

Libertarian Arguments for Anarchism

Stephen Kershner
State University of New York, Fredonia

1. Introduction

In this essay, I argue against the view that libertarianism supports anarchism. In support of this claim, I shall focus on Aeon J. Skoble's fine book, *Deleting the State*.¹ Skoble's argument is new but his strategy is not. The reason Skoble's argument fails also explains why similar arguments also fail.

2. Skoble's Argument that Libertarianism Supports Anarchism

In *Deleting the State*, Aeon J. Skoble presents a powerful libertarian argument for anarchism. Skoble argues that because libertarianism gives priority to liberty and because the state curtails liberty, libertarians must hold that the state is illegitimate.² The many interesting arguments, discussions, and examples make this book excellent. That said, Skoble's argument fails.

Here is Skoble's argument (see, e.g., pp. 47 and 69):

- (P1) If a state is justified, then it is justified in coercing individuals.
- (P2) If the state is justified in coercing individuals, then it is justified in depriving individuals of liberty.
- (C1) Hence, if the state is justified, then it is justified in depriving individuals of liberty. [(P1), (P2)]
- (P3) If the state is justified in depriving individuals of liberty, then liberty is not the most important political value.
- (P4) Liberty is the most important political value.
- (C2) Hence, the state is not justified. [(C1), (P3), (P4)]

¹ Aeon J. Skoble, *Deleting the State: An Argument about Government* (Chicago, IL: Open Court, 2008).

² A similar argument can be found in Murray Rothbard, "Society Without a State," *Nomos*, Vol. XIX (1978), pp. 191-92.

Premise (P1) follows from the definition of a “state.” On Skoble’s account, roughly, a group of individuals is a government if and only if they maintain a monopoly of force in an area and, perhaps, acquire income from taxation (p. 39).³ Note that Skoble treats “state” and “government” as synonymous. On his account, the state differs from society, which is a group of individuals who live together (p. 38). Premise (P2) follows from the notion that state coercion infringes on individuals’ rights and thus their liberty. Premise (P3) follows from two assumptions. First, if state coercion is justified, then the justification overrides liberty. Second, if something overrides liberty, then liberty is not always the most important political value. Premise (P4) follows from the definition of “libertarianism.”

3. Two Preliminary Concerns

One concern about this argument is that (P4) is undefended. Even if liberty usually outweighs other values, it still seems possible that there is some amount of another value (for example, deserved well-being) that outweighs liberty in some circumstances. For example, it is hard to believe that preventing the loss of millions of deserved units of utility does not outweigh the smallest loss of liberty. It might be that the liberty-prioritization claim only applies to the design of basic political institutions. Alternatively, in the real world, it might be unlikely that values will conflict. Skoble simply assumes libertarianism to be true, so this is not a criticism of his book, but it is a concern for the overall argument.

A second concern is whether the government might infringe on freedom as a way to maximize it. For example, consider when a state preventively detains someone based on strong evidence that he will harm someone in the future. In this case, the state infringes on someone’s right as a way of preventing him from infringing on others’ rights in the future. If freedom is filled out in terms of respected rights, then in this case the state infringes on someone’s freedom in order to increase it, albeit persons other than the one whose right is infringed. However, Skoble appears to view freedom in terms of rights and to view rights as side-constraints.⁴ If this is correct, then it is wrong to maximize liberty by infringing on it.

³ Similar definitions can be seen in Rothbard, “Society Without a State,” p. 191; Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. 51; Jan Narveson, *The Libertarian Idea* (Philadelphia, PA: Temple University Press, 1988), p. 219.

⁴ The notion that rights are side-constraints can be seen in Nozick, *Anarchy, State, and Utopia*, pp. 30-33; Hillel Steiner, “The Structure of Compossible Rights,” *Journal of Philosophy* 74 (1977), pp. 767-75.

4. Actual Consent versus Hypothetical and Rational Consent

A third concern is the Hobbesian-fear argument, which attempts to show that (P2) is false.⁵ This argument rests on two assumptions:

- (1) *Government is Necessary for Social Cooperation.* Hobbes argues that government protects against anticipatory violence, which prevents persons from being part of a civil society.
- (2) *Social Cooperation is Necessary for Liberty.* A civil society is necessary for persons' liberty to be respected.

Skoble argues against (1). He argues that game theory provides us with a model of rationality that suggests that the government is not a necessary condition for social cooperation. He argues that historical cases of effective non-governmental dispute mechanisms (e.g., Western cattle towns during the late 1800s, English Common Law and Law Merchant prior to the consolidation of these by the crown, the Middle Eastern merchant associations, and medieval Iceland's civil law) and incidents of peace breaking out during World War I confirm the practicality of such non-governmental routes to civil society. Elsewhere he rejects other libertarian arguments for government coercion, including arguments from efficiency (discussing Nozick on pp. 53-57), natural rights theory (discussing Machan on pp. 57-63), and contractarianism (discussing Narveson on pp. 63-67).

However, it is not clear how the Hobbesian-fear argument is relevant to the issue of government authority. A government can get rights from individuals only if the individuals stand in a special relation to the government (analogy: duties to family members), injure the government and owe compensation (right to compensation), or give a valid consent that creates a right in the government.⁶ The first two don't apply. The third focuses on actual historical sequences, not hypothetical ones as in the Hobbesian-fear argument.

Whether someone would rationally consent to something is irrelevant to whether he has done so. Consider the following lifetime amounts of well-being for the following marriage combinations. The first number is the male's; the second the female's. Assume that the coupling combination has no effect on third parties and that the parties are aware of the payoff values:

⁵ Thomas Hobbes, *Leviathan* (New York: Penguin, 1951 [1651]).

⁶ To create a right (claim) in another, an individual has to give a promise rather than consent. Consent creates either a Hohfeldian liberty or power in another. However, because the argument is traditionally phrased in terms of consent, I'll stick to this usage.

	Alice	Betty
Al	100/100	25/25
Bob	25/25	100/100

Given this payoff scheme, it is irrational for Al to marry Betty and Bob to marry Alice, but if they consent to do so (when sane, aware of the relevant facts, etc.), then they are morally bound.

5. Tacit-Consent Arguments for State Authority

We can and do consent to limit future act-options. Consider when a person validly consents to euthanasia, the Marine Corps, or to be bound to a mast (for example, Odysseus). Citizens who consent to the government close off future act-options (for example, not paying taxes), but do not limit their liberty.⁷

On rights-based libertarian grounds, the government is legitimate if and only if persons validly consented. One might argue against state authority either because most or all individuals in a relevant area haven't done so. However, Skoble does not provide much of an argument against the claim that most have done so. He says we can't assume that persons do consent from their living in an area (p. 100). But whether they understand their living there as tacit consent is an empirical question, and the mere fact we can't assume it doesn't show that they haven't do so. Here Skoble needs some sort of empirical support for his claim.

Alternatively, Skoble might claim that we can't infer consent when the expression of dissent carries an unreasonably high cost (p. 101). However, this is false. A high cost of dissent does not always invalidate consent. In order to see this, consider the following case:

Black Mamba: During an expedition into Africa, a highly venomous black mamba bites a wealthy scientist. He is quickly taken to the house of a local doctor who offers to sell him the doctor's only portion of mamba antivenin for the market price. The scientist quickly agrees and signs a contract. He is then given the antivenin. After a month of lying near

⁷ Persons can validly consent to limit their options against others. This explains what is wrong with the theory that persons cannot consent to the use of force by others. If the state is just a group of individuals who claim or have a monopoly of force in a region, then it is at least possible that persons can consent to their use of force. Consent to the use of force is distinct from consent to the right to make a reasoned decision about how to act. It is the running together of these two types of consent that underlies the famous argument by Robert Paul Wolff, *In Defense of Anarchism* (New York: Harper Torchbooks, 1970). The notion that a person can consent to the government as a hired agent can be seen in Tibor Machan, *Human Rights and Human Liberties* (Chicago, IL: Nelson-Hall, 1975), p. 145.

death, the scientist recovers. He then refuses to pay, arguing that the contract is invalid since his consent was coerced.⁸

Here the cost of not consenting is incredibly high, but that does not invalidate the consent to pay. At the very least, Skoble needs an argument that most persons have not validly consented to government authority. He doesn't provide one.

It is worth noting that on some accounts of the foundations of private property rights, conventions play a role in the acquisition of property rights to previously unowned things.⁹ So whether property is acquired via mixing labor, first possession, adding value, or some other method might be a function of the applicable social convention. If social convention plays a role in the acquisition of property rights, then it might also play a role in the transfer of rights to the government. Just as convention in the context of property binds persons who do yet exist, a similar thing might explain how governments acquire authority over a region and then how this applies to future generations via property rights.

The underlying assumption here is that unilateral acts do not by themselves create a property right in a previously unowned thing. For example, John Locke's labor-mixing argument fails.¹⁰ His argument asserts that the person who initially mixed his labor into unowned land or some other unowned object then owns it as a way of protecting his right to the labor. First, labor is an event that ceases to exist and hence there is nothing left to protect. Second, the mixing and labor are one and the same and so either nothing is mixed in or the person does not mix it in. In either case, the argument fails.¹¹ Third, even if the mixing and labor are distinct and the person mixes an object (i.e., his labor) into land, it is unclear why the person gains the land into which the object is mixed rather than losing the object.¹²

Skoble might argue that even if most persons do validly consent, a minority doesn't and this blocks government legitimacy. This might be correct if rights are absolute. If they are not, then in some cases efficiency might override rights. For example, we might think that efficiency dictates who has

⁸ This example comes from Stephen Kershnar, "A Liberal Argument for Slavery," *Journal of Social Philosophy* 34 (2003), p. 510.

⁹ For one such account, see Stephen Kershnar, "Private Property Rights and Autonomy," *Public Affairs Quarterly* 16 (2002): 231-58.

¹⁰ See John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge, MA: Cambridge University Press, 1988 [1690]), Bk. 2, chap. 5.

¹¹ This objection comes from Jeremy Waldron, *The Right to Private Property* (New York: Oxford University Press, 1988), pp. 184-91.

¹² This point comes from Nozick, *Anarchy, State, and Utopia*, pp. 174-75.

the burden with regard to detecting dissent. For example, consider the following case:

Trauma Victim: A woman who suffers from past trauma and out of internal compulsion gets undressed and into bed with a man, who then has intercourse with her without any knowledge that she is not willingly participating.

We might think that even though the woman acts involuntarily, the man should not be made to pay compensation or be punished because she didn't validly consent. The same is true if she acts from hypnosis, neurosurgery, or another third-party-caused autonomy-blocking mechanism. This is because efficiency dictates that she shoulder the burden of indicating dissent or at least avoiding widespread indices of valid consent.

In addition, if there are dissenters to the state, then their rights might still be overridden. Consider the following cases:

Hotwire: There is a car accident and a three-year-old black girl's arm is cut off. If reattachment surgery doesn't begin soon, she will permanently lose the arm. A bystander knows the only way to get the child to the hospital in time is to hotwire a parked car. The bystander knows the car owner and in particular that he is a member of the Aryan Brotherhood, a vicious racist organization, and would never consent to allowing his car to be used to help the girl.

Ticking Time Bomb: A terrorist plants a nuclear bomb in the middle of New York City. He plans to blow it up in the middle of the day when the city has millions of commuters in addition to its residents. He is tortured and still won't disclose its location. The only thing that will make him talk is making him witness the mutilation and killing of one son and a threat to do the same to his others.¹³

Intuitively, it seems permissible both to hotwire the car and to torture and kill the son. From this it follows that rights are not absolute (that is, they can be overridden). If they can be overridden by great costs, then the avoidance of such costs might explain what overrides dissenters' rights. It should be noted that the notion that weighty costs can override rights does not follow from the above cases, although it does cohere nicely with it.

¹³ This example can be seen in Michael Levin, "The Case for Torture," *Newsweek*, June 7, 1982, accessed online at: http://webpages.acs.ttu.edu/wschalle/case_for_torture_by_michael.htm.

6. Conclusion

Skoble and other libertarians fail to show that libertarianism supports anarchism. The focus on whether persons would rationally consent to the state misses the issue. Instead, the truth of anarchism depends on whether all or most persons actually have consented to the state. Tacit consent to the acquisition of property rights in previously unowned things provides us with a model as to how valid consent might occur. However, whether persons actually have done so is an empirical issue.

