

DAVID MILLER AND LIFE BOAT SITUATIONS: A NOTE

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From an article written by Professor David Miller¹ we quote the following:

It is arguable, to say the least, whether the intuition that costs may not be imposed on individuals merely for the sake of a greater social good implies that no limitations of individual's personal or property rights is ever permitted. Consider the following by way of analogy. Suppose ten farmers own adjoining pieces of land along the banks of a river. Because of changing meteorological conditions, there is the possibility of a disaster flood that would wash away everything that the farmers have done to improve their land, unless all of them cooperate to raise flood barriers right along the river banks. One farmer refuses to raise barriers on his land, claiming that he has divine protection against flooding, or that he has private knowledge that the relevant weather conditions won't occur, or given some such reasons. It is permissible for the nine other farmers to force the refusenik to raise barriers on his stretch of the river? I think it clearly is permissible, and that a description of this case as one of 'imposing costs on some for the greater benefit of others' [in Robert Nozick's words²] misses its most important salient feature, namely that the vital interest of the nine farmers – the same interest that justifies the property rights in the first place – are put at risk if the tenth farmer is allowed to sabotage the cooperative solution³.

Here we have, once again, an alleged justification for the use of force, not as a defensive device but as an aggressive step that infringes other people's rights. Professor Miller probably has in mind that the monopoly of force should intervene, which has been labeled "government" by political philosophers at this stage of our cultural evolution⁴. For the same matter, the case can also be discussed in a context of "autogovernment"⁵ where competitive

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¹ "The Justification of Political Authority", *Robert Nozick*, New York: Cambridge University Press, 2002, David Schmidtz ed.

² *Anarchy, State and Utopia*, New York: Basic Books, 1974.

³ "The Justification" *op. cit.*, p. 26.

⁴ It is interesting to stress that Ernst Cassirer has said that "I have no doubt that future generations looking at much of our political systems will have the same impression that a modern astronomer has when he reads a book of astrology, or a modern chemist when he sees a treatise of alchemy". *El mito del estado*, México: Fondo de Cultura Económica, [1946] 1992, p.349 [*The Myth of State*].

⁵ *Vid.*, Alberto Benegas-Lynch, Jr. "Toward a Theory of Autogovernment", *Values and The Social Order. Voluntary versus Coercive Orders*, Aldershot, UK: Avebury Series in Philosophy, 1997, vol III, Gerard Radnitzky ed.

agencies of justice and protection compete in the way that have been described, among others, by Murray N. Rothbard, Bruce Benson, Walter Block, Hans-Hermann Hoppe, to which we should add interesting philosophical arguments related to game theory, such as those that have been presented by Anthony de Jasay⁶.

In any case, the aforementioned quotation from David Miller should be analyzed in separate segments. If there has been a previous arrangement between the farmers that states that in case of dispute the conflict should be settled through, let us say majority vote, it would be perfectly legitimate to compel the tenth farmer to raise flood barriers. Obviously, this is not the case since Professor Miller is advocating the use of force as an exogenous device that appears *ex-nihilo* so to speak. No violence would be needed if an agreement as previously mentioned had existed, unless the tenth farmer would decide not to honor his word. Of course, if one reads David Miller's description one would easily conclude that, in that context, this is not either the case.

In his analysis, we are confronted with another matter. Since knowledge is dispersed through different individuals in what we call "society", ignorance must be taken on account. In our example we must accept that the tenth farmer may be right regarding what will happen with the meteorological conditions. But even if he does not have the necessary knowledge, the case shows that the other nine farmers are violating his property rights.

Suppose it could be said that, in fact, "as a consequence" of not violating property rights, the flood finally arrives and destroys the land of the ten farmers. In the first place, it should be noted that there is no causal connection between the flood and property rights. Property rights did not cause the flood. It was caused by a meteorological catastrophe. It could be said that the flood would have been prevented if property rights were infringed violently. This could be said *ceteris paribus*. We do not know what would have happened in a contrafactual exercise, but for the sake of the argument suppose this is the case. In this line of argument, aren't we accepting utilitarianism, balancing what we think are the benefits and the negative effects for different persons? Aren't we using some persons as a means for the ends of others? Won't this reasoning take us to sacrifice the rights of some for an eventual benefit that others would enjoy? On what grounds can we say for sure that we have the knowledge to conclude that this and that causes a benefit or a problem? On the other hand, suppose we have the knowledge, what are the moral foundations that allows us to sacrifice the right of one person or a group for the benefit of others?

The main question here is that if we are allowed to destroy rights this would affect negatively all persons since nobody could claim a right independently of the so called "social balance". We must take on account that all of us are circumstantially a majority and circumstantially a minority in different situations.

Suppose there is a group that is considered systematically as a majority that is granted a "right" to exploit systematically the rest of the people. Evidently this would be institutionalized theft: a band is authorized to exploit the rest of the people. In a sense, this is,

⁶ Specially in his collection of essays *Against Politics*, London: Routledge, 1997.

to a great extent, precisely what takes place in most countries. The result of this systematical exploitation causes negative results: insecurity and poverty.

We should consider this problem, which appears to be a puzzle, still from another angle. If we reject the utilitarian view and accept a natural law approach⁷, in the sense that we should respect the nature, that is the attributes of human beings, why should this be so? If one of the logical implications of human action is that, from our own point of view, we expect to be in a better position after our action takes place, why should we allow this to happen taking on account that the rights of third parties have not be infringed? The answer is obviously that this is convenient and better for each person. But, isn't this precisely an utilitarian approach? The answer is a vehement no. Of course, institutional frameworks that protect private property will be convenient for each person. In this line of argument we may say that natural law is convenient but this is not an utilitarian approach since there are no social balances involved.

In effect, there is no social balance, respecting natural law is convenient (it is good for the individual) simply because, in this context, each person may have its way if it is not permissible to resort to force so as to use the fruit of other people's labor. In this scenario, individual prosperity is based on voluntary contractual agreements, freedom of choice and individual responsibility. The discovery process of rules of just conduct, compatible with natural order, allows that each person may follow the path that he or she esteems is in line with his or her particular life projects.

Leaving aside Professor Nozick's inconsistencies regarding the alleged "invisible hand process" which would eventually arrive at a minimal state⁸, he has elaborated one of the most powerful criticism to utilitarianism:

individuals are ends and not merely means; they may not be sacrificed or used for the achieving of other ends without their consent. Individuals are inviolable [...] but why may not one violate persons for the greatest social good? Individually, we each sometimes choose to undergo some pain or sacrifice for a greater benefit or to avoid a greater harm: we go to the dentist to avoid worse suffering later; we do some unpleasant work for its results; some person's diet to improve their health or looks; some save money to support themselves when they are older. In each case, some cost is born for the sake of the general overall good. Why not, *similarly*, hold that some persons have to bear some costs that benefit other persons more, for the sake of the overall social good? But there is no *social entity* with a good that undergoes some sacrifice for its own good. They are only individual people, different individual people, with their all individual lives. Using one of these people for the benefit of others,

⁷ For different approaches to natural law philosophy, *vid.* A.P. d'Entréves *Natural Law*, London: Hutchinson Press, [1951] 1977; John Finnis, *Natural Law and Natural Rights*, Oxford: Clarendon Press [1980] 1986 and Leo Strauss, *Natural Right and History*, Chicago: The University of Chicago Press, 1965. To secure natural rights (natural human attributes) means to respect individual paths and different approaches to life, which should be differentiated from nature in general, so as to defend oneself from the rigors of nature: such occurrences as storms, earthquakes, plagues, etc.

⁸ For a discussion on this topic, see Roy A. Childs, Jr. "The invisible hand strikes back", *Liberty against Power*, San Francisco: Fox & Wilkes, [1977] 1994, Joan Kennedy Taylor, ed.

uses him and benefits the others. Nothing more [...] The moral side constraints upon what we may do, I claim, reflect the fact of our separate existences. They reflect the fact that no moral balancing act can take place among us; there is no moral outweighing of one of our lives by others so as to lead to a greater overall *social* good. There is no justified sacrifice of some of us for others.⁹

We should also say that, apparently, Professor Miller does not grasp the fundamental meaning of *cooperative solutions* since in the quoted analogy he states that the ten farmers should not be allowed “to sabotage the cooperative solution”. As we understand it, David Miller is suggesting that the cooperative solution should in fact be sabotaged, since cooperation necessarily means voluntary agreements and respect for individual rights. As a *reductio ad absurdum* we surely wouldn’t conclude that Hitler’s policy was a “cooperative solution”.

We should also point out that Miller’s statement that “the vital interest of the nine farmers – the same interest that justify the property rights” is not at all clear. He assimilates “the interests” of the nine farmers with the tenth farmer’s property rights, and thereby justifies the invasion of the latter’s right. “The vital interests” of a bank thief are in no way the same interests of those who own the bank.

As it is well known, the counterpart of a right consists in an obligation. If I earn an income of a thousand the rest of the members of society have a universal obligation to respect my income. But if I say that I have a “right” to receive two thousand although I do not earn it, if such said “right” is granted, this means that some other person (or persons) would be compelled to finance the difference, situation that necessarily means the infringement of these people’s rights. That is why those alleged “rights” are technically pseudorights, which are included in most of the contemporary written Constitutions. In an Orwellian fashion, those Constitutions are in fact a list of pseudorights: the right of a decent home, to education, to love and so on.

These pseudorights also constitute malinvestments since the allocation of properties is not realized according to consumer tastes in voluntary arrangements contexts¹⁰. On the contrary, the use of aggressive force becomes necessary to achieve the aforementioned ends. This misallocation of scarce resources will affect negatively wages and incomes in real terms due to capital consumption.

One last point should be discussed regarding David Miller’s quotation. Property rights are *not* put at risk if the flood occurs. The property is eventually put at risk (not *property rights*), in the same way as when an entrepreneur decides to invest on the production of a good that consumers won’t buy and, consequently, incurs in losses.

The line of thought of the present note points at showing that when property rights are infringed in the name of the so called life boat situations, in the last analysis, there will be an increase not a decrease of those situations. New life boat situation will tend to appear.

⁹ *Anarchy*, *op.cit.*, p. 31-33; also see p. 28-30.

¹⁰ For some of the fundamental differences between the market process and elections in the political arena, see Bruno Leoni “Voting versus the Market”, *Freedom and the Law*, Indianapolis: Liberty Fund [1961] 1991.

Examples of these extreme situations are always surrounded by dramatic implications but if we see this from another side we might conclude that, in a sense, our world is permanently surrounded by life boat situations. For example, we know that today there are thousands of persons in India and Africa that confront life boat situations in the sense that they live in dangerously miserable conditions. They desperately need food and drugs to overcome plagues. Precisely, this situation tends to get worse because governments in those places systematically infringe rights on the basis that, in this way, they will counteract and check life boat situations. On the contrary, countries that protect property rights have definitively gained and flourished. All countries and all places have started from scratch. Wealth does not appear through an automatic process, it requires labour and saving. Our ancestors were savages. To become civilized requires much effort in a climate that secures the sanctity of freedom.

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