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Cover image shows (from top): Benjamin Constant (1767–1830), James Madison (1751–1836), John Locke (1632–1704), and Charles de Secondat, Baron de Montesquieu (1689–1755).

The Role of Government in a Liberal Society

If men were angels, no government would be necessary.
If angels were to govern men, neither external nor internal
controls on government would be necessary.
—James Madison, *Federalist* No. 51, 1788

And whosoever has the Legislative or Supreme Power of any
Commonwealth is bound to govern by establish'd standing
laws, promulgated and known to the People, and not by
Extemporary Decrees; by indifferent and upright Judges, who
are to decide Controversies by those Laws; And to employ the
force of the Commonwealth at home, only in the execution
of such Laws, or abroad to prevent or redress Foreign Injuries,
and secure the Community from Inroads and Invasion.
—John Locke, 1680–1690

Society, state, government

Every country in the world today has a government. They are organised as states. However, human beings did not always live under government as we know it, or within nations and states. Our remotest ancestors lived in family groups and small tribes. In any society, there are rules to enforce, disputes to settle, and external threats to counter. Hence, it is not surprising that all societies, ancient and modern, display leadership arrangements. Modern government has grown out of all proportion to these needs and has become a serious threat to life, liberty, property, and the public interest. It is no longer the servant of the people but is their master. The reason is that government is based on authority

and authority tends to acquire a life of its own through the inevitable benefits that it creates for those with authority. Government becomes a Frankenstein's monster that preys on the people's rights and freedoms unless it is tamed and confined to its essential functions. This essay is a contribution to the understanding of those functions.

It is useful to make clear what we mean by *government*. In legal and political language, *government* refers to several different things. Sometimes we speak of *the government of the day*. In parliamentary systems, this is the prime minister and other ministers responsible to Parliament. In the US presidential system, it refers to the president and his cabinet, better known as *the administration*. In other contexts, *government* is understood to encompass the whole executive apparatus of the state including the political leadership, the public service, departments of the state, and all other government agencies and instrumentalities, including government-controlled corporations and regulatory bodies. Sometimes *government* is used to refer to the state as a whole. Thus we speak of *the three great branches of government*, the legislative, the executive, and the judicial. John Locke used the term in this sense in his immortal *Two Treatises of Government*. (Locke identified the legislative, judicial, and federative branches, the latter exercising a very limited form of executive power.) The state is a relatively modern concept that finds its clearest expression in customary international law.

Let us consider a hypothetical community that occupies a certain territory. The members of this community have a shared culture, live by common rules, and defend their common interests through cooperation. Here we have a society. However, this society may not have the kind of political organisation that creates a corporate personality or an official voice that allows it to deal with other politically organised groups. Specifically, it has no means of giving assurances to other groups that it can and will abide by the norms of international cohabitation. In short, this group is not a state. When a community achieves this capacity, it reaches statehood and is so recognised by other states. In general, statehood requires (a) a permanent population, (b) a defined territory, (c) government, and (d) capacity to enter into relations with other states.¹ We see that state and government are inextricably linked in international law. Sometimes the identity of the government may be in doubt, as in the case of revolutions or civil war. In the end, though,

the international community looks for a government that can be held responsible.

In domestic law, government in the wider sense equates to the state, but not in the narrower sense. In countries where constitutional government is relatively strong, the legislative and judicial branches of the state serve as checks on executive government. In the nineteenth century, regarded by many legal historians as the classical age of the British Constitution, Parliament and the common law courts were an effective check on executive power. It is not entirely coincidental that the Industrial Revolution and the first International Liberal Economic Order, as Deepak Lal terms it, occurred in that era.² The United States became the richest nation in history under a constitution that limits the powers of all three branches of the state by a system of mutual checks and balances. Hence, in delimiting the power and role of government, we must find ways to make government work against its own expansionary tendency by making appropriate constitutional arrangements.

The problem that we face today is that the legislative, executive, and judicial branches of government collude in extending the role and powers of government. As Hayek pointed out, the faith that the American Founding Fathers placed in the tripartite separation of powers in limiting government has not been vindicated.³ Hayek, Buchanan, and other constitutionalists have proposed constitutional improvements that I have not the luxury to discuss within the confines of my brief. My task is to address the question of the proper role of government understood in the wider sense of the state which encompasses all branches of the government. In the discussions that follow I will use the term *state* in preference to *government*.

Is the state inevitable?

I approach these questions from the viewpoint of classical liberalism. Other viewpoints are possible. Hegel saw the state as the ultimate synthesis (between family and civil society) that creates the ideal condition for realising true freedom. Marx regarded the state as a necessary but transient condition on the road to socialism. Aristotle and Aquinas regarded the state as part of universal order. Anarchic libertarians see no justification for the state at all. The classical liberal view is deeply sceptical about the state but sees a limited role for it.

Rothbard defines the state as ‘as that institution which possesses one or both (almost always both) of the following properties: (1) it acquires its income by the physical coercion known as “taxation”; and (2) it asserts and usually obtains a coerced monopoly of the provision of defense service (police and courts) over a given territorial area.’⁴ In the Rothbardian natural society, individuals will buy whatever services they need, including protection through private courts and private security services. All assets will be privately owned, and infrastructure will be privately created and maintained. There is no place or role for the state in such a society. The private use of force is authorised only to defend a person’s rights.

Despite its value as a description of the ideal condition of liberty, this model must be rejected not only for the pragmatic reason that very few people live in such conditions but also because it is inherently unstable except perhaps on a very small scale. Among larger populations, as Nozick demonstrated, a minimal state can arise from anarchy even though no one intended it, by a process that need not violate anyone’s rights.⁵ Nozick shows that even without a Lockean social contract, an ultraminimal state can arise through free contracting for protection services (resulting in a dominant protective association) and that such an ultraminimal state may become a minimal state by the acquisition of a de facto monopoly of law enforcement power and its consequent moral obligations to offer protection to nonmembers within the relevant territory. If it could arise, then it will arise in some societies.

The ideal liberal state is the minimal state

An alternative model of a liberal state is that of a society that enlists the protection of a minimal state. This model is preferred for two reasons. First, it is closer than libertarian anarchy to the historical experience of societies that have aspired to be liberal, and hence we have greater familiarity with it. Second, it acknowledges the need for coercion to preserve the freedoms that liberal society offers. As Ludwig von Mises observed,

The liberal understands quite clearly that without resort to compulsion, the existence of society would be endangered and that behind the rules of conduct whose observance

is necessary to assure peaceful human cooperation must stand the threat of force if the whole edifice of society is not to be continually at the mercy of any one of its members ... This is the function that the liberal doctrine assigns to the state: the protection of property, liberty, and peace.⁶

Von Mises echoes John Locke's theory that the state is born out of the need for protection from the insecurity that results from every man being the judge and enforcer of his own natural rights.⁷ Individuals escape this state of nature by creating a supreme authority under a trust or social contract that obligates the authority to protect the lives, liberty, and estates of individuals.

The minimal state in the Lockean sense is the dominant protective association, which has an effective monopoly of the power to protect its members from having their natural rights violated by members and outsiders. The minimal state will establish the physical infrastructure to perform all these functions—courts, bailiffs, sheriffs, a police force, and even defence forces to protect members from foreign invasion. There will be no state land other than land acquired lawfully from members. It has no claim to unowned land and cannot gain ownership by occupation except to the extent required to perform its minimal functions. The minimal state will not have the power by its own will to create, extinguish, or modify the rights of its members.

This model of the minimal state requires an important clarification concerning the natural rights of those, such as children, who are unable to seek the protection of the law. Under a protection contract, the buyers presumably gain protection of their rights and those of their dependents. Would a protective association that is a minimal state have a duty to protect a child against cruel treatment by a parent or other custodian? What would be the basis of such a duty? Nozick does not address the question directly, though he argues that children possess rights in relation to parents.⁸ A protective association's obligation to enforce a child's right against custodial abuse may arise in one of two ways. First, parents may contract on behalf of their children to secure their protection against all including themselves. This is not fanciful, as a parent can be expected to secure protection of his or her child in the

event of the loss of custody to a separating spouse. Second, assuming that members would be loath to live in a society that allows cruelty to children, protective associations that offer to protect children's rights may be preferred over those that do not. The association can give this protection without violating anyone's rights, for no person has the right to violate the rights of defenceless individuals. It is also a non-redistributive service as we assume that members freely contract for it. This function will not produce the kind of extensive criminal law that marks the modern (non-minimal) state. The state will be limited to undertaking, on behalf of a limited class of persons who are incapable of understanding their rights or of seeking legal recourse, the prosecution of wrongs known in classical jurisprudence as *mala in se*. These are self-evidently wrongful acts that harm life, liberty, and property. It will not have the power assumed by the modern state to create offences at will (*mala prohibita*). It is worth noting that the modern state perpetrates its most outrageous assaults on liberty and property by criminalising behaviour that in the natural order of liberty is perfectly lawful.⁹ The minimal state will have no such competence.

The problem of cost and the rise of the non-minimal state

Performance of even the minimal functions of the state carries costs. In Nozick's minimal state, the costs are met by membership fees. However, there are problems of costs even in this idealised state. Consider the moral obligation to extend protective services to nonmembers. If all or some members refuse to contribute to this, the free-rider problem invites coercive exaction. Members may have agreed to abide by majority decisions in these matters, as in a modern corporation, but that does not prevent them from resigning from the association. There are other problems of cost. Once a protective association gains a monopoly of coercive power, it also gains enormous bargaining power to set conditions for its services. If the membership is generally unhappy with the terms, they may dismiss the dominant protective association and form another one. However, human nature and the economics of political power suggest that a monopoly protective association will not easily give up its status, but will seek to preserve its position by Machiavellian strategies including outright vote-buying and the use of force. Besides, dominant protective agencies earn the gratitude of

the people by defending them against external enemies. Hence, it may not be possible in practice to install an alternative protection service provider except by violent revolution or secession. We know this as a brutal fact of human history.

Thus, the minimal state has an innate tendency to grow. The state is animated by the people who wield its powers. Without them, there is no state. Since men are no angels, the state inevitably gravitates towards its own interests and away from the public interest. The challenge for liberal societies is to find ways to confine the state to its essential functions. This is achieved, however imperfectly, by checks and balances. David Hume, in his great essay *Of the Independency of Parliament*, wrote,

Political writers have established it as a maxim that, in contriving any system of government, and fixing the several checks and controuls of the constitution, every man ought to be supposed a *knave*, and to have no other end, in all his actions, than private interest. By this interest we must govern him, and, by means of it, make him, notwithstanding his insatiable avarice and ambition, cooperate to public good. Without this, say they, we shall in vain boast of the advantages of any constitution, and shall find, in the end, that we have no security for our liberties or possessions, except the good-will of our rulers; that is, we shall have no security at all.¹⁰

The first function of the liberal state: Securing life, liberty, and property

The primary justification for the state is its role as the guarantor of last resort of the personal safety, liberty, and property of the citizen. A state that cannot or does not perform this function has no reason to exist. Thomas Hobbes, the famous proponent of the absolute sovereignty of the state, was clear about this. He wrote that ‘The end of obedience is protection’ and the ‘obligation of subjects to the sovereign ... is understood to last as long, and no longer, than the power lasteth by which he is able to protect them.’¹¹ Hobbes maintained that the natural right of individuals to protect themselves can never be relinquished by covenant. Sovereignty is intended to be immortal, ‘yet is in its own

nature, not only subject to violent death by foreign war, but also through the ignorance and passions of men it hath in it.⁷¹²

Life, liberty, and property are secured by the rules of justice that protect them—liability rules and the rules of contract. In civilised society, citizens for the most part observe these rules and resolve disputes when they occur amicably or by lawful self-defence. Yet there is residual responsibility of the state to enforce the law when private processes fail. The state executes its responsibility through its police power, the judicial power exercised through impartial and competent courts, and through the appropriate use of legislative power.

Police power

The police power of the state is justified on the ground that laws need to be enforced. But there are laws and then there are laws. A state that is organised on the principle of freedom would have few laws, concerned mainly with the protection of life liberty and property. The criminal law in such a state will only punish acts that harm these interests. These are acts that are intrinsically wrong (*mala in se*). In contrast, the modern welfare state criminalises countless other types of acts that have little to do with preserving life liberty and property but much to do with social control and state self-maintenance. These are crimes solely by reason of prohibition (*mala prohibita*). Apart from the regular constabulary, there are myriad enforcers such as price and quality controllers, licensing authorities, inspectors, censors, and even speech police. Most of these enforcers have no place in the minimal liberal state.

The police power, even in the minimal state, is dangerous because of the agency problem. In a liberal society, the police are not the arm of the ruler but the agents of the people whose rights and liberties they are employed to protect. Hence, police power must be clearly delimited and the police must remain under the ultimate control of their principal—the people—through appropriate constitutional mechanisms. The exercise of police power must be reviewable by independent, impartial, and competent courts.

Military power

The state's responsibility extends to the protection of life, liberty, and property from external enemies—hostile nations and non-state actors

such as international terrorist groups. Private mobilisation to meet these threats is unrealistic, hence the need for state military power. Military power is an aspect of police power but raises special issues. Military power is potentially more dangerous than domestic police power. In many countries, civil authority exists by grace of military commanders. Liberals and republicans have historically opposed the idea of a standing army for this reason. However, the constancy of threats and the sophistication and costs of defence against foreign enemies and their local agents have made civil defence impractical for many countries, a fact that Adam Smith recognised in *The Wealth of Nations*.¹³

Historically, military power has been used not only for national defence but also for conquests abroad. Great empires were built with military power. Military adventurism has also ruined nations. National defence sometimes requires preemptive action and military operations abroad, but a liberal society that respects life, liberty, and property will not engage in conquest for gain. In our complex and economically interdependent world, it is not always easy to see where legitimate national defence ends and conquest begins. The agency problem is particularly acute for these reasons and it must be mitigated by ultimate civilian control and constitutional checks.

Judicial power

The most fundamental principle of the common law is that a person is free to do as he pleases unless the law forbids it. In a liberal society there is no such thing as complete freedom. Untrammelled freedom of one can exist only at the expense of the freedom of others. Hence, freedom can exist only through the observance of the fundamental laws that protect life, liberty, and property. These laws concern contract, tort, and crime. A free society exists when most people observe these laws most of the time. However, there are always lawbreakers and disputes about what the law requires. The resolution of these disputes will require some form of arbitration, though in most cases that service need not be state-provided. In fact, private arbitration is the norm in merchant trade and industry.

Are courts necessary? I think so, for the following reasons.

First, the effectiveness of private arbitration depends on the availability of judicial enforcement of awards in the last resort. This

avoids the problem of private coercion that threatens the peace. Self-help is not always an option for the weaker parties, particularly in cross-border transactions. A party that does not honour a private judgment in effect commits theft. Hence, enforcement of these judgments falls within the police function of the state. Second, where there is no preexisting arbitration agreement between parties and they cannot agree to arbitration post-dispute, an independent court may be the only recourse, particularly for the weaker party. Third, and most importantly, independent courts are needed to resolve disputes between the state and citizen. Disputes between state and citizen occur in many ways. Criminal prosecution is a virtual state monopoly, though it need not be. The state claims taxes and obedience to its regulations. The state has contractual disputes with citizens. Citizens have grievances about state violation of their rights and freedoms and about state transgressions of constitutional boundaries. A practical way to resolve these disputes is through courts that are funded publicly but are independent of the state.

These comments should not be taken as general approval of the way courts function in most countries, including industrialised democracies. Court proceedings are costly and the levels of judicial competence not always acceptable. Restrictive regulations in many countries make legal services prohibitively expensive for all but the wealthy. Government, as hirer and paymaster of judges, has subtle means of influencing decisions. Courts are often justifiably criticised for misconceiving their role and usurping legislative power. Some conservative thinkers regard the judiciary as the most dangerous branch of government. These, among other reasons, spur the exodus of litigants to commercial arbitration and alternative dispute resolution (ADR).

Legislative power

James Madison regarded the legislature as the most dangerous arm of the government. In the *Federalist* No. 48, he wrote,

But in a representative republic, where the executive magistracy is carefully limited; both in the extent and the duration of its power; and where the legislative power is exercised by an assembly, which is inspired, by a supposed

influence over the people, with an intrepid confidence in its own strength; which is sufficiently numerous to feel all the passions which actuate a multitude, yet not so numerous as to be incapable of pursuing the objects of its passions, by means which reason prescribes; it is against the enterprising ambition of this department that the people ought to indulge all their jealousy and exhaust all their precautions.¹⁴

Whereas the executive exercises legal power, the legislature can create power and direct its exercise. In parliamentary systems, the legislature is the virtual servant of the executive. In the US presidential system, the legislature is a virtual vote bazaar, where one lawmaker will vote for a measure, which he would ordinarily oppose on principle, in order to gain the votes of others for a project of his own. Thus, coalitions of special interests often prevail over the public interest. The modern welfare state is the creation of legislative power. Legislators consumed by their elevated sense of importance and the demands of the game of electoral survival have expanded the role of government to its current Leviathan-like proportions. They have not only legislated on every aspect of our lives but have delegated vast legislative powers to the executive branch with scant provision for political or judicial oversight.

In the ideal liberal society, the state has extremely limited legislative power. The classic liberal legal system resembles the spontaneous legal order that F. A. Hayek masterfully portrayed in *Rules and Order*, which was republished as the first volume of his monumental work *Law, Legislation and Liberty*. Such a legal order emerges endogenously as the product of coinciding patterns of conduct on the part of free individuals pursuing their own private ends. The rules thus evolved are general, impersonal, and end-independent. They are rules of just conduct that Hayek famously described as ‘Nomos: The Law of Liberty.’¹⁵ They appear in the law books as the laws of tort, crime, and contract. The English common law epitomised this process of law-formation. In contrast, the modern welfare state directs its legislative power to the achievement of its own politically determined ends. The grown law is set aside by legislative directions and administrative discretions. The law of contract, the basis of free trade, has been systematically mutilated

by legislation aiming to regulate labour markets, trade practices, and consumer preference, and by countless license requirements. Property rights and liability rules that have crystallised over centuries have been distorted in the name of social justice. Whereas the classically liberal minimal state is frugal in the exercise of its legislative power, the welfare state is extravagant. I argued previously that the minimal state would have no power to unilaterally alter the rights and freedoms of citizens. So, does the minimal state need legislative power at all? The answer is yes, for the following reasons.

In a world that is in equilibrium, there will be no need for legal change. The real world though is one of disequilibrium and evolution. In such a world, we will still expect the basic rights concerning life, liberty, and property to remain permanent features of liberal society. Indeed, it is the persistence of these rights that enable us to survive and flourish in this uncertain world. However, the rules that protect these interests will need ongoing adjustment and clarification. Herein lies the logic of the common law, which historically has upheld the rights to life, liberty, and property by defining and adjusting the fundamental rules of conduct to new realities. This is an ongoing project in a liberal society. Consider the general rule that parties cannot withdraw from contracts that are formed by the meeting of the minds (*consensus ad idem*). When do minds meet when people transact on the internet? Property rights may conflict in new ways as a result of new technologies. New tradable rights may have to be recognised as resources such as water go from surplus to scarcity. The minimal state in a liberal society will be required to develop an extensive jurisprudence concerning the protection of basic rights. Sometimes, the development of this jurisprudence may require legislation, as when rapid changes in technology or natural conditions create uncertainties concerning legitimate expectations. Hence, the minimal state in a liberal society will have, in addition to local courts, an institution resembling the old High Court of Parliament of England. This institution was the highest court in the land and (unlike the present sovereign parliament) was the ultimate custodian of the rights of the people. It exercised legislative power only occasionally when 'the development of common law rules has failed to keep pace with changes in social and economical conditions' or 'when a too servile adherence to precedents has forced those rules into a wrong groove.'¹⁶ Legislative

power could not be used to ‘affect the sacred principles of the common law created by immemorial tradition.’¹⁷

A second need for legislation arises in relation to law enforcement and the administration of justice. Legislation can usefully regulate the operations of the agencies of government responsible for policing the law to ensure due process, and facilitate the judicial process by providing for the maintenance and administration of the courts. Such legislation does not abrogate rights but assists their vindication.

Does the state have any other role?

The modern state has assumed many other roles. It has become, among other things, provider of goods and services, social insurer, wealth distributor, moral guardian, entrepreneur, keeper of the currency, banker, and economic planner. It has been an abject failure in each of these roles. It will take several volumes to record all the evidence on this question, and this is not the occasion to conduct even a cursory survey. It suffices to observe the unambiguous trend in recent decades in all but a handful of countries towards a trust in markets and private enterprise to deliver the most cherished goals of society. The trend is no more evident than in the former communist states of Central and Eastern Europe and the still nominally communist states of Asia, such as China and Vietnam. The transformation of the economic thinking of social democratic and labour parties of OECD countries offers further evidence.

Yet collectivist thinking remains strong in all countries. Most governments concede the efficiency of markets but regard themselves as their master. There is a belief at large that we can manipulate market forces, release or restrain them at will, and commit them to whatever social ends that we desire. This is the inarticulate premise of the so-called Third Way thinking of Tony Blair and Bill Clinton. It is based on a profound misconception about the nature of markets and the world in which we live. Markets represent a process of discovery about both ends and means. This is its great virtue. It can do what governments cannot—allocate resources efficiently in a world in disequilibrium where no one commands the kind of knowledge needed for central planning. Let us consider in this light the various social roles assumed by the state.

The state as provider

The modern state is a massive provider. It provides healthcare, education, pensions, physical infrastructure, and even entertainment. It does so by direct provision and by various forms of tax and subsidy schemes, grants, and legal mandates. It is clear that the state in its own right cannot provide anything, for it owns nothing that it has not taken from people. Hence, whatever the state provides amounts to coercive redistribution. Even so, we may ask whether state provision of goods and services can be justified.

The state, even in countries with free-market orientations, has been a major participant in trade and industry. The state has owned and operated mines, trading monopolies, railways, airlines, seaports and airports, utilities, motorcar and aircraft factories, banks, insurance companies, universities, schools, hospitals, telephone companies, television and radio stations, and innumerable other businesses. Reasons ranging from national security, macroeconomic control, efficiency, and equality and social justice to national pride have inspired state involvement in these fields. Many of these justifications have been laid bare by competition in a globalised marketplace, resulting in a worldwide trend towards privatisation of these state enterprises.

From the standpoint of the liberal minimum state, only security concerns provide a semblance of a justification. The state's duty to secure the safety of citizens may require the enforcement of special rules and measures at seaports and airports. As many countries have realised, the state can implement these precautions without owning these assets.

The role of the state in health and education

Despite the withdrawal of state actors from many sectors of the economy, the state remains loath to disengage from the health and education sectors. States that trust the market to provide food, medicine, shelter, child care, transportation, electricity, water, gas, books, computers, and many other essential goods and services do not trust markets to provide healthcare and education. In most countries, the state owns and operates primary and secondary schools, universities, and vocational colleges, as well as hospitals and nursing homes. Commercial providers of these services (where allowed) are heavily regulated.

Discussion of the role of government in health and education is not helped by a common confusion of two distinct issues. The first question concerns efficiency. Can the state do a better job of providing health and education services than competitive markets? The second concerns the ways in which financially (or otherwise) incapacitated persons may be helped to access healthcare and education. The latter issue is not specific to education and health, and raises the question of the state's role in providing safety nets and income support. Hence I propose to discuss it as a general question presently.

Education

In most countries, the state directly or indirectly provides education at primary, secondary, and tertiary levels. There are numerous state education models around, ranging from state monopoly to mixed systems where private schools, sometimes aided by the state, coexist with state schools. I do not propose to labour the point that private education wherever allowed outperforms state education, with a few notable exceptions where local communities or alumni take virtual ownership of particular state-owned schools. Evidence from both developed and developing countries suggests that school choice is of paramount importance to parents and that private schools in general are preferred over state schools despite their higher costs. James Tooley's groundbreaking work on education markets in the Third World not only confirms observable migrations from public to private education but also shows the capacity of education entrepreneurs to deliver superior and affordable education to the poor.¹⁸ So why state education?

In his essay 'The Role of Government in Education,' Milton Friedman argued that in a free society where the family is the unit of organisation, there are only three justifications for government action beyond its essential role of maintaining the rules of the game of social life. He wrote,

Beyond this, there are only three major grounds on which government intervention is to be justified. One is 'natural monopoly' or similar market imperfection which makes effective competition (and therefore thoroughly voluntary exchange) impossible. A second is the existence of substantial

‘neighbourhood effects’, i.e., the action of one individual imposes significant costs on other individuals for which it is not feasible to make him compensate them or yields significant gains to them for which it is not feasible to make them compensate him—circumstances that again make voluntary exchange impossible. The third derives from an ambiguity in the ultimate objective rather than from the difficulty of achieving it by voluntary exchange, namely, paternalistic concern for children and other irresponsible individuals.¹⁹

Friedman distinguished between (a) general education for citizenship that inculcates the values and rules of society and (b) vocational and professional education. He included in the first category primary schooling that imparts basic literacy and minimum knowledge, as well as liberal education at higher levels. Friedman argued that general education had ‘neighbourhood effects’ that justified state involvement, but proposed that such education can be secured through education subsidies (in the form of vouchers that can be used to buy education from preferred schools) rather than by the nationalisation of the education system. Friedman’s argument is that we all benefit from living among a population of educated citizens, and hence we may have a duty to contribute to that end. Friedman saw no justification for public funding of vocational and professional education, which forms human capital and generates higher rewards for trainees in the labour market.

Friedman’s case for state funding of general education on the grounds of neighbourhood effects is questionable. General education, as Friedman conceded, is also human capital. His argument about neighbourhood effects neglects individual and family responsibility for general education. Providing general education is part of the general duty of parents to impart life skills to their offspring. There is justification for legalising this moral duty, as it protects a class of persons who cannot protect themselves. Just as our ancient ancestors taught their progeny hunting skills, we owe to our children the transfer of skills they need to live in the modern world. As to the neighbourhood effect, if my family benefits from living in a society of civic-conscious and knowledgeable citizens, I have a reciprocal duty to help my fellow citizens achieve the

same by providing general education to my children. The neighbourhood effect does not justify public funding of general education. Whether the state should grant assistance to people who cannot buy education in the marketplace is a separate question.

Healthcare

The state is deeply involved in the provision of healthcare. In OECD countries, private hospitals coexist with free public systems. The state has established health insurance schemes partly or fully funded through taxation or employer mandates. A trend towards piecemeal privatisation of unsustainable public health systems is observed in most countries. Wherever the opportunity exists, people seem to be migrating to private systems. As with education, the privatisation debate on health confuses the issue of efficiency with the issue of providing care for those who cannot afford it.

I do not propose to examine the ills of modern state-sponsored healthcare systems, or the economics of healthcare. Milton Friedman's essay 'How to Cure Healthcare,' and the *Cato Handbook for Congress: Health Care* provide excellent analyses on these matters.²⁰ My aim is to identify the liberal principle concerning the state's role in relation to the provision of healthcare.

There are two major differences between education and healthcare. One is that the former is a constant demand (at least at the general level), whereas the latter is an intermittent demand. Most people are healthy most of the time, though all are forever susceptible to ill health. The second is that illness can incapacitate a person financially to a point where buying healthcare becomes impossible. Hence, there is a need for health insurance. There is no justification for state assistance to those with means to buy health insurance. Since most people are potential victims of catastrophic illness and it is not possible to compel everyone to buy health insurance, there is a case for the establishment of a universal scheme of catastrophic health insurance.²¹

State and universal safety nets

All functioning societies have some kind of safety net. I grew up in a society (Sri Lanka) where the safety net was provided by my immediate and extended family and my friends. There was no possibility of getting

money from the state to tide me over in difficult times, but there was a high probability that my brother or sister would shelter and feed my family until I was back on my feet. In pre-welfare-state European societies, social security was largely a private or cooperative enterprise. The mutual aid societies formed a backbone of civil society.²²

Family networks are not easy to maintain in an industrialised society marked by dynamic labour markets. Many people have no choice but to leave their hometowns and villages, where support from family is available. The problem, though, is exaggerated. As millions of migrants from non-European societies demonstrate, distance is not the barrier to close family relations and mutual care that one imagines. In fact, overseas labour markets have opened new opportunities for the poor of these countries to better their lives and those of their relatives at home. In countries like Mexico, the Philippines, Sri Lanka, Bangladesh, and Nepal, remittances from migrant workers form substantial parts of national income. In 2005, Mexicans working abroad, principally in the US, remitted \$18 billion, making it the largest source of foreign exchange for their home country. In 2002, remittances to Sri Lanka from expatriate labour amounted to 27% of the country's foreign exchange earnings. The story is similar in other labour-providing countries. This money does not go to the state, but to families. It funds house-building, education, businesses, and family care.

One of the great advantages for economically emerging countries is their lack of state-controlled social security. What is wrong with state social security? From the liberal standpoint, it is based on compulsion, violates freedom of choice and property rights, and is inefficient. It also makes the population dependent on the state. Most state social security funds are technically bankrupt, and hold future generations to ransom for the benefit of the present. It is encouraging to notice recent, profoundly significant research produced by classical liberal scholars on how we may escape the current social security quagmire. It requires radical rethinking of the whole system of incentives and disincentives to save for retirement and catastrophe.²³ As Daniel Shapiro argues, the moral case for social security privatisation is unanswerable.²⁴ Emerging nations can avoid this democratically created quagmire by developing private social security arrangements.

State-controlled social security is entrenched in Western welfare societies to the extent that its overnight abolition is not an option. However, privatisation of social security is not just an option, but an economic and moral imperative.

Endnotes

- ¹ 'Convention on Rights and Duties of States (inter-American),' 26 December 1933, *United States Statutes at Large* 49:3097, *Treaty Series* 881, art. 1.
- ² D. Lal, *Reviving the Invisible Hand: The Case for Classical Liberalism in the Twentieth Century* (Princeton, NJ: University of Princeton Press, 2006), 22–23.
- ³ F. A. Hayek, *Law, Legislation and Liberty*, vol. 1 (London: Routledge & Kegan Paul, 1982), 1.
- ⁴ M. Rothbard, 'Society without a State,' *The Libertarian Forum* VII:1 (1975), 3.
- ⁵ R. Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), xi.
- ⁶ L. von Mises, *Liberalism: In the Classical Tradition* (1927; repr. New York: The Foundation for Economic Education, 1985), 37.
- ⁷ J. Locke, *Two Treatises of Government* (1689–1690; repr. Cambridge: Cambridge University Press, 1960), 368.
- ⁸ R. Nozick, *Anarchy, State, and Utopia*, 38–39.
- ⁹ For an illuminating economic history of criminal law, see B. L. Benson, *The Enterprise of Law: Justice Without the State* (San Francisco: Pacific Institute for Public Policy, 1990).
- ¹⁰ D. Hume, *Essays Moral, Political and Literary* (1777; repr. Indianapolis: LibertyClassics, 1987), 42.
- ¹¹ Thomas Hobbes, *Leviathan* (1651; repr. New York: W. W. Norton & Co., 1997), 121.
- ¹² As above.
- ¹³ A. Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776; repr. Indianapolis: LibertyClassics, 1981), 707–708.
- ¹⁴ J. Madison, 'The Federalist No. 51,' *The Federalist Papers* (1788; repr. New York: Bantam Books, 1982), 251.
- ¹⁵ F. A. Hayek, *Law, Legislation, and Liberty*, vol. 1, 94–123.
- ¹⁶ W. Holdsworth, *History of English Law*, vol. 2 (London: Methuen, 1936), 446–447.
- ¹⁷ C. H. McIlwain, *The High Court of Parliament and its Supremacy* (New Haven: Yale University Press, 1910), 299–300.
- ¹⁸ J. Tooley, P. Dixon, and J. Stanfield, *Delivering Better Education: Market Solutions for Educational Improvement* (London: Adam Smith Institute, 2003).

- ¹⁹ M. Friedman, 'The Role of Government in Education' (1955), www.schoolchoices.org/roo/fried1.htm.
- ²⁰ M. Friedman, 'How to Cure Healthcare,' *Hoover Digest* 2001:3 (2001) www.hoover.org/publications/digest/3459466.html; Cato Institute 'Cato Handbook for Congress: Healthcare' (1996), www.cato.org/pubs/handbook/hb105-24.html.
- ²¹ M. Friedman, 'How to Cure Healthcare.'
- ²² For a history of fraternal societies in the US, see D. Beito (1990) 'Mutual Aid for Social Welfare: The Case of American Fraternal Societies,' *Critical Review* 4:4 (1990) 709–736.
- ²³ P. Booth and D. Cooper *The Way Out of the Pensions Quagmire* (London: Institute of Public Affairs, 2005).
- ²⁴ D. Shapiro, 'The Moral Case for Social Security Privatization,' *The Cato Project on Social Security Privatization* 14 (Washington DC: Cato Institute, 1998).