

Marginal notes : pp. 29, 30.

Also, text is right-justified but footnotes aren't; is that deliberate?

Minarchism on Seasteads

Roderick T. Long

Abstract

States are dangerous, even minarchist ones. Nevertheless, there are reasons why a seastead community might seek to organize as a minarchy rather than an anarchy in order to have a governmental face to turn toward the outside world. Such a minarchy will need to be designed with incentive structures to counteract, as far as possible, the tendency of state power to grow. Several strategies for doing so, both democratic and anti-democratic, are considered and found wanting. It is argued that the best way of constraining a minarchist state is to build competitive, anarchic elements into its structure; several ways of doing this are canvassed.

1 Why Minarchism?

The idea of building independent free communities on seasteads, outside the jurisdiction of existing states, remains an attractive one. But escape from the authority of external states will be a hollow victory if such authority is simply allowed to rearise domestically on the seastead itself. In short, seastead communities face the possibility of both internal and external threats to freedom. Hence it becomes imperative, for those planning to construct such communities, to consider how their institutions should be structured to address both kinds of threats. I've addressed the issue of external threats elsewhere (Long, 1995); the focus of the present article is on the internal threat.

States are dangerous because they are coercive monopolies – typically, monopolies over a given territory.¹ From an ethical standpoint, such monopolies are undesirable because, in claiming rights for themselves (e.g. to legislation, adjudication, and enforcement) that they deny to others, they violate libertarian equality. (Long, 2001; 2005.) From a pragmatic standpoint, by exempting themselves from the discipline of competition, such monopolies render themselves liable to a variety of incentival and informational perversities. The absence of competitors makes it easier for state actors to abuse their power; and even if they resist that temptation and do their best to make decisions beneficial to the populace, the absence of competitive feedback makes it difficult for them to know which decisions to make (Barnett, 1998). Ideally, then, it would be best to dispense with state monopoly in favor of a polycentric legal order of the sort advocated by free-market anarchists (Stringham, 2007; Long, 2008).

There are reasons, however, why the founders of some seastead communities might feel constrained to retain a state structure. For one thing, some prospective residents might be too cautious to adopt a constitutional structure so radically unfamiliar to them. For another, having a governmental face to turn toward the outside world might be necessary, at least initially, in order for a seastead community to maintain legitimacy and respectability in the eyes of other states, which could be crucial to protecting seastead sovereignty: “If it looks to outsiders as though ‘nobody is in charge,’ hostile powers may take this as an invitation to invade in order to ‘restore order,’ and world opinion will put up little protest” (Long, 1996a).

Moreover, most countries will not allow foreigners to enter unless they hold a passport issued by a recognized government; if seastead residents are not to be closed off from the outside world (a situation not only inconvenient in itself, but also favorable to the rise of domestic tyranny through the diminishment of the right of exit), a seastead community must have some single agency authorized to issue passports (Long, 1997).

1. I say “typically”, because, in the ancient world, states were often characterized by monopoly over a given population rather than over a given territory. As Aviezer Tucker reminds us: “The Greek polis was essentially a structure of people united by law, not by a relation to a territory. When the Greeks colonized, the future state, the *polis*, its hierarchical political structure, had already existed on the ship, before a favorable precise site was chosen.” (Tucker, 2016, p. 148; cf. Long, 2016b.)

A further reason that retaining a state structure might be desirable for a fledgling free community is that such a community may be founded within the territory of some existing state on the basis of a long-term (e.g. 99-year) lease granted by that state, and some individual party must be the holder of the lease (Long, 1997). This consideration applies more to land-based communities than to seasteads, but might conceivably apply to the latter if they were located within an existing state's territorial waters, as states may be less reluctant to cede some sovereignty there than to cede it over portions of land.

Hence some seastead communities may well choose to structure their legal order as a monopoly state. Given the aforementioned incentive and informational perversities associated with monopolies, however, they will want a state as limited as possible – specifically, a *minimal state* or *minarchy*,² limited to the protection of its citizens' libertarian rights, and barred from violating those rights itself except insofar as the prohibition on competition inherent in the state's monopoly status constitutes such a violation. Moreover, even the monopoly status itself can be rendered consistent with libertarian rights if it is established through voluntary contract³ – though the inalienability of certain rights does place limits on which contractual requirements are legitimately enforceable (Evers, 1977; Barnett, 1986; Rothbard, 2003).

← "incentive" should be "incentival"

As is well known, state power has a tendency to grow. Hence the institutional structure of a minarchist seastead community must be chosen with care to counteract this tendency as far as possible. This is the minarchist's problem of constitutional design.

2 Incentive Structures

Guarantees of rights written into a paper constitution are not self-enforcing.⁴ After all, the 1936 Soviet Constitution guaranteed freedom of speech, press, religion, and assembly, as well as the inviolability of one's person, home, and private correspondence; but these rights were not exactly respected diligently in practice. For that matter, the United States Consti-

2. Although the coining of the term "minarchy" is usually attributed to Samuel E. Konkin III in 1971, it can be found, in roughly the same sense, in Ralph Borsodi's writings in 1968 (Borsodi, 1968, p. 491.) ←

3. It's a matter of definitional dispute whether a contractually instituted monopoly counts as a state.

4. On the political confusion engendered by the illusion of self-enforcing rules, see Long (2006).

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tution has not been adhered to with great faithfulness either; a consistent application of just the 5th, 9th, 10th, 13th, and 14th amendments would prohibit almost everything that federal and state governments currently do, which is why those amendments will never be applied consistently. To be sure, constitutional rights are *better* secured in the United States than they were under the Soviet Union; but that's because of differences in institutional structure, not differences in paper guarantees. Constitutional design, then, is not primarily a matter of crafting a written document; rather, it is a matter of arranging institutional structures in such a way as to give their participants the appropriate incentives. How, then, should a minarchy be structured so as best to marshal incentives in the service of limiting the growth of state power?

This is a pressing question even in the case of contractually instituted monopolies, such as proprietary communities. The monopoly enjoyed by a proprietary community may not constitute a violation of libertarian rights, but that doesn't stop it from being dangerous. After all, to the extent that a private company enjoys a situation comparable to that of a state, it tends to acquire the incentive to act like a state, or to transform itself into a state. The physical isolation of a seastead creates the risk of a relatively competition-free environment, thus enhancing the risk of abuse of power on the part of its administration.⁵

To be sure, if a seastead community is composed of separable sections, so that some regions can secede simply by physically disconnecting themselves from their neighbors and sailing off, this enhanced right of exit should constitute a check on administrative abuses. All the same, it would be physically (and geometrically) difficult to design a seastead community that enabled every resident to secede in this way. Moreover, the costs of physical secession from a proprietary community are significantly higher than the costs of switching service providers under free-market anarchism, and those higher costs give administrators some leeway in expanding and abusing the

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5. Over the past several years, Naomi Kritzer has been writing a connected series of short stories (on their way to being a novel) for the *Magazine of Fantasy and Science Fiction* set on a nastily oppressive "libertarian" seastead. Kritzer probably intends the stories to be a critique of libertarianism as such, but they raise concerns about the incentival perils of proprietary communities that libertarians themselves should find valid.

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powers. Hence institutional checks and balances are as needed for proprietary communities as they are for conventional states (Long, 1996a).

3 The Benefits and Hazards of Democracy

In modern society, the most popular strategy for checking state power is representative democracy. The theory is that if politicians abuse their power, they can simply be voted out of office by their constituents. Within the freedom movement, by contrast, representative democracy is often looked at with suspicion, on the grounds that it enables majority tyranny.

Suspicion toward representative democracy is warranted – not primarily, however, for enabling majority tyranny so much as for enabling tyranny by a minority of special interests. The ancient Athenians rightly regarded voting for elected representatives as an anti-democratic, oligarchical, even plutocratic mode of governance, since those who win elections tend to be those who are socially prominent and well-connected, who are popular or have the money to make themselves so (Long, 1996c; Long, 2015).

Defenders of representative democracy often point to elections as a competitive element that mitigates the State's monopolistic character but as David Friedman observes, electoral "competition" lacks the informational value of genuine market competition:

When a consumer buys a product on the market, he can compare alternative brands. ... When you elect a politician, you buy nothing but promises. You may know how one politician ran the country for the past four years, but not how his competitor might have run it. You can compare 1968 Fords, Chryslers, and Volkswagens, but nobody will ever be able to compare the Nixon administration of 1968 with the Humphrey and Wallace administrations of the same year. It is as if we had only Fords from 1920 to 1928, Chryslers from 1928 to 1936, and then had to decide what firm would make a better car for the next four years.

Imagine buying cars the way we buy governments. Ten thousand people would get together and agree to vote, each for the car he preferred. Whichever car won, each of the ten thousand would have to buy it. It would not pay any of us to make any serious effort to find

out which car was best; whatever I decide, my car is being picked for me by the other members of the group. Under such institutions, the quality of cars would quickly decline.

(Friedman, 1995, pp. 131-132)

Skeptics of democracy often look to some form of political elitism – rule by a board of experts, say – as the cure for democracy’s ills. But if the problem with representative democracy is that it empowers a special-interest elite, it’s hard to see how handing power over to such an elite *directly* is much of a solution. There exists no reliable way of selecting the members of a ruling elite or ensuring their incorruptibility.

Three years before developing his free-market anarchist proposal for competing security agencies, Belgian economist Gustave de Molinari offered the rather less attractive suggestion of making voting rights proportional to property, as a way of protecting the industrious rich against the rapacious poor (Molinari, 1846). Given that the state by its nature tends to respond more readily to concentrated interests than to dispersed ones, and so tends to favor the rich at the expense of the poor (Chartier and Johnson, 2011), it would seem that the poor stand in more need of a means of self-defense against the rich than vice versa, which would seem to make Molinari’s proposal precisely the wrong approach.

Defenders of “epistocracy” suggest limiting the franchise based not on wealth but on knowledge, as determined by, say, performance on a test, (Brenan, 2016). But as Sheldon Richman points out:

The public-choice problems with any form of epistocracy have long been noted. [...] For example, who would compose the test to determine who gets extra votes? [...] Another problem with testing relates to Gilbert Ryle’s distinction between “knowing how” and “knowing that.” Someone could be ignorant of the facts asked for on a test – what’s the unemployment rate? What party controls Congress? etc. – but have perfectly libertarian instincts about what the government

ought not to be able to do to him. Why should that person have fewer votes than, say, Paul Krugman or George Will?⁶

(Richman, 2016)

Hans-Hermann Hoppe (1994) has argued that monarchy is preferable to democracy from a minarchist perspective (a monarcho-minarchy, if you will), since a monarch regards her realm in something like the way a private owner regards her property, and so has reason to conserve it, thus promoting the prosperity and security of her subjects, whereas democratic politicians elbowing each other at the public trough face a tragedy of the commons and thus have little incentive to think beyond the next election. But empirically, a glance at the endless warfare conducted historically by kings and queens, or at the fantastical excess of royal palaces like Versailles and Schönbrunn, does little to encourage confidence in the thriftiness and low time-preference of monarchs. And theoretically, this is only to be expected, because the incentives that a ruler has for the treatment of her subjects are not, in fact, likely to be beneficial for those subjects.

Hoppe's argument on behalf of monarchy resembles the argument sometimes seen that slavers are likely to treat their slaves kindly out of a self-interested concern to preserve their property in good condition. In reply to this argument, historian Herbert Aptheker points out that unlike inanimate tools, human beings tend to resist being made to labor for another instead of for themselves, and so must be *compelled* to do so by threats and punishment. "Instead of the slave's value preventing cruelty, it was exactly because of that value, and that greater value he could produce – when forced – that cruelty existed."⁷ (Aptheker, 1943, pp. 132-133.) In short, it's better for one's pocketbook to treat one's slaves cruelly, even if that means killing some and crippling others, than to treat them less cruelly, if the result of this laxity is large-scale shirking, pilfering, or escaping.

6. A real-life example: in the United States, the 2016 Libertarian Party presidential candidate, Gary Johnson, was unable to identify Aleppo, the chief site of the refugee crisis in Syria. This ignorance of geography and current events alike was embarrassing; but all the same, who can deny that a Johnson presidency would have been better for liberty than the presidency of Donald Trump or Hillary Clinton?

7. Incidentally, free-market anarchist Murray Rothbard seems to have looked favorably on Aptheker's argument, since in Rothbard's personal copy of Aptheker's book this passage is marked "with heavy lightning-bolt squiggles and marginal comments like 'Right,' 'Good,' 'Great.'" (Long, 2009.)

Aptheker's argument generalizes to the case of monarchy. Yes, the monarch may regard the realm (including the populace) as an owner regards her goods, but precisely for that reason she needs to use threats of violence to motivate her subjects to produce for her benefit rather than their own. Of course, this is so for democratic rulers as well, but in their case the subjects at least have recourse to defensive use of the ballot – a severely inadequate tool, but better than the nothing that monarchy offers them. (Term limits are also useful in this regard.) Belgium's King Leopold II did indeed treat the territory of the Congo Free State precisely as his private property, which indeed it essentially was; but so nightmarish was his treatment of the native population that life under, *e.g.*, the Soviets looks attractive by comparison.

Moreover, even the limited incentives to kind treatment that monarchy affords depend on the monarch being economically rational. Since the kind of criminal insanity that throws economic rationality to the winds is likelier to occur in an individual than in a majority, democracy looks rather safer than monarchy on this score as well.

Given the importance of democratic self-defense on the one hand and the deficiency of representative democracy on the other, one might look with hope to the ancient Athenian model, which combined *direct* (rather than representative) democracy with *sortition* (selecting representatives by lot rather than election), a pair of policies that ensured proportional representation in political decision-making. And indeed the Athenian system seems to have worked relatively well for the liberty of its (free male) citizens (Long, 1996c; Long, 2015). All the same, Athenian history is filled with abuses of power, both by majorities (*e.g.* the execution of Socrates) and by elites (*e.g.* the use of patronage by aristocratic families to buy the votes of commoners in the assembly). Surely we can do better.

4 Saving Minarchy through Injections of Anarchy

There are a number of constitutional stratagems that can be used to restrain state power. One possibility is a plural executive, as a check on presidential overreach. (Dual executives have famous historical precedents in Sparta and republican Rome; but if deadlock is a worry, triple executives are a possibility.) As for legislative overreach, one way of addressing the tendency of state

power to grow is to make it easier to repeal laws than to pass them. Science-fiction author Robert Heinlein has one of his characters offer the following proposal: “I suggest one house of legislators, another *whose single duty is to repeal laws*. Let the legislators pass laws only with a two-thirds majority ... while the repealers are able to cancel any law through a mere one-third minority” (Heinlein, 1997, p. 301). One could also make it possible to repeal laws either through referendum or through lawsuit, as the Athenians did.

But if the biggest problem with minarchy is that it is not anarchy, then the solution (short of abolishing minarchy in favor of anarchy) is to make minarchy as much like anarchy as possible – that is, to incorporate a competitive element into the legal structure of the state, thus diminishing its monopolistic character even if one does not eliminate it. Existing states often involve *some* competitive element; the United States, for example, divides power among the executive, legislative, and judicial branches; between the federal government and the states; and, in the case of referenda and jury trials, between state officials and private citizens. These checks and balances are no doubt in significant part responsible for the U.S. enjoying the degree of freedom (however inadequate) that it does. A free-market anarchist system would of course embody a much more thoroughgoing and less hampered version of checks and balances (Long, 2008); but short of full anarchism, there are ways of introducing competitive checks and balances into a minarchist system that go far beyond what the U.S. system offers. One way of doing this is the idea of “virtual cantons” (Long, 2016a). As I have written elsewhere:

The libertarian state must consist of a central government, highly restricted in its powers so as to keep it from mischief, and a large number of competing local cantons, less restricted in their powers, so as to force political pressure down to the competitive canton level lest it otherwise simply shatter the central government, or bypass it, or shape it to its will. [...] The cantons should be “virtual” rather than physical; that is, membership in cantons should not be tied to geographical location; thus changing from one canton to another will be costless, thereby limiting the ability of cantons to oppress their members; anyone can change canton membership at will, and any sufficiently large number of citizens can start a new canton.

(Long, 1996a; cf. Long, 1993; Long, 1994b)

The virtual-canton concept incorporates a competitive model that, like free-market anarchism, decouples jurisdiction from territory, thus reaping the incentival and informational benefits that competition brings; but it does so *within a minarchist framework* (albeit a skeletal one) and so remains able to turn a governmental face to the outside world. And the ability to switch canton membership constitutes a form of democratic self-defense that, unlike the ballot, cannot easily be used *offensively*.

Canton membership could also be used as a basis for representation in the central legislature. Or, the legislature might be bicameral, with one house elected directly by the population generally and the other chosen by the cantons. If this proposal were to be combined with Heinlein's bicameral proposal mentioned above, it might be best for the canton house to be the law-passing one (to ensure maximum representation for different interest groups in the legislative process) and for the popular house to be the law-repealing one, thereby acknowledging Isabel Paterson's argument that, structurally speaking, the general populace is especially suited to exercise the function of a mass veto (Long, 1994; Long, 2016a).

The property of mass is inertia. In politics, inertia is the veto. A function or factor can only be found where it is. No plan or edict can establish it where it is not. [...] [In the Roman Republic] the tribunes of the people [were] invested with the formal veto power. [...] At one time, the tribunes of the people 'stopped the whole machine of government' for a number of years, refusing to approve and thus permit any act of government whatever [...] until their grievances were redressed. They were able to do so because the power they exercised did inhere in the body they represented. It was there. If the people will not move the government cannot. Though laws are passed and orders given, if mass inertia is found opposed, the laws and orders will not be carried out. [...] [T]he function of mass, which is taken for granted by mechanical engineers, and usually ignored by political theorists, was understood by the Romans. They used it where it belongs for stability, by attaching to it directly that part of the mechanism proper to the factor of inertia, the device to 'cut' the motor when necessary.

The same function has been rightly expressed in modern government by placing with the representatives elected by the people on

short tenure the power of the purse. [...] The effective veto [operates] by negation, withholding supplies. When unlimited supplies are voted automatically in unapportioned lump sums, it is obvious that the function of mass, the stabilizing element, is no longer included in government; the connection has broken somewhere. The citizens as such, the people, have no representatives at all. Their presumed delegates actually represent the spenders of supplies, as must be the case when the elections are carried by such expenditure. Then the inherent veto power can register its weight only by informal devices, indicating imminent danger that the overcharged motor, being out of control, will tear loose from the base and be smashed. [...] [T]he final expression of the intrinsic mass-inertia veto when it is deprived of legitimate representation consists of men quitting their tools and throwing down their arms. The crowning folly of governments is to suppress the signal.

(Paterson, 1943, pp. 46-48)

Paterson's point is that the function of a representative body needs to correspond to the power it represents in order to ensure that power flows through constitutional channels rather than around them or over them; hence, the veto power is best placed in a body whose constituents have the ability to back up that veto – and mass action is obviously better at vetoing legislation than at initiating it.

There is historical precedent for the virtual-canton approach. The legal institutions of medieval Iceland are often cited as a historical precedent for free-market anarchism (Friedman, 1995, pp. 201-208). But the Icelandic Free Commonwealth (930-1262 AD) was not strictly anarchic, as there was a monopoly legislature of chieftains. However, the system incorporated a competitive element, in that one could switch chieftains (thus simultaneously changing one's representative in the legislature and changing one's provider of local security services) without changing one's geographical location.

Iceland's combination of anarchic non-territoriality with a monopolistic legal framework was stable and successful for over three centuries – and when it did finally break down, the failure was due to the monopolistic rather than the competitive elements. In particular, the total number of

chieftaincies was fixed by law; this lack of free entry eventually made it possible for multiple chieftaincies to be concentrated in the hands of a few families, thus vitiating inter-chieftain competition (Long, 1994a). My suggestion above that “any sufficiently large number of citizens can start a new canton” is meant to be an improvement on the Icelandic system; if for any reason a small faction ends up controlling all the existing virtual cantons, the competitive element remains in effect since new virtual cantons can be formed at any time.

Given that legal systems include executive, legislative, and judicial functions, another way of blending minarchy with anarchy would be to introduce competition in one or two of those functions but not all three. Such an approach would yield six possible combinations (Long, 2000). The relative merits of the six possibilities warrant further study.

Finally, a free community might be organized along the lines of what I call the “doughnut model” (Long, 1996b). On this model, an outer minarchic region serves as a buffer zone surrounding an interior region where free-market anarchism reigns. On land, this would mean that the area along the inside of the nation’s borders would be minarchic, so that the anarchic region would have no direct interface (except by air) with surrounding countries; one would have to pass through the minarchic territory to reach the anarchic region, which would be enclosed within the minarchy in the same way that the independent nations of San Marino and Vatican City are enclosed within Italy’s territory, and that of Lesotho is likewise enclosed within South Africa’s territory. At sea, an outer ring of seasteads organized as a minarchy could likewise enclose an inner group of seasteads functioning anarchically. The idea is that an anarchist region is less likely to be declared *terra nullius* and invaded if it is surrounded by a minarchist region that has achieved international recognition. Furthermore, a country containing both anarchist and minarchist regions could be maximally attractive to immigrants, as those who are more nervous about anarchy than about minarchy and those who are more nervous about minarchy than about anarchy would each have a place to live (though the anarchists among us will naturally hope that as time goes by and the anarchist region proves itself, it will eventually be able to absorb the minarchist region, if only through the latter’s citizens simply losing interest in maintaining its monopolistic institutions).

While the doughnut model serves as one way of combining anarchist and minarchist elements, it does not obviate the need for the other ways – since all states are dangerous, even minarchist ones with anarchist regions inside them. The outer minarchist region could thus itself be organized along virtual-canton lines, for example. Of course, the anarchist region itself potentially serves as an additional check against the minarchist region should the latter begin to expand its power.

In short, then, there are means by which a seastead community, should it be compelled by circumstances to organize as a minarchy, can reasonably hope to restrain the powers of its state, at least for a fair bit of time.

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