

STATE, ANARCHY, AND CULTURE

Asistent drd. Ștefan L. Cojocaru,
University of Boston, S.U.A.

Abstract. *Looking at the tension between democrats, who rely on collective decision and state institutions, and liberals, who stress general principles of justice and individual freedom, I attempt to construe a mixed position, trying to bring the best of their parts into a new perspective. We will keep the contention that people have inalienable rights, and substitute the libertarian incrimination of the state with the positive obligation of every member of the community to respect everyone else's rights.*

This perspective, which I call, "normative libertarianism", is essentially ethical and modifies classical libertarianism, as exemplified by Murray Rothbart's contention that "taxation is theft", by looking at institutions as cultural practices of individual people, which can be assed, as any other practices, in moral terms. Democracy and state institutions are in fact made possible by the culture of freedom which we accept as moral individuals. Normative libertarianism, I argue, also avoids the pitfalls of institutionalism as exemplified by Karl Popper's famous critique of Plato's "Republic".

The notion of 'democracy' is not free of ambiguity. Sometimes it is used to designate the majority rule, sometimes people mean by it the constitutional constraints imposed on the majority rule. The Austrian economist, Friedrich A. von Hayek, once associated these meanings of 'democracy' to distinct political doctrines; he wrote in *The Constitution of Liberty*, "Liberalism is a doctrine about what the law ought to be, democracy a doctrine about the manner of determining what will be the law" (p. 103). Taking Hayek's denominations, we can remark that the two uses of the word correspond to different traditions of understanding democracy.

Liberals naturally tend to emphasize constitutional principles and insist on the adequate observance of laws. Depending on their degree of radicalism, liberals also hope to extend more or less the domain of constitutional principles; some of them, generally called 'libertarians', would even extend it until principles alone, in absence of any collective decision, define the sphere of individual freedom. In the following lines I will refer by 'anarcho-libertarian' to those libertarians who think that if a constitutional principle is possible at all, then it should be reducible to a broader principle of justice. The idea gains some credit from the fact that modern democracies already have functional constitutions, which supposedly incorporate some general principle of justice.

Conversely, democrats believe that the tension between the two senses of 'democracy' could be diminished through institutional work. Only a steady advance of the deliberative and authoritative institutions, the democrats say, would make the collective decision better conform to constitutional qualifications. I will henceforth call this view 'institutionalism'.

Now, both positions, anarcho-libertarian and institutionalist, have their merits and weaknesses, which are not yet easily detectable. In the next pages I will try to bring the best of their parts into a new perspective, at the same time non-institutional and not coincident with classical libertarianism. Usually, anything that has to do with libertarianism or anarchism is regarded as the most distant thing from democracy, but if my intention to construct a mixed position comes out realizable, this will respond implicitly to the question whether a kind of anarcho-libertarianism permissive towards democracy is conceivable. In my initial terms, the question may be put: "Could collective (coercive) decisions be admitted from an ethical point of view?".

The members of democratic societies are familiar with the following paradox of democracy: tyranny can be installed by democratic means. This subject has been and will be touched in every abstract debate on the democratic political system; likewise, critiques of democracy have pointed and will point it out. There where a single human being fails to engage oneself into the right course of action, a majority of people can fail too; consequently, a majority might in principle respect democratic procedures to elect, perhaps against its goodwill, leaders determined to uproot the very democratic procedures.

Plato wrote in the *Republic* (562b-565e) a similar argument against democracy, and Karl Popper, defending democracy in *The Open Society and Its Enemies*, famously criticized him. Plato had found in his argument sufficient reasons to discard 'majority' as a correct answer to the question "Who should rule?". I am interested here in two important features of Popper's response to the question raised by the Greek philosopher, one of which is this characterization of Plato's position:

[...] some people think that in Plato's theory the welfare of the state is ultimately an ethical and spiritual matter, depending on persons and personal responsibility rather than on the construction of impersonal institutions. I believe that this view of Platonism is superficial. *All long-term politics are institutional.* (p. 124)

According to the terminology fixed above, Popper is clearly an institutionalist. My second point of interest consists in the way Popper characterizes his own institutionalist view. I put it threefold:

1) Plato's question, "Who should rule?", identifies political power with the will of the sovereign - whoever this is, collective or individual - hence hiding the false assumption that political power is uncontrollable; therefore Popper recommends to shift to the question: "How can we so organize political institutions that bad or incompetent rulers can be prevented from doing too much damage?" (p. 120).

2) Not only democracy, but all sovereign systems must confront the paradox emphasized by Plato. However, some institutions are better than others; for instance, typical democratic institutions permit the peaceful alternation of governments and room for their own gradual improvement.

3) Impersonal institutions need personal decisions, since, Popper says, they "[...] are like fortresses. They must be well designed *and* manned" (p. 125).

At first sight, the third point contradicts the other two, and looks like a concession made to Plato's ethical view on the state. Surely Popper did not want it to appear so. He would have wanted to accommodate personal leadership, while maintaining the central role of *impersonal* institutions. But is it really possible to avoid the question "Who should rule?"? First, since institutions need personal guidance, the question is relevant to the recruitment of the institutional heads: should it be made on a political basis or otherwise? Second, how we are to draw a line between 'the personal' and 'the impersonal' within the democratic institutions largely depends on how we take 'the impersonal'.

In what sense, then, are political institutions *impersonal*? Obviously, not in the sense they do not concern persons. At times, we say about attitudes or relations among persons that they are impersonal, e.g., a law may be impersonal in so far as it treats everyone equally, paying no attention to contingent particularities such as race, age, gender... Sometimes we think of a certain law of a state not only as a norm imposed by the state, but also as a practice observed by the citizens. Indeed, what else could we primarily understand by 'institutions', other than practices established among people? As any set of habits and relations among individuals; they comprise all the ingredients of human behavior: power, confidence, greed, envy, benevolence, perseverance, enthusiasm, etc. Facing crises, they are exposed to the lack of some of these ingredients – especially confidence – or to the affluence of others. It would be meaningless to say that institutions are impersonal, *that is*, they lie outside human activity; we assign the adjective 'impersonal' to the noun 'institution' only when our purpose is to restrict the reference of our words to a definite set of practices like the equal treatment under the law. Institutions are not impersonal *per se*, they become impersonal from the moment the members of a community embrace political practices which can be described as impersonal. Furthermore, saying that an institution works properly amounts to saying that the members of a community observe such and such social practices.

Popper's proposal to shift from the ethically marked question¹ of Plato to one which accentuates the political role of institutions – point (1) – seems to suggest either that institutions are 'objective' entities ready to be handled, or that some citizens should have a larger contribution than others to the 'design and maintenance' of political practices. The latter is consistent with point (3). (It is presupposed that not everyone would be competent and eager to work for the institutions.) I do not personally believe that Popper saw institutions as objects. Rather, in keeping with the second interpretation, he thought that political practices could be molded throughout successive modifications of the 'social arrangement', towards the most advantageous one in utilitarian terms². By 'social arrangement' I hereby mean a sort of Rawlsian distribution of social benefits, conditional upon the relative positions of the individuals, to some extent equilibrated by a rigid, non-utilitarian law. Popper, unlike Rawls (pp. 54-118), did not propose any principle of justice; however, he realistically noticed that people would agree to adopt social practices of a higher degree of impersonality *if* institutional workers motivated them by promoting various formulas of relative benefits or lesser disadvantage.

¹ Ethical, in that it touches on the leader's will.

² This is not to say that Popper was a utilitarian at heart.

When we conceive a point of view from which *objective* evaluations of social arrangements, in terms of preferences, can be made, we assume that a group of individuals, the institutional experts, would be involved more than others in making and preserving the institutions. Now, that citizens should bear different responsibilities with respect to their political practices is an ethical issue in itself; and perhaps it is not objectionable, under the most rigorous ethical angle, to let someone bear the whole responsibility, provided one wishes it, as it is wrong to deprive someone of political participation. Besides, this makes from the outset democracy inapplicable in those places of the world where there is a critical lack of benevolent institutional workers, where the vast majority of the people are unwilling to support different political burdens. In other words, if a population does not adhere *unconditionally* to any impersonal political practices, if it lives in the absence of any civic culture, it cannot possibly reach a 'social arrangement'.

Another inconvenient of institutionalism follows from point (2). Even if we accepted that some individuals should contribute more than others to the 'design and maintenance' of political practices, we would not normally be inclined to lessen the moral responsibility of each member of a society for his acts. Point (2) states nonetheless that we could evaluate different institutions or sets of institutions as if we were able to appreciate in moral terms that one system is better or worse than another. But if systems are to a degree right or wrong, citizens become morally unaccountable to that degree. The problem is that nobody would simply free of moral responsibility the citizens of National Socialist Germany for what happened in the concentration camps during World War II – and neither would Germans themselves – *because* several German institutions functioned wrong or *because* the whole system went wrong. We normally take the other way around: citizens are accountable for the functioning of their institutions. Thus, the institutionalist who would try to preserve both the responsibility of the citizens and the possibility of evaluating systems morally would assume an enormous task - to further evaluate individual responsibilities. Unfortunately, we cannot measure the institutional effects of a system to correlate them *thereafter* with specific shares of responsibility. Institutional relations and practices are far too intricate for us to make out anyone's exact share of responsibility. In addition, the benefits of a social and political system are relative to the preferences of the evaluator. We do not have exact criteria for locating the best democracy among the existent group of democratic countries, much less for locating the best current political system. It is true that, though the majority of the world's population would probably choose to live in a democratic society, a significant number of normal individuals would live anywhere else but in a democracy.

Now the question arises whether the difficulties of the institutionalist view entail that every attempt to evaluate institutions is doomed to failure. The anarcho-libertarian claims a parallel modality of looking at the institutions. The anarcho-libertarian first concentrates on the human activity behind the neutral surface of the institutions; he sees the institutions as cultural practices. Soon, the very individualistic methodology provides a tool for institutional appraisal, i.e., the language of morality. Human beings evaluate their everyday practices by means of the common morality. This should apply to state institutions as well, thinks the anarcho-libertarian, convinced that it is not worth searching for auxiliary means, because there are none. An evaluation of a human practice has to be done eventually in ordinary moral terms ('good' / 'wrong', 'right'), for the

investigation of the possibility of some independent means to evaluate human practices constitutes an illusory enterprise, subject itself to moral evaluation. Just as institutions pertain to nothing but human activity, evaluating the institutions has to be part of a common practice. To illustrate the previous lines, I quote two paragraphs from one of the most prominent contemporary anarcho-libertarians, Murray Rothbart:

Throughout history, groups of men calling themselves “the government” or “the State” have attempted – usually successfully – to gain a compulsory monopoly of the commanding heights of the economy and the society. In particular, the State has arrogated to itself a compulsory monopoly over police and military services, the provision of law, judicial decision-making, the mint and the power to create money, unused land (“the public domain”), streets and highways, rivers and coastal waters, and the means of delivering mail.

[...] there is one crucially important power inherent in the nature of the State apparatus. *All other* persons and groups (except for acknowledged and sporadic criminals such as thieves and bank robbers) obtain their income voluntarily [...] Only the state obtains its revenue by coercion, by threatening dire penalties should the income not be forthcoming. That coercion is known as “taxation”, although in less regularized epochs it was often known as “tribute”. Taxation is theft, purely and simply [...] (p.162).

Even if Rothbart probably expects his contention that taxation is theft to produce some rhetorical effect, he makes, on the other hand, a moral judgment in the every-day language. The repeated use of the word ‘monopoly’, by which two kinds of practices are separated, those of the state and those of the other people, reflects his entire accusation against the state. Rothbart clearly connects state violence with the transgression of the usual human practices. But describing how Rothbart proceeds to set up his incriminations does not justify them.

I guess that in spite of and beyond its pathos, the paragraph quoted from Rothbart contains something intuitive. The democratic state does constrain people to pay taxes; it does impose several monopolies too. We generally think that there is a reason for such measures, that is, the will of the people substantiated into political action by the democratic institutions. We are inclined to say, after Max Weber, that the state has a legitimate monopoly of violence. Could this mean that any institutional action is right? The paradox of democracy examined earlier obliges us to respond to this question negatively. It is possible for a freely elected dictator to manipulate state institutions towards violent ends. However, someone might object, since violent manipulation of democratic institutions have rarely occurred in history, we could make the necessary adjustment and say that the democratic state has, with few exceptions, a legitimate monopoly of violence. Rothbart goes anyway further than pointing out the possibility of such unfortunate events; he implies that violence characterizes as a matter of fact *every* collective action undertaken through the state institutions. In the anarcho-libertarian’s eyes, the paradox of democracy does not occur now and then, but continually, with every institutional process. It is in the nature of the democratic decision-making that somebody’s freedom will always be affected.

This is not counterintuitive either, and it is not strictly a libertarian idea. Kant similarly claimed in *Perpetual Peace*.

[...] democracy is, properly speaking, necessarily a despotism, because it establishes an executive power in which ‘all’ decide for or even against one who does not agree; that is, ‘all’,

who are not quite all, decide, and this is a contradiction of the general will with itself and with freedom (p. 119).

I call Kant's claim 'the stronger version of the paradox of democracy'. According to the weaker version of the paradox, violence *might* in principle be inflicted upon individuals not only directly, in ordinary crime, but also indirectly, through the institutional agent created to enforce the law. If we accepted the previously adjusted Weberian definition of the state – "the agency which has, with few exceptions, a legitimate monopoly of violence" –, we would still have to expose those exceptions in order to get an accurate account of 'the legitimate'. Again, a popular endorsement of a state action does not simply make that action right. To put it in another way, legitimated violence is *not* tantamount to legitimate violence. Until we settle, regardless of the support that the population gives to the state, the cases in which the leaders of the state act unrightfully, there is no reason to believe that they would act rightfully. The question is, could these cases be established before a state action takes place? Surely, in a sense, we could list the illegitimate actions, but this is not enough. We have to evaluate *actual* institutional measures. An evaluation of a living practice is required from us, not a theoretical reflection on state legitimacy. Measures imposed by a government cannot be irrefutably declared legitimate prior to the execution of those measures.

Although this partial conclusion allows more than the weaker version of the paradox of democracy, it is only closer to the stronger one. What Kant's formulation of the stronger version of the paradox seems to add to it is that nothing ever legitimates non-defensive coercion. State violence is not defensive with respect to its citizens, but punitive. The democratic state will exert its power to discipline any of its non-violent citizens who would not submit to the collective decision. That this is particularly true for those historical situations where the democratic majority adopted obviously wrong decisions should not prevent us from recognizing that somebody will *always* be wronged by the democratic decision.

One would probably think now that there must be some cases of legitimate use of non-defensive violence. We all learn in school something like the following moral dilemma: a destitute man finds himself in desperate circumstances; his wife is terribly sick, and he has unsuccessfully exhausted the legal means for procuring the indispensable medicament; he then breaks the window of a pharmacy and steals the drug. Is he guilty of theft? The intention of his action being good, we tend to exonerate the man. I would say, nevertheless, that our attitude towards him has yet to be refined depending on how he acts *after* the stealing episode. We can imagine at least three outcomes of this story: 1) assuming full responsibility for his acts, the man voluntarily surrenders to the police and gives explanations in a court of law; 2) he hides from the police and he is never found; 3) he hides from the police, but he is arrested and denies in the court having stolen the drug. What motivates the different shades in our attitude towards the man introduced with the three possible outcomes? I believe that it is the common practice of demanding explanations from whoever violates someone else's right. We *need* to hear justifications from the man who stole a drug to heal his wife. Rights are so structured that defensive violence is self-justifying, whereas non-defensive violence is not. If one's act meets the conditions for being defensive, a simple report of facts wontedly suffices, but if the act cannot be immediately reported as defensive, a justificatory procedure must be appealed to. The pith of the

anarcho-libertarian incrimination of the state is plain: those in power are ultimately unaccountable for their political acts. The state is projected by construction outside the ordinary practices.

But anarcho-libertarianism has its own paradox. The negative emphasis on rights contrasts with the expected elimination of the enforcement agent. I would pointlessly claim that a) people have inalienable rights, and that b) these are not respected by the state, if I gave no indication as to how to restore people's rights. A political program whose aim is to attain the social order of maximally respected rights must include means for its actualization. As the eradication of institutional violence by political means calls for a precise identification of those responsible for the violations of rights, the individuals in power appear fundamentally different from anybody else. The anarcho-libertarians are thus confronted with two major problems. For one, it looks as if it took a secondary state to have officials account for the violations of rights, since there are no available institutional means other than the democratic ones to fulfill such a complex judiciary task, let alone to ensure the passage to another political order - besides, it would be illusory to believe that no wrongdoer goes unpunished; rather, no coercion is inescapable. For another, the anarcho-libertarian picture celebrates a possible world of maximally respected rights - i.e., a world emancipated from indirect, institutional, violence - which is, unfortunately, disconnected from the imperfect real world, where *what is right* or how *the right* should be implemented is, along with rights themselves, visibly disputed. Political or institutional conflict, often manifestly violent, and certainly bloodier than ordinary crime, has never been absent from the history of mankind.

Even a perfectly imaginable privatization of justice and armed forces and the realization of a full-scale market system can be neither achieved, nor durably upheld by political means. Without a considerable growth of a culture of freedom and respect of rights, nothing will prevent the more powerful to shatter the maximal net of trust around him by dictating his own vision of right if he wants to. Unless we presuppose in our concept of libertarian anarchy that the personnel of the private associations delivering protection services is less corruptible than that of any state military forces, we run the risk of turning the possible realm of the right into a Hobbesian state of war. Also, conceiving the respect of rights as the mere by-product of unexamined traditions or habits will not do. Only a culture of reflective impersonal practices can resist commotion caused by external factors or opportunity for corruption.

The paradox of anarcho-libertarianism originates in the rigidly negative application of the language of morality. I am not sure at all whether, morally, we should be able to tell a fundamental difference between people in power and simple citizens. At any rate, how would one prove that the temptation of violating another's right for personal benefits is not equally sowed in all or, well, that sheer ignorance is not the sole source of political evil? There are no obvious empirical means for this type of enterprise. It is characteristic of the negative libertarian claim for rights that freedom must be represented defensively, *against* a group of malevolent officials and trade union leaders, and not as an integrative idea. But perhaps the most disorienting corollary of defensive freedom is the tendency to distinguish *literally* between supererogatory and obligatory duties, and consider the latter more demanding or important than the former. This happens easily if we see rights apart from morality, if we do not make of the respect of rights a moral, positive, requirement.

Let us now consider anarcho-libertarianism positively. We will keep the contention that people have inalienable rights, and substitute the incrimination of the state with the positive obligation of every member of the community to respect everyone else's rights. This perspective – I name it 'normative libertarianism' – is essentially ethical. Clearly, it circumscribes rational recommendations for a proper behavior towards the other human beings, and, to the disappointment of the classical anarcho-libertarians, it disallows any political ideal. In light of this new position, we would say that anarcho-libertarians erected a political ideal on the hasty assumption that, those in power being fundamentally guilty of violating rights, the perfect rule of right could be brought on Earth if state officials and politicians were deprived of their monopolistic power. Instead of negatively limiting our duty in relation to rights, normative libertarianism extends it beyond the bare conformation to rights. Normative libertarianism acknowledges that the true respect of rights grows in a culture of a certain kind. Freedom and rights are practices; as such they must be *learned*. People need training in order to participate to the practice of rights - by 'people' I refer not only to the presumptive enemies of freedom, but to its presumptive friends as well. Not only the state officials desirous of acquiring power or those whose poverty stirs them to rebellious envy, but also the individuals disposed to break contracts to increase their wealth or the rich whose affluence encourages their moral sufficiency have to be given such a cultural chance.

Good institutions pass by education, and sometimes they require more than education. Understanding this is part of our duty with respect to the rights. If the negative variant of the anarcho-libertarian thinking leads to an axiological difference between obligatory and supererogatory duties, its positive variant subsumes uniquely a logical distinction between them. Normative libertarianism does not employ the language of morality partially, but wholly; in accordance with it, the culture of freedom is conditional upon the respect of all moral duties. Someone might want to object that a uniform accent on all moral duties impinges on the culture of freedom itself in that it makes freedom dependent on material prerequisites. But pleading for the extension of the culture of freedom by appropriate means – that is, by carrying out any morally good action – is not explaining freedom. I do not set out to determine scientifically objective conditions for the historical development of the culture of freedom when I say that I have a positive duty to contribute to the advance of the culture of freedom. Its motor remains the same – the very idea of freedom, since I would be incapable of grasping my moral duties if I was not somehow conquered by it.

Normative libertarianism inherits from both anarcho-libertarianism and institutionalism. The individualistic approach to the study of institutions, taken from anarcho-libertarianism, helps it avoid the paradox of democracy. As regards the perfectivity of institutional practices, it resembles institutionalism. Unlike institutionalism, it does not initiate evaluations of the political systems, neither in utilitarian units of preferences, nor in moral terms. By way of consequence, normative libertarianism encounters none of the difficulties faced by institutionalism.

From this standpoint, democracy is not morally superior or inferior to other historical forms of political organization. Democracy consists of a set of historically contingent human practices which can be *understood*, not evaluated. It is a contingent fact that more individuals are protected by constitutions in the XXIst century than in any other past century; it might have

been otherwise. The good understanding of contingent practices like the democratic election of representatives may result in a fruitful usage of them as means towards a strengthened culture of freedom and rights. As any other means – technology, communications, etc. – the democratic vote does not serve a legitimate purpose in every context. Institutional means are not good or bad in themselves. They are not even adequate all the time, for every partial end conducing to the culture of freedom. Sometimes the vote granted to a politician would simply change the configuration of relative material benefits, while on other occasions it might increase civic awareness; here again it is up to the rational individual to act as his conscience commands.

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