
The State and Public Choice

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Anthony de Jasay's book *The State* (1985) belongs to public-choice theory. The similarities are numerous, including a common individualist methodology, the same normative individualist presumption, the nonromantic analysis of government, and the rejection of any "social welfare function" and cost-benefit analysis. This essay, however, focuses on the differences between *The State* and public-choice theory. These differences can illuminate our understanding of the state and the possibility, if any, of limiting it. Although Jasay has produced a considerable body of work since *The State*, I focus on that book and use James Buchanan as the focal point on the side of standard public-choice theory.

The main difference between *The State* and standard public-choice theory lies in their basic conceptions of the state. The state can be conceived as a servant or as a dominator. Public-choice theory adopts the first conception, even if it always keeps in mind the possibility that the servant may turn against its master. *The State* defends the second conception.

Some Methodological Differences?

Let us deal with some methodological differences first. Jasay models the state as a single, monolithic actor. One reason he does so is the observation that the state cannot but have its own ends because it is impossible to aggregate the preferences of all members of society into a sort of social welfare function: "[T]he state could not

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pursue the interests of its subjects unless they were homogeneous” (Jasay 1985, 267). I say a bit more about this reason later.

Another reason is purely methodological: assuming that the state is a monolithic entity rationally pursuing its own ends is convenient and produces interesting results. Indeed, many of the predictions of Jasay’s model are disturbingly close to our experience of the contemporary state, from growing redistributive activities to global state-owned enterprises, constant attempts by the tenants of the state (the individuals or parties of individuals who actually run it) to limit political competition, minute regulation of life, and so forth. Modeling the state as an acting monolith, however, makes it more difficult to conceive how its internal structure can serve to constrain it, or how in Montesquieu’s words “power should be a check to power” ([1748] 1914, book XI, chap. 4).

Standard public-choice theory usually models the state as a complex assemblage of groups and individual actors: politicians, bureaucrats, voters, and organized interests. Once you adopt this approach, it becomes more difficult to talk of the state’s interests without looking at the sometimes clashing interests of its constituent parts. So it is not surprising that public-choice analysis provides a more charitable vision of the state.

One might think that another methodological difference relates to the stability of individual preferences. Neoclassical economics, from which public-choice theory derives its analytical tools, assumes that individual preferences are stable over time. Jasay sometimes departs from this assumption. He suggests that individuals used to the state come to prefer it to the state of nature, which they might have preferred had they stayed in it. Individuals, he argues, can become addicted to the state or, on the contrary, allergic to it, as happens to a minority. An individual’s preferences can also change as he becomes accustomed to a certain level of income. But this difference is only apparent. The assumption of stable preferences is mainly a methodological trick meant to avoid the temptation of ad hoc explanations (Becker 1976, 5) and often suffers exceptions. Moreover, even Buchanan abandons it when talking about political or philosophical values as opposed to tastes: “individual values can and do change in the process of decision-making,” he explains (1954, 120).

Public Goods and Social Contract

The crucial substantive difference between public-choice analysis and the theory exposed in *The State* is that the former buys into the standard economic theory of public goods, whereas the latter does not. Recall that according to the standard theory a public good is a good whose consumption everybody enjoys simultaneously (nonrivalry) and from the consumption of which nobody can be excluded (nonexcludability). Public protection—national defense, police, and the courts—is the main example of a public good, although many others have been proposed.

Because public goods are nonexcludable, free riders would skip paying for the production of such goods in an anarchic state of nature, so they would not be produced in sufficient quantity, if at all. In Hobbes's immortal words, the life of man under anarchy is "solitary, poor, nasty, brutish, and short."

Public-choice analysis concludes that it is in the interest of individuals to conclude a social contract that creates the state with the mission of producing the required public goods. This unanimous social contract forms the basis of the contractarian–constitutionalist dimension of public-choice theory (Buchanan 1975). The state thus conceived is not a dominating power but a product of (political) exchange. It is built to be the citizens' servant.

Leviathan, however, is always lurking and needs to be continuously restrained. Democracy is not sufficient: "Democracy may become its own Leviathan unless constitutional limits are imposed and enforced," writes Buchanan (1975, 161). Rational social contractors will impose such constitutional limits on the state, thus constraining how decisions will be made about the production of public goods and how the public purse will be managed. Chaining Leviathan and making sure the state remains a servant are deemed possible.

Jasay does not admit the existence of general public goods that would justify a social contract. Specific public goods may exist for specific groups of individuals but not necessarily for all individuals constituting society. Every individual has his own preferences, and there is no reason why some goods would be universally wanted, especially if we consider the share of the financing assigned to these different individuals. Everybody may arguably like police protection, but many might think that the price is too high. Moreover, game theory has shown that some public goods can be produced without the state, at least in some quantity. Jasay's "capitalist state," a state whose only purpose is "to keep out any non-minimal rival" (1985, 5), does provide one broad sort of public good, insurance against exploitation, but Jasay does not believe that this institution is stable.

If general public goods do not exist or if they can be produced by voluntary cooperation, as Jasay tends to believe, there is no need for a social contract. In fact, there is nothing that can lead to a unanimous social contract. Moreover, there would be no way to constrain the state created by such a contract: with all the power granted to it, it would yield to the temptation of exploiting at least some of its subjects.

We are now in a position to better understand why "in the general case where its subjects are not unanimous in their conception of the good, the state can in the nature of the case only further its good" (Jasay 1985, 80). If general public goods do not exist, the state can help only *some* subjects get the specific public goods they want. As the state grows beyond the capitalist state, as it starts pursuing the good of its subjects, it can favor some only at the expense of others. And the state is the one that makes the decision regarding whom to favor and whom to harm. This adversarial state will naturally side with those whose support it needs to pursue its own goals, which are its tenants' goals. The goals that the state pursues may be in part

altruistic, but they remain the state's goals. The state does provide some real services, but only as far as it is necessary to obtain or keep the support of the thin majority it needs, and so the services it offers target these beneficiaries. As Jasay puts it, the state "has no jam that is not already the jam of its subjects" (1985, 80). What it gives to Peter, it has necessarily stolen from Paul. The state cannot be everybody's state.

Welfare maximization and cost-benefit analysis are just smoke screens. A few strong sentences in *The State* are worth quoting:

The long and short of it is that objective and procedurally defined interpersonal comparisons of utility, even if they are modestly partial, are merely a roundabout route all the way back to the irreducible arbitrariness to be exercised by authority. . . .

[T]he two statements "the state found that increasing group P's utility and decreasing that of group R would result in a net increase of utility," and "the state chose to favor group P over group R" are descriptions of the same reality. (1985, 111–12, emphasis in original)

Democratic or not, the state always needs the support of some subjects, perhaps a majority of them. It buys their consent by promoting their good against the good of other subjects. Jasay explains this relationship beautifully: "When the state cannot please everybody, it will choose whom it had better please" (1985, 103). The supporters helped by the state, including powerful interest groups, become free riders on the rest of society. Instead of solving the free-rider problem, the social contract makes it worse!

The state, thus, is necessarily a dominator who exploits some of its subjects. Its ends are benefits such as power, income, and other subjective things that its tenants obtain for themselves. It is important to understand that, in the Jasayan sense, the term *consent* means nothing more than the support of those who are at the receiving end of redistribution because the state needs their support. Similarly, the term *democratic values* means nothing but "whatever the exigencies of consent require" (Jasay 1985, 142), which amounts to what needs to be believed in order to justify the redistribution decided by the state.

The fact that the subjects may vote only formalizes and fuels consent buying. Note that Jasay's model requires voters to cast their votes according to their interests, not their opinions. But how can an individual voter vote his interests when his vote has (for all practical purposes) a zero probability of actually promoting them? His vote would be decisive only if there were otherwise a fifty-fifty split in voting results. This problem is a well-recognized feature of voting in public-choice theory (Brennan and Lomasky 1993; Caplan 2007). Jasay solves this problem in part by assuming that people's opinions are usually congruent with their interests. This is not always true, as shown by rich and middle-class people's votes in favor of redistributing their own

incomes. Yet it is probably true that people align their opinions on their interests more than the other way around: “few people consciously believe that their interest is unjust” (Jasay 1985, 122). Jasay also argues that the state and its intellectuals deceive people as to what their interests are.

In Jasay’s theory, constraining the state is virtually impossible. The opposition—that is, those who compete to become the state’s new tenants—will bid up the price of consent by offering to certain clienteles more than what the incumbents offer. So the state necessarily grows, especially because it must always correct the unintended consequences of past interventions in favor of this or that group. Moreover, as the bidding process continues, redistribution turns into churning: everybody is both robbed and assisted in many ways at the same time. An individual is generally unable to determine whether he is a net taxpayer or a net tax consumer. The governed become more and more dissatisfied and ungovernable. People cry for the state to do more and do less simultaneously.

In order to have more power and resources to buy consent, the state eventually has no choice but to nationalize capital, thereby achieving economic democracy and state capitalism, which is nearly the exact opposite of the capitalist state. But too much democracy encourages bidding up the price of consent and leaves no discretionary power to the state. So the state will have to limit political competition in order to prevent further bidding by the opposition, which would otherwise lead to the workers controlling through the ballot box their own working conditions and pay in nationalized enterprises. Yet a more powerful and less competitive state apparatus does not prevent individuals from contradicting the planners’ intentions in their daily actions. Economic inefficiencies grow, black markets develop. The final stage of the state’s evolution will be to control more directly and tightly what its subjects may consume and do. The state becomes like a master on a Southern plantation, minutely regulating its subjects’ lives.

This evolution is not an iron law of history, Jasay insists, but the state has “a built-in totalitarian bias” (1985, 13). And there is no obvious way to stop the process. Along the way, laws will be adopted, and constitutions—those paper barriers—will be changed or reinterpreted as needed to facilitate the state’s growth.

Jasay, as we saw, claims that there is no surplus for the state to distribute. In standard, Buchanan-type theory of public choice, on the contrary, the public goods produced by the state do create a surplus that can be redistributed. State-produced public goods generate economic growth. In this perspective, the state’s first business is to increase economic efficiency. What it takes away for redistribution, nobody would have been able to earn in the state of nature, anyway. This idea probably meets the average taxpayer’s intuition that he would not have earned under anarchy what he must pay to the state. Increasing economic efficiency may *require* ex ante redistribution, as some individuals may have to be bribed to enter the social contract—one of the most troubling features of Buchanan’s contractarianism (see Buchanan 1975, 178–79 and *passim*).

Another notable difference separates Anthony de Jasay and the public-choice tradition represented by James Buchanan. Buchanan was proud of belonging to the liberal tradition. By “liberal,” Buchanan meant “classical liberal” (see Buchanan 2001 and 2005), with perhaps something more or something less. He favored some “equality of opportunities,” which Jasay dismisses as a front for redistribution and an excuse for state intervention. The author of *The State* breaks away from classical liberalism, except for the part of it that conforms to his capitalist (or minimal) state. Whereas Buchanan interprets John Rawls as a classical liberal, Jasay offers a strong critique of the Rawlsian social contract. If Buchanan is a classical liberal, Jasay appears to be more like a conservative anarchist.

What to Do with the State?

So what should we do with the state? Jasay’s theory implies that ideally it should be abolished. People should accede to an anarchy where private property and freedom of contract would prevail. This ideal, however, assumes that people’s preferences have not changed so much that they now dislike state-of-nature activities and would be incapable of taking care of themselves. So, on balance, what is to be done is not clear. Perhaps making sure that future generations read *The State* and are able to understand it is the only clear path to follow.

There is another reason why abolishing the state might not be a good idea—perhaps the most important one and well argued by standard public-choice theory. Reviewing *The State* when it was first published, James Buchanan first recognized what was interesting about Jasay’s book and the necessity to meet its challenge: “Somehow, those of us who retain a residual faith in some positive potential for organization must meet the challenge posed by this book. We must, in some form or fashion, incorporate the descriptive features of the state, as depicted, into a coherent and nonromantic normative account of constructive reform” (1986, 242–43).

But Buchanan also pointed out a problem in Jasay’s argument for anarchy: “[T]he whole structure of his discussion presupposes that life in the social equilibrium of anarchy would be tolerably livable, rather than nasty, brutish, and short. . . . Without this state-of-nature as a fall-back alternative, Jasay’s whole exercise would be forced into a comparison of ‘best worsts,’ and one that would, necessarily, involve a somewhat more positive perspective on politics. If we start with Hobbes, we may not like what the state can do to us, and may well do to us, but we may escape the folly of imagining that, with no state, all would be better” (1986, 243).

What would anarchy turn out to be? I take anarchy to mean the absence of organized political power. Note that this characterization is broader than the absence of a state but does not mean the total absence of any sort of power, which might be impossible. From what we know, stateless primitive anarchic societies were not fun places to live in. There is evidence that violence was endemic among primitive men

(LeBlanc 2003). To control this violence and to organize social life, people needed stifling traditions, enforced when needed by bans or other dire punishments.

Early-twentieth-century Eskimos, who had “no government in the formal sense, either over a territory or at all” (Hoebel 1990, 81), provide an interesting case study. Social life was coordinated by customary rules, taboos, and fears. “We don’t believe; we only fear,” said the wise man of an Eskimo tribe (70). Another Eskimo explained the intellectual conservatism of this culture: “[T]oo much thought only leads to trouble. . . . We Eskimos do not concern ourselves with solving all riddles. We repeat the old stories the way they were told to us and with the words we ourselves remember. . . . We are content not to understand” (qtd. on 69). Among these communities, “[i]nfanticide, invalidicide, senilicide, and suicide are privileged acts: socially approved homicide” (74). A Labrador girl was the victim of a socially approved homicide when she “was banished in the dead of winter because she persisted in eating caribou meat and seal together,” a taboo violation that endangered the whole community (73). Some primitive societies might have been softer, although not more entrepreneurial or culturally rich.

Of course, Jasay is conscious of this problem. He suggests that anarchy would be more efficient in a modern society: “there is some reason to hold that the more civilization advances, the more viable becomes the state of nature” (1985, 3). This notion may be true, although evidence to support it is lacking. Moreover, even today, not all societies are modern, and anarchy would be constantly threatened by less-enlightened groups. Who seriously thinks that a contemporary anarchic society would *not* be invaded by Islamists and transformed into a nonminimal caliphate? This problem of national defense is not treated in *The State*, but Jasay admits that the efficient rules generated under anarchy will “not necessarily . . . protect one society from another” (Anthony de Jasay to Pierre Lemieux, August 7, 2014). If preventing the oppression of tribal rules or an invasion by a foreign tyranny is a public good, Jasay’s capitalist state, not anarchy, would seem the goal to aim for.

Let us recap. If general public goods, including protection, can be produced privately, then the state conforms to how Jasay modeled it: it can produce only redistribution and, with its totalitarian bias, tends toward state capitalism and the plantation state. Nozick’s minimal state and Jasay’s capitalist state are unstable and, in any event, unnecessary. The hidden assumption is that anarchy would not be worse than the equilibrium toward which the state tends. If, on the contrary, some general public goods—such as protection—cannot be produced privately (in sufficient quantities), and if anarchy is worse than the state, then the latter may be necessary as the fragile equilibrium that standard public-choice theory models on the ridge between anarchy and Leviathan.

The question remains: How do we restrain Leviathan? Jasay argues that paper barriers are not sufficient. Strong private institutions must be available to block state power—which is Bertrand de Jouvenel’s (1945) main theme. Or, as Jasay writes, in what may be interpreted as a rare admission that perhaps Leviathan can be kept

in check, “Self-imposed limits on sovereign power can disarm mistrust, but provide no guarantee of liberty and property beyond those afforded by the balance between state and private force” (1985, 205).

The standard justification of the state raises at least one further problem. *General* public goods and unanimity are demanding concepts. Can we really find some good or service that *all* individuals in a society would be willing to pay for and for the sake of which they would sign a *unanimous* contract? Even national defense is not universally wanted—for instance, by pacifists, although talk is cheap, and many pacifists likely overstate their preference. Yet if we do not restrict the domain of individual preferences, nothing proves that obvious public goods such as control of asteroids or of antibiotic resistance would bring forth unanimity. Somebody intent on committing suicide or an extreme misanthropist on his death bed might prefer the whole of mankind to disappear with him. It is to avoid this sort of problem that the social contract is always framed in the context of some original position where individuals face a somewhat uncertain future. Perhaps most oddballs can be bribed into signing a social contract, but there still might be no finite price for bribing a jihadist. Do we have to envision the possibility that there exist only near-general public goods and a near-unanimous social contract? Or, as Jasay would probably argue, must we avoid thinking about the state in contractarian terms? But don’t we then eschew a useful tool of analysis?

The State is most naturally interpreted as a ferocious yet scholarly indictment of the state and ultimately a plea for anarchocapitalism. But Anthony de Jasay also makes the capitalist state very tempting: “The very rationale of a minimal state is to leave few levers for the zealots to get hold of and upset things with if, by the perversity of fate or of the electorate, *they* managed to become the state” (1985, 33, italics in original). This book is, in my view, one of the most important and one of the most neglected of the twentieth century. The way things are going, it will be even more useful in the twenty-first.

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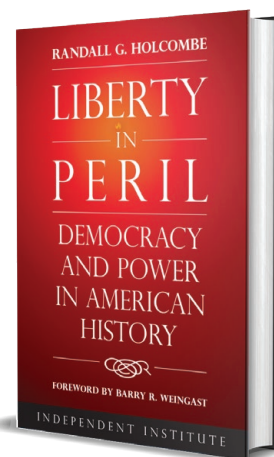
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