

# CHAPTER

## 2

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# The State of Nature

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**I**NDIVIDUALS in Locke's state of nature are in "a state of perfect freedom to order their actions and dispose of their possessions and persons as they think fit, within the bounds of the law of nature, without asking leave or dependency upon the will of any other man" (sect. 4).<sup>1</sup> The bounds of the law of nature require that "no one ought to harm another in his life, health, liberty, or possessions" (sect. 6). Some persons transgress these bounds, "invading others' rights and . . . doing hurt to one another," and in response people may defend themselves or others against such invaders of rights (chap. 3). The injured party and his agents may recover from the offender "so much as may make satisfaction for the harm he has suffered" (sect. 10); "everyone has a right to punish the transgressors of that law to such a degree as may hinder its violation" (sect. 7); each person may, and may only "retribute to [a criminal] so far as calm reason and conscience dictate, what is proportionate to his transgression, which is so much as may serve for reparation and restraint" (sect. 8).

There are "inconveniences of the state of nature" for which, says Locke, "I easily grant that civil government is the proper remedy" (sect. 13). To understand precisely what civil government remedies, we must do more than repeat Locke's list of the inconveniences of the state of nature. We also must consider what arrangements might be made within a state of nature to deal with

these inconveniences—to avoid them or to make them less likely to arise or to make them less serious on the occasions when they do arise. Only after the full resources of the state of nature are brought into play, namely all those voluntary arrangements and agreements persons might reach acting within their rights, and only after the effects of these are estimated, will we be in a position to see how serious are the inconveniences that yet remain to be remedied by the state, and to estimate whether the remedy is worse than the disease.\*

In a state of nature, the understood natural law may not provide for every contingency in a proper fashion (see sections 159 and 160 where Locke makes this point about legal systems, but contrast section 124), and men who judge in their own case will always give themselves the benefit of the doubt and assume that they are in the right. They will overestimate the amount of harm or damage they have suffered, and passions will lead them to attempt to punish others more than proportionately and to exact excessive compensation (sects. 13, 124, 125). Thus private and personal enforcement of one's rights (including those rights that are violated when one is excessively punished) leads to feuds, to an endless series of acts of retaliation and exactions of compensation. And there is no firm way to *settle* such a dispute, to *end* it and to have both parties know it is ended. Even if one party *says* he'll stop his

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\* Proudhon has given us a description of the *state's* domestic "inconveniences." "To be GOVERNED is to be watched, inspected, spied upon, directed, law-driven, numbered, regulated, enrolled, indoctrinated, preached at, controlled, checked, estimated, valued, censured, commanded, by creatures who have neither the right nor the wisdom nor the virtue to do so. To be GOVERNED is to be at every operation, at every transaction noted, registered, counted, taxed, stamped, measured, numbered, assessed, licensed, authorized, admonished, prevented, forbidden, reformed, corrected, punished. It is, under pretext of public utility, and in the name of the general interest, to be placed under contribution, drilled, fleeced, exploited, monopolized, extorted from, squeezed, hoaxed, robbed; then, at the slightest resistance, the first word of complaint, to be repressed, fined, vilified, harrassed, hunted down, abused, clubbed, disarmed, bound, choked, imprisoned, judged, condemned, shot, deported, sacrificed, sold, betrayed; and to crown all, mocked, ridiculed, derided, outraged, dishonored. That is government; that is its justice; that is its morality." P. J. Proudhon, *General Idea of the Revolution in the Nineteenth Century*, trans. John Beverly Robinson (London: Freedom Press, 1923), pp. 293–294, with some alterations from Benjamin Tucker's translation in *Instead of a Book* (New York, 1893), p. 26.

acts of retaliation, the other can rest secure only if he knows the first still does not feel entitled to gain recompense or to exact retribution, and therefore entitled to try when a promising occasion presents itself. Any method a single individual might use in an attempt irrevocably to bind himself into ending his part in a feud would offer insufficient assurance to the other party; tacit agreements to stop also would be unstable.<sup>2</sup> Such feelings of being mutually wronged can occur even with the clearest right and with joint agreement on the facts of each person's conduct; all the more is there opportunity for such retaliatory battle when the facts or the rights are to some extent unclear. Also, in a state of nature a person may lack the power to enforce his rights; he may be unable to punish or exact compensation from a stronger adversary who has violated them (sects. 123, 126).

#### PROTECTIVE ASSOCIATIONS

How might one deal with these troubles within a state of nature? Let us begin with the last. In a state of nature an individual may himself enforce his rights, defend himself exact compensation, and punish (or at least try his best to do so). Others may join with him in his defense, at his call.<sup>3</sup> They may join with him to repulse an attacker or to go after an aggressor because they are public spirited, or because they are his friends, or because he has helped them in the past, or because they wish him to help them in the future, or in exchange for something. Groups of individuals may form mutual-protection associations: all will answer the call of any member for defense or for the enforcement of his rights. In union there is strength. Two inconveniences attend such simple mutual-protection associations: (1) everyone is always on call to serve a protective function (and how shall it be decided who shall answer the call for those protective functions that do not require the services of all members?); and (2) any member may call out his associates by saying his rights are being, or have been, violated. Protective associations will not want to be at the beck and call of their cantankerous or paranoid members, not to mention those of their members who might attempt, under the guise of self-defense, to

use the association to violate the rights of others. Difficulties will also arise if two different members of the same association are in dispute, each calling upon his fellow members to come to his aid.

A mutual-protection association might attempt to deal with conflict among its own members by a policy of nonintervention. But this policy would bring discord within the association and might lead to the formation of subgroups who might fight among themselves and thus cause the breakup of the association. This policy would also encourage potential aggressors to join as many mutual-protection associations as possible in order to gain immunity from retaliatory or defensive action, thus placing a great burden on the adequacy of the initial screening procedure of the association. Thus protective associations (almost all of those that will survive which people will join) will not follow a policy of nonintervention; they will use some procedure to determine how to act when some members claim that other members have violated their rights. Many arbitrary procedures can be imagined (for example, act on the side of that member who complains first), but most persons will want to join associations that follow some procedure to find out which claimant is correct. When a member of the association is in conflict with nonmembers, the association also will want to determine in some fashion who is in the right, if only to avoid constant and costly involvement in each member's quarrels, whether just or unjust. The inconvenience of everyone's being on call, whatever their activity at the moment or inclinations or comparative advantage, can be handled in the usual manner by division of labor and exchange. Some people will be *hired* to perform protective functions, and some entrepreneurs will go into the business of selling protective services. Different sorts of protective policies would be offered, at different prices, for those who may desire more extensive or elaborate protection.<sup>4</sup>

An individual might make more particular arrangements or commitments short of turning over to a private protective agency all functions of detection, apprehension, judicial determination of guilt, punishment, and exaction of compensation. Mindful of the dangers of being the judge in his own case, he might turn the decision as to whether he has indeed been wronged, and to what extent, to some other neutral or less involved party. In order for the occurrence of the social effect of justice's being seen to be

done, such a party would have to be generally respected and thought to be neutral and upright. Both parties to a dispute may so attempt to safeguard themselves against the appearance of partiality, and both might even agree upon the *same* person as the judge between them, and agree to abide by his decision. (Or there might be a specified process through which one of the parties dissatisfied with the decision could appeal it.) But, for obvious reasons, there will be strong tendencies for the above-mentioned functions to converge in the same agent or agency.

People sometimes now do take their disputes outside of the state's legal system to other judges or courts they have chosen, for example, to religious courts.<sup>5</sup> If all parties to a dispute find some activities of the state or its legal system so repellent that they want nothing to do with it, they might agree to forms of arbitration or judgment outside the apparatus of the state. People tend to forget the possibilities of acting independently of the state. (Similarly, persons who want to be paternalistically regulated forget the possibilities of contracting into particular limitations on their own behavior or appointing a given paternalistic supervisory board over themselves. Instead, they swallow the exact pattern of restrictions a legislature happens to pass. Is there really someone who, searching for a group of wise and sensitive persons to regulate him for his own good, would choose that group of people who constitute the membership of both houses of Congress?) Diverse forms of judicial adjudication, differing from the particular package the state provides, certainly could be developed. Nor do the costs of developing and choosing these account for people's use of the state form. For it would be easy to have a large number of preset packages which parties could select. Presumably what drives people to use the state's system of justice is the issue of ultimate enforcement. Only the state can enforce a judgment against the will of one of the parties. For the state does not *allow* anyone else to enforce another system's judgment. So in any dispute in which both parties cannot agree upon a method of settlement, or in any dispute in which one party does not trust another to abide by the decision (if the other contracts to forfeit something of enormous value if he doesn't abide by the decision, by what agency is *that* contract to be enforced?), the parties who wish their claims put into effect will have no recourse permitted by the state's legal sys-

tem other than to use that very legal system. This may present persons greatly opposed to a given state system with particularly poignant and painful choices. (If the state's legal system enforces the results of certain arbitration procedures, people may come to agree—supposing they abide by this agreement—without any actual direct contact with what they perceive to be officers or institutions of the state. But this holds as well if they sign a contract that is enforced only by the state.)

Will protective agencies *require* that their clients renounce exercising their right of private retaliation if they have been wronged by nonclients of the agency? Such retaliation may well lead to counterretaliation by another agency or individual, and a protective agency would not wish *at that late stage* to get drawn into the messy affair by having to defend its client against the counterretaliation. Protective agencies would refuse to protect against counterretaliation unless they had first given permission for the retaliation. (Though might they not merely charge much more for the more extensive protection policy that provides such coverage?) The protective agencies need not even require that as part of his agreement with the agency, a client renounce, by contract, his right of private enforcement of justice against its *other clients*. The agency need only refuse a client *C*, who privately enforces his rights against other clients, any protection against counterretaliation upon him by these other clients. This is similar to what occurs if *C* acts against a nonclient. The additional fact that *C* acts upon a client of the agency means that the agency will act toward *C* as it would toward any nonclient who privately enforced his rights upon any one of its clients (see Chapter 5). This reduces intra-agency private enforcement of rights to minuscule levels.

#### THE DOMINANT PROTECTIVE ASSOCIATION

Initially, several different protective associations or companies will offer their services in the same geographical area. What will occur when there is a conflict between clients of different agencies? Things are relatively simple if the agencies reach the same decision about the disposition of the case. (Though each might want to

exact the penalty.) But what happens if they reach different decisions as to the merits of the case, and one agency attempts to protect its client while the other is attempting to punish him or make him pay compensation? Only three possibilities are worth considering:

1. In such situations the forces of the two agencies do battle. One of the agencies always wins such battles. Since the clients of the losing agency are ill protected in conflicts with clients of the winning agency, they leave their agency to do business with the winner.<sup>6</sup>
2. One agency has its power centered in one geographical area, the other in another. Each wins the battles fought close to its center of power, with some gradient being established.<sup>7</sup> People who deal with one agency but live under the power of the other either move closer to their own agency's home headquarters or shift their patronage to the other protective agency. (The border is about as conflictful as one between states.)

In neither of these two cases does there remain very much geographical interspersal. Only one protective agency operates over a given geographical area.

3. The two agencies fight evenly and often. They win and lose about equally, and their interspersed members have frequent dealings and disputes with each other. Or perhaps without fighting or after only a few skirmishes the agencies realize that such battling will occur continually in the absence of preventive measures. In any case, to avoid frequent, costly, and wasteful battles the two agencies, perhaps through their executives, agree to resolve peacefully those cases about which they reach differing judgments. They agree to set up, and abide by the decisions of, some third judge or court to which they can turn when their respective judgments differ. (Or they might establish rules determining which agency has jurisdiction under which circumstances.)<sup>8</sup> Thus emerges a system of appeals courts and agreed upon rules about jurisdiction and the conflict of laws. Though different agencies operate, there is one unified federal judicial system of which they all are components.

In each of these cases, almost all the persons in a geographical area are under some common system that judges between their competing claims and *enforces* their rights. Out of anarchy, pressed by spontaneous groupings, mutual-protection associations, division of labor, market pressures, economies of scale, and rational

self-interest there arises something very much resembling a minimal state or a group of geographically distinct minimal states. Why is this market different from all other markets? Why would a virtual monopoly arise in this market without the government intervention that elsewhere creates and maintains it? <sup>9</sup> The worth of the product purchased, protection against others, is *relative*: it depends upon how strong the others are. Yet unlike other goods that are comparatively evaluated, maximal competing protective services cannot coexist; the nature of the service brings different agencies not only into competition for customers' patronage, but also into violent conflict with each other. Also, since the worth of the less than maximal product declines disproportionately with the number who purchase the maximal product, customers will not stably settle for the lesser good, and competing companies are caught in a declining spiral. Hence the three possibilities we have listed.

Our story above assumes that each of the agencies attempts in good faith to act within the limits of Locke's law of nature.<sup>10</sup> But one "protective association" might aggress against other persons. Relative to Locke's law of nature, it would be an outlaw agency. What actual counterweights would there be to its power? (What actual counterweights are there to the power of a state?) Other agencies might unite to act against it. People might refuse to deal with the outlaw agency's clients, boycotting them to reduce the probability of the agency's intervening in their own affairs. This might make it more difficult for the outlaw agency to get clients; but this boycott will seem an effective tool only on very optimistic assumptions about what cannot be kept secret, and about the costs to an individual of partial boycott as compared to the benefits of receiving the more extensive coverage offered by an "outlaw" agency. If the "outlaw" agency simply is an *open* aggressor, pillaging, plundering, and extorting under no plausible claim of justice, it will have a harder time than states. For the state's claim to legitimacy induces its citizens to believe they have some duty to obey its edicts, pay its taxes, fight its battles, and so on; and so some persons cooperate with it voluntarily. An openly aggressive agency could not depend upon, and would not receive, any such voluntary cooperation, since persons would view themselves simply as its victims rather than as its citizens.<sup>11</sup>

## INVISIBLE-HAND EXPLANATIONS

*How, if at all, does a dominant protective association differ from the state?* Was Locke wrong in imagining a compact necessary to establish civil society? As he was wrong in thinking (sects. 46, 47, 50) that an "agreement," or "mutual consent," was needed to establish the "invention of money." Within a barter system, there is great inconvenience and cost to searching for someone who has what you want and wants what you have, even at a marketplace, which, we should note, needn't become a marketplace by everyone's expressly agreeing to deal there. People will exchange their goods for something they know to be more generally wanted than what they have. For it will be more likely that they can exchange this for what they want. For the same reasons others will be more willing to take in exchange this more generally desired thing. Thus persons will converge in exchanges on the more marketable goods, being willing to exchange their goods for them; the more willing, the more they know others who are also willing to do so, in a mutually reinforcing process. (This process will be reinforced and hastened by middlemen seeking to profit in facilitating exchanges, who themselves will often find it most expedient to offer more marketable goods in exchange.) For obvious reasons, the goods they converge on, via their individual decisions, will have certain properties: initial independent value (else they wouldn't begin as more marketable), physically enduring, non-perishable, divisible, portable, and so forth. No express agreement and no social contract fixing a medium of exchange is necessary.<sup>12</sup>

There is a certain lovely quality to explanations of this sort. They show how some overall pattern or design, which one would have thought had to be produced by an individual's or group's successful attempt to realize the pattern, instead was produced and maintained by a process that in no way had the overall pattern or design "in mind." After Adam Smith, we shall call such explanations *invisible-hand explanations*. ("Every individual intends only his own gain, and he is in this, as in so many other cases, led by an invisible hand to promote an end which was no part of his intention.") The specially satisfying quality of invisible-hand explanations (a quality I hope is possessed by this book's account of the

state) is partially explained by its connection with the notion of fundamental explanation adumbrated in Chapter 1. Fundamental explanations of a realm are explanations of the realm in other terms; they make no use of any of the notions of the realm. Only via such explanations can we explain and hence understand everything about a realm; the less our explanations use notions constituting what is to be explained, the more (*ceteris paribus*) we understand. Consider now complicated patterns which one would have thought could arise only through intelligent design, only through some attempt to realize the pattern. One might attempt straightforwardly to explain such patterns in terms of the desires, wants, beliefs, and so on, of individuals, directed toward realizing the pattern. But within such explanations will appear descriptions of the pattern, *at least within quotation marks*, as objects of belief and desire. The explanation itself will say that some individuals desire to bring about something with (some of) the pattern-features, that some individuals believe that the only (or the best, or the . . . ,) way to bring about the realization of the pattern features is to . . . , and so on. Invisible-hand explanations minimize the use of notions constituting the phenomena to be explained; in contrast to the straightforward explanations, they don't explain complicated patterns by including the full-blown pattern-notions as objects of people's desires or beliefs. Invisible-hand explanations of phenomena thus yield greater understanding than do explanations of them as brought about by design as the object of people's intentions. It therefore is no surprise that they are more satisfying.

An invisible-hand explanation explains what looks to be the product of someone's intentional design, as not being brought about by anyone's intentions. We might call the *opposite* sort of explanation a "hidden-hand explanation." A hidden-hand explanation explains what looks to be merely a disconnected set of facts that (certainly) is not the product of intentional design, as the product of an individual's or group's intentional design(s). Some persons also find such explanations satisfying, as is evidenced by the popularity of conspiracy theories.

Someone might so prize each type of explanation, invisible hand and hidden hand, that he might attempt the Sisyphean task of explaining each purported nondesigned or coincidental set of isolated facts as the product of intentional design, *and* each purported

product of design as a nondesigned set of facts! It would be quite lovely to continue this iteration for a bit, even through only one complete cycle.

Since I offer no explicit account of invisible-hand explanations,<sup>13</sup> and since the notion plays a role in what follows, I mention some examples to give the reader a clearer idea of what we have in mind when speaking of this type of explanation. (Examples given to illustrate the type of explanation need not be *correct* explanations.)

1. Explanations within evolutionary theory (via random mutation, natural selection, genetic drift, and so on) of traits of organisms and populations. (James Crow and Motoo Kimura survey mathematical formulations in *An Introduction to Population Genetics Theory* (New York: Harper & Row, 1970).
2. Explanations within ecology of the regulation of animal populations. (See Lawrence Slobodkin, *Growth and Regulation of Animal Populations* [New York: Holt, Rinehart & Winston, 1966] for a survey.)
3. Thomas Schelling's explanatory model (*American Economic Review*, May 1969, pp. 488–493) showing how extreme residential segregation patterns are producible by individuals who do not desire this but want, for example, to live in neighborhoods 55 percent of whose population is in their own group, and who switch their place of residence to achieve their goal.
4. Certain operant-conditioning explanations of various complicated patterns of behavior.
5. Richard Herrnstein's discussion of the genetic factors in a society's pattern of class stratification (*I.Q. in the Meritocracy*, Atlantic Monthly Press, 1973).
6. Discussions of how economic calculation is accomplished in markets. (See Ludwig von Mises, *Socialism*, Part II, *Human Action*, Chapters 4, 7–9.)
7. Microeconomic explanations of the effects of outside intervention in a market, and of the establishment and nature of the new equilibria.
8. Jane Jacobs' explanation of what makes some parts of cities safe in *The Death and Life of Great American Cities* (New York: Random House, 1961).
9. The Austrian theory of the trade cycle.
10. Karl Deutsch and William Madow's observation that in an organization with a large number of important decisions (which can later be evaluated for correctness) to be made among few alternatives, if large numbers of people have a chance to say which way the

- decision should be made, a number of persons will gain reputations as sage advisers, even if all randomly decide what advice to offer. ("Note on the Appearance of Wisdom in Large Bureaucratic Organizations," *Behavioral Science*, January 1961, pp. 72–78.)
11. The patterns arising through the operation of a modification of Frederick Frey's modification of the Peter Principle: people have risen three levels beyond their level of incompetence by the time their incompetence is detected.
  12. Roberta Wohlstetter's explanation (*Pearl Harbor: Warning and Decision* [Stanford: Stanford University Press, 1962]), contra the "conspiracy" theorists, of why the United States didn't act on the evidence it possessed indicating a Japanese attack forthcoming on Pearl Harbor.
  13. That explanation of "the intellectual preeminence of the Jews" that focuses on the great number of the most intelligent male Catholics who, for centuries, had no children, in contrast to the encouragement given rabbis to marry and reproduce.
  14. The theory of how public goods aren't supplied solely by individual action.
  15. Armen Alchian's pointing to a different invisible hand (in our later terminology, a filter) than does Adam Smith ("Uncertainty, Evolution, and Economic Theory," *Journal of Political Economy*, 1950, pp. 211–221).
  16. F. A. Hayek's explanation of how social cooperation utilizes more knowledge than any individual possesses, through people adjusting their activities on the basis of how other people's similarly adjusted activities affect their local situations and through following examples they are presented with, and thereby creates new institutional forms, general modes of behavior, and so on (*The Constitution of Liberty*, chap. 2).

A rewarding research activity would be to catalog the different modes (and combinations) of invisible-hand explanations, specifying which types of invisible-hand explanations can explain which types of patterns. We can mention here two types of invisible-hand processes by which a pattern  $P$  can be produced: filtering processes and equilibrium processes. Through filtering processes can pass only things fitting  $P$ , because processes or structures filter out all non- $P$ 's; in equilibrium processes each component part responds or adjusts to "local" conditions, with each adjustment changing the local environment of others close by, so that the sum of the ripples of the local adjustments constitutes or realizes  $P$ . (Some processes of such rippling local adjustments don't come to

an equilibrium pattern, not even a moving one.) There are different ways an equilibrium process can help maintain a pattern, and there also might be a filter that eliminates deviations from the pattern that are too great to be brought back by the internal equilibrating mechanisms. Perhaps the most elegant form of explanation of this sort involves two equilibrium processes, each internally maintaining its pattern in the face of small deviations, and each being a filter to eliminate the large deviations occurring in the other.

We might note in passing that the notion of filtering processes enables us to understand one way in which the position in the philosophy of the social sciences known as methodological individualism might go wrong. If there is a filter that filters out (destroys) all non- $P$   $Q$ 's, then the explanation of why all  $Q$ 's are  $P$ 's (fit the pattern  $P$ ) will refer to this filter. For each particular  $Q$ , there may be a particular explanation of why *it* is  $P$ , how it came to be  $P$ , what maintains it as  $P$ . But the explanation of why all  $Q$ 's are  $P$  will not be the conjunction of these individual explanations, even though these are all the  $Q$ 's there are, for that is part of what is to be explained. The explanation will refer to the filter. To make this clear, we might imagine that we have *no* explanation of why the individual  $Q$ 's are  $P$ 's. It just is an ultimate statistical law (so far as we can tell at any rate) that some  $Q$ 's are  $P$ ; we even might be unable to discover any stable statistical regularity at all. In this case we would know why all  $Q$ 's are  $P$ 's (and know there are  $Q$ 's, and perhaps even know why there are  $Q$ 's) without knowing of any  $Q$ , why it is  $P$ ! The methodological individualist position requires that there be no basic (unreduced) social filtering processes.

#### IS THE DOMINANT PROTECTIVE ASSOCIATION A STATE?

Have we provided an invisible-hand explanation of the state? There are at least two ways in which the scheme of private protective associations might be thought to differ from a minimal state, might fail to satisfy a minimal conception of a state: (1) it appears

to allow some people to enforce their own rights, and (2) it appears not to protect all individuals within its domain. Writers in the tradition of Max Weber<sup>14</sup> treat having a monopoly on the use of force in a geographical area, a monopoly incompatible with private enforcement of rights, as crucial to the existence of a state. As Marshall Cohen points out in an unpublished essay, a state may exist without *actually* monopolizing the use of force it has not authorized others to use; within the boundaries of a state there may exist groups such as the Mafia, the KKK, White Citizens Councils, striking unionists, and Weathermen that also use force. *Claiming* such a monopoly is not sufficient (if *you* claimed it you would not become the state), nor is being its sole claimant a necessary condition. Nor need everyone grant the legitimacy of the state's claim to such monopoly, either because as pacifists they think no one has the right to use force, or because as revolutionaries they believe that a given state lacks this right, or because they believe they are entitled to join in and help out no matter what the state says. Formulating sufficient conditions for the existence of the state thus turns out to be a difficult and messy task.<sup>15</sup>

For our purposes here we need focus only upon a necessary condition that the system of private protective agencies (or any component agency within it) apparently does not satisfy. A state claims a monopoly on deciding who may use force when; it says that only it may decide who may use force and under what conditions; it reserves to itself the sole right to pass on the legitimacy and permissibility of any use of force within its boundaries; furthermore it claims the right to punish all those who violate its claimed monopoly. The monopoly may be violated in two ways: (1) a person may use force though unauthorized by the state to do so, or (2) though not themselves using force a group or person may set themselves up as an alternative authority (and perhaps even claim to be the sole legitimate one) to decide when and by whom the use of force is proper and legitimate. It is unclear whether a state must claim the right to punish the second sort of violator, and doubtful whether any state actually would refrain from punishing a significant group of them within its boundaries. I glide over the issue of what sort of "may," "legitimacy," and "permissibility" is in question. Moral permissibility isn't a matter of

decision, and the state need not be so egomaniacal as to claim the sole right to decide moral questions. To speak of legal permissibility would require, to avoid circularity, that an account of a legal system be offered that doesn't use the notion of the state.

We may proceed, for our purposes, by saying that a necessary condition for the existence of a state is that it (some person or organization) announce that, to the best of its ability (taking into account costs of doing so, the feasibility, the more important alternative things it should be doing, and so forth), it will punish everyone whom it discovers to have used force without its express permission. (This permission may be a particular permission or may be granted via some general regulation or authorization.) This still won't quite do: the state may reserve the right to forgive someone, *ex post facto*; in order to punish they may have not only to discover the "unauthorized" use of force but also prove via a certain specified procedure of proof that it occurred, and so forth. But it enables us to proceed. The protective agencies, it seems, do not make such an announcement, either individually or collectively. *Nor does it seem morally legitimate for them to do so.* So the system of private protective associations, if they perform no morally illegitimate action, appears to lack any monopoly element and so appears not to constitute or contain a state. To examine the question of the monopoly element, we shall have to consider the situation of some group of persons (or some one person) living within a system of private protective agencies who refuse to join any protective society; who insist on judging for themselves whether their rights have been violated, and (if they so judge) on personally enforcing their rights by punishing and/or exacting compensation from those who infringed them.

The second reason for thinking the system described is not a state is that, under it (apart from spillover effects) only those paying for protection get protected; furthermore, differing degrees of protection may be purchased. External economies again to the side, no one pays for the protection of others except as they choose to; no one is required to purchase or contribute to the purchasing of protection for others. Protection and enforcement of people's rights is treated as an economic good to be provided by the market, as are other important goods such as food and clothing. However, under the usual conception of a state, each person living

within (or even sometimes traveling outside) its geographical boundaries gets (or at least, is entitled to get) its protection. Unless some private party donated sufficient funds to cover the costs of such protection (to pay for detectives, police to bring criminals into custody, courts, and prisons), or unless the state found some service it could charge for that would cover these costs,\* one would expect that a state which offered protection so broadly would be redistributive. It would be a state in which some persons paid more so that others could be protected. And indeed the most minimal state seriously discussed by the mainstream of political theorists, the night-watchman state of classical liberal theory, appears to be redistributive in this fashion. Yet how can a protection agency, a business, charge some to provide its product to others? <sup>16</sup> (We ignore things like some partially paying for others because it is too costly for the agency to refine its classification of, and charges to, customers to mirror the costs of the services to them.)

Thus it appears that the dominant protective agency in a territory not only lacks the requisite monopoly over the use of force, but also fails to provide protection for all in its territory; and so the dominant agency appears to fall short of being a state. But these appearances are deceptive.

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\* I have heard it suggested that the state could finance itself by running a lottery. But since it would have no right to forbid private entrepreneurs from doing the same, why think the state will have any more success in attracting customers in this than in any other competitive business?