
The Maximizing State

— ◆ —

ANTHONY DE JASAY

History seems to demonstrate that a society of perfect freedom, immune from the habit of collective choice, perdures only for small and very poor societies of simple design in relative geographical remoteness that isolates them from other societies. Other than in such increasingly rare conditions, perfect freedom survives only in shreds and fragments in states in which ad hoc or rule-following collective choice predominates. It would be rash to conclude that this transformation is a necessary consequence of some omnipresent cause, an incontrovertible corollary of the human condition, or the nature of any social organization. It would be better theory to propose more modestly with Hume that the transformation is a matter of “constant conjunction” that has always occurred but may or may not occur again in the future.

We need not decide whether collective choice comes to prevail because ordered anarchy is an intrinsically weak structure or because the state is an inherently strong one. A case can be made for either view. In this article, I lay out the factors that always have and presumably always will make the transformation from ordered anarchy to state highly probable.

The State as Unitary Actor

My 1985 book *The State* has been fairly widely criticized on the ground that it is an unwarranted anthropomorphism to treat the state as a unitary actor making decisions the way a person does, selecting them in its calculating mind with reference to its preferences and the conditions that it encounters or expects to prevail. The critics have pointed out reasonably enough that the state is a very complicated and opaque

Anthony de Jasay is an independent scholar and author living in Paluel, France.

The Independent Review, v. 15, n. 1, Summer 2010, ISSN 1086-1653, Copyright © 2010, pp. 5-18.

set of bodies and persons loosely connected by some common interests but also separated by conflicting ones, bound by some common rules but also following particular ones of their own and pursuing objectives that pull them in various directions at once. The critique was deserved in the sense that I should have anticipated and met it explicitly rather than take for granted that readers will see the advantage of imagining the state as a unitary actor about whose decisions certain predictions can be made, instead of treating it more realistically as a chaotic and largely unpredictable witches' cauldron that at best can be described but that defies theory.

An analogy from economics may not disarm the critique but may explain why I believe that it ought to be firmly resisted.

A firm, especially a corporation of a certain size, is a hierarchical organization that functions, as does the state, by command and obedience. Final command rests with the owners and cascades downward by delegation; disobedience of varying degrees is sanctioned by punishments of varying gravity. Within this top-down assembly, a number of subassemblies have some autonomy without which they can function only poorly or not at all. Thus, production, purchasing, design, maintenance, marketing, personnel, and finance, to mention only the principal ones, have a certain latitude to make their own decisions; defend and expand their "turf" and "pull the blanket over themselves"; secure easy objectives, higher capital budgets, greater influence, and more consideration for their activity at top management level; and so forth. In the limit, each of these "subassemblies" may be pulling the firm in a different direction. It would be hard to make a case that the firm is more like a unitary actor than the state.

Nevertheless, despite sporadic attempts to deal with the firm purely descriptively or a little more ambitiously, imputing to it some behavioral regularity ("firms add a normal margin to cost and sell what they can at that price")—attempts that have born little fruit—economics has by and large adhered to the theory of the firm that treats it as a unitary actor and imputes to it a single *maximand*, profit, that is the only *point* of having a firm at all, any other objective ("market share," "longevity," or "monopoly power") being potentially rational only if it is at least consistent with profit maximization. This theory of the firm, in increasingly sophisticated guises, has done great service both in promoting rigorous thinking and in helping us to understand reality, and economics would be poorer if it were discarded on the ground that no real-life firm is in fact a unitary actor and that none can ever be "proven" to maximize profit. (Proof is the more awkward to find because the rational *maximand* is the present value of all expected future profits, expectations of the future are not uniform in their level and time pattern, and management may well be more sanguine than the marginal shareholder—hence, the alleged conflict between short and long term.)

I contend that just as no particular firm can be proven to maximize profit, but the behavior of firms in general can be best predicted by assuming that they strive to do so, so the behavior of states can be best understood and predicted by imputing to them a single *maximand*. Sporadically in history and political theory, potential candidates for the role of *maximand* have cropped up. Territory, power, tax revenue, and

dynastic security of tenure have been mentioned, although not systematically developed. I maintain that the *point* of sovereign command, of *being the state* at all, is to have power one can use at one's discretion.¹

The distinction between power *tout court* and discretionary power is crucial. All other things being equal, power reduces to the capacity to have at least some of one's commands obeyed by a relevant population (or, probabilistically, by some portion of it). However, some commands may merely serve to bring about the very obedience that they demand. The state may order its subjects to pay taxes for the maintenance of judiciary and police apparatus designed to intimidate the population into obeying the order to pay these taxes. Alternatively, the state may order people to shore up a dam to protect their own village from being flooded. Obeying this command is in the villagers' own interest. Had the command been instead to join a mass demonstration for world peace and human rights, they might not have obeyed unless the state had driven them or was able to rely on their abundant loyalty. Having one's command of the latter sort obeyed or collecting more taxes than are needed to secure continuing taxpayer obedience and to ensure that the same tax will be raised the next time around is having discretionary power. Such power enables the state to realize objectives that are not instruments for reproducing power. Promotion of a supreme value, patronage of the arts, and establishment of a firmly based kleptocracy are plausible examples of discretionary objectives, among many others.

The Machinery of Maximization

The state's power is exercised by the government as plenipotentiary agent. We may say that for most purposes the government is the personified state. One difficulty about this usage is that whereas the state is best understood as an abstract entity, the government is both abstract and physically existent, consisting of real persons, some of whom can be more completely identified with the government than others. However, theory must live with this awkwardness of reality as it does with so many other things.

Discretionary power is power not required for its own reproduction or maintenance; power is the property of commands being obeyed; and obedience (to the government) is a function of intimidation and allegiance.

In seeking to maximize its discretionary power, the government schematically must "feed" the two "ingredients," intimidation and allegiance, into a kind of machinery where they mix and move along until they "come out" as obedience; obedience, in turn, procures the wherewithal for the intimidation and allegiance to be fed into the machine.

Several processes may lend themselves to turning intimidation and allegiance into obedience and obedience into intimidation and allegiance. The most obvious

1. Geoffrey Brennan and James Buchanan [1980] (1999) frame the state as a unitary actor maximizing taxes, rather than discretionary power.

and in our time the most widely used is, of course, taxation. Using taxes to acquire resources *both* for maintaining a repressive apparatus that will intimidate people into paying taxes *and* for other purposes leaves some of the latter resources available to be used for buying allegiance. If judiciously targeted, the granting of material privileges to some and the redistribution of the resources of some for the benefit of others will create more allegiance and readier obedience to the government than they will cause alienation among the victims of redistribution.²

The use of resources merely to generate the obedience that allows the raising of resources of the same magnitude, leaving nothing over for discretionary purposes, is a break-even exercise, an altogether futile drudgery. Although such a futile result is indeed the probable but unintended outcome of attempts to solicit greater allegiance, “break even” is not the aim of running the machinery of maximization, but rather the eventual self-destruction of the aim. Without the ability to yield power that can be employed at discretion for any purpose short of the absurd, *being a state* is a pointless exercise.

The idea of the minimal state that imposes collective choice over only a severely restricted domain and exercises self-denial by not using power to generate discretionary power seems to upset this conclusion. In fact, the minimal state, if it existed, would be an antistate actor whose rational purpose would be the opposite of that of the state, preempting the place that a state can otherwise take and expand in.

Although obedience may yield discretionary power, it is quite unlikely to do so as if the latter were a linear function of the former, increasing in the same proportion as intimidation and allegiance increase. It is a plausible conjecture that beyond a certain degree of required obedience, diminishing returns set in, and more intimidation, combined with more redistribution or not, not only fails to raise discretionary power, but actually decreases it. Discretionary power is maximized when its (rising) marginal cost is equal to its marginal increment, both measured in resources. Naturally, one cannot find this point by calculation. It can be identified more or less successfully only with the antennae of instinctive statesmanship. Taxation, I suspect, may be foolishly excessive, and dictatorship overdone for its own good. Discretionary power is more likely to be maximized with discretion.

Inadvertent Surrender: Social Contract and Conquest

Hardly any other cliché or allegory keeps as strong a grip on the mind of both the political philosopher and the ordinary man as the social contract. The reason seems straightforward: social contract theory flatters us into believing that we have conjured up the state not as a matter of misguided, absent-minded, and inadvertent surrender, but of our own clear-sighted will. There is no call to be either rebellious or rueful

2. For the public-choice background, see Mueller 2003.

about it. People had ample reason for entering into it and for honoring its terms. We need not feel a little foolish or ashamed that we could not fail to honor it if perchance we should like to do so, because the contract has turned out to be irrevocable and permanent, admitting neither breach nor renegotiation.

We are not dealing here with the early form of the contract, the one between God and the monarch under which the latter, in exchange for the power granted to him, binds himself to rule in conformity to his divine mandate. Nor do we mean the quasi-social contract by which the monarch consents to a constitution, and in return his people consent to obey him but retain the material means to disobey (refuse to pay taxes, meet force with force, depose the monarch).

The social contract as tacitly understood in contemporary usage is that of Thomas Hobbes ([1651] 1968), by which the people contract among themselves to create Leviathan, who is not a party to the contract but who has the sword to enforce the “covenant,” or that of Jean-Jacques Rousseau, a much less solid construction in which the people conceive of the General Will, agree to submit to it, and have no temptation to disobey because recognition of the General Will tells them that they have no interest to do so (it is better to fell and share the stag than to run off and chase the hare).

It is perhaps needless to spell out that the idea of a whole people’s unanimously concluding a contract obliging it to anything at all, let alone to surrender to and obey a superior power, is at best an allegory. To suppose that the people should do so and irrevocably commit all future generations to it, having calculating the expected advantages it will bring, is to impute to the people either a reckless acceptance of a great risk or a failure to see that risk at all.

The state, however, has a more down-to-earth genesis by contractual means in which the parties are unaware that by making what may seem to be innocuous agreements, they are creating the viable embryo of a state. The agreements concern the organization of what Robert Nozick calls “protective agencies” specializing in the enforcement of the conventions that hitherto were being enforced by social sanctions (exclusion of the deviant from the benefits of the convention as well as other punishments administered by the plaintiffs and other parties interested in protecting that convention). Many or most people may have incurred enforcement costs involved in punishing deviants, be it no more than boycotting cheats, watching one’s property, mending one’s fences, and helping neighbors and peers protect their own and the public order. For some, such activities may actually be a source of satisfaction and self-esteem, but others would resent them as a cost and might well welcome an opportunity to unload the duty of rule enforcement on a specialized agency equipped to discharge it. For many, doing so would feel like taking a free ride because they may not realize that in one way or another they have to bear some of the agency’s cost. Others may have the illusion that they can escape these costs altogether or bear a smaller amount of them than the benefit they derive from a third party’s enforcement of the rules. On these grounds, the scenario of piecemeal surrender of some of the

enforcement function to specialized agencies is as plausible as that of the social contract is implausible. The rest follows not as a matter of inexorable logic, but as a matter of great plausibility, from the “slippery slope” argument. Specialized enforcement agencies merge into a single agency that holds sway over a population delineated by ethnic or geographic features. The agency gradually arms itself and disarms the population, arguments of efficiency in enforcement furnishing an adequate excuse for establishing a monopoly position, which is obviously of paramount importance for an embryonic state. The final stage in this scenario of the birth of the state is a move from the agency’s protecting the people’s property to its protecting their property from all except itself. In this stage, the agency no longer confines itself to obliging the population to cover its costs of enforcing the rules. Instead, it uses its power to extort from society a volume of resources far greater than mere rule enforcement costs and uses part of the surplus to buy the support of selected segments of society to deter any attempts at resistance by other segments. Henceforward, the mechanism of redistribution is in place and available for maintaining society in a situation of surrender and the state in power, with the ultimate objective of maximizing the state’s discretionary power.

Pressed into a nutshell, this account of the state’s emergence suggests that the free-rider temptation is the Achilles heel of “perfect freedom.” This temptation is not a necessary condition of the state’s emergence, but it comes close to being a sufficient condition for it. Another such account, likewise very close to being sufficient though not necessary, is that of the territorial conquest of one ethnic group or otherwise distinct population by another. David Hume ([1777] 1986) states categorically that nearly all past and present governments originated in usurpation and conquest. It is difficult to find in history many states of which this claim is not true. It is certainly true of the most outstanding specimens of statehood. The Trojans subjugated the Latins and made Rome. The Franks conquered Gaul and laid the foundations of France. Scandinavian trader-warriors along the route from the Baltic to the Black Sea took the Slavs into their service and established Kiev and other principalities that in due course formed Russia. The Normans vanquished the Saxons and created a united England. The resulting societies were from the outset neatly divided along ethnic lines into conquerors and conquered, governors and governed, a division that provided an outline for the feudal system of control and almost automatically answered any subsequent question of who would command and who would obey. For centuries, the conquered ethnic group surrendered to the conqueror, until the clear dividing line was gradually washed out, and other divisions took over its founding functions.

Ruling by the Rule

We are in the habit of classifying types of government according to the group in society that exercises political power. Thus, we distinguish theocracy, monarchy, oligarchy, plutocracy, and democracy, to mention only some basic types. Another

frequently made classification has only a binary alternative: dictatorship and democracy. However, a more fundamental distinction is between a society in which “the king decrees” and one in which “the king in his council decrees.” In the latter alternative, the validity of the king’s decision is subject to a formal requirement, an embryo of a rule that constrains rule making.

Self-Imposed Constraints

Kenneth Arrow calls a social (his term for *collective*) choice rule a “constitution,” and Thomas Schelling calls a constitution a *vow*. Much past and present misunderstanding in political thought might be dissipated by keeping firmly in mind the word *vow* and with it the state’s own role in binding collective choice by rules.

When collective choices are made ad hoc as the occasion demands, the state relies on the sufficiency of its power to get the decision obeyed. It seeks neither to spare certain individuals’ preferences nor to allow for all of the likely consequences of overriding them. However, it is perfectly possible that the overriding of individual preferences, though quite feasible, costs more in terms of the power that needs to be used and tied up to deter resistance than it accrues advantages to the state from being carried out rather than some alternative.

The economy in the utilization of power that arises from sparing individual choices on some ad hoc occasion without prejudging the likelihood of overriding them on a future occasion is, however, only one part of the gain the state may expect from “self-denial,” and it is independent of such self-denial’s taking the form of an explicit, declared “vow,” a self-imposed rule to govern collective choice. The latter, removing arbitrariness and imparting a certain limited predictability, should further enhance the economy of power.³ Moreover, because collective choices to conform to a rule or rules are repetitive, obedience to them is apt to become habitual, and hence resistance tends to become eroded. This catalog of the potential advantages of constrained collective choice applies to the case of the constraint’s being unilaterally adopted by the state as a matter of prudential calculation, a case known in history as the absolute monarch’s “granting a constitution” to subjects whose role is limited to showing greater willingness to obey in return for diminished arbitrariness. A somewhat different case is that of a constitution as an explicitly negotiated bargain between a monarch and the people, governors and the governed, that should further enhance political obedience, albeit at the cost of a more stringent “vow” on the state’s part. Imposing greater restraint would induce a loss from forgone collective choices than is greater than the gain from a further reduction in the use of coercive power. The reverse would, of course, be the case if the state imposed less restraint on its exercise of collective choice. The “secret” (a secret because it is not shared with the

3. On the enhancement of credit, see Stasavage 2003.

governed) is to formulate the rule-making rule under which the state can expect to secure the best trade-off between power saved and desired objectives forgone (“forgone” because they would become “unconstitutional”)—the maximizing rule of rule making. The constraints must be incorporated in a master rule, or rule of rule making, that provides for mandating the government (and eventually its recall) and delineates the areas in which collective choice may be exercised and individual choices overridden. Perhaps the most prominent element of any rule of rule making is the specification of the manner in which a rule must be made (for example, by the king’s decreeing it in his council or by the majority’s voting for it under universal franchise)—what Herbert Hart calls “the rule of recognition” that characterized Venice as a plutocracy and earns most modern Western states the name of “representative democracy.”

What is the best rule of rule making for a state? We obviously cannot give a specific answer to this question, any more than we can to a question about a firm’s ideal business plan. However, a wholly formal statement of what is best may not be completely useless. By “best,” we continue to mean the one most likely to maximize the state’s discretionary power. Assuming that greater constitutional constraints yield both diminishing returns in terms of the saving of the power needed to secure obedience and increasing costs in terms of forgone collective choices, discretionary power will rise as long as the saving of power is greater than the opportunity cost of forgoing more and more collective choices. The favorable balance between the two will go on increasing, but at a diminishing rate. Maximum discretionary power will be reached as the power saved by ever-stricter self-imposed constraints no longer exceeds the worth of the lost opportunity of making certain collective choices. Needless to say, this point cannot be found by using calculus, although perhaps clever politicians with “feel” for what “pays” can approximate the formal optimum.

As a practical matter, a constitution that it “pays” to adopt is one that appears to bind the government’s hands more than it really does or in ways that matter more to the governed than to the government. For example, a constitution might grant habeas corpus and concessions on other “civil rights” even while maintaining the rule of collective choice over individuals’ material resources—the rule of rule making that places no explicit restraint on the taxation of income or wealth. History abounds in real-life constitutional examples of this kind.

Paradoxes of the Rule-Making Rule

In a truly rule-bound system of rules, every rule must be the product of the proper observance of some antecedent rule. Ordinary rules of “must” and “must not” have to be made by following the rule of rule making (including, of course, rule change). *That* rule, however, fails to be rule bound unless it, too, is made by observing a higher-order rule of making rules of rule making, and the latter must be made by following a rule of yet another order higher. A truly rule-bound system is therefore an

infinite regress of ever higher orders of rules. This property may or may not be a genuine paradox.⁴ In any event, it casts serious doubt on the possibility of legitimate birth of constitutions. Constituent assemblies are organs of collective choice through which collective choice legitimizes itself. This procedure is tantamount to collective choice's vesting in itself the power to override individual choice and laying down the limits or conditions under which such overriding is to be regarded as legitimate. Awareness of this circularity presumably induces many political theorists to embrace the fiction that constitutions are really adopted by unanimity or "practical unanimity," in which case collective choice does not legitimize itself, but individual choice does so.

The other major paradox, apparent or genuine but in any case the source of serious preoccupation, concerns the internal logic or structure of the rule of rule making. Like every rule that regulates behavior and the distribution of benefits and burdens, the rule must provide for both sanctions to punish its breach and the enforcement of these sanctions. Consider the following: "The king has ruled that he (in his council) may decide all things except a certain thing. If he decides that thing, the king must punish the king. If the king fails to punish him, the king must punish the king, and so forth." A quasi-legal construction in which enforcement of sanctions for a breach of the rule rests with the rule breaker himself clearly contains a flaw.

"Separation of powers" reputedly provides a remedy for this rather conspicuous flaw. It is a pity that Montesquieu's text that immortalized this idea does not distinguish sharply enough between the separation of three basic *functions* of the state, so that the legislative, executive, and judicial functions are carried out by three distinct institutions motivated by different interests. Moreover, the state's *power* to enforce the decisions taken by these institutions and to protect them, but not also to carry out any of these functions, is in no meaningful sense *separated* into parts to match the separate functions. If it were, civil war would probably be an endemic condition. The separation of functions has done honorable service in the United States, as has most of the rest of the U.S. Constitution.⁵ One wonders, however, how such separation would perform in the wildly counterfactual case of the Congress's severely limiting its own authority to impose taxes or the Supreme Court's denying Congress's authority to vote taxes and the executive's entitlement to collect them.

In sum, we must be soberly skeptical of the very logic of a rule of rule making—its ultimate claim to legitimacy and enforceability. In most cases, constitutions seem to "work" principally because they are not tested and are not designed to provoke severe tests or to settle severe conflicts between state and society. Most of their practical effect pertains to the regulation of how governments may obtain power and how their tenure may be terminated. Only in a very idealized sense do they "safeguard liberty"; more precisely, the liberties they safeguard are those that the state is fairly

4. Related paradoxes are discussed in Suber 1990.

5. One might refer here as well to the originally Dutch idea of a compound republic that became so important in theories of federalism in America; see Ostrom [1971] 1987.

willing to remove from the competence of collective choice because doing so permits a more economical use of power spent on staying in power and is thus conducive to maximizing the residue, discretionary power.

Shrinking Freedom

I find it deeply objectionable to speak, along with John Rawls, of “basic” freedoms, a usage that suggests both that some freedoms are “basic,” hence important, and others “nonbasic,” hence not very important or perhaps even negligible, and also, more insidiously, to say that someone, perhaps the speaker or perhaps “society” speaking through some authority, is entitled to say which freedoms are “basic” and which are not. I find it equally objectionable to dismiss the presumption of liberty on the grounds, put forward by Joseph Raz (1986, 8–14), that it fails to discriminate in favor of the more important liberties. Setting up a rank order of liberties, some more basic than others and more deserving of protection under the presumption of liberty, is too close to arrogance to be seemly.

Nevertheless, it is a matter of common perception that some curtailments of freedom have a greater impact on an individual’s life and that some have an impact on more individuals than do others. It is therefore not good enough simply to observe that “our freedom is shrinking by the day.” We need to spell out which of our freedoms are being shrunk. It might be desirable, in addition, to find an objective measure of the shrinkage.

The prohibition of smoking on public premises is one of the most often cited deprivations of liberty. It seems particularly irritating to smokers (and to a sprinkling of high-principled nonsmokers), perhaps because it is recent and the freedom it suppresses is still fresh in the memory. However, it arguably affects only smokers adversely and even them only when they are on public premises. The excuse offered for the interdiction—that smoking exerts a dangerous negative externality on nonsmokers—may or may not be accepted by smokers as relevant and as justification for the violation of one of their freedoms. But even if it is rejected, the loss of the freedom in question is more significant as a precedent than as an actual deprivation.

The shrinking, by various forms of taxation, of a vast array of freedoms—feasible acts offending against no rule—is best considered in this perspective. The acts in question depend on the use or disposal of material resources—opportunities offered by the possession of wealth and the spending of income—that the state preempts. It is as if the act that depends on the resources subject to preemption had been moved from one side of the fence of rules to the other side, from the “may” to the “must not” category. The upheaval is massive, given that many modern states preempt 50 and even 55 percent of their gross national product and that few preempt anything less than 40 percent, if central and local government spending and compulsory social insurance are added up.

To appreciate the peculiar relationship between the state and property (what current usage persists in calling “property rights,” which are derivative forms of property and evoke wrong legal connotations), one must revert to its conventional roots in such behavioral equilibria as “first come first served,” “finders keepers,” and perhaps also queuing. This trace leads to the Humean conception of first possession, its stability, and its “transference by consent,” all antecedent to any sort of state. There is logically a presumption of property—that is, of possession signaling good title in the absence of sufficient reason to challenge it.

States at least implicitly undertake to protect property from everyone except themselves. All but fully socialist ones recognize the inviolability of property as wealth (subject to expropriation under “due process” or “due compensation”). Only a tiny minority of states tax wealth, although most tax inheritance. Somewhat oddly, none recognizes the inviolability of property in the form of income, and, as noted earlier, no rule of rule making so much as mentions constraints on collective choice in the matter of writing tax codes (though a couple make pious references to just taxation). Some apologists of the strange asymmetry between the treatment of wealth and the treatment of income contend that pretax income is not property. No one seeks to find good cause in justice for the numerous other forms of taxation. Consumption, sales, and value-added taxes and excise duties pass without questions of legitimacy and the immense restriction of freedoms they represent.

The tax take is “returned” to society *in natura* as publicly provided goods and services. (There are two exceptions: transfer payments that are returned as cash and the state’s discretionary spending permitted by its discretionary power.) Nominal national income is almost unaffected, but real national income falls, perhaps substantially. A basket of goods and services made up of health care, education, pensions, and other entitlements is at best worth its money cost to the recipient if by a fluke he would have chosen the same basket had he been free to do so. In all other cases, though, it is worth less to him than the basket he would have freely chosen. However, although the fact of a decline in real income seems to be a necessary truth subject only to minor qualifications, we cannot put even a rough a number on it. In any event, we should perhaps not commingle questions of riches with questions of freedom at given levels of riches.

The shrinkage of freedom due to taxation, however, is clearly massive, and we can put a number on it. In modern states, as noted earlier, between 40 and 55 percent of what is produced by the efforts of individuals under the division of labor is preempted and disposed of by collective choice that is endowed with the power to override individual choices. We may well grant that not all liberties require the use of material resources for their exercise. Some authors on the political left enjoy mocking the liberties that do so, calling them liberties to choose between flavors of ice cream. The metaphor is preposterous. Without setting up a hierarchy of noble, less noble, and ignoble freedoms, we may safely contend that the ones that depend on material resources are immensely important, and if half of all riches is removed from the grasp of individuals, the resulting shrinkage of freedom is immensely important, too.

Another Inadvertent Surrender

For as long as states have existed, their rulers and governments have been buying the support of one part of society—initially a small part—by extorting the purchase price from other parts. At the outset, they would buy the close councilors, courtesans, Praetorian guards, mameluks, bishops, abbots and other spiritual guides of the people, territorial administrators, and tax collectors. The base on which states relied for support, using redistribution in the widest sense to obtain it, was progressively broadened. In medieval and early-modern Europe, it was not unusual for the state to seek the alliance of an entire class, the better to deter another class from disobedience. Alliances between the king and the towns against the nobility were common. The ally was remunerated by tilting economic policy, such as it was, in the ally's favor and by making classes other than the merchants and artisans bear the main burden of wars.

In buying support with the redistribution of privileges, benefits, and burdens to and from selected groups in society, the state was “using power to stay in power.” Using power to raise and move material resources and handing them out as bribes in exchange for support formed a more sophisticated manner of proceeding than deterring disobedience and breach of rules by intimidation. This conduct became an ingrained habit. It has also inadvertently led to the surrender of the state's *ultima ratio*, its discretionary power.

In part for reasons lodged in the history of political thought and particularly the Enlightenment, early in the nineteenth century egalitarian principles began to make their way into the advanced countries' rules of rule making. Competition between political rivals contributed to an evolution in which the granting or termination of the mandate to govern became the privilege of a gradually broadening part of the governed until it finally settled down at what we now consider its terminal form—namely, simple majority voting in anonymity under universal suffrage.

Under this system, assuming that voters cast their ballots exclusively to promote their own ascertainable material interests (an obvious simplification whose saving virtue is that it is not very conducive to woolly verbiage), a sufficient condition for a person or group to gain or retain the mandate to govern the state is the formation of a decisive coalition more interested in voting for him, her, or it (let it be “it”). A voting coalition cannot be beaten by a rival coalition if the former consists of the majority of all voters and no anonymous member of it can be tempted to desert it and join the rival. (Under anonymity, no bribe can be credibly offered to a voter to join a coalition unless the same bribe is offered to all of its members. If anybody can be the median voter, it is impossible to buy the median voter without offering the same price to all voters in the coalition.)

Recall that the offer made to members of a potential coalition is redistributive—that is, that the winning coalition is to be rewarded out of resources taken from the losing coalition(s). A coalition cannot be beaten if no other coalition can offer more to the average member of a simple majority. This condition will be the case if the winning coalition undertakes to tax the richer half of society (*minus* one person) up to

its taxable capacity and distribute the proceeds to the poorer half of society (*plus* one person). Note that a coalition greater than the simple majority can be beaten by one having merely a simple majority because the latter can dispose of the taxable resources of a larger losing minority.

It is obvious that any number of potential coalitions can make the same unbeatable offer, each proposing to reward the same poorer half of society with the resources that can be taken from the same richer half, and each limiting its offer only to the members of a bare majority because any larger majority will have to make do with the spoils taken from a smaller minority.

Therefore, if this situation is recognized by at least two of the rivals partaking in the auction to win the mandate to govern, at least two identical electoral programs will be put forward, and the outcome will depend on some random variable, the toss of a coin. (Some modern electoral contests with convergent programs and very close results do resemble this idealized result.)

Conclusion

Conducted on a somewhat abstract level, my analysis suggests that in a condition of perfect liberty where all rules emerge as spontaneous behavioral equilibria, individuals will either abandon this freedom without fully realizing that they are doing so (and entrust power to a rule-enforcing agency) or will be made to do so by foreign conquerors to whom they yield. Either way, they bow to collective choice, surrendering freedom rather inadvertently. They gain a measure of what Arnold Toynbee called “security of maintenance.” Only a few would rather undo this bargain and seek liberty in ordered anarchy.

The state, personified in the government, seems no more successful than the individual in consciously pursuing an objective rather than inadvertently allowing outcomes to happen to it. Logically, it would seek to maximize the discretionary power that it could devote to purposes of its own instead of solely to those of its supporters, but it ends up by dissipating all of its discretionary power in political competition of its own making. It inadvertently surrenders the potential its initial endowment of power provides. In the process of becoming a redistributive drudge, it is spreading wider as the sphere of freedoms shrinks. Like the firm in the perfectly competitive industry that makes no profit, the state ultimately achieves only its own survival, and no one is satisfied by this relatively pointless result.

References

- Brennan, H. G., and J. M. Buchanan. 1999. *The Power to Tax: Analytical Foundations of a Fiscal Constitution*. Indianapolis, Ind.: Liberty Press.
- De Jasay, Anthony. 1985. *The State*. Oxford: Basil Blackwell.

- Hobbes, T. [1651] 1968. *Leviathan*. Harmondsworth, U.K.: Penguin.
- Hume, D. [1777] 1985. *Essays: Moral, Political, and Literary*. Edited by Eugene F. Miller. Indianapolis, Ind.: Liberty Press.
- Mueller, D. C. 2003. *Public Choice III*. Cambridge, U.K.: Cambridge University Press.
- Ostrom, V. [1971] 1987. *The Political Theory of a Compound Republic: Designing the American Experiment*. 2d ed. Lincoln: University of Nebraska Press.
- Raz, Joseph. 1986. *The Morality of Freedom*. Oxford, U.K.: Oxford University Press.
- Stasavage, D. 2003. *Public Debt and the Birth of the Democratic State: France and Great Britain, 1688–1789*. Cambridge, U.K.: Cambridge University Press.
- Suber, P. 1990. *The Paradox of Self-Amendment: A Study of Logic, Law, Omnipotence, and Change*. New York: Peter Lang.

SUBSCRIBE NOW AND RECEIVE A FREE BOOK!



“*The Independent Review* does not accept pronouncements of government officials nor the conventional wisdom at face value.”

—**JOHN R. MACARTHUR**, Publisher, *Harper’s*

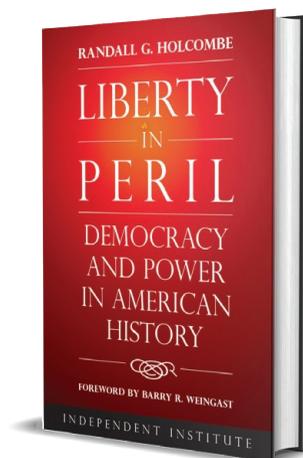
“*The Independent Review* is excellent.”

—**GARY BECKER**, Nobel Laureate in Economic Sciences

Subscribe to [The Independent Review](#) and receive a free book of your choice such as *Liberty in Peril: Democracy and Power in American History*, by Randall G. Holcombe.

Thought-provoking and educational, [The Independent Review](#) is blazing the way toward informed debate. This quarterly journal offers leading-edge insights on today’s most critical issues in economics, healthcare, education, the environment, energy, defense, law, history, political science, philosophy, and sociology.

Student? Educator? Journalist? Business or civic leader? Engaged citizen? This journal is for YOU!



Order today for more **FREE** book options

SUBSCRIBE

The Independent Review is now available digitally on mobile devices and tablets via the Apple/Android App Stores and Magzter. Subscriptions and single issues start at \$2.99. [Learn More.](#)

