

NOTES

CHAPTER 1 / Why State-of-Nature Theory?

1. See Norwood Russell Hanson, *Patterns of Discovery* (New York: Cambridge University Press, 1958), pp. 119–120, and his quotation from Heisenberg (p. 212). Though the X (color, heat, and so on) of an object can be explained in terms of its being composed of parts of certain X-quality (colors in certain array, average heat of parts, and so on), the *whole* realm of X cannot be explained or understood in this manner.

2. Carl G. Hempel, *Aspects of Scientific Explanation* (New York: The Free Press, 1965), pp. 247–249, 273–278, 293–295, 338.

CHAPTER 2 / The State of Nature

1. John Locke, *Two Treatises of Government*, 2nd ed., ed. Peter Laslett (New York: Cambridge University Press, 1967). Unless otherwise specified, all references are to the *Second Treatise*.

2. On the difficulties of binding oneself into a position, and on tacit agreements, see Thomas Schelling's *The Strategy of Conflict* (Cambridge, Mass.: Harvard University Press, 1960).

3. Others may punish, without his call; see the further discussion in Chapter 5 of this book.

4. We shall see (p. 18) how money may exist in a state of nature without an explicit agreement that establishes a medium of exchange. Private protective services have been proposed and discussed by various writers in the individualist-anarchist tradition. For background, see Lysander Spooner, *NO TREASON: The Constitution of No Authority* (1870), *Natural Law*, and *A Letter to Grover Cleveland on His False Inaugural Address; The Usurpation and Crimes of Law-makers and Judges, and the Consequent Poverty, Ignorance, and Servitude of the People* (Boston: Benjamin R. Tucker, 1886), all republished in *The Collected Works of Lysander Spooner*, 6 vols. (Weston, Mass.: M & S Press, 1971). Benjamin R. Tucker discusses the operation of a social system in which all protective functions are privately supplied in *Instead of a Book* (New York, 1893), pp. 14, 25, 32–33, 36, 43, 104, 326–329, 340–341, many passages of which are reprinted in his *Individual Liberty*, ed. Clarence Lee Swartz (New York, 1926). It cannot be overemphasized how lively, stimulating, and interesting are the writings and arguments of Spooner and Tucker, so much so that one hesitates to mention any secondary source. But see also James J. Martin's able and interesting *Men*

Against the State: The Expositors of Individualist Anarchism in America, 1827-1908 for a description of the lives and views of Spooner, Tucker, and other writers in their tradition. See also the more extended discussion of the private protection scheme in Francis Tandy, *Voluntary Socialism* (Denver: F. D. Tandy, 1896), pp. 62-78. A critical discussion of the scheme is presented in John Hospers, *Libertarianism* (Los Angeles: Nash, 1971), chap. 11. A recent proponent is Murray N. Rothbard, who in *Power and Market* (Menlo Park, Calif.: Institute for Humane Studies, Inc., 1970), pp. 1-7, 120-123, briefly describes how he believes the scheme might operate and attempts to meet some objections to it. The most detailed discussion I know is in Morris and Linda Tannehill, *The Market for Liberty* (Lansing, Mich.: privately printed, 1970), especially pp. 65-115. Since I wrote this work in 1972, Rothbard has more extensively presented his views in *For a New Liberty* (New York: Macmillan, 1973), chaps. 3 and 11, and David Friedman has defended anarcho-capitalism with gusto in *The Machinery of Freedom* (New York: Harper & Row, 1973), pt. III. Each of these works is well worth reading, but neither leads me to revise what I say here.

5. See I. B. Singer, *In My Father's Court* (New York: Farrar, Strauss, and Giroux, 1966); for a recent "counterculture" example see *WIN Magazine*, November 1, 1971, pp. 11-17.

6. Exercise for the reader: describe how the considerations discussed here and below lead to each geographical area having one agency or a federal structure of agencies dominant within it, even if initially the area contains a group of agencies over which "wins almost all the battles with" is a connected relation and a nontransitive one.

7. See Kenneth R. Boulding, *Conflict and Defense* (New York: Harper, 1962), chap. 12.

8. For an indication of the complexity of such a body of rules, see American Law Institute, *Conflict of Laws; Second Restatement of the Law*, Proposed Official Draft, 1967-1969.

9. See Yale Brozen, "Is Government the Source of Monopoly?" *The Intercollegiate Review*, 5, no. 2 (1968-69), 67-78; Fritz Machlup, *The Political Economy of Monopoly* (Baltimore: Johns Hopkins Press, 1952).

10. Locke assumed that the preponderant majority, though not all, of the persons living in the state of nature would accept the law of nature. See Richard Ashcroft, "Locke's State of Nature," *American Political Science Review*, September 1968, pp. 898-915, especially pt. I.

11. See Morris and Linda Tannehill, *The Market for Liberty*; on the importance of voluntary cooperation to the functioning of governments see, for example, Adam Roberts, ed., *Civilian Resistance as National Defense* (Baltimore: Penguin Books, 1969) and Gene Sharp, *The Politics of Non-Violent Action* (Boston: Porter Sargent, 1973).

12. See Ludwig Von Mises, *The Theory of Money and Credit*, 2nd ed. (New Haven, Conn.: Yale University Press, 1953), pp. 30-34, from which I have taken this story.

13. For the beginnings of a treatment of issues that an account of invisible-hand explanations must consider, see F. A. Hayek's essays, "Notes on the Evolution of Systems of Rules of Conduct" and "The Results of Human Action but not of Human Design," in his *Studies in Philosophy, Politics, and Economics* (Chicago: University of Chicago Press, 1967), as well as Chapters 2 and 4 of his

Constitution of Liberty (Chicago: University of Chicago Press, 1960). See also the discussion of design devices and filter devices in Chapter 10 of this book. To see how close we are to the beginnings, notice that nothing said herein explains why not every scientific explanation (that does not appeal to intentions) of a functional relationship between variables is an invisible-hand explanation.

14. See Max Weber, *Theory of Social and Economic Organization* (New York: Free Press, 1947), p. 156; and Max Rheinstein, ed., *Max Weber on Law in Economy and Society* (Cambridge, Mass.: Harvard University Press, 1954), Ch. 13.

15. Compare H. L. A. Hart's treatment of the parallel problem for the existence of a legal system in *The Concept of Law* (Oxford: The Clarendon Press, 1961), pp. 113–120.

16. On the claim that physicians do this, see Reuben Kessell, "Price Discrimination in Medicine," *Journal of Law and Economics*, 1, no. 1 (October 1958), 20–53.

CHAPTER 3 / Moral Constraints and the State

1. Here and in the next section I draw upon and amplify my discussion of these issues in footnote 4 of "On the Randian Argument," *The Personalist*, Spring 1971.

2. For a clear statement that this view is mistaken, see John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), pp. 30, 565–566.

3. Which does which? Often a useful question to ask, as in the following:
—“What is the difference between a Zen master and an analytic philosopher?”

—“One talks riddles and the other riddles talks.”

4. *Groundwork of the Metaphysic of Morals*. Translated by H. J. Paton, *The Moral Law* (London: Hutchinson, 1956), p. 96.

5. See John Rawls, *A Theory of Justice*, sects. 5, 6, 30.

6. See Gilbert Harman, "The Inference to the Best Explanation," *Philosophical Review*, 1965, pp. 88–95, and *Thought* (Princeton, N.J.: Princeton University Press, 1973), chaps. 8, 10.

7. See Judith Jarvis Thomson, "A Defense of Abortion," *Philosophy and Public Affairs*, 1, no. 2 (Fall 1971), 52–53. Since my discussion was written, John Hospers has discussed similar issues in a two-part essay, "Some Problems about Punishment and the Retaliatory Use of Force," *Reason*, November 1972 and January 1973.

8. Recall the Yiddish joke:

—“Life is so terrible; it would be better never to have been conceived.”

—“Yes, but who is so fortunate? Not one in a thousand.”

9. “Is there any reason why we should be suffered to torment them? Not any that I can see. Are there any why we should *not* be suffered to torment them? Yes, several. . . . It may come one day to be recognized, that the number of the legs, the villosity of the skin, or the termination of the os sacrum, are reasons equally insufficient for abandoning a sensitive being to the same fate. What else is it that should trace the insuperable line? Is it the faculty of reason, or, perhaps the faculty of discourse? But a full grown horse or dog is beyond comparison a more rational, as well as a more conversible animal, than an infant

of a day, or a week, or even a month old. But suppose this case were otherwise, what would it avail? The question is not, Can they *reason*? nor can they *talk*? but, Can they *suffer*?" Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, chap. 17, sect. 4, n. 1. Before these words quoted, Bentham discusses the eating of animals, which he holds to be permissible because the animals don't have long-protracted anticipations of future misery through knowing they are going to die, and because the death people inflict on them is less painful than the one they would suffer in the course of nature.

10. This point was suggested to me by Mr. Thom Krystofiak.

11. At least one philosopher has questioned whether we have good reason to weight animals' interests less than our own and to impose limitations less stringent on their treatment than on the treatment of people. See Leonard Nelson, *System of Ethics* (New Haven, Conn.: Yale University Press, 1956), sects. 66, 67. After my discussion of animals was written, this issue was raised in an interesting essay by Peter Singer, "Animal Liberation," *New York Review of Books*, April 5, 1973, pp. 17-21. Unfortunately, Singer treats as a difficult issue whether rats may be killed to be stopped from biting children. It would be useful here to apply principles about response to innocent threats (see page 35 above).

CHAPTER 4 / Prohibition, Compensation, and Risk

1. Contrast this with Kant's view that "everyone may use violent means to compel another to enter into a juridical state of society." *The Metaphysical Elements of Justice*, trans. John Ladd (Indianapolis: Bobbs-Merrill, 1965), sect. 44; and see our further discussion in Chapter 6.

2. Rothbard seems to favor this alternative. "Suppose that Smith, convinced of Jones' guilt, 'takes the law into his own hands' rather than going through the court procedure? What then? In itself this would be legitimate and not punishable as a crime, since no court or agency may have the right, in a free society, to use force for defense beyond the selfsame right of each individual. However, Smith would then have to face the consequence of a possible countersuit and trial by Jones, and he himself would have to face punishment as a criminal if Jones is found to be innocent." *Power and Market* (Menlo Park, Calif.: Institute for Humane Studies Inc, 1970), p. 197, n. 3.

3. See also the symposium "Is Government Necessary?" *The Personalist*, Spring 1971.

4. Related issues that natural-rights theories must cope with are interestingly treated in Erving Goffman, *Relations in Public* (New York: Basic Books, 1971), chaps. 2, 4.

5. If Locke would allow special paternalistic restrictions, then perhaps a person legitimately could give another the permission and the right to do something he may not do to himself: for example, a person might permit a doctor to treat him according to the doctor's best judgment, though lacking the right to treat himself.

6. These questions and our subsequent discussion are repeated (with stylistic improvements) from a February 1972 draft circulated under the title of Part I of this book. Independently, Guido Calabresi and A. Douglas Melamed, "Property Rules, Liability Rules, and Inalienability," *Harvard Law Review*, 85, no. 6

(April 1972), 1089–1128, discuss similar questions and some themes treated here.

7. For example, we might suppose that each person's net assets are recorded in some central computer, and that each has a cash balance sufficient to pay off any claim against him. (We shall see later how interesting problems arise when we relax this latter assumption.) Purchases involve adding the price to the seller's balance while subtracting it from the purchaser's. A judgment is upheld against a person by transferring an amount from his account to his victim's; there is no possibility of refusing to pay. We mention this to sharpen our question, not to recommend the computerized system.

8. See Peter Newman, *The Theory of Exchange* (Englewood Cliffs, N.J.: Prentice-Hall, 1965), chap. 3.

9. On the more usual role of middlemen see Armen Alchian and W. R. Allen, *University Economics*, 2nd ed. (Belmont, Calif.: Wadsworth, 1967), pp. 29–37, 40.

10. As intensified by the uncertain occurrence of the event? See Martin Seligman et al., "Unpredictable and Uncontrollable Aversive Events," in Robert Brush, ed., *Aversive Conditioning and Learning*, Academic Press, 1971, pp. 347–400, especially Section IV.

11. A rationale of intermediate depth would be provided by the intermediate possibility that any *particular* fear is removable in some social environment or other, though not all fears together. We should note that someone who grants that some specific fears are not removable by a change of the social environment *might* still wonder whether these fears weren't too irrational to be catered to by social policy, though this would be hard to defend in the case of something like fear of bodily harm.

12. See H. L. A. Hart's essay, "Legal Responsibility and Excuses," in *Punishment and Responsibility* (New York: Oxford University Press, 1968), chap. 2. The argument cannot be extended from punishment to compensation, for these costs must fall somewhere. On such questions, see the discussion in Walter Blum and Harry Kalven, Jr., *Public Law Perspectives on a Private Law Problem: Auto Compensation Plans* (Boston: Little, Brown, 1965).

13. A very wide net indeed would be cast by a prohibition on any act whose risked consequence would produce fear if certainly expected, which could be part of a totality of similar acts that produces fear, where whether or not the totality produces fear depends upon how many similar acts it contains.

14. *An Anatomy of Values* (Cambridge, Mass.: Harvard University Press, 1970), chap. 9.

15. The economically most sophisticated discussion of criteria for determining the amount of compensation for loss of life is E. J. Mishan, "Evaluation of Life and Limb: A Theoretical Approach," *Journal of Political Economy*, 1971, pp. 687–705. Unfortunately, Mishan's procedure involves double counting, for the "indirect or derivative risks" (pp. 699–705) of a person's death, including the financial or psychic loss to the others, already will be included, via his own concern for them, in the direct involuntary risk as Mishan explains this. For compensation is to be paid for the direct involuntary risk in an amount sufficient to make the person in question willing to bear that risk of death. On the assumption that people have a right to commit suicide, quit their jobs, and so forth, if

the victim himself isn't concerned about these indirect or derivative risks, they don't seem a cost that may properly be imposed upon another who risks his life or causes his death. After all, could these costs be imposed against the person himself or his estate if *he* committed suicide or quit his job? If, on the other hand, he *is* concerned about these indirect or derivative risks, they (as much as is proper of them) will be included, via *his* concern for them, in the compensation of the direct risk. To this criticism must be added, however, the additional complication that a victim may have *obligations* to others, which he doesn't care about but which he would carry out if he were alive, perhaps due to social or legal pressure. The theoretical determination of appropriate compensation *would* have to include the indirect risks that fall upon persons to whom the victim is obligated though indifferent.

16. I owe this objection to viewing the condition as sufficient to Ronald Hamowy.

CHAPTER 5 / The State

1. Herbert Hart, "Are There Any Natural Rights?" *Philosophical Review*, 1955; John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), sect. 18. My statement of the principle stays close to Rawls'. The argument Rawls offers for this principle constitutes an argument only for the narrower principle of fidelity (bona fide promises are to be kept). Though if there were no way to avoid "can't get started" difficulties about the principle of fidelity (p. 349) other than by appealing to the principle of fairness, it *would* be an argument for the principle of fairness.

2. Hart, "Are There Any Natural Rights?"

3. I have formulated my remarks in terms of the admittedly vague notion of there being a "point" to certain kinds of rights because this, I think, gives Hart's argument its most plausible construction.

4. I have skirted making the institution one that you didn't get a fair say in setting up or deciding its nature, for here Rawls would object that it doesn't satisfy his two principles of justice. Though Rawls does not require that every microinstitution satisfy his two principles of justice, but only the basic structure of the society, he seems to hold that a microinstitution must satisfy these two principles if it is to give rise to obligations under the principle of fairness.

5. The acceptability of our procedures to us may depend on our not knowing this information. See Lawrence Tribe, "Trial by Mathematics," *Harvard Law Review*, 1971.

6. It is a consequence of Locke's view that each citizen is in a state of nature with respect to the highest appeal procedure of the state, since there is no further appeal. Hence he is in a state of nature with respect to the state as a whole. Also, citizens have "a liberty to appeal to Heaven, whenever they judge the cause of sufficient moment. And therefore, though the people cannot be judge, so as to have by the constitution of that society any superior power, to determine and give effective sentence in the case; yet they have, by a Law antecedent and paramount to all positive laws of men, reserved that ultimate determination to themselves, which belongs to all mankind, where there lies no appeal on earth, viz. to judge whether they have just cause to make their appeal to Heaven. And this judgment they cannot part with. . . ." *Two Treatises of Gov-*

ernment, ed. Peter Laslett (New York: Cambridge University Press, 1967), II, sect. 168; see also sects. 20, 21, 90–93, 176, 207, 241, 242.

7. The considerations of this paragraph, though I find them powerful, do not completely remove my uneasiness about the position argued in the text. The reader who wishes to claim, against this book, that special moral principles emerge with regard to the *state* might find this issue a fruitful one to press. Though if I do make a mistake here, it may be one concerning responsibility rather than concerning the state.

8. May someone in a position to know say that he hasn't gotten around to examining the information, and so he will defend himself against anyone's now coming to apply the procedure to him? Presumably not, if the procedure is well known and not of recent origin. But even here, perhaps, a *gift* of some extra time may be made to this person.

9. The category of feared exaction of compensation will be small but non-empty. Exacting compensation may involve activities people fear because it involves compelling them to do compensatory forced labor; might it even be the direct imposition of a feared consequence, because only this can raise the victim to his previous indifference curve?

10. Gilbert Harman proposes simple intertranslatability as a criterion of merely verbal difference in "Quine on Meaning and Existence," *Review of Metaphysics*, 21, no. 1 (September 1967). If we wish to say that two persons with the same beliefs who speak different languages differ only verbally, then Harman's criterion will include as "simple," translations as complex as those between languages. Whatever is to be decided about such cases, the criterion serves in the present instance.

11. May the prohibitors charge the prohibited party for the other costs to him of performing the activity were it unprohibited, such as time, energy, and so on?

12. Here, as at all other places in this essay, "harm" refers only to border crossings.

13. Lawrence Krader, *Formation of the State* (Englewood Cliffs, N.J.: Prentice-Hall, 1968), pp. 21–22.

CHAPTER 6 / Further Considerations on the Argument for the State

1. Locke holds that men may put themselves in a civil society or protective association for, among other things, "a greater security against any that are not of it. This any number of men may do, because it injures not the freedom of the rest; they are left as they were in the liberty of the state of nature." *Two Treatises of Government*, ed. Peter Laslett (New York: Cambridge University Press, 1967), II, sect. 95. (All further references in this chapter are to the *Second Treatise*, unless otherwise noted.) But though it does not injure their freedom by reducing the rights which they have, it does injure their security by making it more likely that they will suffer injustice because they will be unable effectively to defend their own rights. Elsewhere Locke recognizes this point, discussing it in the context of arbitrary acts, though it applies as well to persons acting according to fixed and publicly specified rules: "He being in a much worse condition who is exposed to the arbitrary power of one man, who has the command of

100,000, than he that is exposed to the arbitrary power of 100,000 single men" (sect. 137).

2. For a discussion of the applicability of dominance principles to some puzzling cases, see my "Newcomb's Problem and Two Principles of Choice," in *Essays in Honor of C. G. Hempel*, ed. N. Rescher et al. (Holland: Reidel, 1969), pp. 114-146; also Martin Gardner's "Mathematical Games" column, *Scientific American*, July 1973, pp. 104-109, and my guest mathematical games column, *Scientific American*, March 1974, pp. 102-108.

3. On the "prisoners' dilemma," see R. D. Luce and H. Raiffa, *Games and Decisions* (New York: Wiley, 1957), pp. 94-102.

4. On related issues see Thomas Schelling's essay, "The Reciprocal Fear of Surprise Attack," *The Strategy of Conflict* (Cambridge, Mass.: Harvard University Press, 1960), chap. 9.

5. Since nothing is beyond the leaders of states, it would not be surprising if a nation *A* prohibited nation *B* from arming and incorporated *B* into *A*, claimed that this provided *B*'s citizens with protection, and thus constituted a recognition and fulfillment of *A*'s obligations to compensate them for the disadvantages the prohibition had imposed upon them. *A* would claim to be acting permissibly. It is left as an exercise for the reader to state why this cloak won't cover such aggression.

6. This is *not* to say that the constitutional limits on free speech should be narrower than they are. But since responsibility can continue through the choices of others, perhaps universities properly may impose more stringent limitations on their faculty, occupying a position of special aura and prestige (do they still?), in their dealings with the students at their own universities. (It might also be held, in support of an institutional standard more stringent than the constitutional guarantee in this area, that the vocation of faculty members requires them to take ideas and words with especially great seriousness.) So *perhaps* something like the following *narrow* principle is defensible: If there are actions which it would be legitimate for a university to punish or discipline students for doing, and which it would be legitimate for a university to punish or discipline faculty members for doing, then if a faculty member attempts to and intends to get students at his university to perform these actions and succeeds (as he had intended), then it would be legitimate for the university to discipline or punish the faculty member for this. I ignore here questions about what would be appropriate if the faculty member tries but through no fault or virtue of his own fails. I also ignore the messy questions about what channels of persuasion are covered by the principle: for example, speeches on campus outside class, but not a column written in a local town or city newspaper.

7. I owe these questions to Jerrold Katz.

8. "But because no political society can be, nor subsist, without having in itself the power to preserve the property and, in order thereunto, punish the offenses of all those of that society, there and there only is political society where *everyone* of the members has quitted his natural power to judge of and punish breaches of the law of nature, resigned it up into the hands of the community in all cases that exclude him not from appealing for protection to the law established by it" (sect. 87, italics mine). Does Locke mean that the existence of independents prevents there from being political society in the area, or that the independents are not *members* of a political society which does exist in the area?

(Compare also sect. 89, which does not resolve the issue.) Locke holds that "absolute monarchy, which by some men is counted the only government in the world, is indeed inconsistent with civil society, and so can be no form of civil government at all" (which seems to use the requirements that *all* be included) and goes on to say, "Wherever any persons are who have not such an authority to appeal to for the decision of any difference between them, there those persons are still in the state of nature; and so is every absolute prince, in respect of those who are under his dominion" (sect. 90).

9. Sections 74–76, 105–106, and 112 of the *Second Treatise* might incline one to think that our situation does contain a compact, though note that Locke uses "consent" in these sections rather than "compact." Other sections, and the main thrust of the work, incline one in the opposite direction and have so inclined Locke's commentators. One might also, in considering Locke's discussion of money (sects. 36, 37, 47, 48, 50, 184), play down phrases like "invention of money," "agreed that a little piece of yellow metal . . . should be worth," "by mutual consent," "phantastical imaginary value," and so on, and instead emphasize "tacit agreement," so as to try to get Locke's description to fit the story we have told in Chapter 2.

10. The distinction between "entitlement" and "desert" is discussed by Joel Feinberg in his essay, "Justice and Personal Desert," reprinted in his *Doing and Deserving* (Princeton, N.J.: Princeton University Press, 1970), pp. 55–87. If legitimacy were tied to desert and merit rather than to entitlement (which it isn't), then a dominant protective agency might have it by meriting its dominant market position.

11. Statement 1 below expresses *a*'s being entitled to wield the power, whereas *a*'s being entitled to be the one that wields that power is expressed by statement 2 or 3.

1. *a* is the individual *x* such that *x* wields power *P* and *x* is entitled to wield *P*, and *P* is (almost) all the power there is.
2. *a* is entitled to be the individual *x* such that *x* wields power *P* and *x* is entitled to wield *P*, and *P* is (almost) all the power there is.
3. *a* is entitled to be the individual *x* such that *x* wields power *P* and *x* is entitled to wield *P* and *x* is entitled that *P* be (almost) all the power there is.

12. Rothbard imagines that somehow, in a free society, "the decision of any two courts will be considered binding, i.e., will be the point at which the court will be able to take action against the party adjudged guilty." *Power and Market* (Menlo Park, Calif.: Institute for Humane Studies, 1970), p. 5. *Who* will consider it binding? Is the person against whom the judgment goes morally bound to go along with it? (Even if he knows that it is unjust, or that it rests on a factual mistake?) Why is anyone who has not in advance agreed to such a two-court principle bound by it? Does Rothbard mean anything other than that he expects agencies won't act until two independent courts (the second being an appeals court) have agreed? Why should it be thought that this fact tells us anything about what it is morally permissible for anyone to do, or tells us anything about the authoritative settling of disputes?

13. The contract-like view would have to be stated carefully, so as not to allow unfairly finding a corrupt judge guilty of crimes.

14. See David Lewis, *Convention* (Cambridge, Mass.: Harvard University

Press, 1969), for a philosophical elaboration of Schelling's notion of a coordination game: note especially Lewis' discussion of social contracts in Chapter 3. Our account of the state involves less intentional coordination of action with some other individuals than does Mises' account of a medium of exchange described above in Chapter 2.

Interesting and important questions we cannot pursue here are the extent to which, and under what conditions, clients who give a protective agency whatsoever special legitimacy it possesses bear responsibility for its violations of others' rights, which they did not "authorize" it to do; and what they must do to avoid being responsible for this. (See Hugo Bedau, "Civil Disobedience and Personal Responsibility for Injustice," *The Monist*, 54 (October 1970), 517-535.

15. For the first view see Rothbard, *Man, Economy, and State*, vol. 2 (Los Angeles: Nash, 1971), p. 654; for the second see, for example, Ayn Rand, "Patents and Copyrights," in *Capitalism: the Unknown Ideal* (New York: New American Library, 1966), pp. 125-129.

16. As we have construed the rationale underlying such systems, at any rate. Alan Dershowitz has reminded me that it is possible that some alternative nonpreventive reasons for prohibiting private enforcement of justice might be produced. Were such reasons to survive scrutiny, it would be incorrect to make the strong claim that all legal systems that prohibit private enforcement of justice *presuppose* the legitimacy of *some* preventive considerations.

CHAPTER 7 / Distributive Justice

1. The reader who has looked ahead and seen that the second part of this chapter discusses Rawls' theory mistakenly may think that every remark or argument in the first part against alternative theories of justice is meant to apply to, or anticipate, a criticism of Rawls' theory. This is not so; there are other theories also worth criticizing.

2. See, however, the useful book by Boris Bittker, *The Case for Black Reparations* (New York: Random House, 1973).

3. F. A. Hayek, *The Constitution of Liberty* (Chicago: University of Chicago Press, 1960), p. 87.

4. This question does not imply that they will tolerate any and every patterned distribution. In discussing Hayek's views, Irving Kristol has recently speculated that people will not long tolerate a system that yields distributions patterned in accordance with value rather than merit. (" 'When Virtue Loses All Her Loveliness'—Some Reflections on Capitalism and 'The Free Society,' " *The Public Interest*, Fall 1970, pp. 3-15.) Kristol, following some remarks of Hayek's, equates the merit system with justice. Since some case can be made for the external standard of distribution in accordance with benefit to others, we ask about a weaker (and therefore more plausible) hypothesis.

5. Varying situations continuously from that limit situation to our own would force us to make explicit the underlying rationale of entitlements and to consider whether entitlement considerations lexicographically precede the considerations of the usual theories of distributive justice, so that the *slightest* strand of entitlement outweighs the considerations of the usual theories of distributive justice.

6. See the selection from John Henry MacKay's novel, *The Anarchists*, reprinted in Leonard Krimmerman and Lewis Perry, eds., *Patterns of Anarchy* (New York: Doubleday Anchor Books, 1966), in which an individualist anarchist presses upon a communist anarchist the following question: "Would you, in the system of society which you call 'free Communism' prevent individuals from exchanging their labor among themselves by means of their own medium of exchange? And further: Would you prevent them from occupying land for the purpose of personal use?" The novel continues: "[the] question was not to be escaped. If he answered 'Yes!' he admitted that society had the right of control over the individual and threw overboard the autonomy of the individual which he had always zealously defended; if on the other hand, he answered 'No!' he admitted the right of private property which he had just denied so emphatically. . . . Then he answered 'In Anarchy any number of men must have the right of forming a voluntary association, and so realizing their ideas in practice. Nor can I understand how any one could justly be driven from the land and house which he uses and occupies . . . every serious man must declare himself: for Socialism, and thereby for force and against liberty, or for Anarchism, and thereby for liberty and against force.'" In contrast, we find Noam Chomsky writing, "Any consistent anarchist must oppose private ownership of the means of production," "the consistent anarchist then . . . will be a socialist . . . of a particular sort." Introduction to Daniel Guerin, *Anarchism: From Theory to Practice* (New York: Monthly Review Press, 1970), pages xiii, xv.

7. *Collective Choice and Social Welfare*, Holden-Day, Inc., 1970, chaps. 6 and 6*.

8. Oppression will be less noticeable if the background institutions do not prohibit certain actions that upset the patterning (various exchanges or transfers of entitlement), but rather prevent them from being done, by nullifying them.

9. See Gregory Vlastos, "The Individual as an Object of Love in Plato" in his *Platonic Studies* (Princeton: Princeton University Press, 1973), pp. 3-34.

10. Further details which this statement should include are contained in my essay "Coercion," in *Philosophy, Science, and Method*, ed. S. Morgenbesser, P. Suppes, and M. White (New York: St. Martin, 1969).

11. On the themes in this and the next paragraph, see the writings of Armen Alchian.

12. Compare this with Robert Paul Wolff's "A Refutation of Rawls' Theorem on Justice," *Journal of Philosophy*, March 31, 1966, sect. 2. Wolff's criticism does not apply to Rawls' conception under which the baseline is fixed by the difference principle.

13. I discuss overriding and its moral traces in "Moral Complications and Moral Structures," *Natural Law Forum*, 1968, pp. 1-50.

14. Does the principle of compensation (Chapter 4) introduce patterning considerations? Though it requires compensation for the disadvantages imposed by those seeking security from risks, it is not a patterned principle. For it seeks to remove only those disadvantages which prohibitions inflict on those who might present risks to others, not all disadvantages. It specifies an obligation on those who impose the prohibition, which stems from their own particular acts, to remove a particular complaint those prohibited may make against them.

15. Cambridge, Mass.: Harvard University Press, 1971.

16. Rawls, *Theory of Justice*, p. 4.
17. See Milton Friedman, *Capitalism and Freedom* (Chicago: University of Chicago Press, 1962), p. 165.
18. On the question of why the economy contains firms (of more than one person), and why each individual does not contract and recontract with others, see Ronald H. Coase, "The Nature of the Firm," in *Readings in Price Theory*, ed. George Stigler and Kenneth Boulding (Homewood, Ill.: Irwin, 1952); and Armen A. Alchian and Harold Demsetz, "Production, Information Costs and Economic Organization," *American Economic Review*, 1972, 777-795.
19. We do not, however, assume here or elsewhere the satisfaction of those conditions specified in economists' artificial model of so-called "perfect competition." One appropriate mode of analysis is presented in Israel M. Kirzner, *Market Theory and the Price System* (Princeton, N.J.: Van Nostrand, 1963); see also his *Competition and Entrepreneurship* (Chicago: University of Chicago Press, 1973).
20. See Marc Blaug, *Economic Theory in Retrospect* (Homewood, Ill.: Irwin, 1968), chap. 11, and the references cited therein. For a recent survey of issues about the marginal productivity of capital, see G. C. Harcourt, "Some Cambridge Controversies in the Theory of Capital," *Journal of Economic Literature*, 7, no. 2 (June 1969), 369-405.
21. Rawls, *Theory of Justice*, p. 12.
22. Rawls, *Theory of Justice*, pp. 14-15.
23. Rawls, *Theory of Justice*, sect. 16, especially p. 98.
24. Here we simplify the content of 5, but not to the detriment of our present discussion. Also, of course, beliefs other than 5, when conjoined with 3 would justify the inference to 4; for example belief in the material conditional "If 3, then 4." It is something like 5, though, that is relevant to our discussion here.
25. Rawls, *Theory of Justice*, p. 15.
26. Rawls, *Theory of Justice*, p. 103.
27. But recall the reasons why using magnitudes of entitlement does not capture accurately the entitlement principle (note on p. 157, this chapter).
28. Some years ago, Hayek argued (*The Constitution of Liberty*, chap. 3) that a free capitalist society, over time, raises the position of those worst off more than any alternative institutional structure; to use present terminology, he argued that it best satisfies the end-state principle of justice formulated by the difference principle.
29. This is especially serious in view of the weakness of Rawls' reasons (sect. 82) for placing the liberty principle prior to the difference principle in a lexicographic ordering.
30. "The idea of the original position is to set up a fair procedure so that any principle agreed to will be just. The aim is to use the notion of pure procedural justice as a basis for theory." Rawls, *Theory of Justice*, p. 136.
31. Thomas Scanlon, Jr., "Rawls' Theory of Justice," *University of Pennsylvania Law Review*, 121, No. 5, May 1973, p. 1064.
32. See my "Moral Complications and Moral Structures," *Natural Law Forum*, 13, 1968, especially pp. 11-21.
33. Rawls, *Theory of Justice*, p. 72. Rawls goes on to discuss what he calls a liberal interpretation of his two principles of justice, which is designed to elimi-

nate the influence of social contingencies, but which “intuitively, still appears defective . . . [for] it still permits the distribution of wealth and income to be determined by the natural distribution of abilities and talents . . . distributive shares are decided by the outcome of the natural lottery; and this outcome is arbitrary from a moral perspective. There is no more reason to permit the distribution of income and wealth to be settled by the distribution of natural assets than by historical and social fortune” (pp. 73–74).

34. Rawls, *Theory of Justice*, p. 104.

35. Rawls, *Theory of Justice*, pp. 311–312.

36. Rawls, *Theory of Justice*, p. 15.

37. Rawls, *Theory of Justice*, pp. 538–541.

38. “In order to show that the principles of justice are based in part on envy it would have to be established that one or more of the conditions of the original position arose from this propensity.” *Theory of Justice*, p. 538.

39. For example:

1. Differences between any two persons' holdings should be morally deserved; morally undeserved differences should not exist.
2. Differences between persons in natural assets are morally undeserved.
3. Differences between persons partially determined by other differences that are undeserved are themselves undeserved.

Therefore,

4. Differences between persons' holdings shouldn't be partially determined by differences in their natural assets.

40. Rawls, *Theory of Justice*, p. 310. In the remainder of this section, Rawls goes on to criticize the conception of distribution according to moral desert.

41. “No reason need be given for . . . an equal distribution of benefits—for that is ‘natural’—self-evidently right and just, and needs no justification, since it is in some sense conceived as being self-justified. . . . The assumption is that equality needs no reasons, only inequality does so; that uniformity, regularity, similarity, symmetry, . . . need not be specially accounted for, whereas differences, unsystematic behavior, changes in conduct, need explanation and, as a rule, justification. If I have a cake and there are ten persons among whom I wish to divide it, then if I give exactly one-tenth to each, this will not, at any rate automatically, call for justification; whereas if I depart from this principle of equal division I am expected to produce a special reason. It is some sense of this, however latent, that makes equality an idea which has never seemed intrinsically eccentric. . . .” Isaiah Berlin, “Equality,” reprinted in Frederick A. Olafson, ed. *Justice and Social Policy* (Englewood Cliffs, N.J.: Prentice-Hall, 1961), p. 131. To pursue the analogy with mechanics further, note that it is a substantive theoretical position which specifies a particular state or situation as one which requires no explanation whereas deviations from it are to be explained in terms of external forces. See Ernest Nagel's discussion of D'Alembert's attempt to provide an *a priori* argument for Newton's first law of motion. [*The Structure of Science*, (New York: Harcourt, Brace, and World, 1961), pp. 175–177.]

42. But see also our discussion below of Rawls' view of natural abilities as a collective asset.

43. Rawls, *Theory of Justice*, p. 179.
44. Rawls, *Theory of Justice*, p. 102.
45. Rawls, *Theory of Justice*, p. 27.
46. Rawls, *Theory of Justice*, p. 183.
47. Rawls, *Theory of Justice*, p. 102.
48. "But isn't justice to be tempered with compassion?" Not by the guns of the state. When private persons choose to transfer resources to help others, this fits within the entitlement conception of justice.

CHAPTER 8 / Equality, Envy, Exploitation, Etc.

1. For a useful consideration of various arguments for equality which are not at the most fundamental level, see Walter J. Blum and Harry Kalven, Jr., *The Uneasy Case for Progressive Taxation*, 2nd ed. (Chicago: University of Chicago Press, 1963).

2. Bernard Williams, "The Idea of Equality," in *Philosophy, Politics, and Society*, 2nd ser., ed. Peter Laslett and W. G. Runciman (Oxford: Blackwell, 1962), pp. 110-131; reprinted in Joel Feinberg, ed., *Moral Concepts* (New York: Oxford University Press, 1969).

3. Williams, "The Idea of Equality," pp. 121-122.

4. Perhaps we should understand Rawls' focus on social cooperation as based upon this triadic notion of one person, by dealing with a second, blocking a third person from dealing with the second.

5. See Kurt Vonnegut's story "Harrison Bergeron" in his collection *Welcome to the Monkey House* (New York: Dell, 1970).

6. See on this point, Judith Jarvis Thomson, "A Defense of Abortion," *Philosophy & Public Affairs*, 1, no. 1 (Fall 1971), 55-56.

7. "Men are, in great measure, what they feel themselves to be, and they think of themselves as they are thought of by their fellows. The advance in individual self-respect and in social amenity caused by the softening of the more barbarous inequalities of the past is a contribution to civilization as genuine as the improvement in material conditions." R. H. Tawney, *Equality* (New York: Barnes & Noble, 1964), p. 171. The slightly different connection I shall trace between equality and self-esteem does not go in the first instance through other persons' views.

8. Compare L. P. Hartley's novel, *Facial Justice*; and Blum and Kalven, *The Uneasy Case for Progressive Taxation*, p. 74: "Every experience seems to confirm the dismal hypothesis that envy will find other, and possibly less attractive, places in which to take root." See also Helmut Schoeck, *Envy*, trans. M. Glenny and B. Ross (New York: Harcourt, Brace, Jovanovich, 1972).

9. Might some thrive on no work at all, others on repetitive work that does not demand constant attention and leaves many opportunities for daydreaming?

10. *The Theory of Capitalist Development* (New York: Monthly Review Press, 1956). See also R. L. Meek, *Studies in the Labour Theory of Value* (London: Lawrence & Wishart, 1958), pp. 168-173.

11. See Eugene Von Böhm-Bawerk, *Capital and Interest*, vol. 1 (South Holland, Ill.: Libertarian Press, 1959), chap. 12; and his *Karl Marx and the Close of His System* (Clifton, N.J.: Augustus M. Kelley, 1949).

12. *Capital*, Part I, Chapter I, Section I, page 48.
 13. Marx, *Capital*, Vol. I, Chapter 2, pp. 97–98.
 14. Marx, *Capital*, p. 120. Why “stomach”?
 15. Compare Ernest Mandel, *Marxist Economic Theory*, vol. 1 (New York: Monthly Review Press, 1969), p. 161. “It is precisely through competition that it is discovered whether the amount of labor embodied in a commodity constitutes a *socially necessary* amount or not. . . . When the supply of a certain commodity exceeds the demand for it, that means that more human labor has been spent altogether on producing this commodity than was socially necessary at the given period. . . . When, however, supply is less than demand, that means that less human labor has been expended on producing the commodity in question than was socially necessary.”
 16. Compare the discussion of this issue in Meek, *Studies in the Labour Theory of Value*, pp. 178–179.
 17. See the detailed discussion of his theory in Marc Blaug, *Economic Theory in Retrospect* (Homewood, Ill.: Irwin, 1962), pp. 207–271.
 18. See Israel Kirzner, *Competition and Entrepreneurship* (Chicago: University of Chicago Press, 1973).
 19. Or he sends n different money orders to n different recipients; or n rich people each send an amount to one specific recipient. Since it makes no difference to our argument, we shall make the simplifying assumption of an equal number of rich and poor individuals.
 20. With n individuals in poverty, the utility for this person of no one's being in poverty is greater than

$$\sum_{i=1}^n u \text{ (individual } i \text{ is not in poverty given that the rest remain in poverty).}$$
- This statement uses a notion of conditional utility, on which see my unpublished doctoral dissertation, “The Normative Theory of Individual Choice” (Princeton University, 1963, chap. 4, sect. 4); and R. Duncan Luce and David Krantz, “Conditional Expected Utility,” *Econometrica*, March 1971, pp. 253–271.
21. As one might have thought the earlier cases to be. See H. M. Hockman and James D. Rodgers, “Pareto Optimal Redistribution,” *American Economic Review*, September 1969, pp. 542–556. See also Robert Goldfarb, “Pareto Optimal Redistribution: Comment,” *American Economic Review*, December 1970, pp. 994–996, whose argument that compulsory redistribution is in some circumstances more efficient is complicated by our imagined scheme of direct interpersonal transfers.
 22. Why not those that unimportantly affect their lives as well, with some scheme of *weighted* voting used (with the number of votes not necessarily being proportional to the degree of effect)? See my note “Weighted-Voting and ‘One Man One-Vote’ ” in *Representation*, ed. J. R. Pennock and John Chapman (New York: Atherton Press, 1969).
 23. Dr. Seuss, *Thidwick, the Big-Hearted Moose* (New York: Random House, 1948).

CHAPTER 9 / Demoktesis

1. "With the purpose of the State thus confined to the provision of external and internal security, or to the realization of a scheme of legal order, the sovereign commonwealth was reduced, in the last analysis, to the level of an insurance society for securing the liberty and the property of individuals." Otto Gierke, *Natural Law and the Theory of Society 1500-1800*, vol. 1 (New York: Cambridge University Press, 1934), p. 113. All the more would Gierke make this complaint (which others might view as praise) about the dominant protective association of a territory.

2. For an alternative *illegitimate* route to a state more extensive than the minimal state, see Franz Oppenheimer, *The State* (New York: Vanguard, 1926). Though it would be appropriate within this essay to dissect critically Locke's route to a more powerful state, it would be tedious, and similar things have been done by others.

3. On these last points see my "Newcomb's Problem and Two Principles of Choice," in *Essays in Honor of C. G. Hempel*, ed. Nicholas Rescher et al. (Holland: Reidel, 1969), especially pp. 135-140.

4. See C. G. Hempel, *Aspects of Scientific Explanation* (New York: Free Press, 1965), pp. 266-270. I use "fundamental" here in Hempel's sense, rather than as in Chapter 1 above. The requirement excluding indexical expressions ("I," "my") from moral principles lacks adequate justification.

5. See Harold Demsetz, "Toward A Theory of Property Rights," *American Economic Review*, 1967, pp. 347-359.

6. "Each gives himself to everybody, so that . . . he gives himself to nobody; and since every associate acquires over every associate the same power he grants to every associate over himself, each gains an equivalent for all that he loses. . . ." Jean Jacques Rousseau, *The Social Contract*, bk. 1, chap. 6.

7. See Locke, *First Treatise on Government*, chap. 6, for Locke's criticism of the view that parents own their children, and chap. 9, for his objections to considering ownership in such cases (supposing it to exist) as transitive.

8. In his introduction to his standard edition of Locke (*Two Treatises of Government*, 2nd ed. New York: Cambridge University Press, 1967) Peter Laslett offers no *internal* explanation of why Locke goes on to write the *First Treatise*, and he treats this somewhat as an oddity (pp. 48, 59, 61, 71). That Locke's own developing views on property led him to think it necessary to consider, and distinguish himself from, Filmer in such detail, may seem to be contradicted by Laslett's assertion on page 68 about Locke's view of property, but one sees that this assertion does not have this consequence if one closely examines Laslett's statements on page 34 and page 59.

9. Compare Locke's presentation of a similar argument in sections 116 and 117, and see section 120 where Locke shifts illegitimately from someone's wanting society to secure and protect his property to his allowing it complete jurisdiction over his property.

10. See Herbert Spencer, *Social Statics* (London: Chapman, 1851), chap. 19, "The Right to Ignore the State," a chapter that Spencer omitted from the revised edition.

11. See Herbert Spencer, *The Man Versus the State* (Caldwell, Idaho: Caxton Printers, 1960), pp. 41-43.

CHAPTER 10 / A Framework for Utopia

1. "A state which was really morally neutral, which was indifferent to all values, other than that of maintaining law and order, would not command enough allegiance to survive at all. A soldier may sacrifice his life for Queen and Country, but hardly for the Minimum State. A policeman, believing in Natural Law and immutable right and wrong, may tackle an armed desperado but not if he regards himself as an employee of a Mutual Protection and Assurance Society, constructed from the cautious contracts of prudent individuals. Some ideals are necessary to inspire those without whose free co-operation that State would not survive." J. R. Lucas, *The Principles of Politics* (Oxford at the Clarendon Press, 1966), p. 292. Why does Lucas assume that the employees of the minimal state cannot be devoted to the rights it protects?

2. The assumption that supply is always limited "is trivially valid in a pure exchange economy, since each individual has a finite stock of goods to trade. In an economy where production takes place, the matter is less clear. At an arbitrarily given set of prices, a producer may find it profitable to offer an infinite supply; the realization of his plans will, of course, require him to demand at the same time an infinite amount of some factor of production. Such situations are of course incompatible with equilibrium, but since the existence of equilibrium is itself in question here, the analysis is necessarily delicate." Kenneth Arrow, "Economic Equilibrium," *International Encyclopedia of the Social Sciences*, vol. 4, p. 381.

3. See John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), chap. 9, sect. 79, "The Idea of a Social Union," and Ayn Rand, *Atlas Shrugged* (New York: Random House, 1957), pt. III, chaps. 1, 2.

4. See Richard Lipsey and Kelvin Lancaster, "The General Theory of Second Best," *Review of Economic Studies*, 24 (December 1956), which has stimulated an extensive literature.

5. Compare John Rawls, *Theory of Justice*, sect. 63, n. 11. It is not clear how extensively Rawls' later text would have to be revised to take this point explicitly into account.

6. Some theories underlying such imposition are discussed by J. L. Talmon in *The Origins of Totalitarian Democracy* (New York: Norton, 1970) and *Political Messianism* (New York: Praeger, 1961).

7. An illuminating discussion of the operation and virtues of a similar filter system is found in F. A. Hayek, *The Constitution of Liberty* (Chicago: University of Chicago Press, 1960), chaps. 2, 3. Some utopian endeavors have fit this, to some extent. "[The nondoctrinaire character of the origins of the Jewish communal settlements in Palestine] also determined their development in all essentials. New forms and new intermediate forms were constantly branching off—in complete freedom. Each one grew out of the particular social and spiritual needs as these came to light—in complete freedom, and each one acquired, even in the initial stages, its own ideology—in complete freedom, each struggling to

propagate itself and spread and establish its proper sphere—all in complete freedom. The champions of the various forms each had his say, the pros and cons of each individual form were frankly and fiercely debated. . . . The various forms and intermediate forms that arose in this way at different times and in different situations represented different kinds of social structure . . . different forms corresponded to different human types and . . . just as new forms branched off from the original Kvuza, so new types branched off from the original Chaluz type, each with its special mode of being and each demanding its particular sort of realization. . . ." Martin Buber, *Paths in Utopia* (New York: Macmillan, 1950), pp. 145–146.

The people involved need not be trying to discover the best possible community; they may merely be attempting to improve their own situation. Some persons, however, may consciously set out to use and streamline the filtering process of people's choices to arrive at what they (tentatively) judge to be the best community. Compare Karl Popper's account of the filtering process of scientific method, self-consciously used and participated in to get closer to the truth [*Objective Knowledge* (New York: Oxford University Press, 1972)]. Since some persons who participate in filtering processes (or equilibrium processes) will have as an objective reaching the final end, while others won't, we might refine the notion of an invisible-hand process to admit of degrees.

8. See Benjamin Zablocki, *The Joyful Community* (Baltimore: Penguin Books, 1971).

9. For a recent account see Haim Barkai, "The Kibbutz: an Experiment in Micro-socialism," in *Israel, the Arabs, and the Middle East*, ed. Irving Howe and Carl Gershman (New York: Bantam Books, 1972).

10. That is, we think that if we are presented with individual members of the set of exceptions to a particular principle, we will often (though not necessarily always) be able to tell it is an exception, even though it does not fit any explicit description of the exceptions we had been able to offer heretofore. Being confronted with the particular case and realizing it is an exception to the principle often will lead us to offer a new explicit marking off of exceptions to the principle; one that once again (we realize) does not mark off *all* the exceptions. One possible structure of the moral views of a person who makes particular moral judgments, yet is unable to state moral principles that he is confident have no exceptions, is discussed in my "Moral Complications and Moral Structures," *Natural Law Forum*, 13, 1968, pp. 1–50.

11. We are here speaking of questions of emigration out of a community. We should note that someone may be refused entry into a community he wishes to join, on individual grounds or because he falls under a general restriction designed to preserve the particular character of a community.

12. See Herbert Marcuse, "Repressive Tolerance," in *A Critique of Pure Tolerance*, ed. Robert P. Wolff et al. (Boston: Beacon, 1969).

13. "There is no really satisfactory theoretical solution of the problem. If a federal government possesses a constitutional authority to intervene by force in the government of a state for the purpose of insuring the state's performance of its duties as a member of the federation, there is no adequate constitutional barrier against the conversion of the federation into a centralized state by vigorous and resolute central government. If it does not possess such authority, there is no adequate assurance that the federal government can maintain the character of

the system when vigorous and resolute state governments take full advantage of their constitutional freedom to go their own ways." Arthur W. MacMahon, ed., *Federalism: Mature and Emergent* (New York: Doubleday, 1955), p. 139. See also of course the *Federalist Papers*. Martin Diamond interestingly discusses "The Federalist's View of Federalism," in *Essays in Federalism* (Institute for Studies in Federalism, 1961).