he should stop a member of the government constabulary from saving the rape or murder victim.

4. Suppose private roads had private medics, but in the interim, government medics are at the scene of an accident. What would you say to the third party who sees the ambulance and decides to liberate the equipment?

This challenge is very much akin to the previous one regarding the psychiatrists saving a suicide's life.¹⁶ Again, the minions of the state are engaged in a virtuous act, one highly compatible with the libertarian philosophy. They should be allowed to continue, as is, and privatized as soon as possible afterward.

5. A similar question could be asked about air traffic controllers. Suppose that in a libertarian society, air traffic control would be completely private, and various private norms or private directives would emerge. But suppose that in the current society, someone proposes to liberate the air traffic control equipment from one town and sell it to a private entity that values it more. The liberator of the material is not selling the material for scrap and is even enhancing its market value, but in the interim, some pilots who were depending on instruction from the air traffic controllers are stranded in the air. Would you push the button and immediately transfer the equipment to the marketplace to be sold elsewhere, or would you implement a somewhat gradual (perhaps ten-hour) transition plan?

A similar answer emanates from libertarian theory to this challenge. The transition period would not leave pilots up in the air with no way, or only a dangerous way, to get back down to the ground. "Pushing the button" has to be interpreted in such a way so as to not leave innocent people in the lurch, lest they properly be accused of murder. This conclusion is not only compatible with any reasonable version of utilitarianism, but, also, with deontological libertarianism.

¹⁶ For the case in favor of road and highway privatization, see Block 2009c.

IV. Conclusion

Let me now attempt to respond to all five questions through the prism of Rothbard (1977) and “button pushing.” Here is what he said about this issue: “Hence, while the abolitionist will accept a gradual step in the right direction if that is all that he can achieve, he always accepts it grudgingly, as merely a first step toward a goal which he always keeps blazingly clear. The abolitionist is a ‘button pusher’ who would blister his thumb pushing a button that would abolish the State immediately, if such a button existed. But the abolitionist also knows that alas, such a button does *not* exist, and that he will take a bit of the loaf if necessary—while always preferring the whole loaf if he can achieve it.”

Rothbard is *such* an extremist. There is no role in the above statement for any of the exceptions I have made in answering the five questions: allowing the state psychiatrist to continue to save the life of the suicide for 24 hours, supporting the government cop in his act of preventing a victim from being murdered or raped, and so on. In contrast to Rothbard, I am a compromiser, a wuss, a wimp.¹⁷ I allow for these exceptions. That is one way to look at this matter. Another is that were Rothbard faced with these challenges, he would have answered in roughly the same way I did.

Then there is the issue of, if the button is pressed, we eliminate the state alright, but we leave the suicide and the rape victim in the lurch. Posit that the process of full privatization would take too long to save them. Do we then attack the button pusher and not allow him to achieve his heroic act? Hardly. Merely on a utilitarian basis, the state kills many more people than it saves.¹⁸ But that is mere utilitarianism. From a deontological point of view, the button pusher is punishing evil, promoting liberty. It cannot be denied that the dictators of Nazi Germany, Soviet Russia, and Communist China did *some* good. Hitler, Stalin, and Mao all opposed petty theft, particularly from Aryans, and were loyal members of the party. Should we therefore regret the overturning of their brutal dictatorships? To ask this question is to answer it.

¹⁷ That is why I am known far and wide, at least in my own mind, as Walter Moderate Block.

¹⁸ According to these authors, governments have been guilty of murdering, apart from wars, almost 200 million of their own citizens in the previous century: Block 2006b; Branfman 2013; Conquest 1986, 1990; Courtois et. al. 1999; DiLorenzo 2006; and Rummel 1992, 1994, 1997.

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