

Rand versus Individual Rights: A critique of Rand's essay on "The Nature of Government"

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In the December 1963 issue of the Objectivist Newsletter, Rand published an essay entitled *The Nature of Government*, setting out her reasons and guidelines for what a government, organized under Objectivist principles and ethics, would look like. It wraps traditional arguments for limited government in Objectivist garb and rhetoric, describing what limits government should have, what functions it should provide, and why it is a fundamental principle of civilized society for government to behave as she defines it.

The article is mostly about the applicable Objectivist principles and how they morally and rationally lead to courts, police, and military institutions within the governmental institution. Towards the end of the article she briefly takes on the then-emerging doctrine that came to be known as anarcho-capitalism and the concept of "competing governments." Although I fall into the anarcho-capitalist camp, I've always thought *anarcho-capitalism* was oxymoronic and have suggested the replacement term "Agoranism," from the Greek word *agora*, meaning market.

The "competing governments" advocates had a somewhat atomistic concept of how everyone could have their own personal government, with Neighbors A and B having separate governments and potentially going to war against each other to enforce their sense of justice. It is that model Rand criticizes and, as a model, I think Rand is right to do so. I just don't think Rand (and perhaps some "competing government" advocates) fully understand how a system of market-based government would probably work. I haven't kept up with what by now may be voluminous literature defending market-based government and I don't know if the atomistic market model is still widely in play.

Given Rand's goals, it is my belief that they would be better served by a market-based government model than by the traditional limited sovereign government model. In this essay, I want to explore what I believe to be several flaws and anti-individual-rights arguments in Rand's essay and offer some corrections and suggestions to bring her concerns more closely in line with Agoranism, i. e., market-based government.

Rand begins her article with a definition. "A government is an institution that holds the exclusive power to enforce certain rules of social conduct in a given geographical area." This is where her problems begin.

Rand intends this to be a definition of "sovereign" government but for such purposes the definition is inadequate. "Sovereign" government has its origins in an act of force in which some political entity, with sufficient military power, declares that henceforth all people living within a particular jurisdiction, whether they like it or not, will be subject to the legal authority imposed on the area, and it shall be illegal to resist the entity's right to impose those laws. Rand smuggles this additional *forced imposition* principle into her argument later in the essay (see below.)

Such a legal system might take several forms. The individual rights crowd is certainly understandably fond of the constitutional system of law introduced by the founding fathers over the objection of many sub-population groups, such as pre-Columbian natives, African slaves, southerners opposed to slavery, northerners in favor of slavery, European colonists who prefer to remain under British or German control, and colonials who would rather not unite with the other colonies, to name a few. Of course, no polls were conducted, so I'm guessing here. On the other hand, sovereign governments might take one of the more typical forms, the authoritarian or dictatorial model. Or it might look like something in between, before radically shifting to the dictatorial model. Whatever form it takes, one or more population groups will almost certainly be compelled against their will to obey the laws handed down.

Returning to Rand's initial definition, as it stands, it could easily encompass market-based capitalism. Let me give an example. Understand, this is just an example of a model and not a full-fledged complete defense of Agoranism or full description of what an Agoranist society will look like, which would require a book-length argument to properly explain and defend. But it is a model based on modern practices in the market.

Assume, to Rand's disappointment, no sovereign government over a large swath of territory. A real estate developer, or group of developers, builds hundreds or maybe thousands of homes in a large geographic area and other developers build several blocks worth of apartment buildings. People looking for residences will have an interest in certain amenities, such as police, law courts, perhaps a constitution, and decent laws and regulations for the community. These can be provided in many ways.

One possible form (out of many) would be a condominium or cooperative real estate arrangement (these two are slightly different concepts) in which residents receive a certain number of votes based on the calculated worth of their purchase and get to elect a governing board to create rules and regulations for property use and maintenance of commons areas. The organization's sales contract could also impose a Constitution on the purchasers, which Constitution may have been selected from a bar association that has popular support among the residential community markets.

The governing board would have authority to contract with police and court franchises and correctional facilities (and cancel the contracts if they don't like how the service is provided.). All residents, by their initial consent to the sale contract, would have voluntarily agreed to be governed under these laws and regulations. Broad-based laws within the community like those you generally expect a sovereign government to enact, could be adopted from uniform codes put out by bar associations, which is already how most decent democratic sovereign government legislation originates.

Multiple communities could band together and jointly contract for more substantial needs beyond the ability of the individual community to finance, such as, roads, utilities, a SWAT team, a military defense organization, and possibly a security research operation to keep track of potential threats within and without the communities. The market could offer a wide range of governmental services in varying commercial packages that we probably can't even begin to imagine, because central planning doesn't work.

Put aside for a moment your initial hostility to this model, knowing in your Objectivist heart that no such population of rational, hard-working, productive independent citizens could ever choose such a way of life, Galt's Gulch be damned. The more important point is that this model, which is not a sovereign government, fits Rand's initial definition of what a government consists of.

Rand goes on to describe some of the necessities for government, based on the needs of rational man (folk, to decenter the terminology) to survive and some basic principles of individual rights. Rand rightly explains that the right to life implies the right to self-defense. But, as her essay develops, that right to self-defense starts giving way to the needs of sovereign government (see below.)

The use of retaliatory force, she argues, "cannot be left at the discretion of the individual citizen." Effectively, she says you have no right to defend yourself against an aggressor. This is a current issue in criminal law and law enforcement. Many (most?) states have a law that says you may not engage in retaliatory force if you have any way to separate yourself from the aggressor with safety. Other states have a "stand your ground" rule, which allows you to stand up to aggressors and bullies. I assume Rand would relax the "no individual retaliatory defense" rule where personal safety is endangered, but her argument aligns her with those states that limit the right to self-defense.

Since Rand denies the individual the right to use retaliatory force because it undermines civilized society, she says there should be an institution that protects the rights of the individual. That institution, she argues, is government. "A government is the means of placing the retaliatory use of physical force under objective control - i.e., under objectively defined laws."

We then come to a very crucial problem in Rand's government ethics. "The fundamental difference between private action and governmental action—a difference thoroughly ignored and evaded today—lies in the fact that *a government holds a monopoly on the legal use of physical force* (emphasis added)." If the government has a monopoly on the legal use of force, then the government, and only the government, can decide who should be allowed to have weapons and what use, if any, citizens would be allowed to have.

If Rand were at the Constitutional Convention, her Objectivist ethics would require her to vote against the Second Amendment right to keep and bear arms. In her frame of reference, having weapons would violate the government's monopoly on the use of force. Now, it's true that the holders of a monopoly have the right to license individuals to exercise some privilege that falls within the monopoly, but Rand's essay comes down hard against individual retaliatory force or any activity that diminishes the government monopoly on force.

The problem here is that Rand says earlier in her article that "The necessary consequence of man's right to life is his right to self-defense." Rand not only requires government to restrict that right, but she would appear to deny the individual the right to carry the protection needed to exercise that right. If the right to life implies the right to self-defense, then the right to self-defense implies the right to have weapons with which you

can defend oneself. Should a woman not be able to have a weapon to fend off a sexual predator because government has usurped the right to retaliatory force.

In Objectivist ethics, and in other defenses of individual rights, a basic principle is that rights flow from the individual to the group, not visa versa. This leads to the fundamental problem with Rand's entire thesis about government and brings us back to the opening problem about the definition of sovereign government. How does Rand get from an individual's right to self-defense to a government's right to restrict that right of self-defense?

She writes, "There is only one basic principle to which *an individual must consent* if he wishes to live in a free, civilized society: the principle of *renouncing the use of physical force* and *delegating to the government his right of physical self-defense*, for the purpose of an orderly, objective, legally defined enforcement. Or, to put it another way, he must accept the separation of force and whim (any whim, including his own)."

The individual, she says, **MUST** surrender the right of self-defense. But what if the individual, or lots of individuals, don't want to surrender that right? This is where the principle of sovereign government comes into conflict with the principle of individual rights.

Rand doesn't answer the question, but her response is implicit in her fundamental arguments. If "rational, productive, independent men in a rational, productive, free society" are to survive, then it is a moral imperative that her form of government be imposed upon the population. In other words, contra John Galt, her desire to achieve safety without market principles acts as a claim against your life and liberty."

In Randworld, one isn't really asked to consent to this delegation of rights. One isn't routed out of one's home and banished from the territory if you don't consent. And you are not arrested if you don't consent. But you must obey the sovereign government whether you like it or not, or your confiscated gun will be shoved in your face and you will be jailed if you survive the arrest.

Rand's like it or lump it attitude, is not new or original. It is just Objectivist-cloaked political speak for "social contract" theory. Social contract theory, like Rand's argument for government, is just another way of saying "You're screwed. Get used to it."