

## “Humanity’s Darkest Evil”

### The Lethal Destructiveness of Non-Objective Law

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#### INTRODUCTION

The law is an ominous presence throughout *Atlas Shrugged*, as we witness its society’s government impose increasingly restrictive laws that send people tumbling back to primitive conditions. Yet law’s role is secondary; the novel is not *about* political issues. What the prime movers gradually realize is not simply that theirs is a corrupt legal system, but that the entire philosophy on which it is premised—and which is the source of all the forms of victimization they are subjected to, in their personal lives as well as those imposed through law—is invalid. While *Atlas* clearly carries lessons for the legal realm, at its most fundamental, the book concerns the role of the mind in human life and the code of values that that necessitates.

Against that knowledge, it is striking to read Judge Narragansett observe that non-objective law is “humanity’s darkest evil, the most destructive horror machine among all the devices of men” (737). Given the depth of the other vices that Ayn Rand exposes in the book (which include hatred of the good for being the good and the rejection of life itself), surely, one might suppose, this sweeping condemnation is literary hyperbole.<sup>1</sup> If politics is derivative from ethics, how can a certain character of law be humanity’s darkest evil?

Ayn Rand typically chooses her words carefully. Whatever cautions are appropriate against reading fiction as an exact statement of an author’s philosophical convictions, the unqualified character of Narragansett’s statement on such a significant topic merits serious consideration. How destructive *is* non-objective law? The answer is important not only for better understanding the novel, but for understanding our own political situation.<sup>2</sup>

This paper will investigate the meaning of Narragansett’s assessment. To understand his claim, we must understand the stakes. Thus I will begin by explaining the essential nature and the profound value of objective law. I will then focus on the distinctive character of non-objective law, to appreciate its destructive effects. Because the proper nature of law depends on the proper nature of government, which itself depends on the nature of physical force and on human beings’ need for freedom, much of the discussion will be rather abstract, as we must unpeel several layers of foundational premises. Only by explaining these, however, will we be able to appreciate the truly devastating destruction wrought by non-objective law, both in *Atlas* and in the world around us.

## WHAT OBJECTIVE LAW IS

Skepticism toward Narragansett's assessment arises, in large part, from widespread haziness about exactly what objective law is. Most people do have a dim sense of objective law from their familiarity with the ideal of the rule of law. That ideal is typically understood to consist of a number of conditions. Among them: that a government's powers and the rules by which it exercises those powers be stated in plain, readily intelligible terms, promulgated in advance of their application. Retroactive laws are not permitted. Laws must be stable in that they do not frequently or abruptly change and they remain binding until formally altered through pre-established procedures. No contradictory rules may be enacted; laws must be mutually consistent so that each of them can actually be obeyed. Consistency in application is important, as well: laws must be applied equally to like cases. The law is authoritative; its resolutions of disputes are respected as final.

While different scholars would delineate the precise features of the rule of law in slightly differing terms, all accept at least these core ingredients.<sup>3</sup> In deliberate contrast with the rule of men, the requirements of the rule of law are designed to protect individuals from the passions, prejudices, mistakes, and sheer arbitrariness to which human beings are susceptible.<sup>4</sup> When law is what governs a society, a government's rules are spelled out in objectively verifiable terms, for all to know. People are able to plan and coordinate their activities with knowledge of what steps would incur legal penalties. They know what to expect and are able to comply. Moreover—crucially—the rulers themselves are constrained by the law.<sup>5</sup> While it is obviously men who enact any government's laws, the distinction with the rule of men highlights the fact that under the rule of law, the authority of rulers must itself be law-governed. Any actions that rulers take and any rules they impose must be created within the scope of their legitimate authority and must then be applied to them as well as to everyone else in that society. Rulers are bound by laws as much as ordinary citizens.

While all of this goes some way toward clarifying the nature of objective law, it does not go far enough. Notice that these most commonly cited elements of the rule of law address the form of law, rather than its substance. Yet there would be no point in maintaining the niceties of objective form if the substance that those formally correct laws served were unwarranted. Invalid content would sabotage the value of objective form in law, just as invalid form would sabotage the value of objective content. Laws that restricted aspects of individuals' actions that the government had no basis for restricting would not be made any more valid by the precision or lead time with which they were announced, for instance. By the same token, the validity of a law that violated formal requirements of clarity or mutual consistency could not be rescued by the fact that that law sought to achieve a perfectly valid substantive end (such as protection of private property). Both valid form and valid content are crucial to truly objective law. Indeed, knowledge of the proper content of law helps to establish what law's proper form is, since form follows function.<sup>6</sup>

What is the proper content of law? And what determines objectivity in regard to both the law's content and form?

In order to grasp the fundamental character of objective law, first consider the nature of objectivity itself. In any realm, objectivity is a matter of reaching conclusions on the basis of logical inference from relevant facts. Broadly, a conclusion (or policy, procedure, decision, etc.) is objective insofar as it is governed by the way things are—the relevant things—rather than by any person(s)'s subjective beliefs about or attitudes toward the way things are.<sup>7</sup> In a legal system,

which facts are relevant depends on the purpose of law, which, in turn, depends on the purpose of government. Since law is the means through which a government carries out its charge, it is the purpose of government that sets the standard for objectivity in law.

Accordingly, “objective law” designates a legal system that strictly serves the proper purpose of government. All of its specific laws are necessitated by that purpose and advance it by means that carry no countervailing damage.<sup>8</sup> What determines what a particular law should be is that which authorizes the existence of law, in the first place. The mission of law as a whole establishes the proper parameters around the content and form of any particular law. In order to be objective, a law may neither do something *else*, attempting to advance some additional goal that is beyond the authorized role of government, nor do anything that directly undercuts the government’s ability to serve its proper function as effectively as possible. A legal system that deviates from objectivity in regard to either law’s form or law’s content amounts to an abuse of power. For through such departures, it licenses the government to exercise its power in ways that are not justified by the specific function for which it was given that power. (I will expand on this below.)

Given that the objectivity of law is established by the purpose of government, we need, next, to look more closely at what that purpose is.

## **The Purpose of Government**

“A country’s political system is based on its code of morality,” Rand writes in Galt’s Speech. A proper political system is built on “the premise that man is an end in himself, not the means to the ends of others, that man’s life, his freedom, his happiness are *his* by inalienable right” (1061). The purpose of government is to protect man’s rights.

Rights are the moral principle that defines and sanctions a man’s freedom of action in a social context. More specifically, rights define an individual’s entitlement to be free from “physical compulsion, coercion or interference” imposed by others. Rights protect a man’s “freedom to take all the actions required by the nature of a rational being for the support, the furtherance, the fulfillment and the enjoyment of his own life.”<sup>9</sup> Since the government is that institution within any society that holds the exclusive authority to force people to act in certain ways, the only reason for having such a coercive institution is the protection of individual rights.<sup>10</sup> To appreciate the crucial value of objective law in confining government to its proper purview, we must first understand the necessity of respecting individual rights.

Man survives by the use of his reason. Unlike other organisms, we are not genetically coded or instinctually “programmed” to act automatically in ways that will preserve our existence. Reason is our only means of acquiring knowledge and thereby enabling ourselves to obtain and create the goods required for our survival. We must identify “what’s what” and draw logical inferences about it—we must grasp the nature of the existents around us and of the causal relations among them—in order to generate values, those things that sustain and advance our lives. Because the use of reason is volitional, however, a human being “cannot function successfully under coercion.”<sup>11</sup> Where a man is not free to direct his own actions, he is denied his capacity to reason. This is as lethal an assault as a bullet to his heart. For whether one kills a man by a single, fatal blow or through a prolonged ordeal that bleeds him to death, one kills. Since reason is man’s means of survival and since the exercise of reason requires freedom, deprivations of a man’s freedom kill. Let’s examine the issue still more closely.<sup>12</sup>

An individual's freedom is violated when another person initiates the use of force against him against his will. The direct application of physical pressure is the clearest instance, such as by beating, stabbing, poisoning, shackling, shooting, or imprisoning. Further, however, "you are forced to do something if the alternative is physical damage: you'll be seized, imprisoned, deprived of property, or killed."<sup>13</sup> This fact stands on the obvious difference between being persuaded to do something and being forced to do something. If I want something from you, and I attempt to persuade you to give it to me, it remains your choice whether or not to surrender it. This is so regardless of whether I employ rational arguments or nonrational tactics such as flattery or assurances of fame. Your mind, by attending to the case offered, is able to freely reach a conclusion about the advisability of agreeing to my request. If I claim the sought object by means of force, in contrast, such as by picking your pocket or threatening to beat you or to damage other of your property unless you surrender it, I render your beliefs about the wisdom of giving it to me irrelevant. My use of force declares: "I'm getting that object and the only choice left for you is whether you will submit quietly or kick up a fuss, thereby bringing even worse upon yourself. By the power of my guns (clubs, knives, etc.), however, I am getting it; that much has been decided unilaterally, by me."<sup>14</sup>

The person who is subjected to force is prevented from acting as he chooses at the cost of something else that is his. He is made to choose between his money and his life, for example, or between his freedom to run his business as he likes and his ability to avoid legal penalties. He is thus thrust into a "must lose" situation. The problem is not simply that he cannot any longer retain two things that he wants and is entitled to, however (serious a problem as that is). More fundamentally, the very mechanism by which any human being can maintain his life—his capacity for rational thought—is denied him. As Galt puts it, "To interpose the threat of physical destruction between a man and his perception of reality, is to negate and paralyze his means of survival" (1023). Because this is what the initiation of force does, it is a uniquely intolerable evil.

Here again, in order to fully digest this, we should probe more deeply the destructiveness of force.<sup>15</sup>

When a person does something because he is forced to, he is not acting on the basis of evidence and logic. Those considerations are replaced by the need to appease the aggressor. Under such conditions, the victim is unable to proceed by reason. Force "negates" the mind, as Galt declares, not merely by depriving a man of the natural effects of his thinking, but by bringing to a halt the very *process* of thinking. As Leonard Peikoff has observed, "to the extent that someone's gun becomes a man's epistemological court of final appeal, . . . he cannot perform the processes essential to human cognition; he *cannot* think."<sup>16</sup>

What is at issue is not brain injury or malfunction; the paralysis is epistemological. A mind is not a physical entity like a billiard ball or a sponge or a pincushion that can be manipulated by physical objects. The mind is rooted in the brain, of course, but that is not what a mind *is*. No combination of physical pressures can generate *thought* or result in a man's believing anything. A man could feign belief by mouthing certain words, but physical sounds are not convictions. As Rand acutely demonstrates through the torture of Galt, even the infliction of excruciating pain cannot initiate a process of thinking in a man's mind. Force cannot make a mind *go*.<sup>17</sup> Just as intellectual activity alone cannot move physical objects, so physical manipulation alone cannot achieve intellectual effects.<sup>18</sup> Whether a mind thinks and what a mind thinks are the result of a series of cognitive (rather than physical) activities—of mentally focusing, identifying, attending, weighing evidence, pursuing logical implications, and so on. All of these activities are volitional, however; physical force has no power to bring them about. The

upshot is well-expressed by Galt: Any threat of the form “your money or your life”—whatever the particular values being attacked—amounts to the ultimatum: “‘Your mind or your life’—and neither is possible to man without the other” (1023). When a man is unable to use his mind—to reason—he is unable to act as his life requires.<sup>19</sup>

Since physical force has the unique capacity to thwart man’s ability to reason, then, if human beings are to live together, the initiation of force must be banished. To accomplish this, “men need an institution charged with the task of protecting their rights under an *objective* code of rules. *This is the task of a government . . . [which is] the means of placing the retaliatory use of physical force under objective control—i.e., under objectively defined laws.*”<sup>20</sup> Government is strictly “an agent of man’s self-defense, and, as such, may resort to force *only* against those who *start* the use of force” (1062).<sup>21</sup>

## Implications for Objective Law

This function of government, again, provides the standard for objectivity in the law, since law is the instrument through which a government fulfills its function. While Rand is not the first to have recognized the protection of rights as the proper task of government, as long as the object of rights has been murky, so have the proper activities of government. When notions of what individuals possess rights *to* are confused or invalid, different people will demand conflicting “rights” and the government will seek to balance these competing claims. How that balance is achieved—exactly what constitutes a proper “balance,” and of what particular factors—has historically been fluid, left largely to a reading of the mood of the populace at a given moment. Given this, it is crucial to an objective determination of what a government may and may not do to pin down the exact object that rights protect.

This is what Rand’s identification of rights as guardians of individual freedom of action provides. Her identification of the fact that rights can be violated only by the use of physical force enables us to objectively implement the proper theory of government.<sup>22</sup> For the initiation of physical force against a person is a definite, knowable activity. Rand’s insight into the pivotal role of force means that the violator of rights “is not to be detected by ‘intuition,’ feeling, or vote; his action is a tangible fact, available in principle to sense perception.”<sup>23</sup> This is not to say that the proper application of this standard will always be transparent or that the layers of abstract reasoning beyond immediate perception that are sometimes required will never be demanding. We cannot expect the proper resolution of every new question about the parameters of rights in cyberspace or in genetic materials, for instance, to be a snap. It is to say, though, that the standard to be upheld to meet such challenges is firm and clear and rationally justified.

## THE VALUE OF OBJECTIVE LAW

All of this places us in better position to appreciate not only the nature but also the critical importance of objectivity in the law. The value of objective law lies in its crucial service to human life. More exactly, it might be summarized in a single word: freedom. Only through a system of law that is fully objective can the government subordinate might to right. By banishing the unjustified use of force, objective law allows man the freedom that his survival demands. Indeed, because human life is sustained by rational action and because the ability to take rational action relies on a man’s being free, the value of objective law is difficult to overstate. By

protecting a man's freedom, objective law enables him to engage in the kind of action without which he cannot live.<sup>24</sup>

In order to protect individual freedom, the law must be objective in regard to both what it does and how it does it. The substance of its rules as well as their implementation (encompassing enactment and enforcement) must be justified by their service to the government's singular mission. The standard for measuring law's objectivity, again, follows straightaway from the reason for having a government in the first place. As Rand writes:

The nature of the laws proper to a free society and the source of its government's authority are both to be derived from the nature and purpose of a proper government. . . . Since the protection of individual rights is the only proper purpose of a government, it is the only proper subject of legislation: all laws must be based on individual rights and aimed at their protection. All laws must be *objective* (and objectively justifiable): men must know clearly, and in advance of taking an action, what the law forbids them to do (and why), what constitutes a crime and what penalty they will incur if they commit it.<sup>25</sup>

It is not difficult to appreciate the threat posed by laws that lack legitimate content. When law restricts activities that fall within an individual's rightful domain, the individual is victimized by the very institution whose role is to protect him. His freedom is unjustifiably infringed. Less apparent but no less critical to the security of individual rights, however, is the form of law. Laws which are not implemented objectively (due to vague and ambiguous wording, for instance, or due to lax standards of proof for criminal conviction) bring the same unjust effects as laws whose content is invalid. When an ambiguous law is applied to a particular individual, for instance, that person has been denied fair notice of the rules to which he is held legally accountable and thereby denied the full, rightful exercise of his freedom. In order to stay within the confines of a law that could reasonably be interpreted to mean different things, he must refrain from certain activities that he is actually entitled to engage in. To keep the government from penalizing him, that is, he is compelled not simply to obey valid laws and to respect others' rights (which are perfectly proper demands for the law to make of him), but to constrict his activities to a still narrower course.

Because of the power of government, objectivity is vital throughout every aspect of a legal system. A government cannot be limited if its rules of operation are, thanks to non-objective form, unlimited. Insistence on objectivity is a means of ensuring that the power of government not be misapplied. No fail-safe guarantees are available, of course, but the objectivity of law disciplines the government to serve only its proper purpose. Every legal restriction of a citizen poses a threat to use force against him, if he fails to obey that restriction. Only such threats that are required for the respect of individual rights can be justified. In an objective system, therefore, law's substance is limited exclusively to measures that are necessary to achieve the government's purpose and the law's form introduces no features that sabotage that purpose. While both objective content and objective form of law are extremely valuable, it is also important to recognize that we cannot truly enjoy the fruits of objectivity in regard to either without objectivity in the other. Any failure to maintain strict and complete objectivity permits an unjustified use of force by the government and thus violates individual rights. As such, it contradicts the government's reason for being.

The fact that Galt's Gulch lacks a formal government should not be taken to imply that Rand considers the true ideal to be the absence of government. While Galt tells Dagny that "we

have no laws in this valley, no rules, no formal organization” (714), the gulch is not meant to be a model for large scale societal living; it is not an example of Rand’s political philosophy, in practice. Mulligan remarks that the gulch is “not a state . . . not a society of any kind,” but simply “a voluntary association of men” (747).<sup>26</sup> Bear in mind that its population consists of an extremely small number of carefully chosen residents. While Rand defends a government of strictly limited powers, she is emphatically not an anarchist. Nor does she regard government as a necessary evil. On the contrary, all of the argument thus far should make plain that government is a necessary good. For an objective legal system is a *liberator* to human beings and as such, a monumental value. Since this aspect of Rand’s political philosophy is sometimes misunderstood (often, by people professing agreement with her political ideas), further clarification is useful.

Anarchy is not a prescription for liberty, Rand recognizes, but for the rule of the strongest. For its practice amounts to the complete unleashing of force. Since government is the institution designed for the objective protection of individual rights, the rejection of government as such amounts to the rejection of those rights. Contrary to its frequent lip service to rights, anarchism’s “anything goes” policy implies that individuals do not possess rights that warrant respect or objective protection. And if individuals do not hold moral claims against others’ forceful interference, the only thing left to stop the imposition of force is opposing force.

Anarchism is usually defended as necessary to honor *complete* freedom, in order for people to be *fully* free. Its driving contention is that no shackles whatsoever, private or public, should be tolerated. The problem, however, is that this conception of “shackles”—of what would constitute an infringement of individual freedom—reveals a subjectivist conception of rights that confuses freedom with license. In truth, the freedom to which individuals are entitled by right has a distinct identity and definite boundaries. My rights protect my freedom of action from others’ initiation of physical force—period. Rights do not protect me from having unfulfilled desires. Not *anything* that a person might like to do constitutes a rightful exercise of his freedom. Correspondingly, not any restriction of my actions constitutes a violation of my freedom (or an unwarranted shackle). My desire to help myself to your wallet, for instance, would not make my seizing it an innocent exercise of my rights. If that were the case, the concept of rights would be meaningless, since any apparent violation of one man’s rights would simply be the exercise of another man’s rights and as such, immune to legitimate restriction. Your right to your wallet would collapse as soon as another person tried to grab it. On this view, nothing could qualify as a violation of rights. But rights that could not possibly be violated are rights that could not shield anything; *nothing* is required to respect them.<sup>27</sup>

The implication for the propriety of government is direct. If one views rights as license to do whatever one pleases such that anything goes in the exercise of rights, one will have no basis for recognizing a government’s authority to enforce laws declaring that certain actions may not “go.” Without recognition of the objective nature of rights, a government can have no valid principle of operation, no valid means of distinguishing what individuals should and should not be free to do. The subjectivist about rights, in other words, is committed to subjectivism about government (evidenced in the anarchists’ frequent embrace of “competing,” “private” governments). The person who recognizes the objective nature of rights, on the other hand, will recognize the propriety of a government dedicated to the objective enforcement of those rights. The need for government is a direct outgrowth of the objective nature of rights.<sup>28</sup>

## NON-OBJECTIVE LAW . . .

Fortified with this understanding of the exact nature and value of objective law, we can now investigate more directly the malignant character of non-objective law.

Essentially, non-objective law is law that does not serve the legitimate purpose of government. It exercises coercive power to accomplish ends other than the protection of citizens' rights. Whether intentionally or unwittingly, non-objective law transgresses the boundaries that the function of government imposes on the government's activities. This might be done through the adoption of substantively invalid laws, laws whose content forbids or requires some action that it is not a government's legitimate authority to restrict. The advancement of a moral crusade to encourage people to volunteer more time to charity, for instance, or paternalistic restrictions on the foods that people consume would both reflect this sort of non-objectivity.<sup>29</sup> Law could also be non-objective in virtue of being poorly crafted. Ambiguous language or retroactive law or the imposition of requirements by one law that conflict with those imposed by other laws would make it impossible for individuals to know exactly what is required of them. In these cases, although the offending laws might intend to achieve the government's legitimate ends, their non-objective formulation invalidates them. For, as we have already indicated, such laws can only be enforced at the expense of the rights that the government is charged to protect. A person who is uncertain of the range of his legal rights in business because of a vague regulatory edict, for example, will naturally play it safe and curtail his activities in order to avoid possible government penalties. In this way, however, his freedom is wrongly constricted.<sup>30</sup>

Further, laws that are perfectly objective in both content and written form could be applied improperly. Mayor Bascom is an all-too-familiar practitioner of this sort of abuse, treating the law as "rubber," readily stretchable for friends (295).<sup>31</sup> When the standards that people are actually compelled to obey are subjectively determined by the transient preferences of particular bureaucrats, people are as vulnerable as they are under retroactive law. A hallmark of the rule of law—knowing what to expect—is obliterated.<sup>32</sup>

*Atlas Shrugged* is littered with non-objective laws. The Economic Emergency Law forbids any discrimination "for any reason whatever against any person in any matter involving his livelihood" (317). Hiring job applicants on the basis of their training, experience, or ability, for instance, is forbidden. Wesley Mouch, the government's Top Coordinator of Economic Planning and National Resources, issues a blizzard of directives that impose restrictions on business operations, taxes on the most productive, and assure "fair shares" to all. The steel mills of the country are "ordered to limit the maximum production of any metal alloy to an amount equal to the production of other metal alloys by other mills placed in the same classification of plant capacity—and to supply a fair share of any metal alloy to all consumers who might desire to obtain it" (333). Similar restrictions are imposed on the railroad and steel industries (333–35, 836ff., 840, 980). Project Soybean is designed to "recondition" people's dietary habits (937ff). And "[a]ll the manufacturing establishments of the country, of any size and nature, were forbidden to move from their present locations, except when granted a special permission to do so by the Bureau of Economic Planning and National Resources" (333).

Like a virus, the non-objectivity of such a legal regime gradually infects people's private interactions. Consider the Anti-dog-eat-dog-Rule,

a measure of "voluntary self-regulation" intended "the better to enforce" the laws long since passed by the country's Legislature. The Rule provided that the



members of the National Alliance of Railroads were forbidden to engage in practices defined as “destructive competition”; that in regions declared to be restricted, no more than one railroad would be permitted to operate; that in such regions, seniority belonged to the oldest railroad now operating there, and that the newcomers, who had encroached unfairly upon its territory, would suspend operations within nine months after being so ordered; that the Executive Board of the National Alliance of Railroads was empowered to decide, at its sole discretion, which regions were to be restricted (75).

Under non-objective law, such “voluntary self-regulation” is increasingly adopted as a means of preemptive self-defense. Industries “agree” to restrict their own rights in an attempt to forestall even more restrictive regulations that a government threatens to impose. (“Jawboning” is the contemporary euphemism for this sort of extortion, most commonly inflicted on the oil, tobacco, and media industries in the United States.)<sup>33</sup> Businesses are sent the message: do this, or else we will impose worse.<sup>34</sup>

Notice, further, that none of the Anti-dog-eat-dog-Rule’s pivotal terms is objectively defined. The rule prohibits competition that is “destructive” to whom? By what standard? What constitutes “unfair encroachment”? And by what right is a given segment of the market *another’s* territory? How much power—and of exactly what type—does the Executive Board’s “sole discretion” encompass?<sup>35</sup>

The only type of “destruction” that government is properly concerned with is the violation of its citizens’ rights. When extraneous aims are introduced (such as avoidance of “unfair encroachments” and provision of “fair shares”), the government exceeds its authority. For any ends other than the protection of individual rights can only be advanced by means that violate rights. Given that the government properly is an institution authorized solely to protect individual rights and which does not itself produce anything (other than the services necessary to fulfill that mission), the only way for a government to serve any alternative agendas is through forcibly compelling some people to supply the things that the government promises to give to others. In doing so, however, the government becomes an agent of injustice, wronging those whose property it seizes. It restricts the very freedom that it is designed to protect.<sup>36</sup>

Among the novel’s myriad non-objective laws, the prize winner in perversity is Directive 10-289, which prohibits individuals from changing jobs, businesses from closing, changing their amounts of production or income or spending, and everyone from creating new goods or inventions. It authorizes the government to seize all patents and copyrights (538–39). Aptly dubbed the “moratorium on brains” by Francisco (551), this law essentially seeks to freeze the economy in place—by exterminating the liberty that fuels human production of goods and services and thereby allows there to be an economy.<sup>37</sup>

When Mr. Weatherby derides Dagny’s “old-fashioned idea about law,” her response indicates the basic reason that a legal system must be objective:

“Why speak of rigid, unbreakable laws? [Weatherby asks] Our modern laws are elastic and open to interpretation according to . . . circumstances.”

“Then start being elastic right now, because I’m not and neither are railroad catastrophes.” (631)

Dagny’s point is that the laws of identity and causality must be respected in running a government as much as in running a railroad or any other enterprise. Non-objective laws cannot

succeed. The exercise of government power for any end beyond its proper purpose undermines its ability to achieve that purpose.<sup>38</sup> Once a legal system abandons the objective standard of individual rights as its means of determining its activities, what fills the void is the arbitrary. Non-objective law is utterly unfathomable; it *cannot* be applied objectively. Rearden, for instance, has no objective means of discovering what the Fair Share Law actually requires of him since no one could know how to “determine what constituted a fair share of what amount. . . . There was no way to form an argument; the figure could have been one pound or one million tons, with the same validity” (361).<sup>39</sup>

Essentially, what the kaleidoscope of non-objective law in *Atlas* makes clear is that without objectivity, laws no longer govern. No legal question is ultimately answered by reference to written, duly enacted rules. Rather, those men who wield the most brute power have their way. A given citizen’s legal status is hostage to whatever those particular men believe or want, today (which may differ from what they believe or want, two weeks from today).

It is important to appreciate that this is the case not only in regard to government officials who would deliberately abuse their authority to serve ulterior agendas. When the law itself is non-objective, it cannot be objectively understood and applied even by those who earnestly attempt to. Just as you cannot fit a square peg into a round hole, you cannot apply laws that are not rationally justified in accordance with strictly rational methods. When the content or formulation of law is non-objective, laws *must* be treated as “rubber,” since human beings cannot survive by strict adherence to irrational rules. It is only the violation of such rules that allows people to satisfy the needs of their existence.<sup>40</sup> Non-objective laws require that even the most upright government officials resort to irrelevancies in order to determine precisely how a non-objective law will be applied in a particular case.<sup>41</sup>

Consider laws that erect “the public good” as their basis. Exactly who *is* the “public”? And who, among a nation’s citizens, is not? How secure is anyone’s membership in this fortunate class? On what basis is a government to champion the interests of certain segments of the population and not others? Further, for any particular group, which of its interests is the government to serve (other than the rights that all citizens possess equally)? The impossibility of valid answers to these questions (answers that are rationally grounded in the function of government) means that non-objective law *requires* subjectivism from even the most conscientious government worker. In practice, “the public” is invariably identified with a continually revolving cast of subgroups, such that “the public” allegedly served by today’s legislation (the country’s teachers or single parents, for instance) is different from “the public” served by tomorrow’s (farmers or coal miners or overweight middle schoolers). Certain groups are repeat beneficiaries, while other groups never receive such favor. Non-objective law thus divides the populace into rival constituencies who can merely hope that their day will come and deliver as many goodies as those paid out to others—and that they are not displaced by a fresher flavor-of-the-month before having won a big enough payday to last them a while.

The larger point, again, is that in the absence of objective law, no legal question is ultimately answered by reference to what is written. Every question remains indefinitely open, capable of infinitely many answers, depending on the views of the particular enforcers on a particular day. Pull with “the right people” is a person’s only path to the satisfactory resolution of a dispute with the government; rights are no longer relevant. As Dr. Potter observes, what a person needs in such circumstances is “friends” (182). Dave Mitchum recognizes the same basic truth. Although he “knew nothing about the philosophy of law,” Mitchum realizes “that when a court is not bound by any rules, it is not bound by any facts, and then a hearing is not an issue of

justice, but an issue of men, and your fate depends not on what you have or have not done, but on whom you do or do not know” (596).

### . . . AND ITS FALLOUT

The material destruction caused by non-objective law confronts the people of *Atlas* at every turn. Strangled by laws that dictate precisely how businesses will be run, companies are increasingly unable to produce, to ship, to deliver on contracts. Shortages, delays, equipment and facility failures mushroom and progressively envelop the entire economy. Remedies adopted to solve the problems created by earlier non-objective laws, because they themselves are non-objective, inevitably aggravate problems and extend the paralysis. Eventually, every aspect of people’s standard of living is sent careening backward as rationing is imposed, leisure venues are closed to conserve fuel, and basic infrastructure fails (e.g., bridges, railroads) (350, 499, 496ff). By the end of the novel, people resort to horses for transportation in a society where the lights are out.<sup>42</sup>

It is a commonplace that the rule of law, with its requirements of written, stable, objectively knowable rules, is essential to a person’s ability to plan his life. The arbitrariness of the legal system in *Atlas* makes such planning impossible. Instead of proceeding in a legal environment where fixed rules govern cooperation and trade, producers such as Rearden must invest their resources “upon the sole evidence of a man’s face, manner and tone of voice, . . . pouring money into unknown hands in exchange for unsupported promises, . . . into unenforceable contracts—both parties knowing that in case of fraud, the defrauded was to be punished, not the defrauder” (302). Under non-objective law, *all* of a person’s plans acquire this perpetually precarious character. A man literally does not know what is his from one day to the next. Consequently, even the normally most capable people are rendered helpless. For the absence of a clear, well-defined challenge prevents their adoption of a logical course. A person cannot effectively build something or battle something if he is left continually guessing about the nature of his tools and of his obstacles. (Which bureaucrat do I have to please? By what means? Will the pitch that works today continue to appease the relevant personalities tomorrow? Which of the constantly morphing “rules” will apply then?) Without the protection of objective law, a person has no means of rationally pursuing his values.<sup>43</sup>

Admittedly, in *Atlas*, the economic regulations’ stifling effects are exacerbated by the strikers’ withdrawal. Yet this merely hastens the inevitable. Even without the strike, people would eventually confront the same consequences; this is only illustrated more graphically by removing the “men of the mind.” For non-objective law equally removes the men of the mind—along with all the products of rational thought—by removing individual freedom. Non-objective law extinguishes the condition that is necessary for men to use their minds and to create the benefits that rational thought uniquely makes possible.

Directive 10-289, as we have already noted, is the most egregious of the book’s array of government restrictions. By using an example of such drastic dimensions, Rand starkly exposes the life-choking principle that is shared by all non-objective law. This extreme instance simply makes its consequences more plain. Yet less sweeping regulations are of the same essential nature and carry the same destructive effects. The label “moratorium on brains” highlights the fact that the mind drives all genuinely productive activity.<sup>44</sup> Laws such as 10-289 cripple independent thought, however, by making the use of one’s mind to devise a different way of producing anything a punishable offense. (No “better mousetraps” will be permitted.) The message that unites all economic regulations is: *Don’t think. We’ll make all the decisions; we*

*(the government) know best.* The people are simply to follow orders. The tunnel episode illustrates the disastrous culmination of this ethos, in practice. While it is not the direct result of a specific law, the disaster clearly reflects the philosophy that informs such non-objective regulations. The greater the number of dictates handed down from Washington, the less freedom an individual has to exercise his independent judgment and the less we can expect individuals' decisions to be ruled by independent judgment. The reign of non-objective law teaches that the way to stay out of trouble is through mindless obedience. *Don't raise questions or suggest alternatives. Don't attend to the relevant facts confronting you. Simply do as others command.* The result of widespread adherence to such a policy is catastrophe.<sup>45</sup>

The destruction wrought by non-objective law is not confined to the material realm. Its spiritual destruction is equally vast.

Notice that phoniness permeates human interactions in such a regime. When a government sets itself against individual freedom and sets individuals against one another through non-objective law, winks, charades, and double-dealing become the essential tools of survival. Mexico's promise to respect a contract with Taggart Transcontinental, for instance, is pretended to provide assurance, despite the common knowledge that Mexico does not respect property rights (53). (Indeed, it promptly violates that promise by nationalizing the San Sebastián Railroad and Mines [72].) Abiding by the Equalization of Opportunity Bill, Eddie explains to Galt, requires elaborate charades about who owns what (217). Producers and looters alike must break laws in order to get by, as we see in Rearden's and Danagger's private agreement to circumvent legal restrictions, Dagny's bribing officials to get resources needed to keep the railroad running, and Hank's buying his divorce (224, 163). In the rescue of Galt, Dagny shoots a man (1148).

The heroes are reduced to the methods of criminals—Rearden meeting “furtively” with Danagger, searching like a “scavenger,” “hiding, sneaking, lying” to obtain the materials he needs in order to produce (383, 922; also see 474). Dagny wonders at the debasement of this:

There was a time, she thought, when [Rearden's] mind, his energy, his inexhaustible resourcefulness had been given to the task of a producer devising better ways to deal with nature; *now*, they were switched to the task of a criminal outwitting men. She wondered how long a man could endure a change of that kind. (922)

Under non-objective law, as one of Jim's cronies candidly acknowledges, it is not a government of “principles anymore . . . it's only a question of who robs whom” (541). Far from protecting individual rights against aggression, a government of non-objective law creates conflicts between people who are made to fight over a finite pot of loot. Human relations *become* “dog eat dog,” as such law converts the great value of other people into a threat.<sup>46</sup> Individuals get by being at once slave and slave master (654), compelled by the government to satisfy others' demands and to meet their own needs by the only means available: coercion. The freedom to reason and to produce for themselves has been extinguished.<sup>47</sup>

The moral inversion of non-objective law is crystallized in the fact that a pirate is one of the good guys. Ragnar, who never takes rightful property but only things stolen from the innocent (576, 577), is the agent of justice in this upside-down universe, avenging the exploitation of the producers. “It is a policeman's duty to retrieve stolen property and return it to its owners,” he explains. “But when robbery becomes the purpose of the law, and the policeman's duty becomes, not the protection, but the plunder of property—then it is an outlaw

who has to become a policeman” (577–78). When Rearden, on a dark road, tells the police that Ragnar is his new bodyguard, he does not realize how apt a description that is (583).<sup>48</sup>

Shocked as we may initially be by the presentation of a pirate as a hero, defiance of the law is what the rulers of a non-objective system themselves expect—and count on. In a confrontation with Rearden, Ferris explains:

Did you really think that we want those laws to be observed? . . . We *want* them broken. . . . We’re after power and we mean it. . . . There’s no way to rule innocent men. The only power any government has is the power to crack down on criminals. Well, when there aren’t enough criminals, one *makes* them. One declares so many things to be a crime that it becomes impossible for men to live without breaking laws. Who wants a nation of law-abiding citizens? What’s there in that for anyone? But just pass the kind of laws that can neither be observed nor enforced nor objectively interpreted—and you create a nation of law-breakers—and then you cash in on guilt. (436)

Non-objective law invites disrespect, disobedience, and eventually, contempt. While eager for the first, Ferris is oblivious to the second (in the fashion typical of a short-range mentality). When people realize that their legal system does not respect any valid moral ideals and must be routinely violated, they will view it as a sham; the guilt that Ferris is counting on will wear thin. This is evident with the deserters, who are not deterred by the illegality of their actions.<sup>49</sup> When men no longer respect the legitimacy of their legal system, it loses its power to induce guilt. And the pretense of a society that is ruled by law, rather than by muscle, is fully exposed. Ragnar and the strikers simply catch on more quickly.<sup>50</sup>

By casting men into conditions that render survival by rational methods impossible, non-objective law is inimical to the practice of morality. (By “rational methods” here, I mean those based on the fundamental nature of man and his long-term survival needs.) Non-objective law directly assaults reason, as we have already explained. Because all moral virtues are applications of reason, however, non-objective law is an assault on objective morality across the board. Economic regulations clearly penalize the virtue of productiveness by imposing special burdens on those who exercise it (taxes, fees, restrictions on production and contract terms, etc.). Yet non-objective law equally impedes independence, integrity, justice, honesty, and pride.<sup>51</sup>

Independent thought and action are not possible when a person is not free to act by his rational judgment. His thoughts are useless if he is not permitted to act on them and his actions are useless if they are not grounded on *his* convictions.<sup>52</sup> Integrity—fidelity to one’s values—is not possible when a person is penalized for pursuing any values that the government disapproves of (disapproval enforced through laws that restrict a man’s rightful activities). Justice is not possible when a person must deal with others on the basis of government decrees (about hiring, termination, pay, etc.) rather than his own objective judgment. Honesty is not possible when a person must feign compliance with laws that he cannot actually obey and must pretend respect for a justice system that is a fraud. Pride is not possible to a man whose range of ambition is trimmed to satisfy mandated caps and “fair shares” and who is not permitted to live by means of reason, productiveness, independence, integrity, justice, and honesty.<sup>53</sup>

By its basic rejection of rationality, non-objective law pits a man’s morality against him. By requiring conformity to irrational standards, it renders the exercise of objective virtues self-destructive.<sup>54</sup>

The spiritual destruction of non-objective law is also evident in its emotional toll. At times, Dagny's, Rearden's, and Francisco's pain at the conditions they face is searing. After the passage of the Equalization of Opportunity Bill, Rearden's sense of futility is palpable:

He stood at the window, trying not to think. But he kept hearing words in his mind: Rearden Ore . . . Rearden Coal . . . Rearden Steel . . . Rearden Metal . . . What was the use? Why had he done it? Why should he ever want to do anything again? (215)

Non-objective law's systematic evisceration of the conditions of human life drains natural motivation. Dismayed and discouraged as they are at times, though, *Atlas'* heroes are never broken. For the strikers are not the quitters. It is the looters who quit on living as a human being *must*, if he wants to live. One of *Atlas'* major themes is that those who quit reason (through non-objective law or any other means) quit life.

Some will no doubt object that the laws on display in *Atlas* are too farfetched to teach us much; their provisions are too extreme to be actually imposed, thus they are not a realistic basis for lessons about the nature of law. Unfortunately for this wishful thinking, however, the US today suffers from a plethora of non-objective laws that are no less devastating in their effects.<sup>55</sup> Regulations of trade are ubiquitous. Consider, to cite just a handful: minimum wage laws and calls for caps on corporate executives' pay; the Family Leave Act (requiring employers to extend leave time to employees) and the Fair Pay Act, which would mandate equal pay for "comparable" work.<sup>56</sup> Oil companies are routinely threatened with laws against price gouging (earning "excessive" profits) while an endless carousel of "price supports" are given to farmers of corn or cotton or wheat or whatever on the basis of which voting bloc can exert the greatest political pull in a given session of Congress. The Farm Bill is a notorious piñata bursting with prizes designed to satisfy an array of special interests.<sup>57</sup> Regulations of particular industries—health care, coal mining, banking, transportation, food, clothing manufacture, entertainment, telecommunications, and on and on (try to find an industry devoid of regulation)—are so plentiful that most people take them for granted without a second thought.

Antitrust law alone imposes a dizzying array of unjustified restrictions on voluntary transactions. Since enactment of the Sherman Antitrust Act in 1890, one scholar has observed, "The courts in the United States have been engaged . . . in deciding case by case exactly what the law proscribes. No broad definition can really unlock the meaning of the statute."<sup>58</sup> This is the epitome of non-objective law. In the century-plus since Sherman, a cascade of additional restrictions has only further obscured antitrust laws' meaning and tightened the noose on businesses' freedom. The Federal Trade Commission was established in 1914 to prosecute "unfair methods of competition" and "anti-competitive practices."<sup>59</sup> The standards for determining what is "unfair" or "anti-competitive" are opaque. Indeed, antitrust law has grown

into a haphazard accumulation of non-objective laws so vague, complex, contradictory, and inconsistent that any business practice can now be construed as illegal, and by complying with one law a businessman opens himself to prosecution under several others. No two jurists can agree on the meaning and application of these laws. No one can give an exact definition of what constitutes "restraint of trade" or "intent to monopolize" or any of the other, similar "crimes." No one can tell what the law forbids or permits one to do.<sup>60</sup>

Danagger faces this very predicament: “One gang in Washington is yelling that I am expanding too much and something should be done to stop me, because I am becoming a monopoly. Another gang in Washington is yelling that I am not expanding enough and something should be done to let the government seize my mines, because I am greedy for profits and unwilling to satisfy the public’s need of fuel” (383).

Again, this is far from fanciful fiction: In the 1950s, General Electric and Westinghouse, among others, were convicted for fixing prices.<sup>61</sup> Yet by the law, companies were liable for charging prices deemed *either* too low or too high: for being “predatory” by charging so little as to run competitors out of business or for charging too much and thereby “gouging” the consumer. Non-objective regulations leave companies damned if they do and damned if they don’t, with no way to avoid the penalties of the law.<sup>62</sup>

Antitrust law is but one example. It enjoys no monopoly on the employment of arbitrary and thus unknowable standards. Whether a person is striving to comply with affirmative action laws that require respect for the “compelling state interest” served by “diversity”<sup>63</sup> or with sexual harassment law that prohibits creating a “hostile or offensive” work environment<sup>64</sup> or with the Fairness Doctrine’s mandate that broadcasters guarantee “ample play” for the “fair competition” of opposing views on the airwaves,<sup>65</sup> the individual is placed in the untenable position of not truly knowing what he legally may and may not do. The guessing game that is so conspicuous in antitrust and that we see so vividly on the dramatic canvas of *Atlas* is essentially the same in numerous non-objective laws.

Moreover, all regulatory law is non-objective insofar as it preemptively substitutes the government’s judgment about the wisdom of a particular action for an individual’s own. By declaring that a given food or drink or drug is too dangerous to be consumed (the Food and Drug Administration) or that a given radio or television program is too “indecent” to be heard (the Federal Communications Commission) or that a certain activity is too important to practice without a license or too risky to be engaged in without satisfying government restrictions (activities that include, in some states, interior decorating and fortune telling), regulatory law unjustifiably prevents a person from exercising his freedom to rule his own life. Advance restrictions of a person’s activities, when those activities would not infringe on others’ rights, violate *his* rights by removing from that person decisions and options that are properly his. The good intentions that may sometimes be involved do not alter the fact that this tramples his rightful freedom.<sup>66</sup>

While details of actual and fictional laws naturally vary, then, many current laws in force are the same, in principle, as those in *Atlas*. And they carry the same malignant consequences.

Non-objective law is, we have seen, forever unsettled and unknowable. Indeed, released from the discipline of objective validity, *the* law becomes a fiction. Those remnants that resemble law (such as the terms for creating a binding legal contract) offer no protection to those who conform to them. This is vividly illustrated when Rearden signs the papers transferring ownership of his ore mines to Paul Larkin:

Paul Larkin reached for the papers hesitantly; he looked ingratiatingly helpless. “It’s only a legal technicality, Hank,” he said. “You know that I’ll always consider these ore mines as yours.”

Rearden shook his head slowly; it was just a movement of his neck muscles; his face looked immovable, as if he were speaking to a stranger. “No,” he said. “Either I own a property or I don’t.”

“But . . . but you know that you can trust me. You don’t have to worry about your supply of ore. We’ve made an agreement. You know that you can count on me.”

“I don’t know it. I hope I can.”

“But I’ve given you my word.”

“I have never been at the mercy of anyone’s word before.”

“Why . . . why do you say that? We’re friends. I’ll do anything you wish. You’ll get my entire output. The mines are still yours—just as good as yours. You have nothing to fear. I’ll . . . Hank, what’s the matter?”

“Don’t talk.”

“But . . . but what’s the matter?”

“I don’t like assurances. I don’t want any pretense about how safe I am. I’m not. We have made an agreement which I can’t enforce. I want you to know that I understand my position fully. If you intend to keep your word, don’t talk about it, just *do* it.” (222)

In the absence of objective law, if Larkin chooses not to fulfill these terms, Rearden has no recourse—other than *his* resorting to force to try to impose them. This chillingly illustrates the primitive conditions to which non-objective law thrusts us. As the legal system deteriorates in *Atlas*, we witness a regression to “each man for himself.” Since the government cannot be counted on to protect a man’s rights, each must take matters into his own hands.

While a timeworn tactic of self-preservation is to cloak one’s demands as those that serve “the public welfare,” we have already seen how flimsy a shield this offers in the face of the subjective, constantly changing identity of “the public.”<sup>67</sup> For stronger security, a person will need to adopt the more personally tailored methods of money and professional dealbrokers to exert influence on his behalf. Once the government is run not as a principled protector of individual rights but as a favor-trading auction, a person needs resources to bid and personal patrons to exploit them to his advantage. (Rearden, we observe, is forced to buy his divorce and must employ Wesley Mouch as his “man in Washington,” a cretin sufficiently adept at this corruption as to later assume one of the highest government offices [933, 895, 50].) Long before “lobbying” became a mainstay in our political vocabulary, Rand forecast its growth by recognizing it as not the result of individuals’ personal corruption (bad apples in office), but as the inevitable consequence of a corrupt system. Non-objective law requires manipulation by non-objective means; lobbyists are the result. When laws lack objective criteria of enforcement, those charged with applying them are open to non-objective criteria. That is what lobbyists specialize in supplying.<sup>68</sup>

At times, even these forms of influence prove inadequate. When the pretense of civil intercourse can no longer be manipulated to get what one wants, people will resort to hiring “private guns,” literally: not well-dressed lobbyists, but gunmen. At their most desperate, the rulers in *Atlas* use armed goons to try to have Galt do as they wish. And the heroes must respond with force, to rescue him.

This is the Hobbesian state to which non-objective law reduces us.



## THE DARKEST EVIL

A government is a tremendously powerful body. It is that institution within a society that holds a monopoly on the legitimate use of force (apart from that which is sometimes justified in a person's immediate self-defense). The reason for its holding this power is to protect individual rights from the unjustified imposition of force. It is precisely because the government is the agent "of restraining and combating the use of force," Rand writes, that its actions "have to be rigidly defined, delimited and circumscribed; . . . If a society is to be free, its government has to be controlled."<sup>69</sup>

The objectivity of laws is a crucial means by which we confine a government's exercise of power to its proper boundaries. Non-objective law represents the unjustified use of force. Whether it is non-objective in design or in application, deliberately or not, any non-objective law infringes individual rights. This infringement will be more or less flagrant, depending on the particular law in question. But all non-objective law, in the end, either punishes a man for doing something that he is rightfully entitled to do or, by failing to prohibit actions that would violate his rights (either private actions or the government's own), it assists in their violation. As such, non-objective law defeats the point of having a government. Instead of the law's serving as a firm safeguard against the initiation of force (including by government itself), law that is non-objective grants rulers a blank check (1063). As Peikoff observes, it "represents a monopoly on the use of force granted to an agency ruled by whim."<sup>70</sup>

Notice the implications of this. The problem with non-objective law is not simply that it fails to fulfill its function (grave a failing as that is, given the vital importance of protecting individual freedom). Non-objective law allows and authorizes the unjustified use of force—which is the most destructive, deadly enemy known to human existence. The use of force, we have seen, paralyzes its victim's mind. It thus prevents the possibility of rational action, which is what human life depends on. If men cannot reason, men cannot survive. This, I think, is why Narragansett characterizes non-objective law as "humanity's darkest evil."

Non-objective law wipes out the fundamental precondition of human life. While a person under a government run by strictly objective law might still confront a good deal of irrationality in the people around him, that irrationality cannot destroy him unless it is imposed by force. When it is, however (as through non-objective law), the denial of his freedom disarms his capacity to act as human survival demands. He is rendered helpless, delivered to the mercy of those wielding brute force. Human beings cannot survive under such conditions. (The impotence of reliance on force is starkly exposed when Galt is being tortured for refusing to give his captors what they demand. Since they have renounced the use of reason, they can create no *values* to offer Galt in exchange. The bankruptcy of their venture is fully revealed in their inability to repair the torture device itself; they must rely on Galt's mind to do that for them.)

What makes non-objective law distinctively destructive is its pretense of offering protection. That is, a non-objective legal system is worse than worthless; it is an active (if disguised) agent of injustice and of death. For it provides men with a false sense of security. By fraudulently encouraging individuals' belief that their rights are being safeguarded, non-objective law disarms the innocent. If a man knows that he is on his own to protect his rights, he can (and usually will) take measures to do so. If, however, he mistakenly believes that government will protect his rights, he will unwittingly cooperate in his own immolation. He will respect the legal system on the premise that it is a just ally.

The façade of the rule of law that non-objective law maintains, in other words, readily recruits submissive victims because people do not realize that they *are* victims. (Indeed, it exploits people's desire to uphold justice by using that desire against them.) In this way, non-objective law's pretense of objective validity makes men uniquely vulnerable. Thinking that they are protected by a just government, those living under such a system are like the armed soldier who does not realize that his guns are loaded with blanks. Actually, it is worse: under non-objective law, a man's "guns" are turned against him, since the government enjoys a monopoly on the use of force. Having taken over the individual's authority to use defensive force himself, the government now directs force against him. This *is* a "horror machine," as Narragansett had seen.

Rearden recognizes the grotesque injustice of non-objective law when he refuses to mount a defense against his criminal prosecution, refusing to "simulate the illusion of dealing with a tribunal of justice" (477). Even a thief is less depraved, he observes, since a burglar, at least, "does not ask me to sanction his act" (477). Charged by a regime of non-objective law, Rearden names the charade for what it is: "I will not help you to pretend that I have a chance. I will not help you to preserve an appearance of righteousness where rights are not recognized. I will not help you to preserve an appearance of rationality by entering a debate in which a gun is the final argument. I will not help you to pretend that you are administering justice" (479).

The most corrupt kangaroo court is no worse, in principle, than a trial "governed" by non-objective law.

Over the course of *Atlas*, we witness the steady descent of a law-governed society into a state of anarchy. By the book's end, guns and gangs are in command. This is the inevitable result of non-objective law. Because its premise is untenable, it will eventually implode. When people realize that their government does not provide the rightful rule of law, they will no longer respect it as if it did and the resort to force will be more visible and more widespread. Open anarchy would be both more honest and more safe, however, since when the absence of law is forthrightly acknowledged, a person knows his vulnerabilities and can act accordingly. Non-objective law exterminates individual freedom far more effectively by providing false assurances of its security.

## CONCLUSION

Given that the concept of objective law is hazy in many people's minds, it is easy, amid the numerous philosophical insights of *Atlas Shrugged*, to overlook Judge Narragansett's claim. The extreme character of his condemnation of non-objective law, however, should summon our attention. And examination of his claim does, indeed, reveal valuable lessons.

A proper legal system is constructed to serve the proper function of government. Objective law is validated by its service to that end: the protection of individual rights. Non-objectivity, whether in law's content or in its implementation, subverts the law's ability to fulfill that function and reflects the opposing dictum that might makes right. For any failure of objectivity means that government power is being used to serve alternative, illicit ends. As such, non-objective law converts the would-be guardian of man's freedom into an additional threat to it. Under the guise of protecting man's rights, law that is not objectively valid uses the government's monopoly on force to violate his rights. In this way, non-objective law represents evil of the most lethal sort: the unjustified use of force. Given that human life depends on reason and on the freedom that makes reason possible, the unjustified use of physical force, by

paralyzing its victim's mind, cripples a man's means of survival; it attacks his *capacity* to live.<sup>71</sup> This is a dark evil, indeed.

If we were to treat Narragansett's verdict as a precise statement of Rand's considered philosophical conclusion about the relative depths of evil (as I have advised we not treat it), a full vindication of this verdict would require a systematic investigation of competing evils, which is beyond the scope of this paper. Even without that, however, our inquiry has illuminated the critical value of objectivity in law. Given the unique destructive power of physical force, whenever a person is authorized to use force, it is imperative that he use it justly. Similarly, insistence on objectivity in the law is our means of ensuring that government use *its* coercive power justly. When any aspect of a legal system is not objective, what suffers is individual freedom and, as a result, an individual's ability to live.<sup>72</sup>

## NOTES

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1. On hatred of the good, see Ayn Rand, "The Age of Envy," in *Return of the Primitive: The Anti-Industrial Revolution*, Peter Schwartz, ed. (New York: Meridian, 1999), 130–58.

2. I would stress that features of a fictional work, including lines of dialogue, cannot be treated as precise statements of an author's philosophy. The demands of plot, character, theme, and so on that are necessary for an integrated story militate against that. Moreover, Rand herself indicated that this was her view of fiction, in a 1965 letter. See Michael S. Berliner, ed., *Letters of Ayn Rand* (New York: Dutton, 1995), 631–32.

3. See, for instance, Lon Fuller, *The Morality of Law* (New Haven, Conn.: Yale University Press, 1964); Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory* (New York: Cambridge University Press, 2004); Richard H. Fallon, Jr., "The Rule of Law as a Concept in Constitutional Discourse," *Columbia Law Review* 97 (1997): 1–56; Andrei Marmor, "The Rule of Law and Its Limits," *Law and Philosophy* 23 (2004): 1–43; Joseph Raz, "The Rule of Law and Its Virtue," *The Authority of Law* (Oxford: Clarendon Press, 1979), 210–29. Also see Aristotle, *Politics* Book III, 15.

4. See Tamanaha, 122; Aristotle, *Politics* III 15.1286a17–20, 16.1287a18–32.

5. Rand discusses this in "The Nature of Government," *Capitalism: The Unknown Ideal* (New York: Signet, 1967), 332. Also see Leonard Peikoff, *Objectivism: The Philosophy of Ayn Rand* (New York: Dutton, 1991), 368.

6. Notice that many of the formal elements of the rule of law are required because of their necessity to give individuals a fair chance to comply with the law. It is because people could not be reasonably expected to obey conflicting laws or laws whose provisions are so ambiguous as to be compatible with multiple competing interpretations, for instance, that we require clarity and consistency in form. The concern animating these formal requirements is a morally substantive one: treating people justly.

7. This is only a crude statement of the nature of objectivity. A conclusion is objective insofar as it is governed by a person's efforts to reach his conclusions by all and only the relevant facts, logically understood and evaluated. Peikoff characterizes objectivity as "volitional adherence to reality through the method of logic," *Objectivism*, 316. For more precise and detailed discussion, see *Objectivism*, 110–51; Ayn Rand, *Introduction to Objectivist Epistemology*, second edition (New York: New American Library, 1990), 46–47, 52–54, 82, 101–6; and Tara Smith, "'Social' Objectivity and the Objectivity of Value," in *Science, Values, and Objectivity*, eds. Peter Machamer and Gereon Walters (Pittsburgh: University of Pittsburgh Press, 2004), 143–71.

8. The specific laws are "necessitated" in the goal they seek to serve, not in every detail of the means by which they do so.

9. Rand, "Man's Rights," in *Capitalism*, 321–22.
10. Rand, "Nature of Government," and Peikoff, *Objectivism*, 363–69.
11. Rand, "Man's Rights," 322. Also see Galt's Speech in *Atlas*, 1012, and "Nature of Government," 330.
12. For more extensive explanation of reason as our means of survival, see Rand, "The Objectivist Ethics," in *The Virtue of Selfishness* (New York: New American Library, 1964), especially 19–27; Peikoff, *Objectivism*, 193–98; Tara Smith, *Ayn Rand's Normative Ethics—The Virtuous Egoist* (New York: Cambridge University Press, 2006), 56–61; and Tara Smith, *Moral Rights and Political Freedom* (Lanham, Md.: Rowman & Littlefield, 1995), 32–37. Rearden, after passage of the Equal Opportunity Bill, observes that thought is the motor of rational and productive action, and thus of life, 214.
13. Rand, answering a question after a speech given at Ford Hall Forum, Boston, 1973. *Ayn Rand Answers*, ed. Robert Mayhew (New York: New American Library, 2005), 5.
14. As John Locke observed, "it is one thing to persuade, another to command; one thing to press with arguments, another with penalties." *A Letter Concerning Toleration*, published 1689 (Indianapolis: Hackett, 1983), 27.
15. For a fuller explanation of the first part of this analysis, concerning the way in which physical coercion thrusts its victim into a "must lose" situation, see Smith, *Moral Rights and Political Freedom*, 123–39 and 141–63. And for more on the destructive power of physical force, see Peikoff, *Objectivism*, 318–20, and Rand, "Man's Rights," 323, and "Nature of Government," 330–34. For further explanation of the validation of man's rights, see Peikoff, *Objectivism*, 353–55, Rand, "Man's Rights," and Smith, *Moral Rights and Political Freedom*, 31–59.
16. Peikoff, *Objectivism*, 312, emphasis in original. Also see 311–15.
17. This phrase is from Darryl Wright. For an incisive analysis of force vis-à-vis reason to which some of the following is indebted, see Wright's lectures "Reason and Freedom," available at [www.aynrandbookstore2.com/](http://www.aynrandbookstore2.com/).
18. My mind does direct my physical actions, but *my* mind and body are physically linked.
19. Locke made a similar observation about the impotence of force to effect thought, writing: "such is the nature of the understanding, that it cannot be compelled to the belief of anything by outward force. Confiscation of estate, imprisonment, torments, nothing of that nature can have any such efficacy as to make men change the inward judgment that they have framed of things." Further: "It is only light and evidence that can work a change in men's opinions; which light can in no manner proceed from corporal sufferings, or any other outward penalties." Locke, *Letter Concerning Toleration*, 27.
20. Rand, "Nature of Government," 331, emphasis in original. Also see 330.
21. Emphasis in original; also see *Atlas*, 1062–66.
22. See "Man's Rights," 323.
23. Peikoff, *Objectivism*, 359.
24. I address the anticipated objection concerning those who are alive but unfree in *Moral Rights and Political Freedom*, 50–51.
25. "Nature of Government," 332, emphasis hers. Laws against murder would thus be objective in their aim insofar as they are grounded in the individual's right to his life; laws against theft would be objective insofar as they are grounded in the individual's right to property. (Obviously, all aspects of objectivity must be maintained, in order for a particular law to be fully objective, without qualification.)
26. Rand directly addressed the difference between anarchy and the gulch in a question period after a lecture given at Ford Hall Forum in 1972, observing that "Galt's Gulch is not a society; it's a private estate." See her full answer to the question in *Ayn Rand Answers*, 75–76.
27. The assertion of a moral claim obviously cannot prevent actual attacks on rights, as people can and do violate rights. Recognition that the initiation of force is a violation of rights, however, respects the moral barrier and conveys what types of action are inappropriate vis-à-vis a right-holder. For related discussion of purported conflicts between rights, see Smith, *Moral Rights and Political Freedom*, 195–99

and “Rights Conflicts: The Undoing of Rights,” *Journal of Social Philosophy* 26, no. 2 (Fall 1995): 141–58.

28. For more on anarchy and on the idea of competing governments, see Rand, “Nature of Government,” 330–35, and Peikoff, *Objectivism*, 371–73.

29. Trans fats and sugary soft drinks are among recent dietary targets. As an example, see Kim Severson, “Effort to Limit Junk Food in Schools Faces Hurdles,” *New York Times*, December 2, 2007, 22, national edition.

30. Admittedly, *he* chooses to limit his activities, but he does so only because of the government’s threat to impose an even worse fate, if he does not. That threat is created by the lack of clarity or consistency in the relevant laws. He must conform his conduct to a law that means *a or b, or c*, rather than to a law that clearly tells him the relevant legal boundaries.

31. Bascom is but one of a number of figures in *Atlas* for whom the application of law by subjective preference is routine operating procedure.

32. For comments on the fear and anxiety that non-objective law generates, see Rand, “Vast Quicksands,” *Objectivist Newsletter* 2, no. 7 (July 1963): 25, 28; and “Nature of Government,” 336.

33. In a related development, businesses now sometimes *seek* regulations in order to preempt tougher laws that might otherwise be imposed. See Eric Lipton and Gardiner Harris, “In Turnaround, Industries Seek US Regulation,” *New York Times*, September 16, 2007, 1, national edition.

34. For an example in *Atlas*, see Weatherby offering James Taggart “permission” to close the Rio Norte Line, 511.

35. After freezing the railroad bonds, Mouch’s subsequent directive providing assorted escape routes from his measures is a similar showcase of subjectivism. The directive “ruled that people could get their bonds ‘defrozen’ upon a plea of ‘essential need’: the government would purchase the bonds, if it found the proof of the need satisfactory. There were three questions that no one answered or asked: ‘What constituted proof? . . . What constituted need? . . . Essential—to whom?’” (352)

36. On the incompatibility of purported welfare rights with genuine rights, see my “On Deriving Rights to Goods from Rights to Freedom,” *Law and Philosophy* 11 (Winter 1992): 217–34; “Why a Teleological Defense of Rights Needn’t Yield Welfare Rights,” *Journal of Social Philosophy* XXIII, 3 (Winter 1992): 35–50; and *Moral Rights and Political Freedom*, 194–206.

37. For some of the demands that were later enacted into laws in a society increasingly emulating the disastrous policy of the Starnesville factory, also see 299 and, on Starnesville, 323.

38. To use concepts that Rand employs in other contexts, objective law reflects the primacy of existence, while non-objective law reflects the primacy of consciousness. In this context, this essentially means that objective law is faithful to those facts that give rise to the existence of government while non-objective law elevates individuals’ attitudes, desires, and other subjective irrelevancies above those facts. On the primacy of existence and the primacy of consciousness, see Rand, “The Metaphysical Versus the Man-Made,” *Philosophy: Who Needs It* (New York: Bobbs-Merrill, 1982), 29ff; *Introduction to Objectivist Epistemology*, 53–54 and 245–52; and Peikoff, *Objectivism*, 17–23.

39. Rearden also comes to realize that his accomplishments are being destroyed not by minds, but by whim. “By what right?” he wonders, as he confronts the fact that under non-objective law, right does not rule (214–15).

40. This is comparable to the way in which men must cheat on irrational moral principles. On that, see Peikoff, *Objectivism*, 309–10. For further commentary on the political point, see Rand, “The Pull Peddlers,” *Capitalism*, 167–72.

41. For discussion of this in regard to the interpretation of law, see my lecture, “How ‘Activist’ Should Judges Be? Objectivity in Judicial Decisions,” available at [www.aynrandbookstore2.com/](http://www.aynrandbookstore2.com/).

42. In the margins of Lowell Mason’s *The Language of Dissent*, Rand remarks that “government controls *have to* grow, since they cannot and do not work, but merely create growing problems,” Robert Mayhew, ed., *Ayn Rand’s Marginalia* (New Milford, Conn.: Second Renaissance Books, 1995), 201, emphasis in original.

43. Rearden's family is aghast at his admission that he may actually be imprisoned, since they are accustomed to relying on his apparent omnipotence, 462. Also see Dagny contemplating the strange new experience of helplessness against a "fog without shapes or definitions," 298.

44. See Francisco's Money Speech, 410–15.

45. On the close relationship between independence and rationality, see Smith, *Ayn Rand's Normative Ethics*, 114–16 and 124–25, and Peikoff, *Objectivism*, 253–55.

46. Recall Dave Mitchum's dilemma of choosing between his children's well-being and that of the train passengers and calling his fellow workers out to die by their work, rather than to earn their living, 598–99.

47. Ragnar comments on the choice posed, in this society, between being a looter or a victim, 575.

48. Because the victims of non-objective law are forced to resort to the methods characteristic of crooks, the adoption of those methods does not reflect immorality (as it would, were they willingly adopted in a free society). As Galt says in his speech, "morality ends where a gun begins," 1023. While some of Ragnar's friends do not approve of his course, their objection is not moral; rather, they fear that his path is too dangerous. See 580. For description of Ragnar's project, also see 573. For much fuller explanation of the status of morality under force and in emergencies, see Rand, "The Ethics of Emergencies," *The Virtue of Selfishness*, 49–56; Smith, *Ayn Rand's Normative Ethics*, 94–100; and Peikoff, *Objectivism*, 274–76, on the contextual character of morality.

49. The growing number of deserters eventually overwhelms the ability of the police to arrest them (567).

50. Hank observes that, if he were sent to jail by this government, he would feel no shame, but would regard it as comparable to an accident without any moral significance, 384. Knowing the corruption of the system, Dagny is similarly indifferent to the legality of her actions. See 628–29.

51. Rand identifies these seven (reason, productiveness, and the rest) as the fundamental moral virtues. See Galt's Speech, 1018–21; "Objectivist Ethics," 28–30; Peikoff, *Objectivism*, 220–29, and chapter 8, 250–324. Smith, *Ayn Rand's Normative Ethics* systematically examines each of these virtues.

52. On the relationship between independent thought and independent action, see Peikoff, *Objectivism*, 225–29, and Smith, *Ayn Rand's Normative Ethics*, 123–28.

53. For much further explanation of each of these virtues, see Peikoff, *Objectivism*, 220–29, and chapter 8, 250–310, and Smith, *Ayn Rand's Normative Ethics*.

54. This is obviously a large subject. For further explanation, see Peikoff, *Objectivism*, 310 and 314–15.

55. Most nations around the globe are in similar or worse situations.

56. For further information on the latter, see, for instance, [www.pay-equity.org/info-leg.html](http://www.pay-equity.org/info-leg.html).

57. Michael Pollan, "Weed It and Reap," *New York Times*, November 4, 2007, online at: [www.nytimes.com/2007/11/04/opinion/04pollan.html?\\_r=1&oref=slogin](http://www.nytimes.com/2007/11/04/opinion/04pollan.html?_r=1&oref=slogin).

58. A.D. Neale, *The Antitrust Laws of the U.S.A.*, Cambridge University Press, 1960, 20, quoted in Rand, "Antitrust: The Rule of Unreason," *The Voice of Reason*, Leonard Peikoff, ed. (New York: New American Library, 1988), 255.

59. Quoted in Gary Hull, ed., *The Abolition of Antitrust* (New Brunswick, NJ: Transaction, 2005), Appendix, 164. This Appendix offers a synopsis of major antitrust legislation.

60. Rand, "Antitrust: The Rule of Unreason," 255.

61. Hull, *Abolition of Antitrust*, 111.

62. For further comments of Rand's on antitrust, see "Antitrust: The Rule of Unreason," 254–59; *Ayn Rand Answers*, 6, 39; and *Ayn Rand's Marginalia*, 193–98.

63. See *Grutter v Bollinger*, 539 US 306 (2003) and Arthur L. Coleman and Scott R. Palmer, "A More Circuitous Path to Racial Diversity," *Chronicle of Higher Education*, July 13, 2007, B10.

64. Equal Employment Opportunity website: [www.eeoc.gov/](http://www.eeoc.gov/).

65. "Let the Blowhards Blow," *The Economist*, July 21, 2007, 36. The Fairness Doctrine was in effect from 1949 until 1987, and support for reinstating it has recently grown. See John Fund, "'Fairness'

Is Foul—Liberals vs. the First Amendment,” *Wall Street Journal*, Oct. 29, 2007, available online at [www.opinionjournal.com/diary/?id=110010795](http://www.opinionjournal.com/diary/?id=110010795). Legislation concerning hate speech and hate crime offers further examples of non-objective law.

66. For comments on preventive law, see *Ayn Rand’s Marginalia*, 198, *Ayn Rand Answers*, 8–13, and for related discussion of the impropriety of laws banning obscenity, see Rand, “Censorship: Local and Express,” *Ayn Rand Letter* 2, nos. 23–25 (3-part essay) (August and September, 1973): 229–42.

67. Dagny thinks of “the public welfare” as a “voodoo stamp” routinely treated as “superseding contract, property, justice, reason and lives,” *Atlas*, 913.

68. Rand refers to “pull peddlers” on 913 of *Atlas*. For her analysis of the phenomenon, see “The Pull Peddlers,” *Capitalism*, 167–72. This phenomenon is hardly confined to the United States. On the growth of European Union regulations spawning a proliferation of lobbyists in Belgium, where the EU is headquartered, see Carol Matlack, “Why Brussels Is Abuzz with Lobbyists,” *Business Week*, Oct. 29, 2007, 81–83.

69. “Nature of Government,” 331.

70. Peikoff, *Objectivism*, 365.

71. Recall Galt’s saying as much in his speech, 1023.

72. Thanks to Robert Mayhew for helpful comments on an earlier draft.