CONTRACTARIANISM WITHOUT FOUNDATIONS

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I. INTRODUCTION

Is it possible to justify a state, any kind of state, without ultimately basing one’s justification on rights-claims? It would be nice if it was. Robert Nozick argued that the only morally permissible state is one that does not violate fundamental individual rights, and only the minimal state can satisfy this moral requirement. The trouble with such an argument, and perhaps ultimately for any attempt to justify political authority, is that it can only be as plausible as the rights-claims upon which it rests. Against Nozick’s argument, for instance, Thomas Nagel concludes that, “To present a serious challenge to other views, a discussion of libertarianism would have to explore the foundations of individual rights and the reasons for and against different conceptions of the relation between those rights and the other values that the state may be in a position to promote.”

Because Nagel’s response is such a natural one, it is surprising and interesting to find Michael Levin arguing that the minimal state can be defended without appealing to rights claims. “Indeed, even philosophers who share all of Nozick’s intuitions about the legitimate extent of state power would appreciate a defense of the minimal state which makes no such appeal.”

What would such a defense look like? Levin’s own defense of the minimal state is contractarian. He begins with assumptions, not about the nature of rights, but rather about the nature of rational bargaining in a Hobbesian state of nature. People in a Hobbesian state of nature, according to Levin, “are perpetually prepared to fight, and can be deterred from fighting only by a superior force ‘to hold them in awe.’ Second,...individuals are entirely self-interested in the sense that they will strike only those bargains from which they gain something.” Levin argues that rational bargainers in a Hobbesian setting would agree to no more than a state that provided protection against violence, i.e., a minimal state. This conclusion rests mainly upon two claims:
1. Rational bargainers would contract with the state to protect them from violence.

2. Rational bargainers, however, would not contract with the state to provide them with food (or goods like food). These are interesting claims. Are they true? If they were, would they provide a rationale for the minimal state? And if they wouldn’t, what would?

II. THE ARGUMENT FOR CLAIM 1

Why would a Hobbesian bargainer surrender his weapons to the state, but not his means of producing food? Levin says “this crucial difference is supplied by a multiplier effect unique to the problem of war.” The multiplier effect arises when “My need for my sword and my incentive for keeping it are constituted by my beliefs about your beliefs and intentions. If you did not think you might need your sword against me, I would not need my sword against you.” Therefore, if the state became willing and able to protect us, I could reduce my weapons budget a bit and still maintain a credible defensive posture. Seeing this, you could decrease your spending a bit as well. In response, I could lower mine a bit more, and hence, so could you, and so on. Thus “I am more secure even though less able to defend myself.”

Against Levin, however, the multiplier effect is a nonstarter as a basis for thinking bargainers would consent to state provision of protection from violence (and no more). To see why, consider first that protection from violence is a basket of goods, not a single item. The market can provide some of these goods (for example, night watchmen for neighborhood defense) and perhaps cannot satisfactorily provide others (for example, armed forces for national defense).

Recognizing that protection from violence is a basket of goods will help us to see that the multiplier effect is not necessary to induce rational consent to state involvement in the protection business. Why? Because one aspect of such protection, namely national defense, involves creating and deploying arms, rather than surrendering them. So state involvement in providing national defense is not motivated by the multiplier effect. Yet, if Hobbesian bargainers delegate any task to the state, it is likely to be national defense, despite the absence of multiplier effect.

Nor is the multiplier effect sufficient to induce rational consent to state provision of protection. The multiplier effect is manifestly a feature of neighborhood defense (I would put my sword away if only my neighbors would stop carrying theirs.), yet my house might be better