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## American individualist anarchists' critique of the democratic state

### *Abstract*

**RESEARCH OBJECTIVE:** The aim of this paper is to investigate major premisses of American individualist anarchist movement as the critique toward the constitutional democratic state.

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**THE RESEARCH PROBLEM AND METHODS:** Paper analyses premises that led individualist anarchists to formulate their thesis about supreme character of individual rights and individual sovereignty. Consequently, this brought them to conclusion that such defined sovereignty is irreconcilable with any form of government, including constitutional democracy.

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**THE PROCESS OF ARGUMENTATION:** After taking preliminary considerations, reconstructing development of individualist anarchist theory paper examines the shortcomings of constitutional democratic state pointed out by anarchists.

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**RESEARCH RESULTS:** The result of the study is to clarify the Individualist Anarchists critique of the state, including the constitutional democratic state. Also, to elaborate why classical elements like judicial control, constitution, legal protection of individual rights was not perceived by individualist anarchist as sufficient to legitimise the political authority as such.

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**CONCLUSIONS, INNOVATIONS, AND RECOMMENDATIONS:** Adopting anarchists' perspective and introducing into discourse stateless order

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**KEYWORDS:**

individual anarchism, Josiah Warren, individual sovereignty, stateless order

There has been a perennial debate in legal and political philosophy about limits of political authority. This debate becomes even more vital currently, with so many voices about the crisis of constitutional democracy (Graber, Levinson, & Tushnet, 2018; Przeworski, 2010; Van Beek, 2018; Przeworski, 2019; Loughlin, 2019). All those studies adopted statist perspective, while stateless order and anarchist approach has been treated by the representatives of the political theory rather as the utopian alternative. With one significant exception, when in 1974 Robert Nozick, highly respectable Harvard professor, published his provoking and widely acclaimed "Anarchy, State and Utopia". His opening passage has emphasized supremacy of individual rights and called to re-evaluate the legitimate sphere of state's actions. The passage points out:

Individuals have rights and there are things no person or group may do to them (without violating their rights). So strong and far-reaching are these rights that they raise the question of what, if anything, the state and its officials may do. How much room do individual rights leave for the state? (Nozick, 1974).

This passage reinvigorated the deliberation on anarchy and stateless order as the alternative to the state. Nozick's thought-provoking question is deeply rooted in the American tradition of individual anarchist philosophy. Nozick was to some extent familiar with this tradition since he appraised Lysander Spooner and Benjamin R. Tucker, but at the same time he overlooked and neglected role of Josiah Warren, as the father of individualist anarchism, and did not see those 19<sup>th</sup> century thinkers as the predecessors of his philosophy as well as the representatives of the coherent philosophical movement (Nozick, 1974, pp. 316, 335–336). In recent years, there has been

growing recognition of the vital links between individualist anarchist tradition and redefinition of state's legitimacy (Zwolinski, 2023, pp. 109–147). This paper aims to explore the role of the individualist anarchists in laying fundamentals for questioning legitimacy of state's power and authority to present the shortages in attempts to legitimize the state's existence.

The individualist anarchists stretched boundaries of state's critique. According to Tucker "They believe that 'the best government is that which governs least,' and that that which governs least is no government at all" (Tucker, 1888c, p. 3). But this final conviction was preceded by introducing into political philosophy a few crucial premises: about supremacy of the individuals and the individual rights over collective one; the existence of inalienable rights, preceding the statutory laws resulting non-transferable concept of individual sovereignty. Those premises resulted in perception of the state as the greatest encroacher of individual rights. Therefore, neither social contract, nor constitutional system is sufficient for anarchists to legitimize state's existence. The aim of this paper is deeper elaboration on those premises to retrace how they have been formed and evolved, with the special emphasis on the individualist anarchist claim – that they need to lead toward negation of the state as such.

## PIETISTS OF INDIVIDUALISM AND INDIVIDUAL SOVEREIGNTY

Individualism become one of the key notions of the American individualist anarchist movement. Josiah Warren – inventor, social reformer, and political thinker – was the founding father of this movement. In 1825 Warren joined the utopian community called New Harmony, Indiana, established by Robert Owen. After short flirtation with the Owenite movement Warren was convinced that the implementation of the common property system would not solve social problems but would rather increase them by creating the lack of individual responsibility. Moreover, Warren discovered that the uniformity of human needs or desires is a goal that cannot be achieved: common or united interests do not exist. While he was leaving New Harmony his visions and ideas on how to settle social life were firmly

and fully shaped (Schuster, 1932, p. 98). After twenty years of the failure of the New Harmony's experiment Warren firmly stated:

It seemed that the difference of opinion, tastes and purposes increased just in proportion to the demand for conformity. (...) It appeared that it was nature's own inherent law of diversity that had conquered us ... our 'united interests' were directly at war with the individualities of persons and circumstances and the instinct of self-preservation (Martin, 1970, p. 10).

Opposition to Owen's collectivists ideas and the consequence of the New Harmony episode convinced Warren that individualism is essential element of any social and political order. Warren's philosophy not only emphasized the importance of the individual but declared that only the individual human being is the subject worthy of study (Warren, 1846, p. 3). Warren asserted that unfulfilled needs and demands were the sources of all social problems. He created list of means that supposed to solve those problems, individuality was located as the first one, while sovereignty of every individual was situated as the second one (Warren, 1846, p. 1).

Admittedly, individuality is at the top of the Warren's hierarchy. Individuality is the meta-rule which directs all other principles and reappeared in all his works. The presumption of the importance of individualism led him to the thesis that only the individuals are sovereign, and that each individual is his/her own sovereign:

*Every man is by nature constituted to be his or her own government, his own law, his own church – each individual is the system within himself; and the great problem must be solved with the broadest admission of the inalienable right of SUPREME INDIVIDUALITY; which forbids any attempt to govern each other, and confines all our legislation to the adjustment and regulation of our intercourse, or commerce with each other (Warren, 1846, pp. 4–5).*

Warren's approach shared by other individual anarchists, was ground-breaking since it removed from the picture narratives about public goods as well as the minority/majority rights. The biggest entity Warren acknowledged were individual, and only their rights, at the individual level was goal of protection.

The philosophical system created and developed by Warren granted all individuals the possibility of self- government and freedom

without the interference of government and any other power. Warren constantly repeated this idea:

Out of the indestructibility or inalienability of this Individuality grows the ABSOLUTE RIGHT of its exercise, or the absolute SOVEREIGNTY OF EVERY INDIVIDUAL (Warren, 1869, p. 18, emphasis in original).

Warren's activities and ideas attracted many thinkers such as Stephen Pearl Andrews, Ezra Heywood, Lysander Spooner, and William B. Green or Benjamin R. Tucker. All of them recognized the dichotomy between the freedom of individual and coercion of authority or government. They argued that any authority or government would always be the enemy of the individual and threaten individual freedom, individual liberty and individual rights (Reichert, 1967, p. 858; Reichert, 1976, pp. 1–24; Spooner, 1971; Martin, 1970, p. 100).

The idea of sovereignty of the individual was a concept shared by two of Warren's followers: Stephen Pearl Andrews and Benjamin Ricketson Tucker. Andrews was Warren's foremost disciple; he followed the vision of his master quite faithfully but also elaborated some ideas deeper. Andrews stated that

The doctrine of the Sovereignty of the individual – in one sense itself a principle – grows out of the still more fundamental principle of INDIVIDUALITY, which pervades universal nature. Individuality is positively the most fundamental and universal principle which the finite mind seems capable of discovering, and the best image of the Infinite (Andrews, 1851, p. 18).

Thus individuality became the essential law of order, resulting in individual sovereignty, as non-transferable quality, non-compatible with the traditional concept of government as delegation of power.

Those ideas were further developed by the other great individual anarchist, Lysander Spooner, described as the "dissident among dissidents" (Martin, 1970, p. 167). Except for the short period at the end of his life, he remained outside the main currents of the anarchist movement. However, his writings were quite influential as he presented a complete and sophisticated philosophical system; his legal thought and reinterpretation of the constitution are the most prominent and significant contributions for modern anarchists and anarcho-capitalists (Spooner, 1867a; Spooner, 1867b; Spooner, 1870;

Spooner, 1882; Spooner, 1971, vol. 1, pp. 15–62; Trimarchi, 1993; Rucker, 1949, pp. 86–96).

In his early works Spooner clearly presented the vision of individualism, interpreted even more radically than in Warren's beliefs. Spooner's writings suggest that he understood individualism in methodological rather than in practical terms (Weber, 1978, p. 13). The notions that prescribe the existence of the collective bodies like society or company are groundless for him. As he argued, a community is not a mystical entity of any kind, it is just the sum of individuals and nothing more. In Spooner's opinion only individuals were entitled to possess and exercise the rights, like right to make a contract; only individuals make decisions, only individuals take responsibility for their actions:

... idea of a joint, incorporeal being, made up of several real persons, is nothing but a fiction. It has no reality in it. (...) An act of legislation *cannot* transform twenty living, real persons, into one joint, incorporeal being. (...) *The making of the contract, then, is the act of real persons – and necessarily must be, for no others can make contracts* (Spooner, 1843, p. 20).

He did not perceive society as an entity, it was just a collection, the set of individuals: "Society is only a number of individuals" (Spooner, 1855, p. 103; Spooner, 1846, p. 64). Forty years after the publication *The Law of Intellectual Property*, he defended theory of individual rights as vigorously:

I repeat that individual rights are the only human rights. *Legally speaking*, there are no such things as 'public rights', as distinguished from individual rights. *Legally speaking*, there is no such creature or thing as 'the public'. The term 'the public' is an utterly vague and indefinite one, applied arbitrarily and at random to a greater or less number of individuals, each and every one of whom have their own separate, individual rights, *and none others*. And the protection of these separate, *individual* rights is the one only legitimate purpose, for which anything in the nature of a governing, or coercive, power has a right to exist (Spooner, 1886, p. 7).

Therefore, the protection of individual rights is the only purpose and legitimization for the government.

The last of the individualist anarchists worth to mentioned was Benjamin Ricketson Tucker – the most important figure in the

consolidation of individualist anarchism, crystallizing ideas and changing individual anarchism into a solid philosophical movement. Accurately he was described as “advocate rather than the innovator” (Madison, 1943, p. 432; Madison, 1945; McElroy, 1998) so it may be hard to find some novelty in his papers. However, he was recognized as the most prominent and influential individualist anarchist at the end of 19<sup>th</sup> century (Martin, 1970, pp. 202–203; McElroy, 2000, p. 98). As the founder and editor of “Liberty, Not the Daughter, but the Mother of Order” (Reichert, 1967, p. 858; Martin, 1970, pp. 206–207) he made the journal a space for a public discussion and sharing the ideas by many American radicals. The influence of this journal on the development of individual anarchism cannot be overestimated (McElroy, 1981, pp. 7–8).

Tucker, like Warren and Spooner, rejected the concept of the society as an entity, which some goals or rights can be ascribe to: “Society is not a person or a thing but relation, and a relation can have no rights” (Tucker, 1886, p. 1). He denied the existence of “social wholes”, clarifying that:

‘the community’ is a nonentity, that it has no existence, und that what is called the community is simply a combination of individuals having no prerogatives beyond those of the individuals themselves (Tucker, 1888a, p. 4)

## NATURAL LAW, INALIENABLE INDIVIDUAL RIGHTS AND DENIAL OF STATE LEGITIMACY

While Warren laid foundation for individualist anarchist movement, he was not a legal scholar, therefore in some aspects his systems lacks refinement in that matters. But what helped others to develop anarchists' jurisprudence was Warren's claim that state and state official must refrained from invading natural freedoms and liberties of individuals. Then “The power now delegated to them would thus be restored back to each individual, who would possess his natural liberty or sovereignty” (Warren, 1869, p. 56). Warren also set the vision of stateless order that precede positive law, therefore

each one is himself the supreme judge at all times of the individual case in hand and is free to act from his own individual estimate of the advantages to be derived to himself or others, as in the above instance, then the natural liberty of the individual is not invaded (Warren, 1869, p. 59).

Warren emphasized the need for the absence of any form of the coercion as the most distinctive mark of an anarchist movement. Warren's disillusionment with what he called "hopeful theory of Democratic government" grew even bigger during the Civil war when he declared that

Man-made powers are arrayed against NATURE'S LAW! Here we have the fatal issue! What can be done? Are we again at the eve of a long night of desolation, or is there some untried element in modern thought which can reconcile the seeming contradiction between instinct and experience? (Warren, 1863, p. 23).

The idea of "sovereignty of the individual" formulated by Warren raised important question about the possibility of delegating the power to make decisions. Warren himself denied legitimacy of delegation of power to any other body. For Warren, an individual and his/her individuality is the only reference point for any social and political institution and the only sovereign:

*Every one is by nature constituted to be his or her own government, his own law, his own church – each individual is a system within himself; and the great problem with the broadest admission of the inalienable right SUPREME INDIVIDUALITY; which forbids any attempts to govern each other, and confines all our legislation to the adjustment and regulations (Warren, 1846, pp. 4–5).*

The idea of individual sovereignty could not come together with any form of coercive political authority. In Warren's philosophy there was also no higher good that could authorize the limitation of individual freedom and liberty. There was no common good, common interest or any kind of social interest that could limit and reduce the individual liberty.

Each individual being thus at liberty at all times, would be SOVEREIGN OF HIMSELF. NO GREATER AMOUNT OF LIBERTY CAN



BE CONCEIVED—ANY LESS WOULD NOT BE LIBERTY! Liberty defined and limited by others is slavery! LIBERTY, then, is the SOVEREIGNTY OF THE INDIVIDUAL; and never shall man know liberty until each and every individual is acknowledged to be *the only legitimate sovereign of his or her person, time, and property, each living and acting at his own cost*; and not until we live in society where each can exercise this inalienable right of sovereignty at all times without clashing with or violating that of others. This is impracticable just in proportion, as we or our interests are UNITED or *combined with others*. The only ground upon which man can know liberty, is that of DISCONNECTION, DISUNION, INDIVIDUALITY (Warren, 1852, p. 57).

Spooner was also looking for a foundation of deeply grounded individualism and individual rights, for which he used the theory of natural law. He defined law as “an intelligible principle of right, necessarily resulting from the nature of man; and not an arbitrary rule, that can be established by mere will, numbers or power” (Spooner, 1845, p. 5–6). He perceived the law as the inflexible principle,

*natural*, unalterable, universal principle, governing such object or thing. Any rule, not existing in things, or that is not permanent, universal and inflexible in its application, is no law, according to any correct definition of the term law (Spooner, 1845, pp. 5–6; Alexander, 1950, pp. 203–206; Martin, 1970, pp. 181–182).

Spooner proved that any law contradictory with natural law cannot be established through the legislation process, majority rules, agreement, or contract.

If, then, law really be nothing other than the rule, principle obligation or requirement of natural justice, it follows that government can have no powers except such as individuals may *rightly* delegate to it: that no law, inconsistent with men's natural rights, can arise out of any contract or compact of government: *that constitutional law, under any form of government, consists only of those principles of the written constitution, that are consistent with natural law, and man's natural rights*; and that any other principles, that may be expressed by the letter of any constitution, are void and not law, and all judicial tribunals are bound to declare them so. Though this doctrine may make sad havoc with constitutions statute books, it is nevertheless law. It fixes and determines the real rights of all men; and its demands are as imperious as any that can exist under the name of law (Spooner, 1845, p. 16, emphasis in original).

So, the law defined by Spooner as inflexible rule or principle that cannot be made by individuals, it is not statutory law, and therefore legal norms are legitimate only if they are consistent with the natural law. Law cannot be invented; it must be discovered.

It is intrinsically just as false, absurd, ludicrous, and ridiculous to say that lawmakers, so-called, can invent and make any laws, *of their own*, authoritatively fixing, or declaring, the rights of individuals, or that shall be in any manner authoritative or obligatory upon individuals, or that individuals may rightfully be compelled to obey, as it would be to say that they can invent and make such mathematics, chemistry, physiology, or other sciences, as they see fit (Spooner, 1886, pp. 3–4).

While Spooner shared the theory of individual sovereignty articulated by Warren, he believed that the individual is sovereign and therefore he also perceived the idea of delegating power as invalid. He more explicitly explained the problem of majority rule:

two men have no more natural right to exercise any kind of authority over, than one has to exercise the same authority over two. A man's natural rights are his own, against the whole world; and any infringement of them is equally a crime, whether committed by one man, or by millions; whether committed by one man, calling himself a robber, (or by any other name indicating his true character,) or by millions, calling themselves a government (Spooner, 1867a, p. 7).

The conviction formulated by Spooner in his early writings reappeared in his late work *A Letter to Thomas F. Bayard: Challenging His Right-And that of All the Other So-Called Senators and Representatives in Congress – To Exercise Any Legislative Power Whatever Over the People of the United States*:

No man can delegate, or give to another, any right of arbitrary dominion over himself; for that would be giving himself away as a slave. And this no one can do. Any contract to do so is necessarily an absurd one and has no validity (Spooner, 1882, p. 4).

The issue of delegation of power was approached by Spooner in the pamphlet series “No Treason” analysing the validity of American constitution. The last part of *No Treason (No VI, Constitution of No Authority)* reiterates motives raised in previous parts. Spooner more

firmly and decisively spoke in the case of debts incurred in the name of the United States. He impugned the idea of representation and described people elected in a secret ballot as robbers and criminals:

Why, at most, only a few persons, calling themselves 'members of Congress', etc., who pretended to represent 'the people of the United States', but who really represented only a secret band of robbers and murderers, who wanted money to carry on the robberies and murders in which they were then engaged; and who intended to extort from the future people of the United States, by robbery and threats of murder (and real murder, if that should prove necessary), the means to pay these debts (Spooner, 1870, pp. 44–46; Watner, 1981).

For Spooner, as for Warren and other individual anarchists, voluntary consent of individuals is the only possibility for any kind of social architecture (Spooner, 1867a, p. 3). Spooner rejected the existence of any individual obligation for the government, except for those that had been accepted by individuals. He treated as illegal any other form of obligations imposed by government on individuals, because individuals were the only sovereigns, and their genuine, explicitly expressed not tacit consent is required (Spooner, 1967b, pp. 4–5). That idea of explicitly expressed consent differs from the Lockean proposition which explained the delegation of powers through the idea of tacit consent (Gough, 1951, pp. 90, 49, 58).

Spooner rejected the legitimization of the state in one of the classical ways – by using the social contract theory. Society cannot bind those individuals who do not want to enter into the contract, nor can the majority bind unborn generations. Moreover, the consent must be expressed by everyone:

*...the separate, individual consent of every man who is required to contribute, either by taxation or personal service, to the support of the government. All this, or nothing, is necessarily implied, because one man's consent is just as necessary as any other man's. (...) If, for example, A claims that his consent is necessary to the establishment or maintenance of government, he thereby necessarily admits that B's and every other man's are equally necessary; (...) if he denies that B's or any other particular man's consent is necessary, he thereby necessarily admits that neither his own, nor any other man's is necessary; and that government need to be founded on consent at all (Spooner, 1867a, p. 11).*

Spooner rejected the idea that elections and voting procedures can be used as the way to legitimize the authority (Spooner, 1870, pp. 28–29). Therefore, the government could not have neither legitimate power, nor authority derived by the participation of citizens in the voting process. Spooner wrote:

It is self-evident that no number of men, by conspiring, and calling themselves a government, can acquire any rights whatever over other men, or other men's property, which they had not before (Spooner, 1886, p. 6).

Individualism, absolute rights of individual and idea of sovereignty of individual discarded superiority and primacy of any institution or legal system which in any form interfere in the sovereignty of individual. Warren stated:

The state, the society, the institutions, the body politic, the nation, the system, or customs we live in, must not be permitted to become primary, but must be secondary! Neither man, nor man-made laws or systems, must rise above man; but laws, rules, and institutions, must be subject to man's purposes! Human institutions must not rise above Humanity! Man must not be distorted to fit institutions, but institutions must be made to fit man! The state, or body politic, must RESULT FROM INDIVIDUALITY, instead of crushing it (Warren, 1852, p. 33).

Among individualist anarchists Tucker was the one of most severe critics of the state; in his opinion authority and government was natural enemy of individual liberty. Tucker believed that liberty is the highest value. He undermined the typical arguments used for the support of state's existence as the provider of internal and external security. The state is perceived as an institution imposing artificial order, preventing social experiments from spontaneity. The state's existence disrupts the effects of natural social order.

The law of liberty is spontaneous association by natural selection. The first condition of its normal operation is that the basic factor of social existence, the individual, shall be left entirely and absolutely free to regulate his life as experimental contact with other equally free individuals may seem to direct. (...) But regulation, under the law of liberty, cornea of selection and voluntary assent. Under its operation,

security of life and possession, that bogus pretext, which is made the chief apology for so-called governments, is as much more firmly assured as are the normal processes of Nature more effectual than the artificial expedients of man. The antipode of liberty is artificial, arbitrary, *pro forma* intervention between individuals who are losing the best results of experimental association. Its concrete expression is Authority. Its organized exercise is known as Government (Tucker, 1881b, pp. 2–3).

Tucker wanted to abolish not only a particular state (e.g., United States), but the state in general. He believed that besides a state there had been natural spontaneous order that had existed before a state originated. Therefore, the appearance of a coercive state did not create any order but disrupted the natural one.

Our purpose is the abolition, not only of all existing States, but of the State itself. (...) And what is the State? (...) The State is a principle, a philosophical error in social existence. The State is chaos, rioting under the guise of law, order, and morality. The State is a mob, posited on unscientific premises. We propose to supplant the mob by that true social order which is pivoted on the sovereignty of individualities associated for mutual well-being under the law of natural attraction and selection, — Liberty. (...) The State becomes impossible the moment you remove from it the element of compulsion. But it is exactly at this point that government begins. Where the State ceases government begins, and, conversely, where the State begins government ceases (Tucker, 1882, p. 2; McElroy, 2000).

He also blamed the state for all social and economic evils; therefore his main purpose was a fight to abolish this evil. “The State is said by some to be a ‘necessary evil’; it must be made unnecessary” (Tucker, 1881a, p. 2) and he listed long list of State’s sins and violations of natural rights.

## INDIVIDUALIST ANARCHISM – STRETCHING BOUNDERIE

There are combinations of few distinctive and essential concepts within American individualist anarchism. The first and the most important one is individualism itself, understood in the broadest sense.

Individualism was considered in many aspects: as methodological individualism as well as a meta-rule, making the individual the point of reference to any social and political systems. The second one is deep faith in the inalienable character of individual rights. The last one is conviction about non-transferable character of those rights, that exclude legitimate origins of any state, including constitutional democratic state since all relations between individuals should be based on voluntary consent. These ideas and motives were visible in the works of the most admired individual anarchists: Josiah Warren, Lysander Spooner and Benjamin Ricketson Tucker and led them to the conclusion that the idea of any state is irreconcilable with those premises.

The individual is the only sovereign, he/she cannot delegate that sovereignty in any procedure to any elective body. Therefore, there is no possible way to legitimize the existence of state or government. The pressure to preserve the broadest sphere of individual liberty, and the recognition of individuals' specific interests resulted in the total rejection of any collectivist approach. The perfect social arrangements should be achieved not by the annihilation of difference among people, but through the deepest appreciation of differences, and the creation of an environment that would enable their personal development.

Individual anarchists believed that this right is essential to assure the environment in which a person could fully realize himself. Individualist anarchists, hostile to the idea of state, often quoted one of the Founding Fathers, and believed that

The Anarchists are simply unterrified Jeffersonian Democrats. They believe that 'the best government is that which governs least,' and that that which governs least is no government at all. Even the simple police function of protecting person and property they deny to governments supported by compulsory taxation (Tucker, 1888b, p. 3).

The individualist anarchists articulated the need for individually expressed consent to any political obligation, and to any bounds imposed by political authority. They appealed to the long American tradition of limited government, stretching even further the classical reservation toward authority and the Jeffersonian conviction that "Every man, and every body of men on earth, possesses the right of

self-government" (Jefferson, 1903–1904, vol. 3, p. 60). The governmental authority might be threat to this right, to liberty of individuals and private property, therefore there has been visible scepticism to the idea of increasing governmental power. Individualist anarchists went even further in this regard, calling for the abolition of the state, the preservation of individual liberty and private property rights.

Adopting their perspective might be cure for what David Mitrany observed:

Most political philosophers in the past few generations have been unable to escape what the psychoanalysts might call a 'state fixation'. Even those whose temper and reason caused them to distrust a nationalist philosophy could not deal with the state except as a rigid entity (Mitrany, 1975, p. 98).

Treating stateless order as the possible alternative allows to introduce more critical voices about original shortages in legitimization of state power.

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