

ON THE RATIONAL JUSTIFICATION OF THE STATE

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THE general relation between government (or the state) and human freedom is of perennial interest to political philosophers. Recently Richard Taylor has offered his views on the subject in *Freedom, Anarchy, and the Law*.¹ In this clearly argued little book, Taylor deals with several related questions: questions of the justification, legitimacy, and purpose of government, as well as questions concerning political liberty and obligation. I shall be centering on his treatment of the justificatory problem and, more narrowly, on his solution to it.² Taylor poses the question in the following way, initially: "What is the rational justification for the government of some men by others, in case any such justification exists?" (p. 1).

While never offering a truly explicit definition of the term, Taylor identifies "government" or "the state" with "rule," in particular, "the rule of large numbers of men by few" (p. 2). Furthermore, he links "rule" with "coercion," saying at one point that "government, in a word, is the coercion through threat and force of the many by the few" (p. 94). Thus, his initial statement of the justificatory problem contains a redundancy, albeit a harmless one.

This statement of the problem also is somewhat misleading. One would think that what is at stake is the justification of government as such, and not merely this or that form of it. Some of the things Taylor says in discussing the nature of the problem do lend weight to this interpretation. In chapter 14, "The Problem of Justification," he asserts:

it is commonly thought that the only problem here is justifying this or that *form* of government, it being taken for granted that the institution of government itself needs no justification. But the latter is clearly the prior question; for there can be no question of justifying this or that form of government if government itself is without justification or if, as seems to be pretty

much the case, the justification of it is unknown. It may indeed be that only certain governmental forms and procedures have any justification, and therefore a particular government is justified only by showing that it is of this or that kind; but this cannot be assumed at the outset. [P. 99]

Yet later (p. 125), he argues that "the problem is not that of justifying government as such, but rather, this or that form of it. . . . no philosopher needs to feel called upon for a defense of government in opposition to its absence." How does Taylor support this apparent shift? His argument goes something like this: Since man is by nature a social or political animal, the state is not something he simply chooses. Even though its various forms and structures are of human creation, they are all variations upon something that is not, viz., social life itself. The latter is of necessity life within a legal order of one kind or another: human deference to rule is everywhere one of the most conspicuous of human traits—it is no corruption of human nature but part of the expression of that nature.

It is likewise worth noting that Taylor does not claim that the state for which he tries to provide a rational justification is identical in all relevant respects to any actual state, past or present. He believes that probably no state in the history of the world has measured up to the standard he applies and that most governments have done considerable violence to it. Nevertheless, he is convinced that it is within the realm of possibility for a government to measure up and to do so with a "form" rather like that of some states found in the world.

What he has in mind by this *form* is a state with a legal order exhibiting the following two basic features: (1) its public officials are responsible in that "what they do in an official capacity is open and subject to public scrutiny and unrestricted criticism" and in that "their tenure of office may be terminated by those governed, either directly or indirectly, by procedures not overwhelmingly difficult to invoke," and (2) "its criminal law is generated according to the principle of liberty"—the principle that "nothing is made criminal by law that is not a fraud, theft, or assault, nothing that is not naturally injurious" (p. 126). While both are important formal characteristics of the state, the second in particular bears a vital connection with the standard Taylor applies to a state in order to determine whether it is justified. This standard, in brief, is the promotion of individual human freedom.

Reference to the freedom standard will serve to point up a distinctive feature of Taylor's analysis. Government, in his view,

is best thought of as an activity rather than as a relationship between men. Accordingly, it is justified neither by its form (e.g., whether it is democratic in character) nor by the particular relationship that it establishes between rulers and ruled (e.g., whether those who hold political power are in some sense "chosen" by those whom they govern), but rather by the ends or purposes it pursues and by its effectiveness in attaining them. In this respect, he claims to be utilizing a justificatory procedure different from the usual (p. 124).

If one asks why the expansion and enhancement of freedom is deemed the ultimate justification of the state, the answer is that freedom is "the unqualified good, and the necessary condition for the realization of any goodness" (p. 118). Given this commitment to the goodness and indispensability of freedom, it is easy to understand why the basic problem of government, the justification of rule, poses such an enormous difficulty. "The appropriate image of the state," Taylor admits, "is that of a hierarchy of authority that reaches to a supreme authority or sovereign power and is enforced at every level by the overwhelming force of leviathan" (p. 118). In short, coercion is inseparable from government. And coercion is antithetical to freedom—or so it seems. The task of the political philosopher bent on defending the state is to remove this apparent paradox without abandoning the dictates of reason. Taylor believes that,

notwithstanding appearances, the state, even with all its seemingly oppressive apparatus and numberless laws that are enforced at every turn by threats, can in fact be the guarantor of individual freedom. . . . [Indeed,] it is within the state, and by means of it alone, that individual freedom is not merely secured but, to a large extent, found. [P. 119]

In his view, there are two essential aspects of freedom, one negative and the other positive. The one he refers to as the freedom of permission, which has to do with the extent of the restraints upon or obstacles to one's activities. The lesser the restraints imposed on one, the greater the freedom in its permissive aspect. He calls the other aspect the freedom of enablement, referring to the extent to which one has the means to do what one wants to do. The more readily available the means to achieve one's wishes, the greater the enablement aspect of freedom. One is totally or fully free only if one has no obstacles to the achievement of his ends and also has the means to achieve them.

A justified state protects the freedom of permission by criminal

law, i.e., law that defines crimes and offenses and provides punishment for the commission of them. By definition, such a state has the two formal features previously mentioned—most importantly, the feature that defines the nature of the principle of liberty on which the criminal law must be based if it is to be satisfactory. To be sure, enforcement of the criminal law does abrogate one freedom, the freedom to injure, but the net effect of the abrogation is actually the enlargement of freedom. For example, if someone wishes, for whatever reason, to injure me and is prevented from doing so by the state through its criminal law, his freedom is curtailed; but my freedom is greatly enlarged thereby, and taking the two together, there is an enormous net gain of freedom. Thus, “the criminal law nourishes freedom rather than compromising it, provided it is enacted and enforced according to the principle of preventing injury” (p. 127). Therein lies the rational justification of the state insofar as the permissive aspect of freedom is concerned.

To a limited degree, proper protection of the freedom of permission gives rise to the freedom of enablement. For provided that they do not inflict natural injury upon others, those subject to the criminal law are prevented neither by law nor by threat of natural injury by their neighbors from doing whatever they please—clearly, a form of enablement. Taylor maintains, however, that these results do not adequately serve the freedom of enablement, since “many of men’s ends, particularly in view of the advanced state of modern technology, are unattainable just on the strength of the resources they happen to find at hand.” Purely on his own, a man “cannot always peacefully settle a dispute with his neighbor, keep trespassers from demolishing his fields, nor even do anything so simple as post a letter.” (P. 131) Accordingly, it is the function of the civil law to fill the gap between ends and means, thereby promoting the freedom of enablement to a more satisfactory degree.

Taylor contends that this (positive) aspect of freedom is promoted in two basic ways by the civil law: (1) by protection of the common good—by which he means anything of deep concern to all, easily threatened by a few, and in need of overwhelming power for its protection (i.e., power greater than what can be summoned by any man or combination of men within the state)—e.g., provisions for protecting species of wildlife threatened with extinction, for the peaceful settlement of disputes between neighbors, for protecting the environment against pollution and corruption; and (2) by provision of certain services, e.g., public schooling, construction of roads and bridges, and administration of welfare payments. What distinguishes protection of the common good from the pro-

vision of services is that the latter frequently are performed by nongovernmental agencies and sometimes are not of deep concern to all but only to certain groups. What justifies the existence of the state in relation to (1) is the fact that nothing less than the overwhelming power of the state can promote it satisfactorily. What justifies its existence in relation to (2) is the fact (if it be such in any particular instance) that "state provision is (a) cheaper, or (b) more fair, through its enablement of wider participation than would be possible otherwise, or (c) more effective, in requiring resources available only to the state." (P. 133).

Let this suffice as an outline of Taylor's answer to the question of the rational justification of the state. In what follows I shall comment critically on some of the prominent features of his argument—adding, where necessary, relevant details of his discussion that were omitted from the outline. Before proceeding, however, there are a couple of remarks of an interpretive nature that need to be made.

It is clear, first of all, that Taylor's attempt to justify the state or government is not a univocal one. What he tries to support, in effect, is certain types or subtypes of government activity, providing separate justifications for each. Thus, the justification for state action to protect the common good is separate and different from its justification in the case of providing services. Second, it is important to distinguish in Taylor's analysis between the conditions he claims must be met to justify this or that type of government or state activity and his stand on whether these conditions can be met, in principle or practice. One might agree that in order for a given government activity to be justified it must meet a particular criterion or condition and yet disagree that this condition can be met. The converse holds, too.

When Taylor asks that we view government as an activity rather than as a relationship between men, he has in mind modern democratic government. He admits that the conception of government as the relation of ruler to ruled, sovereign to subject, master to servant, was once essentially correct and that even democratic social and political life has not changed so drastically that this conception has become totally false. Nevertheless, he thinks it is a distortion. As he puts it, "if governed life were simply life subjugated to overpowering rule, then the philosophical problems of justification would be insuperable, and anarchism would be the only political doctrine rationally defensible" (p. 121).

Several things may be said in response to this. First, insofar as Taylor is suggesting that we can think of government, any govern-

ment, simply in terms of the concept of activity and not at all in terms of the ruler/ruled relation, *his* view is a distortion. We must think of it as an activity of a certain kind. But once we try to spell out its peculiar nature, we will be forced to introduce the notion of the hegemonic bond. Activity that does not involve this connection is simply not governmental activity. At one point (p. 11), Taylor says: "it is of the very essence of government that those governed must obey, under threat of penalty for failure to do so. This is true of the modern democratic state as well as of the worst despotism." Actually, government is and always has been both an activity and a relationship between men. Furthermore, if governed life were simply an activity and not at all life subjugated to overpowering rule, then there would be no philosophical problem of justification at all—at any rate, no problem of the sort Taylor wants to tackle. It is precisely because of the hegemonic relation embodied in governmental activity that his justificatory problem arises in the first place. He wants to stress the activity concept because this provides the basis for the notion of justification in terms of ends. I agree that in trying to justify government it is permissible to view it as an activity and thus to look to the ends it seeks to achieve. But in so doing one must not lose sight of the kind of activity it is and hence of the basic relationship it establishes between men.

I can accept Taylor's claim that the ultimate justification of the state, if it has one, is to be found in the promotion of individual freedom. Nevertheless, his double-aspect theory of freedom is troublesome. He says that "a man might remain quite unfree even in the absence of . . . obstacles or restraints, for he might lack the means to do what he wants to do" (p. 119). Presumably, such a man would also be unfree in the presence of the means to achieve his wishes if he were to face a situation that prevented his use of them. In other words, the absence of obstacles (freedom of permission) and the possession of requisite means (freedom of enablement) are individually necessary and collectively sufficient conditions of freedom. Perhaps there is a clear, unequivocal sense of "free" that fully fits this description, though I wonder. One implication would be that the mere fact that my wishes exceed my grasp is sufficient to keep me to a degree unfree—even if there are no restraints placed on me. On the assumption that happiness means, among other things, being in possession of the means necessary to achieve one's ends, one effect of this usage of "free" would be to make the conceptual "distance" between freedom and happiness very narrow indeed. I am not at all sure ordinary language supports this. Be this as it may, I think there is a clear

sense of the term that does not fit the description, and there are reasons why Taylor should acknowledge and deal with it.

We commonly distinguish between someone's being free to do something and his being able to do it. I am free to purchase a 747 jet, but I dare say that I do not have the means to do so—and never will!³ Taylor admits that most who have considered the nature of freedom in this context have supposed that freedom is measurable in terms of the permissive aspect alone. Yet he seems unable to bring himself to accept this as sufficient evidence for acknowledging this "aspect" as itself constituting a bona fide sense of the term. Of course, if he were to do so, it would mean that he would have to offer a separate support for the freedom of enablement as an ultimate end of government. This he apparently is not prepared to do.

I submit that the problem of justifying the state, as Taylor himself poses it, is a problem concerned solely with what he calls the freedom of permission. It is this freedom alone that is the unqualified good and the necessary condition of all goodness. What gives rise to the question of the justification of government is the fact that government places obstacles or restraints on people. To justify government is to remove (or at least to reduce to the maximum extent possible) the implied paradox—and that's it, period. Suppose the state does foster freedom of enablement through its civil law: that it is the only agency or institution that can protect the common good and is superior to any other organization in providing important services apart from those involved in protecting the common good. So what? What bearing do these activities have on the issue of the justification of the state? Does the promotion of freedom of enablement, as delineated, necessarily or even probably carry with it the promotion of the freedom of permission? If so, Taylor never says it does. I suggest that it would be very difficult indeed to prove that it does. It might be easier to prove that enhancing freedom of enablement has an *adverse* effect on the freedom of permission. Some forms of taxation (e.g., the "hidden tax" of currency inflation) seemingly needed in its enhancement may well be characterized as theft.

But let us grant for the sake of argument that the relevancy question is settled in Taylor's favor and thus that the appeal to the promotion of freedom of enablement is a valid criterion for determining the justification of the state. There are still serious questions regarding his "implementation" of it. Are protection of the common good and the provision of services to groups, as he envisages them, sufficient to promote this aspect of freedom ade-

quately? What about the charge that this is not enough—that, in order to be justified, the state must provide to the fullest extent possible the means (when otherwise unavailable) that will enable everyone to do whatever he wants whenever he wants to do it (provided only that doing it does not violate the criminal law)? At any rate, why shouldn't the state be required to supply the means, or at least be prepared to furnish them on demand, for the attainment of that which is of deep concern to each individual as an individual, means he cannot come up with on *his own*? Since, according to Taylor, it is the promotion of individual freedom that is the general end of government, and since he holds that freedom of enablement is an essential aspect of that freedom, he can hardly say that this charge is ridiculous. However, since he does not develop a theory of the proper specific ends of government in relation to the freedom of enablement, he is not in a good position to answer it. Why shouldn't a Taylorian government need to cater to the idiosyncratic purposes of its citizens? If, in addition to protecting the common good, government activity involving the provision of services to relatively large groups is justified, then why not government activity involving services to groups of any size, including "groups" of one? Shouldn't the only proviso be that the state can provide these services more satisfactorily than others?

On the other hand, why should justified governmental activity include the provision of services at all? Why shouldn't promotion of the freedom of enablement be confined to protecting the common good? Is the mere fact (if it be such) that state provision is cheaper or more fair or more effective sufficient to justify intervention into the market, with the almost certain economic distortions that would result therefrom? Surely, the mere fact that these services are cheaper, say, is not enough. The same for the other two conditions taken singly. Taken collectively, their presence in a particular instance would of course make a more imposing case for state action. Yet even here there is a question whether it is sufficient justification. Given the diversity and virtual unlimitedness of human wants and desires and the scarcity of resources needed to satisfy them, there is no way for any state provision of a service to avoid supervening or conflicting with the value preferences of some individuals. Enlargement of freedom of enablement for the many through the provision of services may inevitably bring its diminution for the few.

What I am suggesting is both arbitrariness and dubiousness in what Taylor asks us to accept as means of "implementing" the criterion of the promotion of freedom of enablement. But this is

not all. For one thing, it is an open question whether the conditions Taylor lists to justify provision of services by the state are always consistent with each other. For example, it seems possible for a particular service to be such that its provision by the state can only be cheaper (than nonstate provision) if it is less fair, i.e., enables lesser participation than would otherwise be possible. Conversely, it is more fair only if it is more expensive. Taylor offers no guidelines as to what should be done in an instance of this sort. Furthermore, one might question the adequacy of at least one of the three conditions. Is it proper to identify the degree of fairness with the degree of enabled participation in a service? The egalitarianism implicit in this identification cannot be taken as self-evident, especially in the light of Nozick's recent work on the entitlement theory of justice.⁴ Finally, there is the very real possibility that the other two conditions cannot be met in practice. Taylor himself acknowledges this when he says that "experience repeatedly shows that governmental agencies, drawing upon virtually inexhaustible public treasuries, do nothing cheaply or efficiently" (p. 134).

The notion of the common good may be similarly suspect. If something is really of deep concern to all, will it be easily threatened by a few *except by accident*? And will the presence of overwhelming power, as Taylor defines it, be any better able to prevent accidents than lesser powers? In fact, why wouldn't overwhelming power offer an even greater threat by a few—viz., by the rulers of the state—than power of lesser magnitude? Taylor could respond that this misrepresents his concept of overwhelming power. Yet what kind of sense can be made of power greater than what can be summoned by any man or combination of men? Actual power can be wielded only by real men, individually or in combination. Power above and beyond this is mythical. Even the idea of that which is of deep concern to all is troublesome. The highly general things Taylor mentions under this heading are simply not of deep concern to all—not of equally deep concern, anyway. This becomes apparent when concrete proposals for action are made in these areas.

Granting that the notion of the common good is coherent and nonvacuous, there is still the question whether government activity in connection with it is really justified by what Taylor claims. As we have seen, the proffered justification is that no other kind of activity can provide the protection: only the state, through its civil law, has the requisite power. Really, there are two claims here: (1) that only the state can protect the common good, and

(2) that, if only the state can protect it, the existence of the state is justified.⁵ Claim (1) seems clearly to be true, indeed trivially true. Substitution of his definition of "the common good" into the statement "Only the state can protect the common good" yields a tautology. Ultimately it may be reduced to: "Only the state can protect that which only the state can protect." With respect to (2), the situation is more complex. Certainly this claim is not a tautology; nor does it appear to be true as it stands. Suppose, however, that we add to its antecedent a claim to the effect that the common good needs to be protected. In view of Taylor's concept of the common good, this added claim is at least highly plausible in its own right and when incorporated into (2) produces the following necessarily (though nontautologically) true statement:

If the common good needs to be protected and only the state can protect it, then the existence of the state is justified.

What I am suggesting is that the key to this phase of Taylor's attempt to justify the state lies in his notion of the common good. Once one accepts the viability of this concept, one is pretty much committed to accepting his justificatory line.

Actually, I am inclined to think that in order to justify the protection of the common good (where defined simply as that which is of deep concern to all and easily threatened by a few), it is not necessary to argue that only the state can protect it. If one could successfully argue that its protection can be secured more satisfactorily by the state than by any other agency or institution, this should be sufficient—at any rate, as sufficient as it would be in connection with the provision of services. In other words, when the question-begging feature of the concept of the common good is removed, it becomes evident that the justificatory device Taylor uses is more stringent than is necessary. In the end, this may make no difference, for the difficulties raised here concerning the provision of services would have to be met. But the general philosophical point is worth making.

So much for my doubts concerning Taylor's "implementation" of his criterion of the promotion of freedom of enablement as a justification of government. If warranted, they raise grave questions about the applicability of the criterion itself. Apart from protecting the common good and providing services to groups, what legitimate role can government play in promoting the positive aspect of freedom?

Let us turn now to what Taylor calls the negative aspect of freedom and to his claim that government activity is justified if

it protects the freedom of permission of its citizens through a criminal law that is drafted in accordance with the principle of liberty. What about this claim? Is it defensible? To make this determination, it will be important to address the following questions: (1) Can a state, any state, properly generate and enforce its criminal law? (2) Can a state, any state, protect the freedom of permission of its citizens? (3) If a state properly generates and enforces its criminal law, will it protect the freedom of permission of its citizens? (4) If a state protects the freedom of permission of its citizens, will it be a justified state?

As far as the first two questions are concerned, it must be kept in mind that it is not necessarily any actual state, past or present, that is being judged. The concern is with (allegedly) possible states, states that meet certain abstract conditions. I can see nothing incoherent in the idea of a state that, in addition to insisting on the accountability of its rulers, generates and enforces a criminal law of the type indicated. The same for the idea of a state that protects the freedom of permission of its citizens. The likelihood of there ever being a state that can consistently, over the long haul, meet these conditions is another question. The historical record does not provide much ground for hope.

In regard to the third question, I think that the answer is clearly affirmative—in fact, necessarily affirmative. Protection of the freedom of permission is an analytical consequence of the kind of state Taylor envisages. The situation is parallel to one encountered in discussing the notion of the common good. It is true by definition that a state that properly generates and enforces its criminal law will protect the freedom of permission of its citizens. I see no possibility of criticism here.

The fourth question, clearly the most intriguing and crucial, gives rise to points similar to those previously touched upon. The mere fact that a state protects the freedom of permission of its citizens does not necessarily imply that it is justified. One must assume further that such freedom needs to be protected and that the state can protect it more satisfactorily than can nongovernmental agencies. Since he holds that “freedom [including the freedom of permission] is . . . possible only within a legal order, or what is the same thing, only within the vastly powerful state” (p. 136), Taylor obviously holds that nongovernmental agencies cannot do the job. Few would argue against the need to protect the freedom of permission. Murray Rothbard and other libertarian anarchists have argued strenuously, however, against the identification of a legal order with the state and have tried to show that

defense services (including police protection and judicial findings) could be satisfactorily supplied by people or firms who gain their revenue voluntarily rather than coercively, as does the state.⁶ In other words, a lawful but stateless society is not only possible but workable. I do not contend that Rothbard and friends have definitely refuted Taylor, but I do maintain that, in effect, they have shown that Taylor is entirely too uncritical with respect to the role of government in the protection of freedom of permission. Taylor has not demonstrated either that the state alone can protect freedom of permission or that it can protect such freedom more satisfactorily than nongovernment institutions.

This leads to another point. Some, while admitting that Taylor has not proven his claim, would contend that, in the light of recent work by such libertarian theorists as Nozick, Hospers, and Machan in support of the minimal state or strictly limited government,⁷ the burden of proof in this matter has been lifted from Taylor's shoulders. In order to respond to this contention, it will not be necessary to go into the details of the arguments of Nozick et al. It is sufficient to note that they are based primarily on an appeal to natural rights. Thus, the question of the justification of the state is viewed by them as fundamentally a moral one. In the critical part of his discussion of the justificatory issue, Taylor considers several types of attempt to justify the state, one of which he refers to as being moral in character. Under this heading he briefly discusses natural-rights theory. His crucial claims against these justificatory attempts are that "no government has any way of showing that the moral principles it honors, if any, are true" and that even if one believed that this or that legal order was in fact based upon some true principle of morality or justice, that would not by itself justify its jurisdiction over him (p. 103). To be sure, these claims appear to present problems for Taylor. If valid, they seem not only to prevent him from relying upon Nozick and company for support but also to make it impossible for him to defend his own case concerning the role of government in protecting the freedom of permission. Isn't his own support of freedom at root a moral one? After all, he asserts that freedom is the unqualified good and the necessary means to the achievement of any good whatever. While I think that Taylor can successfully refute this charge, to fully develop his rebuttal would take me quite beyond the scope of this paper. Suffice it to say that, as I understand him, Taylor does not conceive "good" and "evil" as moral predicates.

Perhaps in the last analysis Taylor's position concerning the status of freedom is not all that different from that of the limited-

state libertarians. Nonetheless, it is up to Taylor to show this. It is he who claims to offer a *rational* justification of the state.

To return briefly to the question at hand. Because Taylor is trying to provide a rational justification of the state, it is proper to insist that he show that the state's protection of the freedom of permission is more than merely adequate (however this term may be defined). It must be shown to be superior as well—superior to what private individuals or firms could provide; superior when all relevant factors are taken into consideration. Among the latter is the absence from a stateless yet lawful society of a type of coerciveness inherent in any state-supported legal order. This is an especially important consideration for one, like Taylor, who is trying to overcome “the paradox of government.”

In conclusion, I believe I have uncovered a variety of things that are wrong with or dubious in Taylor's attempt to justify the state. So many things, in fact, that it is not possible to provide a neat summary of them. This is due in large measure to the fact that he does not provide a univocal answer to the justificatory question. What he does, in effect, is to offer separate justificatory schemes for different types of government activity. Presumably, if any of them holds up, the state has been justified—some sort of state, that is. Even then, the state he has justified is not necessarily an actual one, but merely a possible one. I would say an improbable one. Be this as it may, I want to emphasize that my critique has been concerned more with the issue of the satisfactoriness of Taylor's justificatory standards than with the question of whether these standards can (or are likely to) be met.

1. Richard Taylor, *Freedom, Anarchy, and the Law* (Englewood Cliffs, N.J.: Prentice-Hall, 1973).

2. In addition to his own solution, Taylor considers and rejects others. For his criticism of theories of the moral justification of government, the theory of utility, the theory of self-government, and the traditional theory of contract, see chaps. 15, 16.

3. For good discussions of the free/able distinction, see Fritz Machlup, “Liberalism and the Choice of Freedoms,” in *Roads to Freedom: Essays in Honour of Friedrich A. von Hayek*, ed. Erich Streissler (New York: August M. Kelley, 1969); and William A. Parent, “Some Recent Work on the Concept of Liberty,” *American Philosophical Quarterly* 11 (1974), no. 3.

4. See Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), chap. 7.

5. Perhaps it is worth noting at this point that, strictly speaking, Taylor is not committed to claim (2). For presumably in order to be *fully* justified a state must

not merely protect the freedom of permission but also the freedom of enablement. Another way of putting it would be to say that Taylor, by implication, distinguishes between government activity and the state in talking about rational justification and maintains that whereas protection of the freedom of permission justifies government activity, protection of such freedom alone does not justify the existence of the state. Government activity in connection with the promotion of the freedom of enablement is also required. Except for an indirect reference at the end of the paper, I shall be skating over this subtlety in what follows.

6. See Murray N. Rothbard, "On Freedom and the Law," *New Individualist Review*, Winter 1962; *Man, Economy, and State* (Princeton, N. J.: D. Van Nostrand, 1962); *Power and Market* (Menlo Park, Ca.: Institute for Humane Studies, 1970); and *For A New Liberty* (New York: Macmillan, 1973).

7. See Nozick; John Hospers, *Libertarianism* (Santa Barbara, Ca.: Reason Press, 1971); and Tibor R. Machan, *Human Rights and Human Liberties* (Chicago: Nelson-Hall, 1975).