

# If Men Were Angels

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James Madison once said that if we were all angels, government wouldn't be necessary. Madison was wrong. If all people were perfectly moral, the State would still play a crucial role in society, as it would be needed to coordinate public works and ensure the upkeep of the commons. Alas, this antiquated meme has persisted via the dubious legacy of right-wing libertarianism, from Ludwig von Mises to Milton Friedman. The State only has a *raison d'être* insofar as it prevents criminal activity. We find this myopic view propounded in books from Nozick's *Anarchy, State, & Utopia* to Hayek's *Road To Serfdom*. We find it from Austrian School economic ideology to Chicago School economic ideology. The misimpression that the *sole* *raison d'être* of government is to ameliorate iniquitous behavior is thus touted even today, centuries after Madison made the statement.

From Murray Rothbard and Ayn Rand, the notion is that the private sector can do anything and everything a State can do—yet do it BETTER and MORE FAIRLY. This is patently false. Such a vision essentially involves anarcho-capitalism. The idea is seductive and simple, so it entices the untutored ear. The claims are based on free-market fundamentalism, which insists that private enterprise is the ultimate solution to everything from rainy days to chicken pox. Privatize everything under the sun, we're told, and a utopia of burgeoning prosperity and sublime meritocracy will be inaugurated. The ONLY reason we need a State, then, is to curb criminal activity—as defined by those in power. It follows from this that if nobody was “unethical”, government wouldn't need to exist.

Reality tells a different story.

Madison had an excuse for making such a naïve statement: he said it in the 18<sup>th</sup> Century...a pre-industrial age when people still owned slaves and women couldn't vote. There were no cars or trains, no electricity or running water, no hospitals or airports, no mass-produced foodstuff or factories manufacturing mass-market consumer products. Madison certainly didn't make this statement in order to serve the interests of large corporations—as corporations (in the modern form) didn't yet exist. There was no stock market, no military-industrial complex, no big petrol- or pharma- or agri- industry. Indeed, the only monopoly power that existed (e.g. Britain's East India Company, mercantile tea companies) was precisely what instigated the American revolution. Protest against corporate power was, after all, the reason for breaking away from England. Serving corporate interests under the auspices of “freedom” was not what motivated the Founding Fathers.

So today, in the 21<sup>st</sup> century, right-wing libertarians don't have the same excuse Madison had for harboring such a flawed view. In a world before television and mass transit, one can forgive Madison his myopia. An era in which the internet and traffic jams and meat packing plants and air-travel didn't exist, Madison's statement ALMOST made a bit of sense. Back then, “municipal services” and “public infrastructure” amounted to a few dirt roads and some wooden posts to which one could tie one's horse. The town sewage system was a muddy ditch in the public square and backyard holes dug on one's own accord. There was no fire department as we know it today. There was a town hall (a venue for town meetings to ensure everyone had a voice), but no K Street. There was no industrial pollution, no LLCs, no massive businesses that were afforded the rights of humans, no Wall Street.

Indeed, Madison's myopic and short-sighted comment was made in an era that preceded the investment banking industry: before securitization mania financial-ized half the economy. (There was, of course, speculation in the 18<sup>th</sup> century, but the national economy wasn't run on it—or destroyable by it.) So, even if men were angels, bad things *can* happen—things that can only be prevented or curtailed by State oversight.

Indulging in utopian hypotheses for even a moment reveals that Madison's observation is no longer tenable.

Even in a world of angels, people would still become impoverished, sickness would still occur, and ignorance would still exist. This means that public infrastructure would still need to be maintained, public health would still need to be facilitated, and public education would still need to be provided. That is to say: We would still need roads and bridges, parks and community centers, schools and healthcare, safety standards and emergency services. Oversight of commercial activity would still be necessary, even if there were no calculated abuses of highly-concentrated private power to curb.

In this idyllic hypothetical world, there would still be accidents to attend to, garbage to collect, potable water to distribute, waste to dispose of, streets to keep clean, and public safety to ensure. Natural disasters would still occur, as would disease and ignorance and flooding. Private enterprise could not assure that all civilians were attended to (irrespective of socio-economic status) because that's not what private enterprise does.

Even in a community of perfect probity, harmful acts would still be possible due to lack of perfect knowledge. Structural inequalities would still emerge and need to be mitigated. Information asymmetries would still form and need to be addressed. Inadvertent “externalities” would still need to be identified and curbed. Fires and other accidents would still occur, so we'd still need a fire department. People (especially the disadvantaged) would still need public services that were communally coordinated. Even in a world of perfect compassion, cats would still get stuck in trees. Helpful neighbors are not always available, and poor people don't have access to certain services...and we certainly wouldn't call a society civil if large swaths of the rank and file were left out in the cold to fend for themselves.

We should have learned by now that ad hoc *neighborly beneficence* isn't always adequate to address municipal issues. Often, a communal effort is necessary to address societal needs—and such efforts must be centrally coordinated by impartial means. Even as the free market works its magic in the private sector, certain things must be conducted as a shared project where everyone pitches in, where everyone is “in it together”, and where everyone is somehow affected. This is a realm in which the profit-motive is inappropriate. Treating such things as business ventures is invariably unfair, not to mention inefficient and ineffective. As has been clearly demonstrated several times since 1929, Adam Smith's “invisible hand” often gets arthritis...and sometimes has seizures.

For each helpful gesture towards one's neighbor, there is another issue that goes beyond the scope of person-to-person kindness. Certain things can only be done via a meta-market mechanism: a well-coordinated, communal effort that is not at the mercy of market forces. Not everything is ideally conducted as a private enterprise. That is to say: Not everything people need should be treated as a consumer product.

As we've learned, in a civil society, people can't be seen as target customers *in all contexts*. Lines must be drawn. There is a difference between hawking breakfast cereals in a marketplace and hawking sickness-treatment services in a marketplace. In one case, the approach is beneficial; in the other case, it is detrimental. So now we know that “for the general welfare” means the State providing universal public healthcare...AND running water...AND regulation of the financial services industry...etc.

If every citizen were the embodiment of ethics, the State would still have a vital role in fostering the general welfare. The police do far more than catch “bad guys”. People in need would still require help, traffic would still need to be directed, and fallibility would still (innocently) cause problems that need to be resolved. Even if we didn’t need a single criminal court or a single prison cell, we would still need arbitration between well-meaning parties. After all, “moral” neither means omniscient nor omnipotent. Probity means noble intent, not necessarily flawless execution (or immunity to misfortune). Good will can’t always translate to perfect competence. And even well-meaning people need to engage in *civic* projects in order to effect the common good.

Before the world wide web and ballistic missiles and sovereign airspace and taxes on dividends and e-mail and texting and “intellectual property”, the world didn’t have as many potential problems that could only be resolved by the State as impartial arbiter.

As long as humans exist, even humans of perfect probity, honest mistakes will be made, ailments will persist, community-wide teamwork will be required, accidents will happen, and learning will still be important. After all, even angels can be ignorant or incompetent...or even simply be unable to accomplish certain things without a well-orchestrated communal effort. Not all problems arise from iniquity.

The bottom line: Good people still encounter predicaments that a community must address TOGETHER. Neighborhood effects wouldn’t magically vanish just because good will was universal. Good will doesn’t preclude the need for a unified effort via public mediation. Private enterprises vying for market-share works wonderfully within a delimited domain; but beyond that domain they are incapable of bringing about the conditions requisite for civil society.

The point of congress is to solve problems and formulate solutions in the interest of ALL people, not for the sake of maximizing profit for a select few. Democratic government is predicated on a coordinated effort to manage societal affairs in a way that optimizes the general welfare, unsullied by conflicts of interest. This—ideally—involves cooperation mediated by a mechanism that transcends special interests. *And even angels have disparate interests*. Such teamwork would be necessary even if every civilian were a perfectly moral actor. If all people were civic-minded, they would recognize *even more clearly* the crucial role that a State plays in facilitating societal weal.

As I discuss elsewhere (see my essays indicting *Originalism* and *Scalia World*), the Constitution wasn’t a terminus; it was a point of departure. It therefore must never be treated as the culmination of a process, but as the inauguration of an open-ended, on-going process—affording an evolving sense of civil rights and the role of a State in a democratic society. After all, the Founders didn’t want a standing army, and *now* look what monstrosity has been created across the Potomac River. What has come to be known as (right-wing) libertarianism seems to have spawned from this Masonian notion that existed before there were roads to pave, air-traffic to oversee, a financial services industry to regulate, or automatic weapons designed for uses other than protecting the State and hunting deer.

Madison couldn’t foresee the complexities of a post-industrial society. Even in a world where agape reigned supreme, problems would still need to be solved by things other than private enterprise. Communal activity oftentimes needs to be coordinated by a State, not left to “the market”. In a community of angels,

there would still be streets to clean, garbage to pick up, fires to put out, education to provide, disease to prevent, healthcare to facilitate, and bridges to repair...things that aren't germane to for-profit businesses (each of which is vying for market-share, each of which is hawking a service / product to those willing and able to buy, each of which treats people as target customers instead of as citizens).

But, alas, men are not angels. So they will always be susceptible to abusing BOTH public office AND private power. Only a well-run State can mitigate the degree to which such penchants are malignant. In the meantime, it's good that the fireman is always there to help the old lady get her cat out of the tree when angelic neighbors are unable to assist.