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Chapter 1  
Skepticism of Power

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## On Max Weber's Definition of Power

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### Introduction

The definition of power offered by Max Weber in his *Wirtschaft and Gesellschaft* has become of central importance to a number of considerations in political science, sociology and public administration. The present paper examines this definition as it has been published in English in a variety of texts. The German original is then presented, and both literal and contextual translations suggested.

### Previous Translations

Weber (1925: 28) distinguishes between power (*Macht*) and leadership or rule (*Herrschaft*). Setting aside, for the moment, the problems of *Herrschaft*, it is interesting to note some of the many variations in meaning among the more prominent commentators on Weber's definition of power, or *Macht*:

- Talcott Parsons (1968:656): 'The probability within a social relationship of being able to secure one's own ends even against opposition.'
- Talcott Parsons and A. M. Henderson (1965: 152): 'The probability that one actor within a social relationship will be in a position to carry out his own will despite resistance. regardless of the basis on which this probability rests.'
- Reinhard Bendix (1962: 290): 'The possibility of imposing one's will upon the behavior of other persons.'
- Julien Freund (1969:221): 'The probability that one actor within a social relationship will be in a position to carry out his own will despite resistance.'
- Peter M. Blau (1963): 'The ability of a person to impose his will upon others despite resistance.'
- Raymond Aron (1964 : 101): 'The chance of obtaining the obedience of others to a particular command.'
- Dennis H. Wrong (1970:54): 'The probability that one actor within a social relationship will be in a position to carry out his own will despite resistance, regardless of the basis on which this probability rests.'
- H. H. Gerth and C. Wright Mills (1958: 180): 'In general, we understand by power the chance of a man or of a number of men to realize their own will in a communal action even against the resistance of others who are participating in the action.'

It is clear that these definitions differ significantly from one another. This difference can be seen to exceed the limits implied by Parsons' reference in *The Structure of Social Action* (1968) cited above, and by his translation, with Henderson, of the Weber work under the title, *The Theory of Social and Economic Organization* (1965), similarly cited. Students of sociology will have little difficulty agreeing that probability and chance are not the same in meaning, and quite distinct from either ability or possibility. In the two Parsons versions, the word will, is replaced by able to secure one's ends; Aron also omits will, and while for Wrong and Freund an actor is in a position to carry out his will, Bendix speaks of one imposing one's will. Gerth and Mills include others participating, and both Parsons (1965) and Wrong include the long clause absent from the others, regardless of the basis on which this probability rests. Other differences are equally self evident: Gerth and Mills recognise that the will may be of a group origin, while Aron omits any reference to origin; some commentators (Blau, Freund, Wrong) seem to imply that resistance is always present, while others (Bendix, Aron) ignore it completely. Since these are the major texts used in courses in American Universities, Weber's precise definition is consequently unclear to many American students of his thought. In the remainder of this paper we shall attempt to clarify

Weber's definition by proceeding from the original German.

Literal Translation It must be noted at once that not all commentators are referencing the identical portion of Weber's *Wirtschaft und Gesellschaft*. During the course of his discussion, Weber conditions the meaning to make it applicable to particular contexts and specific instances. The Gerth and Mills translation shown in our earlier section, one most familiar to American students due to the popularity of the excellent text *From Max Weber*, is drawn from one such later portion of Weber's discussion (1925: 631), and must not be confounded with the others. Weber's precise definition of *Macht* appears as his Definition 16 on page 28 of *Wirtschaft und Gesellschaft*. This is the definitive meaning of the concept as understood by Weber. It is given below in literal translation, with successive phrases and clauses identified for future discussion: use of political power. We reserve the use of might to an aggregate of power, an excess of power, and the like, not to everyday usage. Such considerations suggest that clause C should be placed at the start of the sentence, since it specifies the context within which the meaning holds and within which the action takes place, thus fixing the attention of the English reader to a particular frame of reference. It may be objected that this places the stress in English at a part of the sentence other than where it exists in the German: however, in German, power in the natural science sense is denoted by the word *Kraft*, not *Macht*. In English, power serves both senses, and therefore the English reader's attention must be properly directed at the outset. The sentence then becomes C A B (G) F D (E). It is best to keep both G and E enclosed in parentheses, as asides or comments, at this stage of explication. The definition then becomes: C A Within a social relationship, power means B G every chance, (no matter where on this F D chance is based) to carry through the own.

|                                                                                                                                                |                                                                                 |                                                                  |
|------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|------------------------------------------------------------------|
| <p><b>A</b></p> <p><i>Macht</i> bedeutet<br/>power means</p>                                                                                   | <p><b>B</b></p> <p><i>jede</i> Chance,<br/>(every) chance,<br/>(any)</p>        | <p><b>C</b></p> <p><i>innerhalb</i> einer<br/>within a</p>       |
| <p><b>E</b></p> <p><i>auch</i> gegen <i>Widerstreben</i><br/>also against resistance</p>                                                       | <p><b>D</b></p> <p><i>den</i> <i>eigenen</i> <i>Willen</i><br/>the own will</p> | <p><b>F</b></p> <p><i>durchzusetzen</i><br/>to carry through</p> |
| <p><b>G</b></p> <p><i>gleichviel</i> <i>worauf</i> <i>diese</i> <i>Chance</i> <i>beruht</i>.<br/>no matter whereon this chance (is) based.</p> |                                                                                 |                                                                  |

To restructure this sentence into conventional English usage, we might begin by placing the predicate clause D after the infinitive of the verb F, i.e., to carry through the own will. We might also place clause G after the phrase B which it modifies, viz., A B (G) F D C E. In English, power may be used in other than its social meaning: we speak of a powerful engine, of electrical power, and the like. When speaking of social power, however, we are most often using the word in its English sense of might, a sense derived directly from the German *Macht*, (OED: 429), as is the word *might* itself. Hence, one could translate *Macht* as *might*; however, English commentators have avoided *might* and offered *power* almost universally. In English we do not speak of the redundant use of political *might*, but of the redundant

*E* will (also against resistance). The clause E is understood to mean that the definition holds whether resistance is or is not present. In English, this sense is approximately conveyed by the phrase, even against resistance. which implies that in many, but not all, cases resistance may not be present. The German original implies that the presence or absence of resistance is irrelevant. The best way to signify this sense in English is in the form, Within a social relationship, power means every chance (no matter whereon this chance is based) to carry through the own will.\* \* even against resistance. The awkwardness of the form, however, seems to demand, Within a social relationship, power means every chance (no matter whereon this chance is based) to carry through the own will (even against resistance). We usually speak, in English, of 'imposing' the will or 'realising' the will. The first points to the inception of an action, the second to the termination of an action. For this reason, we prefer 'to carry through' the will as closer in meaning to the process Weber had in mind, in

imposition as well as in termination. We will leave the literal translation in this last form, therefore, while we pursue the contextual meaning.

**Contextual Meaning** Returning to the original German, we note that Weber has employed the word *Chance*, which has the same meaning as in English, that signified not only by luck, opportunity, or fortune, but additionally, that quality associated with the givenness of the social environment.' He does not here employ either the German *Wahrscheinlichkeit* (probability) or *Gelegenheit* (opportunity), nor the French probability.' The Aron translation appears to appreciate this distinction, for chance in French has the English meaning, but Wrong and Parsons (1965) alone include the long phrase G.' It may be argued that some commentators sought to combine the sense of G and B by the substitution of probability for chance with the concomitant elimination of G; but acknowledging that the basis of a chance is irrelevant to the manifestation of that chance does not imply that random characteristic we associate with probability nor with the fortuity of 'opportunity': nor does the latter signify that the basis may be structured or unstructured.' Hence, chance, as employed here by Weber, is the word demanded by any English rendition. A significant portion of the difficulty associated with translating the definition into English appears to lie in phrase D, *den eigenen Willen*. We noted that some versions in English omit the word *will*, although *Willet* can be translated in no other way. Obedience to a command, suggested by Aron, implies merely action as a response to a verbal formulation, and hence is too restrictive. The heart of this difficulty is Weber's inclusion of the word *eigenen* (own). This may seem to imply a singular person or actor, and many commentators have phrased their renderings to reflect such an interpretation. In German as in English, however, *eigenen* (own) need not imply solely a singular person; we speak of the committee exercising its own will, the ladies satisfying their own will, etc. of the uncertainty in the earlier translations can be attributed to the presence of a footnote on page 28 of the text, where Weber recognises the 'amorphic' character of power and the innumerable situations wherein an individual may be in a position to carry through his own will. By so acknowledging these situations, however, Weber does not imply that *Macht* is not also applicable to group or collective wills. On page 161, for example, Weber points to the Swiss Federal Council as an example of collective or collegiate rule. The phrase, *den eigenen Willen*, in correct German usage, could be applied to the will of the Swiss Federal Council. *Eigenen* may be used in both the singular and collective sense. Weber's use of the definite article *den* is part of the formal syntax requirements in German; substantives such as *Willen*, must be preceded by the article. It does not distinguish the unique case, as does the definite article in English: it is not the one of all possible ones. Had Weber wished to restrict the definition to the will of a single person or actor, he would not have employed the form he did. As the phrase stands, it is more inclusive than many of our cited translations seem to imply. We mentioned previously that Weber distinguishes between *Macht* and *Herrschaft* (1925: 2829). *Herrschaft* is equated with *Autorität* or authority (1925: 122). He asserts that *Herrschaft* is not 'every kind of chance' (n.b.) to exercise 'Macht und Einfluss' (power and influence) over other people (1925: 122). *Herrschaft* is defined (1925: 28) as 'The chance for an order with a certain content to find obedience with designatable persons'. It is the subset of *Macht* containing as elements only those formalised exercises of authority; a mob action, for example, where informal chances of power and influence may exist, can not be considered as lying within this subset. Although Aron includes the notion of an order in his rendering of the *Macht* definition, it is important to note that while *Macht* includes *Herrschaft* it is not limited to it. Similarly, in connection with some of the other cited renderings, it is significant that Weber (1925: 604) does employ the German for possibility (cf. Bendix), and speaks of 'imposing' the own will on others in connection with that *Macht* involved in *Herrschaft* (n.b.). Similarly, the notion of influence (*Einfluss*) is involved in *Macht* (1925: 122) but not necessarily the notion of authority (*Autorität*). Thus, Weber's definition of power does not imply the necessity of formal legitimacy, an important point in any discussion of his sociology. Only in that kind of *Macht* called *Herrschaft* is legitimacy a consideration. The phrase, *den eigenen Willen*, then, presents a problem in English translation, and it becomes apparent that the various renderings of the power definition have wrestled with the difficulty it presents. It may be that Weber was careful to employ *eigenen* to eliminate the possibility of readers mistaking his meaning as applicable to some all encompassing, Universal Will, unpersonified and originless. The will of his definition must have a source, either in one person or a group of persons: it is a distinctly human activity, not supernatural nor primordial." In the light of these considerations, it does not appear that a suitable substitution for *den eigenen Willen* can be made employing conventional English. Returning to our last literal translation, we find that the only possible recourse is to substitute one's own will for the own will, and to footnote one's so that the reader may understand that the

word may be used in either the individual or the collective sense with the definition still valid: Within a social relationship, power means any chance, (no matter whereon this chance is based) to carry through one's\* own will (even against resistance). \* individual or collective This translation, we feel, comes closest to the German original. It guarantees to researchers a foundation upon which operationalisations and research categories may be grounded when they employ the Weberian definition of power. For example, if 'whatever the basis' of chance is omitted in the translation, researchers are apt to distinguish only those highly specific occurrences relating to a single dimension, as e.g., only 'government' may be perceived to entail power relations, while sexual relations, commercial enterprise and family decisionmaking may be incorrectly excluded if the Weberian definition is not understood. In addition, omitting 'even against resistance' from the definition is apt to conceal from analysis those regular, redundant obediences to an external will which occur in everyday experiences within bureaucracies and other formal structures. The element of resistance may or may not be present when power is being exercised, according to Weber. In these and related ways, researchers may err in their analyses when they employ the Weberian definition, if the full meaning of that definition is not clear to them.

**Conclusion** In considering Max Weber's definition of power, we have found that it is restricted to wholly human social relationships, of a nonteleological kind. It is the chance of carrying through the will of a person, or of a group of persons, within a social relationship. The basis of this chance is irrelevant, as is the presence or absence of resistance. The notion of legitimacy is not included in Weber's power definition. Legitimacy becomes a consideration only in discussions of formal authority, or *Herrschaft*. *Macht* (power) includes *hierarchaft* (authority) but is not limited to it. We find that the many translations of Weber's definition which appear in sociological texts in English have sought to catch the intent of the passage, rather than its full meaning, because of the difficulty in finding equivalent phraseology for den ei.1.,enen Willett in the context in which this phrase is employed. We have attempted to circumvent this difficulty for researchers by presenting as literal a translation as possible while employing a footnoted format which we believe retains the original meaning with minimal sacrifice of lexical form.

## FOOTNOTES

1. Roth's (1(168:53 ) translation is the same.
2. Translated from the French; see References.
3. Ibid.
4. Ralf Dahrendorf, in his *Class and Class Conflict in Industrial Society* (1967:166) inexplicably employs phraseology identical to the 1965 Parsons version (which he does not reference in this connection, leaving the source unspecified) in discussing Weber's power definition: and yet in referencing Weber's *Herrschaft* later in the same sentence he claims to employ the Fourth Edition (1947) (sic.) of Weber's German original. It remains unclear whether this later reference applies also to the *Macht* translation, particularly since his discussion here involves the work of Parsons. Roderick Martin (1971), referencing only Dahrendorf and Parsons in his own critique of the Weber definition, apparently assumes that the occurrence of identical phraseology implies a consensus with regard to Weber's meaning. If Dahrendorf's translation of the Power definition is indeed his own translation of the definition in *Wirtschaft and Gesellschaft*, and not copied directly from the ParsonsHenderson *Theory of Social and Economic Organisation*, the tack of consensus evident in the translation cited in the present paper would be particularly confounding. Dahrendorf is elsewhere (cf. 1967:167, note) critical of the ParsonsHenderson translation, and Bendix (1962:291) cautions the reader respecting Parsons' definitions in isolation.
5. In this connection, N. Luhmann (1975:118) in his discussion of Weber's concept of Chance, notes the inclusion of the element of structure. Chance, for Weber, is interpreted by Luhmann in such a way that it is a structure, or kind of catalyst, amenable to manipulation by those specific actors possessing what Weber terms power. Hence, it is not simply random occurrence that is implied by this use of chance, but a 'given' of social interaction that is a persistent feature of social life.
6. It is interesting to note that Freund employs opportunity, in his informal discussion of *Macht* (1969 :130 ), but when he comes to defining the term and quotes Weber, he employs probability rather than opportunity, referencing the 1966 Free Press Edition of *The Theory of Social and Economic Organisation*,

p.154.

7. Although he employs probability, not chance, for phrase B.
8. See, e.g., the OED (p.263) definitions of chance, where the element of gain' and interest are included, as in 'the main chance'.
9. An activity, not a property of the actor; cf. Martin (1971:243), who senses the grammatical basis of the confusion in English definitions derived from Weber, since he cites only Parsons and Dahrendorf and not the German original. In insisting that power is 'the property of the relation', and not 'the property of the actor', Martin is not really arguing so much against Weber (as he intends), but against the Dahrendorf (Parsons) rendering.

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4. It is clearly one of the drawbacks of personal construct approaches that careful and timeconsuming interviewing has to be conducted instead of manipulation of already available census data.
  5. This is perhaps another drawback of social area analysis, if other dimensions can be used equally well to denote the supposedly important societal changes.
  6.  $\chi^2 = 123.8$ , significant at least at the .001 level. Despite low observed frequencies in some cells, the expected frequencies were above five in all but 15 per cent of the cells, and the chisquare test is appropriate in such instances.
  7. There is some difficulty in assessing the degree to which the personal constructs may have provided a later rationalisation of the decision to move, or vice versa, but this would not invalidate the general argument presented here.
  8. A forthcoming study is to present the details of this second analysis, with further discussion.

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## Why Government is the Problem?

*Essays in Public Policy, no. 39. Stanford, California: Hoover Institution Press, 1993.*

When a preacher gives a sermon, he usually has a text. Generally, the text expresses a thought that he agrees with and is going to expound. I have been trying to find the word for an anti-text because I have a text for this essay that I am persuaded is wholly wrong. The text comes from the September–October 1991 issue of *Freedom Review*, about as inappropriate a place as possible. It is the statement, “Reagan’s fatuous doctrine that government is the problem.”<sup>1</sup> That’s my text—or my anti-text—for this essay.

The text leaves me two tasks: one easy, one difficult. The first task is to demonstrate that government is the problem; that’s the easy task. The hard task is to understand why government is the problem. Why is it that able, public-spirited people produce such different results according to whether they operate in the political or the economic market? Why is it that if a random sample of the people who read this essay and are not at present in Washington were to replace those who are in Washington, our policies would very likely not be improved? That is the real puzzle for me.

As to the easy task, let me just first count the ways—to plagiarize words from a love poem—in which government is the problem. Let’s list our major social problems and ask where they come from.

### Showing That Government Is the Problem

#### *Education*

One major social problem is clearly the deterioration of our educational system. Next to the military, education is the largest socialist industry in the United States. Total government spending on schooling—I call it schooling rather than education because not all schooling is education and vice versa—comes close to total government spending on defense, if, with the so-called peace dividend, it is not already greater. The amount spent per pupil in the past thirty years has tripled in real terms after allowing for inflation. Although input has tripled, output has been going down. Schools have been deteriorating. That problem is unquestionably produced by government.

#### *Lawlessness and Crime*

If there is any function of government that all but the most extreme anarchist libertarians will agree is appropriate, it is to protect individuals in society from being coerced by other individuals, to keep you from being hit over the head by a random or nonrandom stranger. Is there anybody who will say we are performing that function well? Far from it. Why not? In part because there are so many laws to break; and the more laws there are to break, the harder it is to prevent them from being broken, not only because law enforcement means are inadequate but, even more, because a larger and larger fraction of the laws fail to command the allegiance of the people. You can rigidly enforce only those laws that most people believe to be good laws, that is, laws that proscribe actions that they would avoid even in the absence of laws. When laws render illegal actions that many or most people regard as moral and proper, they can be enforced only by brute force. Speed laws are an obvious example; alcohol prohibition, a more dramatic one.

I believe a major source of our current lawlessness, in particular the destruction of the inner cities, is the attempt to prohibit so-called drugs. I say so-called because the most harmful drugs in the United States are legal: cigarettes and alcohol. We once tried to prohibit the consumption of alcohol at tremendous cost. We are now trying to prohibit the use of narcotics at tremendous cost. The particular consequence that I find most

indefensible is the havoc wreaked on residents of Colombia, Peru, and other countries because we cannot enforce our own laws. I have yet to hear an acceptable justification of that consequence. Coming back home, whether or not you believe that it is an appropriate function of government to prevent people from voluntarily ingesting items that you regard as harmful to them—and whether you believe that it is an appropriate function of government because of the harm to them or to third parties—the attempt to do so has been a failure. It has caused vastly more harm to innocent victims, including the public at large and especially the residents of the inner cities, than any good it has done for those who would choose to use the prohibited narcotics if they were legal. There would be some innocent victims (e.g., crack babies) even if drugs were legalized. But they would be far fewer, and much more could be done to reduce their number and help the remainder.

### ***Homelessness***

What produced the current wave of homelessness around the country, which is a disgrace and a scandal? Much of it was produced by government action. Rent control has contributed, though it has been even more damaging in other ways, as has the governmental decision to empty mental facilities and turn people out on the streets and urban renewal and public housing programs, which together have destroyed far more housing units than they have built and let many public housing units become breeding grounds for crime and viciousness.

### ***Family Values***

Government alone has not been responsible for the extraordinary collapse that has occurred in family values and the resulting explosion in the number of teenage pregnancies, illegitimate births, and one-parent families. Government has, however, contributed to these social problems in major degree. Charles Murray's study of these phenomena in his book *Losing Ground* provides persuasive evidence that these social problems owe a great deal to mistaken and misdirected governmental policies.<sup>2</sup> Personally, I would add another misdirected governmental policy, which he does not consider, that I believe played a key role in the breakdown of social and cultural values—though by a rather indirect route—namely, military conscription. But that is an argument for a different day.

### ***Housing***

Another social problem is the high cost of housing and the destruction of housing. The North Bronx looks like the pictures recently coming from Yugoslavia of areas that have been shelled. There is no doubt what the cause is: rent control in the city of New York, both directly and via the government taking over many dwelling units because rent control prevented owners from keeping them up. The same results have been experienced wherever rent control has been adopted and enforced, though New York is by all odds the worst case.

In addition, the proliferation all over the country of building regulations, zoning laws, and other governmental actions has raised the cost of housing drastically. A friend in California has been a building contractor since before World War II. I asked him, "Suppose you were to build the identical house today that you built in 1945 in one of your large housing projects, and suppose that the price of labor, material, and so on were the same now as it was then. How much more would it cost you now than it did then because you must get government permits and demonstrate that you have satisfied government requirements?" He thought about it a while and finally concluded, "At least one-quarter of the total cost."

### ***Medical Care***

Government has played an increasingly large role in medical care. For decades, total spending on medical care was about 3 to 5 percent of national income. It is now 12 or 13 percent and rising. The acceleration of spending dates from the introduction of Medicare and Medicaid in 1965. In an earlier essay of mine (*Input and Output in Medical Care*, Hoover Essays in Public Policy series), I cited figures on hospital cost per patient day, adjusted for inflation. The cost was twenty-six times as high in 1989 as it had been in 1946 (\$545 compared with \$21); personnel per occupied hospital bed was seven times as high (4.6 compared with 0.7), while the number of hospital beds per 1,000 population had been cut in half (from 10.3 to 4.9). Medical care has advanced greatly since 1946, but it did so before 1965 as well as after, yet most of the increase in cost occurred after 1965. Those seven times as many people per hospital bed are clearly not people who are attending to patients; they are mostly people who are filling in forms to satisfy government requirements.

## ***Financial System***

You are all fully aware of the weakness of our financial system. Is there any doubt that that weakness owes much to Washington? The savings and loans crisis was produced by government, first by the accelerating inflation of the 1970s, which destroyed the net worth of many savings and loan institutions, then by poor regulation in the 1980s, by the increase in the amount covered by deposit insurance to \$100,000, and, more recently, by the heavy-handed handling of the crisis. You know the litany; I don't have to spell it out.

## ***Highway Congestion***

We all complain about highway congestion. That is interesting for a different reason. The private automobile industry is able to produce all the automobiles anybody wants to drive, but the government is apparently not able to produce a comparably adequate highway system, a clear contrast.

## ***Airports***

A similar contrast exists with respect to airlines and airports. The private aircraft industry has been able to build all the aircraft that the commercial airlines wanted to buy, and the airlines have been able to recruit the necessary pilots, attendants, mechanics, and so on. Where is the bottleneck? In airports, in air control facilities. Why? Because those are run by the government.

## ***Miscellaneous***

I have not even mentioned the botched economic policies: the reverse Reaganomics that the Bush administration practiced contributed to the recession of 1990–1991, condemned us to a very slow and erratic recovery from a mild recession, and, very probably, promises a relatively slow 1990s, almost regardless of what the Clinton administration does. Nor have I mentioned such things as over-regulation of industry or agricultural policies under which taxpayers pay people to grow crops that are going to be destroyed or stored or given away. I have not mentioned tariffs and quotas or affirmative action and wage and hour laws. In light of this list, is there any doubt that government is the problem?

None of this means that government does not have a very real function. Indeed, the tragedy is that because government is doing so many things it ought not to be doing, it performs the functions it ought to be performing badly. The basic functions of government are to defend the nation against foreign enemies, to prevent coercion of some individuals by others within the country, to provide a means of deciding on our rules, and to adjudicate disputes.

I wonder if any of the liberal pundits who go around saying that the private market and capitalism, not government, is the problem can name any corresponding set of major problems that afflict our society that derive from private enterprise.

Their knee-jerk answer is clear: pollution. Private enterprise, they will say, is responsible for polluting the air, for polluting the water, for destroying the earth. I suggest to them that they compare the pollution in countries that have been run by the government, such as Poland or the Soviet Union or Romania, with the pollution in this country. The difference is not that our government has been more efficient in avoiding pollution; it is that private enterprise finds that it is not profitable to pollute; it is more profitable to avoid pollution. There is a real function for government in respect to pollution: to set conditions and, in particular, define property rights to make sure that the costs are borne by the parties responsible. Actual government policy, however, has been neither efficient nor effective. An example is the recently passed Clean Air Bill. It will clean the pockets of industry far more effectively than it will clean the air.

## **Explaining Why Government Is The Problem**

One common explanation of why government is the problem, and one that I have often stressed, is the influence of special interests. Government actions often provide substantial benefits to a few while imposing small costs

on many. A dramatic example occurred to me recently when I was talking to a taxicab driver in New York City. (Taxicab drivers seem to be the source of all anecdotes.) I have long been interested in the problem of regulation of taxicabs, so I asked him the market price of a medallion to drive a taxicab. As you know, the number of taxicabs is limited by government fiat. The medallion signifying permission to operate a taxicab is transferable and traded in a relatively free market. Its current price is apparently now somewhere between \$100,000 and \$125,000.

If the limitation on the number of taxis were removed, the benefits would greatly exceed the losses. Consumers would benefit by having a wider range of alternatives. The number of cabs would go up and so would the demand for drivers. To attract more drivers, the earnings of drivers would have to rise. In economic jargon, the supply curve of drivers is positively sloped.

Why does the limitation of the number of cabs persist? The answer is obvious: the people who now own those medallions would lose and they know it. Although they are few, they would make a lot of noise at city hall. The people who would end up driving the additional cabs do not know that they would have new jobs or better jobs. There is no New Yorker who would find it worth his or her time and effort to lobby city hall to remove the arbitrary limitation on medallions simply to get better cab service. It does not pay the individual taxi riders to do so. They are right; it is rational ignorance on their part not to do so.

The phenomenon of concentrated benefits and dispersed costs is a valid explanation for many governmental programs. However, I believe it does not go far enough to explain the kind of situation in which we now are. For example, it does not explain why, once a government enterprise is established, it should be so much less efficient than a comparable private enterprise. Maybe concentrated benefits lead to the establishment of a government enterprise. However, why on those grounds should the U.S. Post Office be less efficient than United Parcel Service?

One answer is that the incentive of profit is stronger than the incentive of public service. In one sense I believe that is right, but in another sense I believe it is completely wrong. The people who run our private enterprises have the same incentive as the people who are involved in our government enterprises. In all cases the incentive is the same: to promote their own interest. My old friend Armen Alchian, who is a professor at the University of California at Los Angeles, put the point this way: There is one thing, he said, that you can trust everybody to do and that is to put his interest above yours. The people who run our private enterprises are people of the same kind as those who run our public enterprises, just as the Chinese in Hong Kong are the same as the Chinese in Mainland China; just as the West Germans and the East Germans were not different people, yet the results were vastly different.

The point is that self-interest is served by different actions in the private sphere than in the public sphere. The bottom line is different. An enterprise started by a group of people in the private sphere may succeed or fail. Most new enterprises fail (if the enterprise were clearly destined for success, it would probably already exist). If the enterprise fails, it loses money. The people who own it have a clear bottom line. To keep it going, they have to dig into their own pockets. They are reluctant to do that, so they have a strong incentive either to make the enterprise work or to shut it down.

Suppose the same group of people start the same enterprise in the government sector and the initial results are the same. It is a failure; it does not work. They have a very different bottom line. Nobody likes to admit that he has made a mistake, and they do not have to. They can argue that the enterprise initially failed only because it was not pursued on a large enough scale. More important, they have a much different and deeper pocket to draw on. With the best intentions in the world, they can try to persuade the people who hold the purse strings to finance the enterprise on a larger scale, to dig deeper into the pockets of the taxpayers to keep the enterprise going. That illustrates a general rule: If a private enterprise is a failure, it closes down—unless it can get a government subsidy to keep it going; if a government enterprise fails, it is expanded. I challenge you to find exceptions.

The general rule is that government undertakes an activity that seems desirable at the time. Once the activity begins, whether it proves desirable or not, people in both the government and the private sector acquire a vested interest in it. If the initial reason for undertaking the activity disappears, they have a strong incentive to find another justification for its continued existence.

A clear example in the international sphere is the International Monetary Fund (IMF), which was established to administer a system of fixed exchange rates. Whether that is a good system or a bad system is beside the point. In 1971, after President Nixon closed the gold window, the fixed exchange rate system collapsed and was replaced by a system of floating exchange rates. The IMF's function disappeared, yet, instead of being disbanded, it changed its function and expanded. It became a relief agency for backward countries and proceeded to dig deeper into the pockets of its sponsors to finance its new activities. At Bretton Woods, two agencies were established: one to administer a fixed exchange rate system and the other, the World Bank, to perform the function of promoting development. Now you have two agencies to promote development, both of them, in my opinion, doing far more harm than good.

Let me take a very different example in the United States. At the end of World War II, we had wage and price controls. Under wartime inflationary conditions, many employers found it difficult to recruit employees. To get around the limitations of wage control, many began to offer health care as a fringe benefit to attract workers. As a new benefit, it took some years for the Internal Revenue Service to get around to requiring the cost of the medical care to be included in the reported taxable income of the employees. By the time it did, workers had come to regard nontaxable medical care provided by the employer as a right—or should I say entitlement? They raised such a big political fuss that Congress legislated nontaxable status for employer-provided medical care.

That excuse disappeared once wage and price controls were eliminated, but the tax exemption of health benefits continued. The result was to create a medical system in which it came to be taken for granted that employees would get their health benefits through their employers. In this indirect way, wartime wage control, abolished after the end of the war, was a major factor that produced the current drive for socialized medicine, strongly fostered by a large part of the business community.

Liberal pundits will tell you that the problem is that the public wants the goodies that government supposedly provides but is too stingy to pay for them. If only, liberals say, we could get those greedy, stingy people to provide us with more taxes, we could solve all these problems. They may be partly right, but only partly. For example, that explanation cannot be the reason we have agricultural subsidies. Do the people of this country really want to pay farmers to grow goods and throw them away or give them away at low prices abroad? To say that the public wants the goodies that government supplies may be true for Medicare and Medicaid but surely not for agricultural subsidies or restrictions on the import of Japanese cars, restrictions that raised by perhaps \$2,000 or so the cost of a car to a member of the public and, incidentally, did not prevent the decline of the U.S. auto industry. It is not true for sugar import quotas. If you could have a public vote on whether consumers want to pay twice the world price for sugar, do you think that there would be an overwhelming vote saying yes?

On the contrary, when people have the opportunity to vote on those issues, they overwhelmingly vote the other way. The public at large thinks that government is too big. People know they are not getting their money's worth for the taxes they pay. In California, where I live and where propositions can be put on the ballot so that you can have direct democracy, the people voted for Proposition 13, which started the tax revolt. Later, they voted for what was called the Gann Limit on total government spending. Californians voted in 1991 to limit the terms of state legislators and, in 1992, the terms of members of Congress. Connecticut has a graduated income tax today not because the people voted for it but because Weicker is governor. Repeated ballot measures designed to increase graduation of the state income tax had earlier been defeated.

However, the liberal pundits are wrong in a more fundamental way. The problem is not that government is spending too little but that it is spending too much. The problem in schooling is that government is spending too much on the wrong things. The problem in health care is that government is spending too much on the wrong things. The end result has been that government has become a self-generating monstrosity. Abraham Lincoln

talked about a government of the people, by the people, for the people. What we now have is a government of the people, by the bureaucrats, including the legislators who have become bureaucrats, for the bureaucrats.

Again, let me emphasize, the problem is not that bureaucrats are bad people. The problem, as the Marxists would say, is with the system, not with the people. The self-interest of people in government leads them to behave in a way that is against the self-interest of the rest of us. You remember Adam Smith's famous law of the invisible hand: People who intend only to seek their own benefit are "led by an invisible hand to serve a public interest which was no part of" their intention. I say that there is a reverse invisible hand: People who intend to serve only the public interest are led by an invisible hand to serve private interests which was no part of their intention.

I believe our present predicament exists because we have gradually developed governmental institutions in which the people effectively have no voice. A recent study by James Payne brought this home to me very clearly. Examining fourteen different government hearings dealing with spending issues, Payne found that "1,014 witnesses appeared in favor of the spending. Only 7 could be classified as opponents. In other words pro-spending witnesses outnumbered anti-spending witnesses 145 to 1." Striking as that is, an even more important finding was that "of the 1,060 witnesses who appeared, 47 percent were federal administrators, and another 10 percent were state and local officials. An additional 6 percent were congressmen themselves." Thus 63 percent of the witnesses in favor of the spending were from government. They were telling us that they should spend our money, I won't say for their benefit but for what they believed, or said they believed, was our benefit. Payne added, "Overwhelmingly, Congress's views on spending programs are shaped by government officials themselves."<sup>4</sup> What is true of spending proposals is equally true of other governmental measures: sugar quotas, the tax exemption of medical care provided by employers, the agricultural subsidies, and so on down the line.

The problem of concentrated benefits and diffused costs is a real problem. However, I do not believe that at the moment it is the key problem. The key problem is that we are unable to practice what we preach because of what has happened to the governmental structure. We preach free enterprise to the newly freed communist countries. We tell them to privatize, privatize, privatize, while we socialize, socialize, socialize.

What can we do about it? We do not have to punish ourselves. This is a great country; it is the richest country in the world with the highest standard of living. It is an extraordinary tribute to the virtues of the free market that, with less than 50 percent of the country's total resources, the private sector can produce a level of living that is the envy of most of the world.<sup>5</sup> We, the people, must once again rule. It will take a major change in the political structure, I believe, to make that possible.

The one movement that I see on the horizon that offers promise is the movement toward term limits, a move that would de-bureaucratize at least Congress. Heretical though it may seem, it would be nice to get back to the spoils system instead of the civil service. That would de-bureaucratize the administration. We now have people in secure, permanent positions whose well-being depends on having government play a major and ever-larger role. Although I see no possibility of getting back to the spoils system, term limits on members of Congress would de-bureaucratize not only Congress itself but also congressional staffs, about the only governmental employees who are not subject to civil service rules and tenure.

There is widespread public support for term limits. Colorado passed term limits for both state legislators and members of Congress in 1991. California passed term limits for state legislators in 1991 and joined thirteen other states in passing term limits for members of Congress in the 1992 election, so fifteen states now have legislated such limits. The number of votes for term limits in the fourteen states that had the issue on the ballot exceeded the nationwide popular vote for Governor Clinton! This is truly an idea whose time has come. Of course, members of Congress will tell you that it is unconstitutional for individual states to limit their terms. Maybe it is, but it should be tested, and Congress certainly has the power to propose a constitutional amendment to that effect. At any rate, something drastic is needed to reverse the direction in which we are moving.

The United States has a great heritage and a great history. Since the beginning of our republic, every generation has been better schooled than its predecessor and has had a higher standard of living. The coming generation threatens to be the first for which that is not true, and that would be a major tragedy.

## Questions and Answers

**QUESTION:** *Why do you believe that this country is not getting the government it wants when the Democrats control practically all the legislative bodies in the country and we have wet liberal Republicans like your esteemed governor in California? The spenders are elected. Reagan seems to have been an aberration.*

**FRIEDMAN:** It has nothing to do with Democrats or Republicans. They are all in the position that I described: they are all seeking to promote their own self-interest. Reagan was a real aberration in the sense that he was the first president in my lifetime who was elected not because he was saying what the people wanted to hear but because the people had come around to wanting to hear what he was saying. He said the same thing in 1980 that he had said in 1964 in supporting Goldwater. He could not have been elected in 1964, and he was elected in 1980. In that sense he was an aberration, but, in the sense of reflecting the real underlying feeling of the population, I do not think he was.

As I say, I believe that the reason that we are not getting the government the people want is because there is no way in which they can make their wants effective. It is the same thing as with the cab business. The people in one district can choose not to reelect their member of Congress, but that will not change the composition of the government as a whole. You have to change the system and make it possible for the people's will to be heard. Take California. How do I know that the people are not getting the legislation they want? I know that because they overwhelmingly passed term limits on legislators and a sharp reduction in permissible expenditures on legislative assistance. When they could vote on the legislature as a whole, they voted very differently than they voted on individual legislators. On your logic, Russia was getting the government its people wanted.

**QUESTION:** How important were World War II and the War Production Board in convincing the public of the power of government to “do good”? Second, and I'll tie them together, how important was inflation in the seventies for the success of Reagan? Therefore, are ideas not that important?

**FRIEDMAN:** On the first issue, I believe the Great Depression was the overwhelmingly important event that persuaded the public that government could do good. The United States was able for 150 years or more to maintain a system that was predominantly private, in which total government spending—federal, state, and local—until 1930 was never more than about 10 or 12 percent of national income; federal spending in 1929 was 3 percent of national income. The United States was able to maintain that because the public at large was persuaded that government was the problem and that the private enterprise system was the way to go. I may say they were not persuaded of that by the intellectuals because the intellectuals—at least by the turn of the century—were predominantly socialists.

It is interesting to ask how countries become free. Why was it that the United States did not get involved in these socialist measures much earlier? Accident played a large part. In the 1830s, to go back to the early history of our country, state after state did get involved. The states owned banks—the Bank of Ohio, the Bank of Indiana. The states constructed turnpikes and canals and were engaged in manufacturing businesses. Then came the panic of 1837, and a major depression in which most of these state enterprises went broke, and the public at large became persuaded that the states could not run those things. I believe that is one reason why private enterprise flourished for the next century.

In the 1930s, it went the other way. It is ironic that the Great Depression was produced by government but was blamed on the private enterprise system. The Federal Reserve System explained in its 1933 annual report how much worse things would have been if the Federal Reserve had not behaved so well, yet the Federal Reserve was the chief culprit in making the depression as deep as it was. So the government produced the depression,

the private enterprise system got blamed for it, and there was a tremendous change in attitudes. When you say ideas are not important, that change in attitudes would not have been possible if the groundwork had not been laid by the socialist intellectuals in the 1920s. It is interesting to note that every economic plank of the 1928 Socialist party platform has by now been either wholly or partly enacted.

So ideas are important, but they take a long time and are not important in and of themselves. Something else has to come along that provides a fertile ground for those ideas. I mentioned the adoption of floating exchange rates in 1971; it was the same thing. Many economists during the previous twenty years had been talking about how much more desirable floating exchange rates would be, but they never got anywhere until gold started leaving the United States and Nixon closed the gold window because there was nothing else he could do. All of a sudden you had a crisis. What happened then was determined by the ideas that had already been explored and developed.

I do believe that ideas have an influence, although I also believe that the accelerating inflation of the seventies was important in enabling Reagan to be elected. However, the accelerating inflation was even more important in causing our present difficulties because of what it did to the tax system through bracket creep. I once attended a breakfast with Senator Long when he was chairman of the Senate Finance Committee; I remember very well his saying, "You know we never could have adopted by legislation the rates of tax we now impose on low and middle incomes. When those rates were adopted, they were on high-income people, but inflation made them applicable to low-income people." I believe that was an important effect of inflation on expanding government.

**QUESTION:** I think your work was very influential in convincing a lot of people that the roots of the inflation of the seventies were fighting the Vietnam War, making the Great Society, and doing it by creating money. In the 1980s, it looks as if we financed the cold war and continued the Great Society, but, instead of monetary financing, we did it with debt. How serious do you think the debt overhang is?

**FRIEDMAN:** I do not believe the debt overhang is the real problem. I believe the real problem is government spending. Government debt is a problem in the long run. Obviously, if the government continues to run deficits for a long period of time, it will sooner or later have to monetize them. So I do not deny that is a real problem. However, it is a mistake to concentrate on the debt as such instead of concentrating on why the debt was created, which is by excessive government spending. What is called a deficit is a form of taxation. It is a very bad form of taxation, but it is a form of taxation. However, it does have some good features. The deficit is the only thing that is keeping spending from going up still faster. Moreover, I do not know of any component of government expenditures that does less harm than the payment of interest. If interest rates tomorrow were zero so that government did not have to pay any interest, what would happen to the money it saved? Do you think it would reduce the deficit? You are kidding yourself.

**QUESTION:** Can you tell us—I don't happen to know—under what circumstances you first said the famous words "There's no such thing as a free lunch"?

**FRIEDMAN:** Peggy Noonan, who has written some very good words that you have all heard such as "Read my lips"—it's too bad she wasn't able to enforce the words she wrote—asked me if I could remember when I first used the words "There's no such thing as a free lunch." The answer is no, I don't remember. However, I am not really the originator of that statement. A colleague of mine at the Hoover Institution traced it back to some time in the nineteenth century in the parlance of saloons: If you bought a beer, they would give you a free lunch. That's where the phrase originally came from. It was made popular by Robert Heinlein, a science fiction writer who wrote a wonderful novel called *The Moon Is a Harsh Mistress*. The novel's setting is a settlement on the moon that revolts using the motto TANSTAAFL (There ain't no such thing as a free lunch). I may say that the revolution was a success because of a wonderful near-human computer.

**QUESTION:** I hope you will not think this question a digression; I would submit that it is central to the debate. If there is one thing that distinguishes our society as an economy from all others, it is the diversity of our population. I would like to know specifically what steps you would recommend to turn the diversity of our

population into a competitive advantage in the global economy.

**FRIEDMAN:** I do not believe in the concept of a competitive advantage in the global economy. We are not harmed by other people improving their standard of living relative to ours; we are helped. The notion of competitiveness, of which so much is spoken, makes sense for an individual enterprise but it does not make any sense for a country. Poor countries can trade with rich countries. A country that is inefficient in almost everything can still trade with one that is very efficient. The economists have a name for that: what determines things is comparative advantage, not absolute advantage. Almost all talk about national competitiveness rests on the fallacy of not considering what determines the exchange rate. It assumes a given exchange rate and then all sorts of things follow that in practice do not occur because, if the exchange rate is inappropriate, it cannot be maintained.

Let me return to your basic and more important question: how can we take advantage of the diversity of our population in order to maintain the well-being of all of us? The answer is straightforward: by reducing the role of government. A book just recently published by the Manhattan Institute is Linda Chavez's excellent *Out of the Barrio*, which gives another example of how government creates problems, in this case, through bilingualism. She discusses that very effectively, and I recommend her book to all of you. Bilingualism is another example of the people involved not wanting what is imposed on them. How did the Americans absorb the immigrants in the nineteenth century? How did they absorb my mother and father, who came to this country at the ages of fourteen and sixteen, respectively, with nothing but their hands? I assure you that there was no welfare office they could go to when they came. There was no governmental relief, but they were able to make their way because there were no barriers to their doing so. I talked about taxicabs in New York. One of the most important programs you could have for the disadvantaged in New York would be to eliminate the limitations on cab licenses. Look at the city of Washington, where for a long time there were essentially no limits; the cabdrivers are far more heterogeneous in Washington, D.C., than they are in New York.

The great virtue of a free market system is that it does not care what color people are; it does not care what their religion is; it only cares whether they can produce something you want to buy. It is the most effective system we have discovered to enable people who hate one another to deal with one another and help one another.

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## Notes

- \* *Adapted from the 1991 Wriston Lecture presented in New York City on 19 November 1991 under the auspices of the Manhattan Institute.*
- 1 E. J. Dionne, "Why Americans Hate Politics," *Freedom Review*, September–October 1991, p. 45.
- 2 Charles Murray, *Losing Ground: American Social Policy, 1950–1980* (New York: Basic, 1984).
- 3 *As recent books by Huber and Olson amply demonstrate, the government is not performing its function of adjudicating disputes very well. See Peter W. Huber, Liability: The Legal Revolution and Its Consequences* (New York: Basic, 1988), and *Galileo's Revenge* (New York: Basic, 1991); Walter K. Olson, *The Litigation Explosion* (New York: Dutton, 1991).
- 4 Quotations from James L. Payne, "Why Congress Can't Kick the Tax and Spend Habit," *Imprimis* (Hillsdale College) 20, no. 5 (May 1991).
- 5 *Government spending at all levels, federal, state, and local, in 1992 was about 43 percent of the national income. In addition, mandated expenditures plus costs imposed by regulations, tariffs, quotas, and so on in effect commandeer a healthy slice of the 57 percent nominally spent by the private sector. I conclude that the private sector controls "less than 50 percent of the country's total resources."*

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## **Libertarian? Why Be**

*By Tom G. Palmer*

*In a book titled Why Liberty, it makes sense to dive right in with a straightforward explanation of what libertarianism is about and why people should embrace liberty as a principle of social order.*

As you go through life, chances are almost 100 percent that you act like a libertarian. You might ask what it means to “act like a libertarian.” It’s not that complicated. You don’t hit other people when their behavior displeases you. You don’t take their stuff. You don’t lie to them to trick them into letting you take their stuff, or defraud them, or knowingly give them directions that cause them to drive off a bridge. You’re just not that kind of person.

You respect other people. You respect their rights. You might sometimes feel like smacking someone in the face for saying something really offensive, but your better judgment prevails and you walk away, or answer words with words. You’re a civilized person.

Congratulations. You’ve internalized the basic principles of libertarianism. You live your life and exercise your own freedom with respect for the freedom and rights of others. You behave as a libertarian.

Libertarians believe in the voluntary principle, rather than force. And more than likely, you do follow that principle in your everyday dealings with other people.

But hold on, isn’t libertarianism a political philosophy, a set of ideas about government and policy? It is. So why isn’t it rooted in what government should be doing, rather than in what individuals should be doing? Ah, here’s the major difference between libertarianism and other ideas about politics. Libertarians don’t believe that government is magical. It’s made up of people. They’re just like us. There’s no special race of people—call them kings, emperors, wizards, Magi, presidents, legislators, or prime ministers—with super-normal intelligence, wisdom, or powers that elevate them above normal people. Rulers, even when democratically elected, are no more “public spirited,” and sometimes far less, than average people. There’s no evidence that they’re any less selfish than other people or any more benevolent. And there’s no evidence that they’re more concerned with right or wrong than average people. They’re like us.

But hold on again, political rulers do exercise powers that other people don’t have. They exercise the powers to arrest people, to start wars and kill people, to decree what other people may or may not read, whether and how they may worship God, whom they may marry, what they may or may not eat, drink, or smoke, what they may or may not do for a living, where they may live, where they must attend school, whether they may travel, what goods and services they may provide to others and what prices they may charge, and a lot more. They certainly exercise powers the rest of us don’t have.

Precisely. They wield force, and they do it as a matter of course—it’s what distinguishes government from other institutions. But they have powers of perception, insight, or foresight no greater than the rest of us, nor standards of right and wrong that are higher or more rigorous than the average. Some may be smarter than average, others perhaps even less intelligent, but there’s no evidence that they really exceed the rest of humanity in such a way that they should be considered elevated above us, as our natural masters.

Why do they exercise force, while the rest of us rely on voluntary persuasion when we deal with others? The holders of political power aren't angels or gods, so why do they claim the authority to exercise powers that none among us would claim the right to exercise? Why should we submit to their exercise of force? If I have no authority to burst into your home to tell you what you should eat, or what you should smoke, or when you should go to bed, or with whom, why should a politician, or a bureaucrat, or an army general, or a king, or a governor have that authority?

## Did We Consent to Be Coerced?

But wait, we are the government, aren't we? At least, in a democracy, as some clever philosophers, such as Jean-Jacques Rousseau, have argued, we consent to whatever the government tells us to do or not to do. The government carries out the "general will" of the people and that means that it's exercising our very own will. So when the government uses force against us, it's just forcing us to be free, by making us follow our own wills, and not what we happen to think we will. As Rousseau argued in his extraordinarily influential book *The Social Contract*, "the general will is always rightful and tends to the public good; but it does not follow that the deliberations of the people are always equally right. . . . There is often a great difference between the will of all [what all individuals want] and the general will."

In his theory, Rousseau combined force with freedom, for, as he argued, "whoever refuses to obey the general will shall be constrained to do so by the whole body, which means nothing other than that he shall be forced to be free." After all, you don't know what you really want until the state has decided what you want, so when you think you want to do something, but are stopped by the police and imprisoned, you're being made free. You were deluded into thinking you wanted to disobey the state, and the police are merely helping you to choose what you really wanted, but were too stupid, ignorant, foolish, or weak to know that you wanted.

Now that may be getting overly metaphysical, so let's dial back a bit and think about what is being argued by advocates of majority rule. Somehow, through elections or some other procedures, we generate the "will of the people," even though some of the people may not agree (at least the ones who lost the vote didn't agree with the majority). Those people will be coerced to go along with the majority, say, by not consuming alcohol or marijuana or by being made to give up their money to pay for things they oppose, such as foreign wars or subsidies to influential economic interests. A majority voted for the law banning X or requiring Y, or for candidates who pledged to ban X or require Y, and so now we know the "will of the people." And if someone still drinks a beer or smokes a joint or hides his or her income, that person is somehow not following the will of the people, to which he or she has consented. Let's unpack that a bit more.

Let's say a prohibitionist law was passed into effect and you had voted for the prohibitionist law or candidate. Some would say that you consented to be bound by the outcome. And if you voted against the prohibitionist law or for an antiprohibitionist candidate? Well, they would add, you participated in the procedure by which the decision was made, so you consented to be bound by the outcome. And if you didn't vote, or didn't even have an opinion? Well, they would add, you surely can't complain now, since you forfeited your chance to influence the outcome by not voting! As the English libertarian Herbert Spencer observed a long time ago of such arguments, "curiously enough, it seems that he gave his consent in whatever way he acted—whether he said yes, whether he said no, or whether he remained neuter! A rather awkward doctrine this."<sup>3</sup> Awkward, indeed. If you always "consent," regardless of what you actually say or do, then the term "consent" means nothing, because it means "non-consent," as well as "consent." When that is the case, a word has been emptied of meaning.

The fact is that a person who's arrested for smoking marijuana in his or her own house didn't in any meaningful sense "consent" to being arrested. That's why the police carry sticks and guns—to threaten people with violence. But maybe those powers are delegated to the government by the people, so if the people could choose not to smoke marijuana, then they could choose to arrest themselves. But if you don't have the authority to break down your neighbor's door and go in with guns drawn to drag them out and put them in a cage, how can you

delegate that power to someone else? So we're back with the magical claim that your pot-smoking neighbors authorized their own arrest, regardless of what opinion they expressed, or how they behaved.

But maybe just being alive in a country means you've consented to everything the government demands of you. After all, if you come into my house, you certainly agree to be bound by my rules. But a "country" isn't quite like "my house." I own my house, but I don't "own" my country. It's made up of a lot of people who have their own ideas about how to live their lives. And they don't belong to me. That's really the most important realization of mature people: other people don't belong to me. They have their own lives to lead.

You, as a mature person, understand that and your actions reflect it. You don't burst into the homes of others to tell them how to live. You don't steal their stuff when you think you have a better use for it. You don't hit, punch, stab, or shoot people when they disagree with you, even about matters of the greatest importance.

So, if you already act like a libertarian, maybe you should be one.

## **What Does It Mean to Be a Libertarian?**

It means not only refraining from harming the rights of other people, namely, respecting the rules of justice with regards to other people, but also equipping yourself mentally to understand what it means for people to have rights, how rights create the foundation for peaceful social cooperation, and how voluntary societies work. It means standing up, not only for your own freedom, but for the freedom of other people. A great Brazilian thinker dedicated his life to the abolition of the greatest violation of liberty imaginable: slavery. His name was Joaquim Nabuco and he stated the libertarian creed that guided his own life:

*Educate your children, educate yourselves, in the love for the freedom of others, for only in this way will your own freedom not be a gratuitous gift from fate. You will be aware of its worth and will have the courage to defend it.*

Being a libertarian means caring about freedom for everyone. It means respecting the rights of other people, even when we find their actions or words disagreeable. It means refraining from the use of force and instead pursuing one's goals, whether personal happiness, or the improvement of the condition of humanity, or knowledge, or all of those, or something else, exclusively through voluntary and peaceful action, whether in the "capitalist" world of free enterprise and exchange, or in science, philanthropy, art, love, friendship, or any of the other human endeavors framed by the rules of voluntary cooperation.

## **Skepticism about Power and Authority**

Being a libertarian means understanding that rights are secure only when power is limited. Rights require the rule of law. John Locke, the English radical philosopher and activist, helped to lay the foundations for the modern world. He argued against the advocates of "absolutism," those who believed that the rulers should exercise unlimited powers. Those who defended absolute power sneered that allowing people their "liberty" would mean everyone just doing whatever he or she "lists," that is, whatever he or she was inclined to do, as a matter of whim and without regard to consequences or the rights of others.

Locke responded that what the party of liberty sought was "a Liberty to dispose, and order, as he lists, his Person, Actions, Possessions, and his whole Property, within the Allowance of those Laws under which he is; and therein not to be subject to the arbitrary Will of another, but freely follow his own." One has the right to do whatever one chooses with what is one's own—to freely follow one's own will, rather than the commands of another, so long as one respects the equal rights of others.

The philosopher Michael Huemer grounds libertarianism in what he calls "common sense morality," which

is comprised of three elements: “A nonaggression principle” that forbids individuals from attacking, killing, stealing from, or defrauding one another; “A recognition of the coercive nature of government . . . which is supported by credible threats of physical force directed against those who would disobey the state”; and “A skepticism of political authority . . . that the state may not do what it would be wrong for any nongovernmental person or organization to do.” As he notes, “it is the notion of authority that forms the true locus of dispute between libertarianism and other political philosophies.”

## **Liberty, Prosperity, and Order**

Being a libertarian means understanding how wealth is created; not by politicians giving commands, but by free people working together, inventing, creating, saving, investing, buying and selling, all based on respect for the property, that is, the rights, of others. “Property” isn’t limited just to “my stuff,” as one might use the term today, but encompasses the rights to “Life, Liberty, and Estate,” to use Locke’s famous phrase. As James Madison, the principal author of the US Constitution argued, “[A]s a man is said to have a right to his property, he may be equally said to have a property in his rights.”

Love and affection may be enough for small groups to cooperate peacefully and efficiently, but libertarians understand that they aren’t sufficient to create peace and cooperation among large groups of people who don’t interact face-to-face. Libertarians believe in the rule of law, meaning rules that are applicable to everyone and not bent or stretched this way or that based on the preferences of people with power. The rules of free societies are not crafted to benefit this or that person or group; they respect the rights of every human being, regardless of gender, color, religion, language, family, or other accidental feature.

The rules of property are among the most important foundations for voluntary cooperation among strangers. Property isn’t just what you can hold in your hands; it’s the complex relationships of rights and obligations by which people who are unknown to each other can guide their actions and that allow them to live peacefully, to cooperate in firms and associations, and to trade for mutual advantage, because they know the baseline—what’s mine and what’s yours—from which each may act to improve his or her condition. Well-defined, legally secure, and transferrable property rights form the foundation for voluntary cooperation, widespread prosperity, progress, and peace. That includes not only the things you can hold in your hand or stand on, but shares of complicated business enterprises that produce any of the uncountable things that require the cooperation of thousands and thousands of people, whether medicines or aircraft or pineapples delivered to your table in winter.

The libertarian law professor Richard Epstein titled one of his best books *Simple Rules for a Complex World*. The title brilliantly captures his theme, that you don’t need complex rules to generate complex forms of order. Simple rules will do. In fact, simple, understandable, and stable rules tend to generate order, whereas complicated, incomprehensible, and fluctuating rules tend to generate chaos.

Well-defined property and the right to trade on mutually agreeable terms make possible large-scale cooperation without coercion. Free markets incorporate more, not less, order and foresight than coercively directed or commanded societies. The spontaneous order of markets is far more abstract, complex, and farsighted than all the five-year plans or economic interventions ever devised. Institutions such as prices, which emerge when people are free to exchange, help to guide resources to their most highly valued uses, without vesting coercive power in a bureaucracy. Coercively imposed “planning” is, in fact, the opposite of planning; it is a disruption of the continuous process of plan coordination embodied in freely developed social institutions.

Order emerges spontaneously from the free interactions of people who are secure in the enjoyment of their rights. That applies not only to economic order, but also to language, social mores, customs, science, and even fields such as fashion and style. To use force in the attempt to subject any or all of those areas to the arbitrary will of a ruler, a dictator, a president, a committee, a legislature, or a bureaucracy is to replace order with chaos, freedom with force, and harmony with discord. Libertarians believe in and work for a world at peace,

in which the rights of each and every unique human being are recognized and respected, a world in which widely shared prosperity is generated by voluntary cooperation, based on a legal system that protects rights and facilitates mutually beneficial exchanges. Libertarians believe in and work for limits on power, for the subjection of heretofore arbitrary power to the rule of law, for the limitation and minimization of violence of all sorts. Libertarians believe in and stand up for the freedom to think, to work, to behave in any way one chooses, so long as one respects the equal freedom of others. Libertarians believe in and work for a world in which each person is free to pursue her or his own happiness, without requiring anyone else's permission to be, to act, to live.

### **So . . . Why Be Libertarian?**

Why be libertarian? It may sound glib, but a reasonable response is, Why not? Just as the burden of proof is on the one who accuses another of a crime, not on the one accused, the burden of proof is on the one who would deny liberty to another person, not the one who would exercise liberty. Someone who wishes to sing a song or bake a cake should not have to begin by begging permission from all the others in the world to be allowed to sing or bake. Nor should she or he have to rebut all possible reasons against singing or baking. If she is to be forbidden from singing or baking, the one who seeks to forbid should offer a good reason why she should not be allowed to do so. The burden of proof is on the forbider. And it may be a burden that could be met, if, for example, the singing were to be so loud it would make it impossible for others to sleep or the baking would generate so many sparks it would burn down the homes of the neighbors. Those would be good reasons for forbidding the singing or the baking. The presumption, however, is for liberty, and not for the exercise of power to restrict liberty.

A libertarian is someone who believes in the presumption of liberty. And with that simple presumption, when realized in practice, comes a world in which different people can realize their own forms of happiness in their own ways, in which people can trade freely to mutual advantage, and disagreements are resolved with words, and not with clubs. It would not be a perfect world, but it would be a world worth fighting for.

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## Chapter 2 Rule of Law

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# Stanford Encyclopedia of Philosophy

## The Rule of Law

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The phrase “the Rule of Law” has to be distinguished from the phrase “a rule of law”. The latter phrase is used to designate some particular legal rule like the rule against perpetuities or the rule that says we have to file our taxes by a certain date. Those are rules of law, but the Rule of Law is one of the ideals of our political morality and it refers to the ascendancy of law as such and of the institutions of the legal system in a system of governance.

The Rule of Law comprises a number of principles of a formal and procedural character, addressing the way in which a community is governed. The formal principles concern the generality, clarity, publicity, stability, and prospectivity of the norms that govern a society. The procedural principles concern the processes by which these norms are administered, and the institutions—like courts and an independent judiciary that their administration requires. On some accounts, the Rule of Law also comprises certain substantive ideals like a presumption of liberty and respect for private property rights. But these are much more controversial (see section 1 below). And indeed as we shall see there is a great deal of controversy about what the Rule of Law requires.

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## 1. One Ideal among Others

The Rule of Law is one ideal in an array of values that dominates liberal political morality: others include democracy, human rights, social justice, and economic freedom. The plurality of these values seems to indicate that there are multiple ways in which social and political systems can be evaluated, and these do not necessarily fit tidily together. Some legal philosophers (e.g., Raz 1977) insist, as a matter of analytic clarity, that the Rule of Law in particular must be distinguished from democracy, human rights, and social justice. They confine the focus of the Rule of Law to formal and procedural aspects of governmental institutions, without regard to the content of the policies they implement. But the point is controversial. As we shall see, some substantive accounts have been developed, which amount in effect to the integration of the Rule of Law with some of these other ideals.

## 2. The Contestedness of the Rule of Law

The most important demand of the Rule of Law is that people in positions of authority should exercise their power within a constraining framework of well-established public norms rather than in an arbitrary, ad hoc, or purely discretionary manner on the basis of their own preferences or ideology. It insists that the government should operate within a framework of law in everything it does, and that it should be accountable through law when there is a suggestion of unauthorized action by those in power.

But the Rule of Law is not just about government. It requires also that citizens should respect and comply with legal norms, even when they disagree with them. When their interests conflict with others' they should accept legal determinations of what their rights and duties are. Also, the law should be the same for everyone, so that no one is above the law, and everyone has access to the law's protection. The requirement of access is particularly important, in two senses. First, law should be epistemically accessible: it should be a body of norms promulgated as public knowledge so that people can study it, internalize it, figure out what it requires of them, and use it as a framework for their plans and expectations and for settling their disputes with others. Secondly, legal institutions and their procedures should be available to ordinary people to uphold their rights, settle their disputes, and protect them against abuses of public and private power. All of this in turn requires the independence of the judiciary, the accountability of government officials, the transparency of public business, and the integrity of legal procedures.

Beyond these generalities, it is controversial what the Rule of Law requires. This is partly because the Rule of Law is a working political idea, as much the property of ordinary citizens, lawyers, activists and politicians as of the jurists and philosophers who study it. The features that ordinary people call attention to are not necessarily the features that legal philosophers have emphasized in their academic conceptions. Legal philosophers tend to emphasize formal elements of the Rule of Law such as rule by general norms (rather than particular decrees); rule by norms laid down in advance (rather than by retrospective enactments); rule by norms that are made public (not hidden away in the closets of the administration); and rule by clear and determinate legal norms (norms whose meaning is not so vague or contestable as to leave those who are subject to them at the mercy of official discretion). But these are not necessarily what ordinary people have in mind when they call for the Rule of Law; they often have in mind the absence of corruption, the independence of the judiciary, and a presumption in favor of liberty.

Contestation about what the Rule of Law requires is partly a product of the fact that law itself comprises many things, and people privilege different aspects of a legal system. For some the common law is the epitome of legality; for others, the Rule of Law connotes the impartial application of a clearly drafted statute; for others

still the Rule of Law is epitomized by a stable constitution that has been embedded for centuries in the politics of a country. When Aristotle (Politics 1287b), contrasted the Rule of Law with the rule of men, he ventured the opinion that “a man may be a safer ruler than the written law, but not safer than the customary law”. In our own era, F.A. Hayek (1973: 72 ff.) has been at pains to distinguish the rule of law from the rule of legislation, identifying the former with something more like the evolutionary development of the common law, less

constructive and less susceptible to deliberate control than the enactment of a statute. There is also continual debate about the relation between law and the mechanisms of government. For some, official discretion is incompatible with the Rule of Law; for others it depends on how the discretion is framed and authorized. For some the final determination of a court amounts to the Rule of Law; for others, aware of the politics of the judiciary, rule by courts (particularly a politically divided court) is as much an instance of the rule of men as the decision of any other junta or committee (see Waldron 2002 for a full account of these controversies).

The fact that the Rule of Law is a controversial idea does not stop various organizations from trying to measure its application in different societies. Groups like the World Justice Project concoct criteria and indexes of the Rule of Law, ranking the nations of the earth in this regard. Countries like Norway and New Zealand rank at the top of the Rule-of-Law league and countries like Zimbabwe and Afghanistan at the bottom (see Other Internet Resources). The criteria can be hardly be described as rigorous. But people in business value these rankings as part of their estimation of country risk for foreign investments (see Barro 2000: 215ff.)

### 3. History of the Rule of Law

The Rule of Law has been an important ideal in our political tradition for millennia, and it is impossible to grasp and evaluate modern understandings of it without fathoming that historical heritage. The heritage of argument about the Rule of Law begins with Aristotle (c. 350 BC); it proceeds with medieval theorists like Sir John Fortescue (1471), who sought to distinguish lawful from despotic forms of kingship; it goes on through the early modern period in the work of John Locke (1689), James Harrington (1656), and (oddly enough) Niccolò Machiavelli (1517); in the European Enlightenment in the writings of Montesquieu (1748) and others; in American constitutionalism in *The Federalist Papers* and (and even more forcefully) in the writings of the Federalists’ opponents; and, in the modern era, in Britain in the writings of A. V. Dicey (1885), F.A. Hayek (1944, 1960, and 1973), Michael Oakeshott (1983), Joseph Raz (1977), and John Finnis (1980), and in America in the writings of Lon Fuller (1964), Ronald Dworkin (1985), and John Rawls (1971). Because the heritage of this idea is so much a part of its modern application, a few highlights need to be mentioned.

#### 3.1 Aristotle

The work of Aristotle on the Rule of Law is still influential. Though he formulated the question of whether it was better to be ruled by the best man or the best laws, he approached that question realistically, noting that it depended not only on the type of law one was considering but also on the type of regime that enacted and administered the law in question (Politics 1282b)

But Aristotle did maintain that law as such had certain advantages as a mode of governance. Laws are laid down in general terms, well in advance of the particular cases to which they may be applied. Moreover,

laws are made after long consideration, whereas decisions in the courts are given at short notice, which makes it hard for those who try the case to satisfy the claims of justice. (Rhetoric 1354b)

There were, he conceded, some cases so fraught with difficulty that they could not be handled by general rules— cases that required the focused insight of particular judges; he used the term *epieikeia* (sometimes

translated as equity). But these cases should be kept to a minimum and legal training and legal institutions should continue to play a role in the way they are disposed of. Aristotle's discussion of the general desirability of rules and his treatment of *epieikeia* continue to influence modern jurisprudence (see Scalia 1989 and Solum 1994).

### 3.2 John Locke

John Locke in the second of his *Two Treatises of Government* (1689) emphasized the importance of governance through "established standing Laws, promulgated and known to the People". He contrasted this with rule by "extemporary Arbitrary Decrees" (Locke 1689: §§135–7). Now the term "arbitrary" can mean many different things. Sometimes it means "oppressive". But when Locke distinguished the rule of settled standing laws from

arbitrary decrees, it was not the oppressive sense of "arbitrary" that he had in mind. In this context, something is arbitrary because it is extemporary: there is no notice of it; the ruler just figures it out as he goes along. It is the arbitrariness of unpredictability, not knowing what you can rely on, being subject, as Locke put it (1689: §137), to someone's

sudden thoughts, or unrestrain'd, and till that moment unknown Wills without having any measures set down which may guide and justify their actions.

In Locke's story, one of the things that people wanted to get away from in the state of nature was being subject to others' incalculable opinions—even when those others were thinking as hard and rigorously as they could about natural law. Your thinking might be different from my thinking, and it might turn out that your view of the relation between your interests and my interests and your property and my interests might be quite different from my view of the matter and quite different again from the view of the next person I came across. The whole point of moving from a state of nature to a situation of positive law was to introduce some predictability into this picture.

Unfortunately, having laid down this requirement, Locke complicated matters by adding a substantive principle of respect for private property: "The Supream Power cannot take from any Man any part of his Property without his own consent", and any law that purports to do so is of no validity (Locke 1689: §138). But then there is a difficulty. Though Locke gave us his own theory of prepolitical property rights—the so-called "Labor Theory" in Chapter Five of the *Second Treatise*—it was itself far from uncontroversial. People in our day, as in his, disagree about the rival claims of labor and occupancy; they disagree about the background of common ownership; and they disagree about how much anyone may appropriate and how sensitive his appropriation must be to the needs of others. We disagree about all that—in ways that were made evident, for example, in the debates about the Lockean theory of Robert Nozick (1974). And Locke and his contemporaries disagreed too; Locke knew, and signaled in a number of places that he knew just how controversial all this was (Tully 1980: 64 ff; for Locke's awareness of the controversies, see Waldron 1999: 74–5).

By insisting therefore that positive law is subject to this substantive constraint, Locke subjected the legislature to a discipline of uncertainty. Because the natural right of property was controversial, so the administration of any substantive constraint along these lines was bound to be controversial. And because the substantive constraint was supposed to affect the validity of positive law (Locke 1689: §135), the effect would be that some people—let's say those who disagreed with Locke about the claims of labor over occupancy—would disagree with him about which positive rules of property are valid and which are not.

### 3.3 Montesquieu

Montesquieu's work on the Rule of Law is best known in connection with his insistence on the separation of powers—particularly the separation of judicial power from executive and legislative authority (see Montesquieu 1748: Bk. 11, Ch. 6). The judiciary has to be able to do its work as the mouthpiece of the laws without being distracted from fresh decisions made in the course of its considerations by legislators and policy-makers.

Montesquieu's views on the separation of powers had a profound effect on the American founding, particularly in the work of James Madison (Federalist Papers, §47).

Elsewhere in *The Spirit of the Laws*, Montesquieu developed a theory of the value of legalism. Noting that despotic governments tend to have very simple laws which they administered peremptorily with little respect for procedural delicacy, Montesquieu argued that legal and procedural complexity tended to be associated with respect for people's dignity. He associated this sort of respect with a monarchy ruling by law, as opposed to despotism:

In monarchies, the administering of a justice that hands down decisions not only about life and goods, but also about honor, requires scrupulous inquiries. The fastidiousness of the judge grows as more issues are deposited with him, and as he pronounces upon greater interests. (Montesquieu 1748: Bk. VI, ch. 1, p. 72)

This emphasis on the value of complexity—the way in which complicated laws, particularly laws of property, provide hedges beneath which people can find shelter from the intrusive demands of power—has continued to fascinate modern theorists of the rule of law (e.g., Thompson 1975: 258–69).

In the modern debate we also hear echoes of the doctrine propounded in *The Spirit of the Laws* (1748: Bk. 26, ch. 15, p.510) that “things that depend on principles of civil right must not be ruled by principles of political right”. “Civil right”—Montesquieu's word for what we call private law—is, he said, “the palladium of property”, and it should be allowed to operate according to its own logic, not burdened with the principles of public or political regulation. A failure of the Rule of Law in this regard is likely to lead to the impoverishment of an economy, as expectations collapse, and owners' incentives for production and enterprise are undermined (Montesquieu 1748: Bk. V, ch. 14, p. 61).

### 3.4 Dicey

Writing in the second half of the 19th century, Albert Venn Dicey bemoaned what he saw as a decline in respect for the Rule of Law in England. The Rule of Law used to be a proud tradition that distinguished governance in England both from the executive domination of *droit administratif* in France and also from the fatuous and abstract certainties of paper constitutions in countries like Belgium etc. For Dicey, the key to the Rule of Law was legal equality:

[W]ith us no man is above the law [and] every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals. (1992 [1885]: 114)

Attractive as this is in the abstract, it exhibited a certain naivety so far as the legal position of state officials was concerned. Officials are and often need to be treated differently in law than the ordinary citizen: they need certain extra powers and they need to be hemmed in by extra restrictions, so that they can be held accountable for the actions they perform in the name of the community. For the ordinary person, the Rule of Law generates a presumption in favor of liberty: everything which is not expressly prohibited is permitted. But for the state and its officials, we may want to work with the contrary presumption: the state

may act only under express legal authorization.

Dicey had a knack of expressing the Rule of Law in terms of principles whose eloquent formulations belied their deeper difficulties. His first principle of the Rule of Law was:

[N]o man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary Courts of the land. (Dicey 1992 [1885]: 110)

This seems fine if we are talking about the imposition of criminal sanctions. But “made to suffer in ... goods” can also be read to connote the imposition of restrictions on the use of personal or corporate property, or the giving or withholding of licenses, grants, and subsidies. It can be read as precluding any form of discretionary regulation. Dicey was indeed inclined to disparage all administrative discretion, particularly where it seemed to be superseding what had traditionally been regarded as judicial functions. But can we really do without discretion in modern governance? Some modern scholars of administrative law have denounced Dicey’s account as an “extravagant”, “absurd”, and pernicious version of the Rule of Law (Davis 1969: 27–32).

### 3.5 Hayek

F.A. Hayek was by training an economist, but he also nurtured an interest in the relation between legal structures and forms of national economy. Hayek’s work on the Rule of Law proceeded in two phases: (1) from his wartime book *The Road to Serfdom* (1944) through to *The Constitution of Liberty* (Hayek 1960); and (2) the somewhat different account presented in his trilogy, *Law, Legislation and Liberty* (1973), an account which is more congenial to the spirit of common law and hostile to the role of legislation.

- (1) Governance during wartime necessarily required total mobilization and management of all of the society’s manpower and resources. Hayek warned in 1944 against the retention of anything like this mode of administration in peacetime. He made an eloquent argument that in normal times a society need not be managed but should be governed—and its people largely left to their own devices—within a framework of general rules laid down in advance. These rules would operate impersonally to protect people from one another, not being aimed at any person or situation in particular and not being dependent for their operation on any expectation on the part of government as to what the particular effects of their application would be. But this lack of particular knowledge on the part of the government would be offset by the fact that rules would provide a framework of predictability for ordinary people and businesses. They would know that they would not be molested by the state, provided they operated within the parameters of the general and impersonal rules. Human freedom, on Hayek’s account, did not preclude all state action; but it does require that state action be calculable.
- (2) In the 1970s, Hayek began to rethink all this. The attention was still on the implications of Rule of Law for liberty. But now Hayek began to wonder whether the texts of clear general legislated rules would really provide an appropriate framework for freedom. It was, he said, a mistake to think that “by confining the judge to the application of already articulated rules we will increase the predictability of his decisions”. Articulated rules are “often a very imperfect formulation of principles which people can better honour in action than express in words” (Hayek 1973: 118). He favored something more like a common law model of predictability, with principles and solutions emerging from a series of judicial decisions in an almost evolutionary way.[1] The evolution of principles that distinguished themselves by their reasonableness was superior, Hayek thought, to the deliberate imposition of rules by a legislator. According to Hayek, the legislative mentality is inherently managerial; it is oriented in the first instance to the organization of the state’s own administrative apparatus; and its extension into the realm of public policy generally means an outward projection of that sort of managerial mentality with frightful consequences for liberty and markets.

### 3.6 Fuller

Lon Fuller believed that government in accordance with the forms and procedures of law had a distinctive value that could help close the gap of separation between positive law, on the one hand, and morality and justice on the other. The conventional wisdom of the legal positivists held that laws could be impeccably drafted and even-handedly administered and still be hideously unjust: antebellum slave law in the United States and apartheid law in South Africa were often cited as examples. But Fuller believed, as a matter of political psychology, that there would be reluctance to use the forms of law—general and public norms—to embody and inscribe injustice. He believed that “coherence and goodness [had] more affinity than coherence and evil”, he thought bad things happened in the dark as opposed to the sunlight of legality, and he maintained that “even in the most perverted regimes there is a certain hesitancy about writing cruelties, intolerances, and inhumanities into law” (Fuller 1958: 636–7).

Fuller acknowledged that this link between legality and justice was tentative. It was certainly controversial. But whether this connection held or not, he also wanted to insist that the complete absence of respect for formal criteria of legality might deprive a system of power of its status as law:

When a system calling itself law is predicated upon a general disregard by judges of the terms of the laws they purport to enforce, when this system habitually cures its legal irregularities, even the grossest, by retroactive statutes, when it has only to resort to forays of terror in the streets, which no one dares challenge, in order to escape even those scant restraints imposed by the pretense of legality—when all these things have become true of a dictatorship, it is not hard for me, at least, to deny to it the name of law. (Fuller 1958: 660)

In his 1964 book *The Morality of Law*, Fuller formulated principles of what he called “the inner morality of law”—principles requiring that laws be general, public, prospective, coherent, clear, stable, and practicable—and he argued that these were indispensable to law-making. Reviewing Fuller’s book, H.L.A. Hart (1965) asked in what sense these principles could be called a “morality”. They seemed to be more like instrumental principles for effective legislation, and on Hart’s view, they were only as moral as the enterprise they made possible.

Fuller responded by denying that the significance of his eight principles was purely instrumental. They also constituted a morality of respect for the freedom and dignity of the agents addressed by the law: what they made possible was a mode of governance that worked through ordinary human agency rather than short-circuiting it through manipulation or terror. This thesis was separate from the connection between law and morality intimated in Fuller 1958. But the two accounts of the moral significance of law were connected in a way that John Finnis explained:

A tyranny devoted to pernicious ends has no self-sufficient reason to submit itself to the discipline of operating consistently through the demanding processes of law, granted that the rational point of such self-discipline is the very value of reciprocity, fairness, and respect for persons which the tyrant, ex hypothesis, holds in contempt. (1980: 273)

Fuller’s work on the Rule of Law had one last nuance. He understood that law constituted a distinct kind of governance that might not be relevant for every task of the state. He contrasted it not just with a Nazi-style reign of terror, but with the sort of managerial administration that might be necessary for allocative decision-making in a mixed economy like the United States in the 1960s. In modern political economy, said Fuller, we face problems of institutional design “unprecedented in scope and importance”. Focusing more on the procedural side of the Rule of Law, Fuller insisted that we lawyers acknowledge that although “[a]djudication is a process with which we are familiar and which enables us to show to advantage our special talents”, still it may be “an ineffective instrument for economic management” (Fuller 1964: 176).

## 4. Rule of Law and Rule by Law

Some theorists draw a distinction between the Rule of Law and what they call rule by law (see e.g., Tamanaha 2004: 3). They celebrate the one and disparage the other. The Rule of Law is supposed to lift law above politics. The idea is that the law should stand above every powerful person and agency in the land. Rule by law, in contrast, connotes the instrumental use of law as a tool of political power. It means that the state uses law to control its citizens but tries never to allow law to be used to control the state. Rule by law is associated with the debasement of legality by authoritarian regimes, in modern China for example.

Thomas Hobbes may be seen as a theorist of rule by law. In a society whose members disagree about property, he thought it conducive to peace for the sovereign of a society “to make some common Rules for all men, and to declare them publicly, by which every man may know what may be called his, what anothers” (Hobbes 1647: Bk. II, ch. 6, sect. ix). But Hobbes also thought that it would undermine peace—indeed it would undermine the very logic of sovereignty—for the ultimate law-maker to be bound by the laws he applied to his subjects (Hobbes 1991 [1651]: 184).

However, the distinction may not be so clear-cut. Even rule by law seems to imply that rulers accept something like the formal discipline of legality. Unless the orders issued by the state are general, clear, prospective, public, and relatively stable, the state is not ruling by law. So this thin version of legality does still have moral significance in the respect it pays to the human need for clarity and predictability. Rule by law “can be a way a government ... stabilizes and secures expectations” (Goodpaster 2003: 686). Even if its use remains instrumental to the purposes of the state, it involves what Fuller called a bond of reciprocity with the purposes of those who are governed: the latter are assured that the promulgated rules are the ones that will be used to evaluate their actions (see also Winston 2005: 316).

Some jurists who maintain the contrast between the Rule of Law and rule by law have a more ambitious agenda. They take seriously the ancient idea that we might be ruled by laws and not by men. One may ask: how is that supposed to happen? After all, all law is made by people and interpreted by people and applied by people. It can no more rule us by itself, without human assistance, than a cannon can dominate us without an iron-monger to cast it and an artilleryman to load and fire it. The jurists who contrast the Rule of Law with rule by law believe they can make this work by focusing on laws whose human origins are in some way diffuse or immemorial. We are not necessarily talking here about natural law, but perhaps about something like customary law or common law—law that is not so evidently a top-down product of powerful human law-makers (Epstein 2011). Common

law grows and develops under its own steam, and need not be conceived as a device by which some identifiable humans rule over others. No doubt there is a lot of mythology in this. A more realistic view of common law identifies it with the deliberate and arbitrary rule of an entity that Bentham (1792) called “Judge & Co”. But it remains true that the human element is diffuse in this sort of system, and at any given time the law that emerges is a resultant of the work of many people rather than the intentional product of a domineering majority ruling us from the legislative center of a state.

As we saw in the discussion of Hayek (1973), the other side of this coin is a disparagement of legislation, precisely because its enactment seems patently and undeniably to represent the rule of powerful officials. Legislation is a matter of will. The legislative process produces law simply by virtue of a bunch of people in an assembly deciding that a given law is to be produced. And this is done by the very men—powerful politicians—to whose power the Rule of Law is supposed to be an alternative.

However, most people who value the Rule of Law do not accept this approach. If a statute is properly drafted (if it is clear, intelligible and expressed in general terms) and prospectively enacted and promulgated, and if it is administered impartially and with due process—they will call this an entirely appropriate exercise under the Rule of Law. Indeed that is what many scholars mean by the Rule of Law: people being governed by measures laid down in advance in general terms and enforced equally according to the terms in which they have been publicly promulgated. The argument that it should be put aside because it does not contrast sufficiently with the rule of men seems perverse.

No one doubts that legislation can sometimes undermine the Rule of Law, by purporting for example to remove legal accountability from a range of official actions or to preclude the possibility of judicial review of executive action. But this is not a problem with legislation as such; this is a concern about the content of particular enactments. Rule by judges, too, can sometimes be seen as the very sort of rule by men that the Rule of Law is supposed to supersede (see Waldron 2002: 142–3 and 147–8).

## 5. Formal, Procedural and Substantive Requirements

Theorists of the Rule of Law are fond of producing laundry lists of the principles it comprises. These principles are of disparate kinds, which may loosely be divided into principles that address the formal aspects of governance by law; principles that address its procedural aspects; and principles that embrace certain substantive values.

### 5.1 Formal Aspects

The best known are the eight formal principles of Lon Fuller’s “inner morality of law”: (1964; see also the lists in Finnis 1980: 270–1; Rawls 1999: 208–10; and Raz 1979 [1977]: 214–18) generality; publicity; prospectivity; intelligibility; consistency; practicability; stability; and congruence. These principles are formal, because they concern the form of the norms that are applied to our conduct.

So for example, the requirement that laws be general in character, rather than aimed at particular individuals, is purely a matter of form. It is compatible with invidious discrimination so far as its substance is concerned, since even a norm like “A person who is of African descent must sit in the back of any public bus that they ride on” applies, universalizably, to everyone. A formal requirement of generality does not guarantee justice; but that partly reflects the fact that justice and the Rule of Law work as separate criteria for evaluating a political system.

Generality is an important feature of legality, reflected in the longstanding constitutional antipathy to Bills of Attainder. Of course law cannot work without particular orders, but as Raz points out (1979 [1977]: 213) the generality requirement is usually taken to mean that “the making of particular laws should be guided by open and relatively stable general rules”. These rules themselves should operate impersonally and impartially.

Besides the form of the rules themselves there is also the nature of their presence in society. The Rule of Law envisages law operating as a relatively stable set of norms available as public knowledge. It requires that laws be

public and that they be promulgated well in advance of individuals’ being held responsible for complying with them. These are features that flow partly from the fact that laws are supposed to guide conduct, which they cannot do if they are secret or retroactive. But it is not just a matter of the pragmatics of governance. Laws face in two directions: (i) they impose requirements for ordinary citizens to comply with; and (ii) they issue instructions to officials about what to do in the event of non-compliance by the citizens. Laws that are secret and retroactive so far as (i) is concerned may still operate effectively in respect of (ii). So the Rule-of-Law requirements of publicity and prospectivity have an additional significance: they require that citizens be put on notice of what is required of them and of any basis on which they are liable to be held to account.

The requirement of clarity is also important in this regard. Laws must be public not only in the sense of actual promulgation but also in the sense of accessibility and intelligibility. True, much modern law is necessarily technical (Weber 1968 [1922]: 882–95) and the lay-person will often require professional advice as to what the law requires of him. It is also an important part of the Rule of Law that there be a

competent profession available to offer such advice and that the law must be such as to make it possible for professionals at least to get a reliable picture of what the law at any given time requires. In the nineteenth century, Jeremy Bentham (1782: ch. 15 and 1792) criticized customary law in general, and common law in particular, for failing to satisfy this requirement: the sources of law were hidden in obscurity and though there were spurious appeals to precedent, much of the law was just made up by the judges as they went along.

## 5.2 Procedural Aspects

We should complement this list of formal characteristics with a list of procedural principles as well, which are equally indispensable to the Rule of Law. We might say that no one should have any penalty, stigma or serious loss imposed upon them by government except as the upshot of procedures that involve (I have adapted this list from Tashima 2008: 264):

- a hearing by an impartial and independent tribunal that is required to administer existing legal norms on the basis of the formal presentation of evidence and argument;
- a right to representation by counsel at such a hearing
- a right to be present, to confront and question witnesses, and to make legal argument about the bearing of the evidence and the various legal norms relevant to the case; and
- a right to hear reasons from the tribunal when it reaches its decision, which are responsive to the evidence and arguments presented before it.

Arguably, such procedural principles matter more in the ordinary person's conception of the Rule of Law than the formal criteria mentioned in the previous section. When people worried that the American detention facility in Guantanamo Bay from 2003 to the present was a "black hole" so far as legality was concerned, it was precisely the lack of these procedural rights that they were concerned about. What the detainees demanded, in the name of the Rule of Law, was an opportunity to appear before a proper legal tribunal, to confront and answer the evidence against them (such as it was), and to be represented so that their own side of the story could be explained. No doubt the integrity of these proceedings would depend in part on the formal characteristics of the legal norms that were supposed to govern their detention, whose application in their case they could call in question at the hearings that they demanded. It is difficult to make a case at a hearing if the laws governing detention are kept secret or are indeterminate or are constantly changing. Even so, we still miss out on a whole important dimension of the Rule of Law ideal if we do not also focus on the procedural demands themselves which, as it were, give the formal side of the Rule of Law this purchase.

Some procedural requirements are also institutional in character: there must be courts and there must be judges whose independence of the other branches of government is guaranteed. This side of the Rule of Law is connected with the constitutional principle of the separation of powers. That principle is sometimes justified simply on the ground that it is unhealthy for power to be institutionally concentrated in society. But it also has a Rule of Law justification inasmuch as it assigns distinct significance to distinct stages in the making and application of laws (Waldron 2013).

## 5.3 Substantive Theories

Though many jurists follow Raz 1977 in thinking that the Rule of Law is a purely formal/procedural ideal, others believe in adding a more substantive dimension. They do not think it is possible to sharply separate our political ideals in the way Raz seems to suppose. At the very least, the formal/procedural aspects generate a certain momentum in a substantive direction. Generality—proceeding according to a rule—is often said to contain the germ of justice (Hart 1961: ch. 8). And, stability, publicity, clarity, and prospectivity indicate a pretty fundamental connection between the Rule of Law and the conditions of

liberty. We have to be careful, however, to distinguish between allegedly substantive requirements of the Rule of Law and specification of the deeper values that underlie and motivate the ideal even in its formal and procedural requirements.

Some jurists believe that there is a special affinity between the Rule of Law and the vindication and support of private property. Ronald Cass (2004: 131) says that “[a] critical aspect of the commitment to the rule of law is the definition and protection of property rights”.

[T]he degree to which the society is bound by law, is committed to processes that allow property rights to be secure under legal rules that will be applied predictably and not subject to the whims of particular individuals, matters. The commitment to such processes is the essence of the rule of law. Cass (2004: 131)

Others, like Richard Epstein (2011: 10), accept that “[a]nalytically, the rule of law is ... a separate conception from private property”. But they think nevertheless that a contingent connection between the Rule of Law and private property can be established by showing that the forms of regulation defenders of private property are concerned about tend to be forms of regulation that the Rule of Law, even on a more austere conception, prohibits.

It is also widely believed—though not necessarily by the same people who associate legality with property—that a system of positive law that fails to respect fundamental human rights should not be dignified with the term “the Rule of Law”. The World Justice Project in 2011 quoted Arthur Chaskalson, former Chief Justice of South Africa, to this effect:

[T]he apartheid government, its officers and agents were accountable in accordance with the laws; the laws were clear; publicized, and stable, and were upheld by law enforcement officials and judges. What was missing was the substantive component of the rule of law. The process by which the laws were made was not fair (only whites, a minority of the population, had the vote). And the laws themselves were not fair. They institutionalized discrimination, vested broad discretionary powers in the executive, and failed to protect fundamental rights. Without a substantive content there would be no answer to the criticism, sometimes voiced, that the rule of law is “an empty vessel into which any law could be poured”. (World Justice Project 2011: 9)

On the other hand, as we have seen, Joseph Raz (1979 [1977]: 211) is famous for insisting that “the rule of law is just one of the virtues which a legal system may possess and by which it is to be judged”, and that we should not try to read into it other considerations about democracy, human rights, and social justice. Those considerations, he said, are better understood as independent dimensions of assessment. Tom Bingham, in his book on *The Rule of Law*, said this in response to Raz:

While ... one can recognize the logical force of Professor Raz’s contention, I would roundly reject it in favor of a “thick” definition, embracing the protection of human rights within its scope. A state which savagely represses or persecutes sections of its people cannot in my view be regarded as observing the rule of law, even if the transport of the persecuted minority to the concentration camp or the compulsory exposure of female children on the mountainside is the subject of detailed laws duly enacted and scrupulously observed. (Bingham 2010: 67)

Lord Bingham’s position has an intuitive appeal in the eyes of many commentators, even if it irritates in its casual rejection of a point whose logic it claims to recognize.

Both Chaskalson and Bingham seem to want to fill out the formal/ procedural conception of the Rule of Law with some human rights component. And many liberals are inclined to follow them in that. But this is not the only possibility. Many associate the Rule of Law with a presumption of liberty or the principle of human dignity. Others—Arthur Chaskalson hinted at this—associate the Rule of Law with a substantive

dimension of democracy.

All this sounds an analytic danger signal. Once we open up the possibility of the Rule of Law's having a substantive dimension, we inaugurate a sort of competition in which everyone clamors to have their favorite political ideal incorporated as a substantive dimension of the Rule of Law. Those who favor property rights and market economy will scramble to privilege their favorite values in this regard. But so will those who favor human rights, or those who favor democratic participation, or those who favor civil liberties or social justice.

The result is likely to be a general decline in political articulacy, as people struggle to use the same term to express disparate ideals.

## 6. The Values Underlying the Rule of Law

Even if the principles of the Rule of Law are purely formal in their application, we don't just value them for formalistic reasons. Most fundamentally, people value the Rule of Law because it takes some of the edge off the power that is necessarily exercised over them in a political community. In various ways, being ruled through law, means that power is less arbitrary, more predictable, more impersonal, less peremptory, less coercive even. It establishes what Fuller (1964: 39–40) called a bond of reciprocity—a mutuality of constraint—between the ruler and the ruled, and in that sense it mitigates the asymmetry that political power otherwise involves.

Connected with this, the Rule of Law is valuable and important because it establishes an environment that is conducive to liberty. According to Hayek's theory of the Rule of Law—particularly in the early phase of his work (see section 3.5 above)—we value requirements like generality and impersonality because they free us from dependence upon others' wills:

My action can hardly be regarded as subject to the will of another person if I use his rules for my own purposes as I might use my knowledge of a law of nature, and if that person does not know of my existence or of the particular circumstances in which the rules will apply to me or of the effects they will have on my plans. (Hayek 1960: 152)

Hayek also maintained that requirements of clarity, prospectivity and so on make an important contribution to predictability, which he thought was indispensable for individual freedom. Predictability is often cited as a Rule- of-Law virtue. In his well-known recent book on the subject, Tom Bingham indicated that one of the most important things people needed from the law that governed them was predictability in the conduct of their lives and businesses. He quoted Lord Mansfield to the effect that

[i]n all mercantile transactions the great object should be certainty: ... it is of more consequence that a rule should be certain, than whether the rule is established one way rather than the other. (Lord Mansfield in *Vallejo v. Wheeler* (1774) 1 Cowp. 143, p. 153 (cited by Bingham 2010: 38))

Bingham went on to observe in his own voice that

[n]o one would choose to do business ... involving large sums of money, in a country where parties' rights and obligations were undecided. (Bingham 2010: 38)

These conceptions claim to bring a certain air of reality to our discussions of freedom. There may be no getting away from legal constraint in the circumstances of modern life, but freedom is possible nevertheless if people know in advance how the law will operate and how they have to act to avoid its application. Knowing in advance how the law will operate enables one to make plans and work around its requirements (see Hayek 1960: 153 and 156–7). And knowing that one can count on the law's protecting property and personal rights gives each citizen some certainty about what he can rely on in his dealings with other people. The Rule of Law is violated,

on this account, when the norms that are applied by officials do not correspond to the norms that have been made public to the citizens or when officials act on the basis of their own discretion rather than norms laid down in advance. If action of this sort becomes endemic, then not only are people's expectations disappointed, but increasingly they will find themselves unable to form expectations on which to rely, and the horizons of their planning and their economic activity will shrink accordingly.

So we need a basis for expectation. The best account of the importance of legal expectations was given by the utilitarian philosopher Jeremy Bentham, in a work called "Principles of the Civil Code". Expectation, said Bentham, is "a chain which unites our present existence to our future existence".

It is hence that we have the power of forming a general plan of conduct; it is hence that the successive instants which compose the duration of life are not isolated and independent points, but become continuous parts of a whole. (Bentham 1931 [1802, 1864]: 111)

The establishment of expectations, said Bentham, is largely the work of law, and the security of expectations is a vital constraint on the action of law: "The principle of security ... requires that events, so far as they depend upon laws, should conform to the expectations which law itself has created...".

Joseph Raz and Lon Fuller took the point about freedom even further. Raz (1979 [1977]: 221) suggested that securing an atmosphere conducive to freedom was a matter of dignity: "Respecting human dignity entails treating humans as persons capable of planning and plotting their future" (Raz 1979 [1977]: 221). In Lon Fuller's theory, too, the principles of the inner morality of law were valued for the way they respected dignity:

To embark on the enterprise of subjecting human conduct to rules involves ... a commitment to the view that man is ... a responsible agent, capable of understanding and following rules.... Every departure from the principles of law's inner morality is an affront to man's dignity as a responsible agent. To judge his actions by unpublished or retrospective laws, or to order him to do an act that is impossible, is to convey ... your indifference to his powers of self-determination. (Fuller 1964: 162)

What is said here about the connection between dignity and Fuller's formal principles can be said even more about the connection between procedure and dignity. Procedural principles capture a deep and important sense that law is a mode of governing people that treats them as though they had a perspective of their own to present on the application of norms to their conduct and situation. Applying a norm to a human individual is not like deciding what to do about a rabid animal or a dilapidated house. It involves paying attention to a point of view. As such it embodies a crucial dignitarian idea—respecting the dignity of those to whom the norms are applied as beings capable of explaining themselves.

## 7. Opposition to the Rule of Law

No account of the Rule of Law is complete if it does not mention the ways in which this ideal is deprecated. The laudatory history of the Rule of Law in the work of thinkers like Aristotle, Locke, Dicey, Hayek and Fuller has been matched by opponents of legality such as Plato (in *The Statesman*), Thomas Hobbes (at least if the Rule of Law is supposed to take us beyond rule by law), and Carl Schmitt 1923 (in his attack on parliamentarism and on the liberal assumption that rules can prevail even under conditions of endemic crisis).

The criticism by Plato (c. 370 BC) has been the most enduring. From his perspective, which extolled the application of focused intelligence and insight by those in power, insistence upon the use of law in government was

like a stubborn, stupid person who refuses to allow the slightest deviation from or questioning of his own rules, even if the situation has in fact changed and it turns out to be better for

someone to contravene these rules. (Statesman 294b–c)

Rules themselves were part of the problem: “People and situations differ, and human affairs are characterized by an almost permanent state of instability” (Statesman 294b). One would use them, only as a (distant) second-best, if one felt one couldn’t discern or trust the appearance of expertise in political life. These concerns are echoed in the work of modern legal pragmatists (like Posner 1995) who place much more faith in insight of judges into new situations than in the application of established rules or strained analogies with ancient precedents.

Echoes of the Platonic critique are also heard in those who privilege decisive executive decision-making in times of crisis, especially if the crises seem to be successive and unending (Schmitt 1923; Posner and Vermeule 2010). Someone’s will has to prevail and, it is said, the Rule of Law does us no service by pretending that the element of will can be eliminated from politics or that decisiveness matters less than the “long deliberation” that was extolled in Aristotle’s *Rhetoric*.

The sense of what good law-making and ordinary legal administration require conveyed by the principles of the Rule of Law is sometimes criticized as archaic. Partisans of the Rule of Law often think in terms of clearly drafted and prospective measures promulgated as norms that can stand in the name of the whole community and form a publicly acknowledged framework for their actions and transactions. But this is not really how law operates in the modern world. As Rubin 1989 points out, a great deal of modern legislation consists simply of a frame-working statute authoring agencies to develop much more detailed rules which are conveyed to the public—to the extent that is necessary—by modes of communication much more complex and nuanced than those envisaged in traditional models of the Rule of Law. For example, the principles comprised in Fuller 1964’s inner morality of law—see section 3.6 above—are recipes perhaps for the production of legislation that looks congenial to legalistic concerns about clarity and predictability. But it has little or nothing to do with the way law actually operates or the way legislatures communicate with agencies and agencies in turn communicate with those whose actions and businesses they supervise (Rubin 1989: 397–408).

At the same time, there are concerns about the mentality that is fostered by an excessive emphasis on the Rule of Law. In its most extreme form, the Rule of Law can have the effect of closing down the faculty of independent moral thought in the officials (the judges, for example: see Cover 1975) or in the ordinary members of a community, making them anxious in the face of uncertainty and distrustful of their own or others’ individual judgments (see Henderson 1990). Sometimes it is important, for the sake of clear and courageous moral judgment, not to exaggerate the importance of something being required by law. Other concerns about the mentality fostered by the Rule of Law include concerns about legalism and the tendency to over-formalize or over-bureaucratize relationships that are more healthily conceived in terms that are more informal. This is not just a matter of legalizing the personal realm; it is also a matter of understanding, for example, the damage that can be done to relations between officials (like social workers) and vulnerable clients by replacing bringing in rigid rules to replace relatively informal professional norms (Simon 1983).

## 8. Controversies about Application

As well as these debates about the value of the Rule of Law there is, within the camp of those who stand for legality, incessant controversy about what the Rule of Law requires. I have mentioned the general debates between defenders of formal, procedural, and substantive conceptions. There are also a number of particular debates.

### 8.1 Discretion

How far should it be the mission of the Rule of Law to eliminate or reduce the amount of discretion in the way a society is governed? Some jurists, like Dicey (1885) and to a lesser extent Hayek (1944) insist that official discretion is inherently antithetical to the Rule of Law. Others, like Davis (1969), condemn this as an extravagant position, arguing that discretion is ineliminable in the modern administrative state.

The rule of the Rule of Law is not to eliminate discretion, but to ensure that it is properly framed and authorized, and that the application of rules and judicial procedures is preserved for those cases where liberty and well-being are most seriously at stake.

## 8.2 Rules and Standards

A similar question arises with regard to the use of norms that have the character of standards rather than rules. (A rule is like a numerical speed limit, whereas a standard is like a norm that requires people to drive at a “reasonable” speed.) Legal systems use both types of norm (Sunstein 1994); they use standards for cases where the appropriate decision may vary with ambient circumstances and it seems better to trust the judgment of those who face a particular situation, rather than laying it down in advance. There is an element of respect for individuals’ powers of discernment conveyed in the use of a standard. At the same time standards allow for less certainty in the law, especially when it is difficult for the person attempting to comply with the norm to predict how his judgment will be viewed by an official or by a court. Hayek suggests that

[o]ne could write a history of the decline of the Rule of Law ... in terms of the progressive introduction of these vague formulas into legislation and jurisdiction. (1972 [1944]: 78)

Whether he is right depends partly on how far we take the Rule of Law to be wedded to predictability: is predictability the be-all and end-all, or does the Rule of Law also promise a kind of legal system that frames and facilitates reason and thoughtfulness in human affairs?

## 8.3 Law and Social Norms

Sometimes situations can be governed and disputes settled by informal social norms rather than by positive law, formally enacted and enforced (Ellickson 1994). Opinions differ as to whether this should be regarded as something altogether different from the Rule of Law. On the one hand, it looks like a genuine alternative, and little is gained by assimilating its desirable features, such as they are, to Rule-of-Law requirements. On the other hand, it does have something in common with understandings of customary law and conceptions of the Rule of Law (like that of Hayek 1973) that try to separate themselves from enactment and legislation. Also it is sometimes said that the Rule of Law works best when what is enforced in a society can be mapped on to its members’ norms of fairness and common-sense. This makes social participation in the integrity and upholding of law more likely (Cooter 1997). The closer this mapping, the less of an investment there has to be in formal legal promulgation: ordinary know-how can become a reliable guide to legal knowledge. However, one has to be very cautious with this. Modern law is inevitably technical in ways that far outstrip the possibilities of intuitive understanding (Weber 1968 [1922]: 882–95). The best that can be hoped for is some sort of occasional consonance between enacted law and informal understandings, and the sporadic character of that may well heighten rather than reduce unpredictability.

## 8.4 Emergencies

Is it reasonable to use the Rule of Law to evaluate the way a society responds to emergencies? It is often thought that emergencies require forms of state action that are more peremptory and less procedurally laborious than those required in normal times. As a matter of fact, a number of possibilities have been discussed (Scheuerman 2006). One is to insist, in the name of the Rule of Law, that existing constitutional safeguards should remain in force; that, after all, is what they were designed for and these situations are where they are most urgently needed. Alternatively, in emergencies, one might rely on a general spirit of flexibility and circumstantial sensitivity in state action that is encouraged even in normal times. On this second option, the Rule of Law does not present itself as a major constraint on the flexibility of state action in face of danger. As a third option, one might seek to preserve something like the Rule of Law by laying down in advance specific legal rules to govern emergencies —rules that suspend ordinary civil

liberties guarantees for example or authorize widespread discretion on the part of officials to undertake action that would normally be governed by general rules of law. (Machiavelli proposed a version of this in his *Discourses* (1517), extolling the institution of dictator in the Roman republic.) This option has the advantage of predictability; but its disadvantage is that it endorses a sort of Rule-of-Law-lite, which may eventually infect or supersede the conception of the Rule of Law that is supposed to be normally applicable.

## 8.5 International Law

The Rule of Law applies not only within national polities but also increasingly between them, but in this arena its use remains under-theorized (for a helpful discussion, see Crawford 2003). Much of the work that has been done on the international Rule of Law simply adopts uncritically the perspective of those who say, at the national level, that the Rule of Law requires determinacy, clarity, and predictability (see Chesterman 2008). But this may be misconceived when we are talking about states rather than individuals as the subjects of law (Waldron 2011b). States are in a much better position to be informed of what their legal requirements are than individual men and women in society, since they are parties to the treaties and practices that establish international law. (Maybe, though, this point does not hold to the same extent when we consider the murky depths of customary international law.)

Anyway, the liberty of an individual state is not such an important value as the liberty of an individual person. It is not clear that national states need protection from international law and the power that it represents in the way that ordinary men and women need protection from the exercise of political power in society. Moreover, in areas like international human rights law, any presumption based on the Rule of Law in favor of the liberty of national states will tend to have detrimental effects on the liberty or well-being of individual men and women. We have to be careful therefore that invocation of the Rule of Law in the international realm does not undermine the values that are supposed to be secured by this ideal within national polities.

One additional point. It remains controversial whether international institutions themselves—like the United Nations and its agencies—should be bound by the Rule of Law. This odd because these agencies are among the most vociferous advocates of the Rule of Law so far as its application to national states is concerned. The reluctance here stems in large part from an estimation of the importance of diplomatic immunity. UN officials worry that if they and their agencies are held legally liable for malfeasances of various kinds associated with peace-keeping activities, there is a danger that the whole basis of international action might unravel. The danger is probably exaggerated, however, and those who make this argument would not for a moment countenance a similar argument in the sphere of national states.

## 8.6 Development and Nation-Building

The Rule of Law is often cited as the key to nation-building and to the establishment of new democracies. Indeed it is often argued (e.g., Barro 2000) that a new state needs Rule-of-Law institutions—effective courts and commercial codes that can secure property rights and the enforcement of contracts—more than or even before it needs democratic institutions such as an elected legislature. It is said that a legal system in a developing country dominated by legislative action will neither inspire the confidence nor establish the stability that modern governance and investment require. (For discussion of these arguments, see Carothers 1998 and—more critically—Carothers 2009.) This raises once more the question of relation between the Rule of Law and legislation—only now it takes us also in the direction of considering an rather uncomfortably direct trade-off between Rule of Law values and democracy.

## 9. The Rule of Law and the Concept of Law

Finally, an analytic question. What is the relation between the Rule of Law and the concept of law? A case can be made—controversial, no doubt—for bringing the two of them together (see Waldron 2008 and also Simmonds 2008). The concept of law could be understood to embrace the fundamental elements of legality, though this identification looks less plausible the more substantive the conception of the Rule of Law is held to be. On this account, a system of governance doesn't count as law unless it exhibits the characteristic forms and processes that we associate with legality. Otherwise we lose our sense of the institutional distinctiveness of law as a way of ruling a society. We saw earlier that Lon Fuller (1958 and 1964) envisaged a connection along these lines. So, in his later work did Ronald Dworkin. Dworkin (2004) asked us to consider a situation in which judges and lawyers were grappling with hard issues of interpretation or with difficult dilemmas posed by multiple sources of law. He said that in such cases, we might say that what was required as a matter of law might be

different from what was required as a matter of justice. That is a familiar separation (even if Dworkin thought it was narrower and more blurred than most legal positivists believed). But he said, it would make no sense to say that what was required as a matter of legality or respect for the Rule of Law was different from what the legal solution was to this case. To figure out the legal solution we have to address the various legal and political materials precisely in light of our commitment to legality.

A conception of legality is ... a general account of how to decide which particular claims are true.... We could make little sense of either legality or law if we denied this intimate connection. (Dworkin 2004: 24–5)

However this is not the received position. According to Joseph Raz (1977) and others you cannot understand what the Rule of Law is unless you already and independently understand what law is and the characteristic evils that law is likely to give rise to (which the Rule of Law tries to prevent). On this account, legality represents a particular set of concerns about law that have emerged in our civilization. The fact that these concerns are undoubtedly moral in character (even though they are not comprehensive moral concerns) means that—in Raz's view—it is better to keep them separate from the concept of law itself, for fear of introducing a moral element into that concept.

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## **Constitutional guardianship in Nepal Rule of law and the irreplaceable role of the judiciary in the federal project**

**George Varughese and Iain Payne**

*(<http://nepalitimes.com>) May 17, 2019*

*(<https://www.nepalitimes.com/opinion/constitutional-guardianship-in-nepal/>)*

Nepal's judiciary has an irreplaceable role in instilling a commitment to the rule of law and encouraging a new way of doing politics in the new federal system. But can this role be more public beyond the confines of courtrooms in Kathmandu and the provinces?

In addition to requiring a proper and substantive account from other branches of government, can the judiciary be instrumental in shaping norms and values in the New Nepal in a constitutional guardianship role?

### **Part 1: Federalism, rule of law and the judiciary,**

*George Varughese and Iain Payne*

The judiciary's relationship to other branches of government shapes its ability to play a role in protecting the Constitution. While historically Nepal's judiciary has, with a few notable exceptions, been cautious to confront or overrule executive action, more recent diffidence suggests additional losses in stature as well as in independence.

Successive governments of all political stripes have colluded in shackling the judiciary and relegating it to subservient status. Judicial sackings, impeachments, forced retirements and politicised appointments are some of the methods used. There is also a consistent pattern of governments and politicians impugning and defying court orders.

Leaders and functionaries of the judicial branch have also invited opprobrium on several occasions, leading to public criticism sometimes exceeding that levelled at executive and legislative branches.

The judiciary has an existential dilemma: how to regain public trust not only as an institution of restraint on government but also as a trusted guardian of justice.

While the Constitution seeks to bring government closer to citizens through a polycentric federal structure, serious concern can be raised of obduracy and procrastination on the part of the federal government to meaningfully devolve power.

The future of inter-governmental relations will be shaped by the ability of the federation's 761 governments to converse as coequals. Legitimate and credible dispute resolution will be critical for constitutionally-mandated cooperation and coordination among and between governments.

The Constitution creates several institutions to support and supervise inter-governmental relations. At the national level these include the Inter-Provincial Council, which brings provinces and federations together to settle political disputes, the National Natural Resource and Fiscal Commission, the constitutionally-mandated authority to oversee the allocation of the country's resources derived from revenues and royalties, and the Constitutional Bench of the Supreme Court.

The Constitutional Bench is tasked with interpreting the Constitution, particularly for settling inter-governmental disputes and providing clarity and coherence to federated governance. However, internal politics have prevented the bench from functioning properly.

More than three years after the adoption of the Constitution, the Court has yet to embrace one of its most important roles: framing and shaping the course of constitutional federalism, particularly regarding intergovernmental relations. This has contributed to ongoing legal and jurisdictional paralysis, which hampers effective functioning of provincial and local governments.

The Constitution's schedules, which delineate the division of constitutional power among the governments, are ambiguous. Disaster management, for example, is listed as both an exclusive responsibility of local government and as a concurrent power of the federation, provinces and local governments.

Whereas effects of disaster are manifested locally, the incoherence in disaster management begins with ambiguous delineation of responsibility in the law.

The ongoing dispute between Province 2 and Kathmandu over the establishment and governance of police forces is another example. This is likely to fester and grow across all provinces in the absence of legal clarity on who does what in a federation.

Such legal uncertainty has stymied lawmaking at the sub-national level. Apprehensive about their legislation being nullified by the courts or contradicted at the federal level, most local assemblies have restricted themselves to passing only procedural laws. One elected local representative recently stated: "Initially, we were very excited to make laws. Later we realised that our laws could be overruled by the court or even by the federal or provincial governments. Now we are confused, as we have to be very careful."

The Constitutional Bench can provide decisive guidance in Nepal's federation by, for example, supplying a constitutionally robust mechanism for sub-national governments to debate and contest laws that harm their constituents' interests. The formal resolution of disputes by the Bench will require governments, particularly the federal government, to publicly justify the direction in which they are steering the federation.

For federalism to work, Nepal's judiciary and the judges who lead it must embrace a culture of learning. This is perhaps most important for the Constitutional Bench, as its task to help navigate the complex jurisprudential issues that will arise in the newly federated system of governance will not be easy.

Like the rest of the country, the judiciary does not have institutional memory of federal governance. Judges, like the functionaries of the other executive and legislative branches, must learn on the job without the luxury of prior experience or preparation. Fortunately, there are quite a few respectable judges who give us hope. May those best suited to learning be given the chance to guide.

May the judicial branch have the confidence, courage and creativity needed to take on the role of constitutional guardianship, leading to a culture that is based on the principled exercise and accountability of governmental power.

*This is the second of a three-part series by George Varughese and Iain Payne, who are associated with Niti Foundation.*

## Importance of Rule of Law in Enterprise Building

Rule of Law is often contextualized as a political and social matter. However, it is equally important in the issues of economic growth and development. As countries around the world are accepting and adapting to market led economies for achieving economic prosperity, it is important to highlight the relationship between Rule of Law and Enterprise Building. How is Rule of Law key in addressing problems like increasing unemployment rates, corruption, and income inequality? This chapter will discuss these questions by first introducing the concept of Enterprise Building and to draw the connection between Rule of Law and Enterprise Building.

Enterprises are the result of entrepreneurial efforts. Therefore, the concept of Enterprise building is intertwined with entrepreneurship. Entrepreneurship has changed the face of the modern world and the evidences are plenty. From people like Henry Ford, who revolutionized the American transportation industry with the iconic Ford Motor Company to people like Mark Zuckerberg, who changed the way we communicate through something like Facebook, entrepreneurs have been the wheel of growth. In Nepal, people like Ananad Bagaria (who brought about an innovation in agro-based industries), Bal Krishna Joshi (who was one of the few firsts to introduce e-marketing in Nepal), Min Bahadur Gurung (a visionary founder of supermarkets in the country) are some who have played instrumental roles in enterprise building in Nepal. However, these are only few success stories enterprise building in Nepal is not as widespread as it should be if we are to escalate the economic growth of Nepal.

Having proper Rule of Law allows markets to operate well as the participants know the ‘rules of the game’ and the fact that they can rely upon it to protect their rights. Hence, when such rules are comprehensive, understandable and written to support competitive and efficient markets, a business friendly environment is established. In such business friendly environment, people are willing to invest in productive sectors and that is very important for economic growth. “The bulk of private investment in developing countries is domestic investment. Reforms to the rule of law that benefit private investors will provide the greatest benefits to domestic investors” (The World Bank as cited in Stolper, A. & Walker, M. 2007). Hence, ensuring Rule of Law is the basic pre-requisite for enterprise building. Stolper, A. and Walker, M. (2007) highlight the functions Rule of Law serves in enterprise building as:

- Rule of Law ensures due process and predictability;
- Rule of Law protects entrepreneurship and
- small business development by establishing clear and objective rules for opening, operating and closing a business;
- Rule of Law imparts stability, certainty and
- clear legal boundaries for property rights;
- Rule of Law forces greater accountability of public officials;

Through these functions of Rule of law, it facilitates economic growth by creating more welcoming environment for the entrepreneurs where they will be able to perceive risks beforehand and mitigate it. Some major aspects of Rule of Law that are important in enterprise building are explained in the remaining chapters of this book.

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**SAMRIDDHI**  
FOUNDATION

Chapter 3  
Limited Government

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## Classical Liberal Politics

### The origin and purpose of government

The early classical liberals believed that government existed solely to protect people's rights, and to expand their opportunity and freedom by minimising coercion and allowing peace to reign. If anyone was to use force, it should be only the government, and it should be used only for these purposes.

Their vision, in other words, was limited government – limited in power and scope, and indeed in legitimacy. Regarding power, they were well aware of how official power could jeopardise freedom, and of the need to contain it. On scope, they insisted that legitimate government is not based on conquest and might, but on the agreement of diverse individuals – whose sole purpose for creating it is to promote their rights, freedoms and opportunities. Concerning legitimacy, Locke explains that the authority of government comes from the individuals who accept curbs on their behaviour in return for civil rights. Therefore, government authority cannot exceed the authority that those individuals are empowered to give it. For example, it cannot deny our inalienable rights such as life and liberty.

Another good reason to limit government is the frailty of human nature. People in government are merely people; they are probably neither wiser nor less self-interested than anyone else. But they wield enormous coercive power, including powers to fine and imprison us. It would be unwise to let them wield that power as they please; it should be controlled and limited. Classical liberals distrust absolute authority, even if it carries the backing of the vast majority of people.

### Functions of government

But is this too narrow a view of government? Classical liberals are often caricatured as believing in laissez-faire or a tiny, vestigial night-watchman state. And critics say that if everyone had to agree what governments existed for, they would not agree on very much, and would remain stuck in anarchy.

Modern governments go well beyond the scope and power that the early classical liberals were willing to grant them. Even classical liberals today often accept that they might have useful functions beyond upholding Mill's no-harm rule and promoting citizens' freedom. Milton Friedman famously advocated a negative income tax to redistribute income from rich to poor, and state-funded education vouchers, designed to give poor families access to education. Adam Smith himself thought that, in addition to protecting the public through defence and the justice system, government should provide public works such as bridges and harbours, and contribute to public education.

But while there may be some useful things that are best done collectively, the question is where to draw the line. That is not helped by the fact that it is often hard to decide exactly when real harm is being done or threatened, or what the exact benefits of an intervention might be.

Mill, for example, though a defender of free speech, thought that his no-harm principle might well justify censorship. He also advocated various duties on individuals in order to help others – such as testifying in court, and ensuring that your children are properly schooled. He saw a role for government in the regulation of trade, working hours, wages and workplace benefits. He advocated social welfare laws to provide work for able-bodied people and provide minimum living standards for others. He thought governments should create infrastructure such as roads and sanitation. And he called for public subsidy of scientific research and the arts.

Even small public benefits, he thought, would justify such interventions. Many classical liberals would disagree with all of this.

More recently, and even in a book about excessive state power (*The Road to Serfdom*), F. A. Hayek also listed some of the functions he thought governments might legitimately take on. They included providing people with a minimum of food, shelter and clothing, sufficient to preserve their health and capacity to work; a comprehensive system of social insurance for misfortunes that are difficult to insure against; assisting after natural disasters, for which again individuals cannot prepare; and economic policy to combat business cycles and the unemployment they create.

Many classical liberals worry that concessions like these are the thin end of a very large wedge. As Hayek himself complained, ‘emergencies have always been the pretext on which the safeguards of individual liberty have been eroded’

– and when we let the state provide emergency relief, food, shelter, clothing, education and healthcare, it is not easy to hold the line between what counts as necessities for the few and conveniences for the many. There is, in other words, no obvious limit to such government intervention.

Adam Smith squares the circle by saying that his interventions – bridges, harbours and support for education – are merely the infrastructure that allows human beings to cooperate with each other socially and economically. They therefore promote freedom rather than threaten it. Hayek too, sees his interventions as trying to keep people able to fend for themselves; so again, his idea is to provide only what it takes to enable free individuals to live, work and cooperate together.

Nevertheless, any government activity, however worthy, requires some assault on people’s rights and freedoms – specifically, taking their property, in the form of taxes, to pay for state activities. Some classical liberals, arguing that property is one of the things that government exists to protect, find this hard to justify. Others simply want assurance that the public benefit – however it is defined – is large enough to justify the intrusion on individuals’ rights and freedoms.

The real-world danger is ‘mission creep’ – governments starting with a few things that are clearly collective responsibilities, and then expanding their powers and functions, with no obvious end point. Classical liberals are perhaps better qualified to draw the boundary than most, since they understand the need for limited government and the dangers of burgeoning government power. And they see why, though government might have a role in making sure that some things such as emergency relief are provided, it should not itself provide them. They also understand why, though government might regulate a market, it should remain an umpire and not become a market player; and why government-led assistance to particular people and groups in distress should not expand into long-term and large-scale income redistribution.

## **The myth of social justice**

The ‘new liberals’, by contrast, think that income redistribution is exactly what governments should do. They see inequality and poverty as the result of unequal power and unjust property laws that benefit employers and the rich but harm employees and the poor. To promote ‘social justice’, therefore, government must correct the power imbalance and redirect wealth and income from better off to worse off people.

Classical liberals think this a gross misuse of the word ‘justice’. To them, justice is commutative justice, the resolution of conflicts between individuals and upholding the rights and freedoms of individuals by punishing those who intrude on them. It is about restraining threats and violence, and granting restitution to people who are made worse off by coercion. It is about the conduct we expect, and have a right to expect, from each other.

Real justice, therefore, focuses solely on how people behave towards each other. Being robbed is unjust; catch-

ing flu is a misfortune but it is not unjust, because nobody has acted unjustly. Social or distributive justice, on the other hand, is quite different. It is about the distribution of things between different members of a group. It seeks to alter that distribution – generally towards greater equality – even if the existing distribution is simply the outcome of events, and nobody has behaved badly or acted unjustly.

If, for example, 100,000 people each pay to watch a popular singer at a stadium, they end the evening slightly poorer and the singer ends it significantly richer. But nobody has done anything wrong, and nobody has been coerced. Classical liberals would therefore ask: how can the resulting distribution of wealth possibly be unjust? And they point out that to return things to equality would require coercion – taking the singer's new wealth by force in order to return it to the audience. Indeed, as Nozick says, it would require constant and repeated coercion to maintain that equality over the future.

There are practical problems too. Complete equality of income is impossible: why should people bother to work hard, or work at all, if they get paid the same as those who do not? So 'social justice' focuses more on redistribution according to need, or in proportion to the value that people deliver to society. But who is to decide who is in need, and whose value is greatest? Is someone who becomes poor out of sheer laziness less 'needy' than someone whose home and business is destroyed in a typhoon? Does a nurse contribute more to society than a violinist? There is no objective way to judge: the decision is entirely subjective. yet, on the back of such arbitrary judgements, the advocates of 'social justice' take people's property and freedom. Not only that, but 'social justice' treats people differently: people pay different amounts of tax, or receive different amounts of state support, depending on how rich or poor they are. This offends against the rule of law – the principle that the law should treat people equally and that nobody should be helped or harmed by arbitrary rulings by the authorities.

Classical liberals, therefore, reject any comprehensive redistribution of wealth or income. They may advocate some temporary state-organised emergency relief; but they deny that anyone has a right to long-term welfare support – because that implies that others have an obligation to support them, under compulsion if necessary, even though they share no blame for the unfortunate circumstances of their fellow citizens.

This does not mean that poorer people fare badly in a classical liberal society. Free societies tend to be richer societies, and it is better to be poor in a rich country than in a destitute one. People in rich countries also tend to contribute more through charitable giving and philanthropic works; though they have no legal obligation to help others in need, they have the resources to back up the moral obligation they feel towards them.

## **Public choice and private interests**

Classical liberals are in any case highly suspicious of how the political decisions on matters such as redistribution are made. Their doubts have been underpinned by the work of the Public Choice School, which applied economic concepts to the political decision-making process, and found it seriously wanting.

Mainstream 'welfare economists' long talked about market failure and the need for government action to correct it. What they forgot is that there is government failure too. Politicians and officials are not angels: there is as much self-interest in the democratic system as there is in the private marketplace.

Elections, for example, are battles of competing interests, in which the majority decide what should be done. That is a big threat to the minority – like the old joke about democracy being two wolves and a sheep deciding what to have for dinner. It is made worse by the fact that elections are dominated by lobby groups, who campaign vigorously to win electoral benefits for their highly concentrated interests. Often, interest groups will create mutually supporting coalitions to make their electoral leverage even greater. Politicians, meanwhile, have to appease these coalitions of vested interests in order to win their votes – after all, even the most public-spirited politician has to get elected in order to do anything. The people who lose out, of course, are the 'silent majority' – the general public, whose interests are much more diffuse.

Nor are decisions in the legislature any prettier. In order to get their own measures through, legislators engage their colleagues in rounds of ‘you vote for my measure, and I will vote for yours.’ So more laws are passed than anyone really wants, and the unrepresented general public are exploited even more. And when these laws are implemented, the bureaucracy again has its own interests – perhaps adding to the size and complexity of programmes in order to expand their own empires.

## **Classical liberalism and democracy**

Classical liberals are democrats, but sceptical democrats. They accept that there are some minimal functions that require collective action. They believe that the general public, not some powerful elite, should make the broad decisions on what those functions are and how to achieve them. And they suggest that representative government is probably the best way to make and implement those decisions.

But they know that the democratic process is far from perfect. It is not a process that reconciles different interests (as markets do), but one in which we choose between conflicting interests – a choice in which only one side can win. It is scarred by the self-interest of electors, of representatives and of officials; it can produce deeply irrational results; and all too often it leads to minority groups being exploited, and their liberties curbed, all in the name of ‘democracy’.

For these reasons, classical liberals maintain that democratic decision-making should be bound by certain rules, and should focus, with precision, on those issues that cannot be decided in any other way. Representative democracy is certainly the best form of government yet devised, which makes many people (and almost all of those who happen to be in power) argue that more and more things should be decided through the democratic process. But that means deciding them through the political process; and politics is not always a benign force. The more things that are decided politically, the easier it becomes for the rights and liberties of individuals to be eroded, and for minority groups to be exploited or suppressed by those who wield the coercive power of the state.

To a classical liberal, by contrast, rights and freedoms are for everyone: they are not a matter of numbers and majorities. Genuine representative democracy is not the same as elected dictatorship, and should not be allowed to mutate into it. Election success does not license the winning majority to treat other people exactly as it chooses.

As well as limiting the democratic – political – process to deciding issues that have to be decided and can only be decided collectively, classical liberals would also endeavour to protect the rights and freedoms of all individuals by imposing restraints on how the process is conducted and how such decisions are made.

## **Constitutions and freedom**

A constitution is one way of setting out those restraints, and giving them force that cannot be easily overridden by those who happen to be in the majority and in power at the time. This does not always succeed: even countries with seemingly strong liberal constitutions are not immune from rapid increases in the size of government and from the erosion of individual rights and liberties by majorities. Constitutional freedoms are hard to protect if the general public loses its understanding of their importance and its will to protect them.

But classical liberals generally believe that setting up constitutional restraints gives us the best chance of protecting individual rights and freedoms.

Through rules such as the separation of powers and checks and balances – for example, multi-cameral government, a federal system and judicial review – we can try to prevent vested interest groups capturing the entire decision-making process.

And a classical liberal constitution would not only ensure that government power was limited and divided. It would ensure that laws applied equally to everyone, so that no particular interest groups – including politicians and government officials themselves – could be given special treatment.

Such a constitution might also delineate the boundaries of state power by setting out the basic rights of individuals, over which the state has no authority (because its founding citizens cannot transfer to the state an authority to injure the rights of others that they themselves do not have). But while such a Bill of Rights might helpfully remind everyone of basic rights such as life, liberty, property and freedom of contract, thought and speech, it cannot possibly enumerate every right and freedom. As Hobbes put it, we should be free to do anything within the ‘silence of the law’ – but a legal system that tried to list everything we could do, rather than the few things we could not, would be long, complex, flawed and painfully restrictive.

Rather, there should be a general presumption that people are free to pursue their own ends by any peaceful means, subject only to a few exceptions set out in the law. There is no need to spell out our numerous freedoms, most of which are implicit in the general presumption of freedom.

## **The legitimacy of government**

As the Swiss–French writer and politician Benjamin Constant (1767–1830) noted, constitutions do not exist to empower our leaders, but to restrain them. None of us has any entitlement to rule over any other; it must be a matter of consent. And if government loses the consent of the public, it loses its entire authority, and its coercive power becomes illegitimate.

That should itself keep government limited, as Frank Knight reminded us: we would never be able to agree on any extensive collection of powers. But governments are also restrained by the threat of rebellion – and quite rightly too, according to Locke and Paine.

Nevertheless, given the coercive force at their disposal, even the most unjust governments can still survive a very long time. Elections, for all their faults, are a more peaceful way of removing governments. Like constitutions, they exist not for choosing our leaders, but for restraining them. That safety valve is critically important: for as classical liberals insist, individuals should not be subject to the arbitrary decisions of others, even of a hugely popular government.

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## The Origins of State and Government

By Tom G. Palmer

*Is the state responsible for wealth and social order? What is a state and what is a government? A short review of the sociology of the state shows that states emerged when “roving bandits” became “stationary bandits” and instituted regularized plunder. The achievement of liberty has been largely a product of subjecting states to law, a process that is still an ongoing struggle. (This essay was originally delivered as a lecture at the 2012 Cato University Summer Seminar.)*

Many people believe that the state is responsible for everything. According to Cass Sunstein, a professor of law at Harvard University and former administrator of the White House Office of Information and Regulatory Affairs, “Government is ‘implicated’ in everything people own. If rich people have a great deal of money, it is because the government furnishes a system in which they are entitled to have and keep that money.”

That’s the academic formulation of a concept that was restated recently in a popular form. “If you’ve been successful, you didn’t get there on your own. If you were successful, somebody along the line gave you some help. Somebody helped to create this unbelievable American system that we have that allowed you to thrive. Somebody invested in roads and bridges. If you’ve got a business—you didn’t build that.

Somebody else made that happen.” That was Sunstein’s boss, President Obama.

Even a charitable interpretation of the president’s remarks shows that he doesn’t understand the concept of marginal contribution to output, for example, of the value added by one additional hour of labor. He doesn’t understand how wealth is produced.

Sunstein and his colleagues reason that since they attribute all wealth to the state, the state is entitled to it, and those who may foolishly think of themselves as producers have no claim of their own over it.

What exactly is a state? The canonical definition was offered by Max Weber, who defined the state as “that human community which (successfully) lays claim to the monopoly of legitimate physical violence within a certain territory.”

In fact, it cannot be the case that all wealth is attributable to the state. Historically, the existence of a state apparatus required a pre-existing surplus to sustain it in the first place. The state, in other words, would not exist without wealth being produced before its emergence. Let’s explore that a bit further.

Why do people have wealth? Charles Dunoyer, an early libertarian sociologist, explained that “there exist in the world only two great parties; that of those who prefer to live from the produce of their own labor and of their property, and that of those who prefer to live on the labor or the property of others.” Simply put, makers produce wealth while takers appropriate it.

In his important book *The State*, the sociologist Franz Oppenheimer distinguished between what he called the economic means and the political means of attaining wealth, that is, between “work and robbery.” “The state,” he concluded, “is an organization of the political means.”

The economic means must precede the political means. However, not all kinds of work produce surpluses sufficient for sustaining a state. You don’t find states among hunter-gatherers, for instance, because they don’t generate enough of a surplus to sustain a predatory class. The same is true of primitive agricultural societies. What is needed is settled agriculture, which generates a surplus sufficient to attract the attention of predators

and sustain them. Such societies are typically conquered by nomads—especially those with horses, who were able to overpower sedentary agriculturalists. We see that happening over and over again after nomadic people erupted out of Central Asia long ago.

There is a memory of that ancient conflict preserved in the Book of Genesis, which tells the fratricidal story of Cain and Abel. It is significant that “Abel was a keeper of sheep, but Cain was a tiller of the ground,” an echo of the conflict between settled agriculturalists and nomadic herders.

State formation represents a transformation from “roving bandits” to “stationary bandits.” As the economist Mancur Olson wrote, “If the leader of a roving bandit gang who finds only slim pickings is strong enough to take hold of a given territory and to keep other bandits out, he can monopolize crime in that area—he can become a stationary bandit.” That is an important insight into the development of human political associations.

The state is, at its core, a predatory institution. Yet, in some ways, it also represents an advance, even for those being plundered. When the choice is between roving bandits (who rob, fight, burn what they can’t take, and then come back the following year) and stationary bandits (who settle down and plunder little by little throughout the year) the choice is clear. Stationary bandits are less likely to kill and destroy as they loot you and they fend off rival bandits. That is a kind of progress—even from the perspective of those being plundered. States emerged as organizations for extracting surpluses from those who produced wealth. In his book, *The Art of Not Being Governed*, the anthropologist and political scientist James C. Scott of Yale University studies regions of the world that have never been successfully subdued by states. A central concept in his work is “the friction of power”: power does not easily flow uphill. When waves of conquerors moved through an area, they subjugated the valleys, while those who escaped moved up into the less desirable highlands. Scott points out that those refugees developed social, legal, and religious institutions that make them very difficult to conquer. It’s especially true of mountain people and swamp people. (It’s a shame various leaders did not read Scott’s book before occupying Afghanistan and promoting “state building” there.) What are the incentives of the rulers? Overly simplistic models posit that rulers seek to maximize wealth, or gross domestic product. Scott, however, argues that the ruler’s incentive is not to maximize the GDP, but to maximize the “SAP,” the state-accessible product, understood as the production that is easy to identify, monitor, enumerate, and confiscate through taxation: “The ruler . . . maximizes the state-accessible product, if necessary, at the expense of the overall wealth of the realm and its subjects.”

Consider (a ruler might say, “take”), for instance, agriculture. Rulers in Asia suppressed the cultivation of roots and tubers, “which has been anathema to all state-makers, traditional or modern,” in favor of paddy rice cultivation. That is rather puzzling. Why would rulers care so much about what crops are planted? The reason, Scott notes, is that you can’t very effectively tax plants that grow underground. Cultivators harvest them when they want; otherwise they remain in the ground. Paddy rice, on the other hand, has to be harvested at specific times by large concentrations of people, so it’s easier for rulers both to monitor and tax the harvest and to draft the laborers into their armies. The incentives of rulers have systematic effects on many practices and permeate our societies.

State systems of social control—from military conscription to compulsory schooling—have thoroughly permeated our consciousness. Consider, for example, the passport. You cannot travel around the world today without a document issued by the state. In fact, you can no longer travel around the United States without a state-issued document. Passports are very recent inventions. For thousands of years, people went where they wanted without permission from the state. On my office wall is an advertisement from an old German magazine that shows a couple in a train compartment facing a border official demanding, “Your passport, please!” It explains how wonderful passports are because they give you the freedom of the world.

That, of course, is absurd. Passports restrict your freedom. You are not allowed to travel without permission, but we have become so saturated with the ideology of the state—and have internalized it so deeply—that many see the passport as conferring freedom, rather than restricting it. I was once asked after a lecture whether I favored state-issued birth certificates. After a moment, I said I could see no compelling reason for it and since

other institutions can do it, the answer was “no.” The questioner pounced! “How would you know who you are?” Even personal identity, it seems, is conferred by the state.

Modern states also claim to be the sole source of law. But historically, states mainly replaced customary law with imposed law. There is a great deal of law all around us that is not a product of the state, for law is a byproduct of voluntary interaction. As the great jurist Bruno Leoni argues, “Individuals make the law insofar as they make successful claims.” Private persons making contracts are making law.

In the sixteenth century, the influential thinker Jean Bodin focused on the idea of sovereignty, which he defined as “the most high, absolute, and perpetual power over the citizens and subjects in a commonwealth.” He contrasted that “invisible power” with another kind of social order, known as customary law, which he dismissed because, he said, “Custom acquires its force little by little and by the common consent of all, or most, over many years, while law appears suddenly, and gets its strength from one person who has the power of commanding all.” In other words, Bodin recognized that custom creates social order, but he defined law as requiring the hierarchical imposition of force, which in turn requires a sovereign—a power that is absolute, unconditioned, and therefore above the law.

That type of sovereignty is inherently contrary to the rule of law, as well as contrary to the principles of federal systems, such as that of the United States, in which power is divided among the different levels and branches of government. In constitutional regimes, the law, not absolute power, is held to be supreme.

The evolution of freedom has involved a long process of bringing power under law. The imposition of force has nonetheless left a powerful imprint on our minds. Alexander Rüstow, a prominent sociologist and a father of the post-war revival of liberty in Germany, meditated on the origins of the state in violence and predation and its lingering imprint: “All of us, without exception, carry this inherited poison within us, in the most varied and unexpected places and in the most diverse forms, often defying perception. All of us, collectively and individually, are accessories to this great sin of all time, this real original sin, a hereditary fault that can be excised and erased only with great difficulty and slowly, by an insight into pathology, by a will to recover, by the active remorse of all.” It takes work to free our minds from our dependence on the state.

When meditating on what it means to live as free people we should never forget that the state doesn't grant to us our identities or our rights. The American Declaration of Independence states, “That to secure these rights, Governments have been instituted among men.” We secure what is already ours. The state can add value when it helps us to do that, but rights and society are prior to the state. It's critical to remember that the next time someone says, “You didn't build that.”

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## Liberalism and Limited Government

*Friday, November 1, 1985*

At first glance the role of limited government in [Ludwig von] Mises' system of classical liberalism appears as a somewhat uneasy compromise between two conflicting goals: on the one hand to achieve the advantages of a free market; on the other hand to benefit, in certain respects, by coordinated central direction. Indeed this compromise might appear to differ only in degree from the kind of compromise enshrined in those "mixed economic systems" that have become so dear to the hearts of the economists and politicians of our time. But such a view of the role of limited government in Misesian liberalism would be utterly incorrect. For Mises, limited government is in no sense a compromise; and the possibility of any viable, stable kind of "mixed" system was categorically rejected by Mises: "There is simply no other choice than this: either to abstain from interference in the free play of the market, or to delegate the entire management of production and distribution to the government . . . there exists no middle way." (Liberalism, p. 79) The truth is that for Mises' liberalism the appropriate and important functions of government, as well as the severely circumscribed limits to government are both directly and consistently implied by the very essence of liberalism itself. "The program of liberalism . . . if condensed into a single word, would have to read: property, that is, private ownership of the means of production" (p. 19) It is the preservation of the institution of private property that most emphatically renders government a necessity for the liberal society; it is the preservation of precisely that same institution that makes it essential to prescribe strict and definite limits to government.

That government is necessary for liberalism was forthrightly emphasized by Mises. Government is defined as "the organs charged with the responsibility of administering the apparatus of compulsion." (p. 35) And "the liberal understands quite clearly that without resort to compulsion, the existence of society would be endangered. One must be in a position to compel the person who will not respect the lives, health, personal freedom, or private property of others to acquiesce in the rules of life in society." (p. 37) And, again, "For the liberal, the state is an absolute necessity, since the most important tasks are incumbent upon it: the protection not only of private property, but also of peace, for in the absence of the latter the full benefits of private property cannot be reaped." (p. 39)

Recognition of the necessity of the state apparatus of compulsion does not, however, lead the liberal to ascribe special nobility, virtue, or esteem to the exercise of state functions. On the contrary, the liberal is thoroughly sensitive to the enormous potential for evil and corruption that inheres in the exercise of government. "Nothing corrupts a man so much as being an arm of the law and making men suffer. The lot of the subject is anxiety, a spirit of servility and fawning adulation; but the pharisaical self-righteousness, conceit, and arrogance of the master are no better." (p. 58)

It is because for Mises the exercise of state functions carries with it no inherent nobility or dignity, that he sees the merits of democracy in a manner entirely free of the mystique with which it is invested in current political ideology. There is, for the liberal, no special glory attached to the task of governing, and no indignity attached to being subject to (limited) governmental rule. The rule of government is a practical necessity; that is all. Division of labor then exercises its claims. "One cannot be an engineer and a policeman at the same time. It in no way detracts from my dignity, my well-being, or my freedom that I am not myself a policeman."

It then follows that there is nothing particularly glorious about a system that seeks to replace government by the few by self-government by the whole people—even were such a goal in fact a possible one. The only reason for endorsing democracy for the liberal society is a pragmatic one. "Democracy is that form of political constitution which makes possible the adaptation of the government to the wishes of the governed without violent struggles . . . By means of elections and parliamentary arrangements, the change of government is executed smoothly and without friction, violence, or bloodshed." (p. 42)

But if the preservation of private property was the basis for liberal acknowledgment of a vitally important role to government, that same essential element in liberalism implies a severely circumscribed set of functions for government. Liberalism reflects the teachings of economics concerning the enormous benefits that society reaps from the institution of private property in the means of production. But the very concept of private ownership involves “for the individual a sphere in which he is free of the state. It sets limits to the operation of the authoritarian will.” Every attempt by the state to go beyond its function of “guaranteeing life, health, liberty and private property against violent attacks” is then seen by the liberal as “evil.” (p. 52) No matter how well-meaning paternalistic acts of government may be, such acts necessarily invade the domain of private property. Consistent paternalism cannot but lead to complete authoritarianism, stifling all progress and innovation. “The wielding of powers of this kind even by men imbued with the best of intentions must needs reduce the world to a graveyard of the spirit.” (p. 54)

Here then we have the single goal and *raison d'être* of limited government in the Misesian system: The pragmatic lessons of economic science, joined with a passionate regard for individual freedom, point unequivocally to the liberal system of private ownership of the means of production.

Preservation of this fundamental framework of individual rights calls for government that protects these rights against potential enemies; the concern that such protection emphatically refrain from itself invading those very rights is not the expression of any kind of compromise—it is merely the other side of the very same coin, the essentiality to liberalism of a protected, inviolate sphere of individual rights.

## The Institutions of a Free Society

### Society without the state

#### *Freedom and culture*

In a free society, a large part of people's lives is lived in the complete absence of government. This is not just a case of the old Indian joke: 'The economy grows at night – when the government is sleeping'. Rather it is that government has no role at all in most of the activities that are really important to people.

People in a free society are not isolated individuals. On the contrary, they are social creatures. They seek out the company of others, try to fit in with others, and collaborate with others in many ways. They may be active members of religious groups. In clubs and societies they associate with others who enjoy the same things that they do, whether it is singing, reading, cooking, fishing, playing and watching sports or collecting. They associate and form groups with others like themselves, whether they are young, old, school friends, new parents, or people with similar disabilities. They may run soup kitchens or hostels for needy and homeless people. This is what is called civil society.

And despite the freedom of action and of movement that people enjoy in more-free societies, their citizens mostly share and respect common values, cultures and traditions. Free individuals, especially the young, may sometimes challenge the old ways – and indeed that is how better ways of doing things are discovered and progress is made. But freedom is not the enemy of culture. Even immigrants who do not share a particular culture must at least respect the prevailing culture if they are to be accepted into society. They may need to learn the language if they are to secure employment. And while they may not at first understand the traditions and moral principles of their adopted country, they will have to do so quickly if they are to avoid offence, and are to prosper. It is not that they would be actively discriminated against: in a free society, people are treated equally. But nobody in the native population – or any other – has to seek out the company of others who they find disagreeable, or who do not respect their ways or who cannot properly communicate with them.

Human beings desire company, and need it as a way of securing opportunities and advancing their own interests. So being an outsider puts you at a big disadvantage. People in a free society may not all share each other's values, but in simple human terms, it pays to tolerate them. The freedom of thought and speech and action that people have in a free society necessarily pays respect to the prevailing culture, morality and traditions.

### Who needs government?

This informal web of mutual interest, collaboration, obligation, trust and reliance greatly enhances our lives. But it does not need government for it to function. We cooperate with each other, and prosper through our membership of various groups, without any authorities getting involved.

Even in the field of law, which one might think was unarguably a government function, we decide most things between ourselves. Contracts in a free society are not designed and imposed by the state but drawn up by the parties concerned, who outline the terms they are prepared to accept and agree to them voluntarily. Those who do enter into contracts often agree to have any disputes between them judged by independent arbitration rather than the state-run courts, which can be much slower, much more expensive and much less fair than the private alternative.

It helps the creation of such informal and cooperative social relationships if the population itself is fairly

homogenous. If most people come from the same race or religion, they will share values and find it easier to enter into agreements with confidence. That has not been helped by colonial regimes and post-war international conferences that have redrawn traditional boundaries and lumped different ethnic groups together. Many countries recently torn apart by conflict, such as Syria, Libya, Lebanon or Iraq, did not exist a century ago; they are the creations of politicians, not of peoples. The British made similar mistakes in Africa and the Indian subcontinent, lumping together different tribal or ethnic groups in the same administrative colony.

No wonder that we have so many fragile states, in which governments cannot even protect the lives and property of their citizens. That is stony ground on which to grow a free society and free economy. It is not easy to re-create a cooperative culture once it has been shattered and there are no bonds of mutual respect and trust on which to base our cooperation. The best that can be hoped for is that the different groups can draw up settlements that allow them to coexist, even if they do not properly cooperate together. But coexistence and cooperation between different peoples will always be much easier if the conditions of a free society are established, with the prospect of mutual benefit resulting.

## **Why government must be limited**

### ***What should government do?***

Few people today believe that government should control every part of our lives. We all believe that the role of government should be limited in some way. Most people accept that we need government to decide or do things that have to be decided or done collectively, but that it should not interfere in things that we can do perfectly well by ourselves. And most thinking people conclude that there should be restraints on our leaders to prevent them overstepping their authority.

The issue is not so much the size of government, but what it is there to decide and do, and how it decides and does these things. Since a free society and its economy are based on trust, the citizens of free societies naturally expect their government to protect them against fraud and theft. But we would not wish the authorities to give people life imprisonment for dodging a bus fare, nor install spy cameras in everyone's home in case they are illicitly downloading music from internet sharing sites. Government action must be proportionate to the problem.

Another reason why government should be limited in its scope is that decisions made by individuals – over whether to trade a particular good, say – are purely voluntary. But decisions made by government – say to stop people from trading in a particular good – require the use of force to be effective. The use of force is an evil, even if it is sometimes necessary. When we make decisions politically, we should balance the benefit they achieve against the evil of the force they rest on. We should not rush to pursue the benefit without thinking of the harm.

And economic and social life both need freedom in order to grow. They develop through a gradual process of small-scale trial and error. Countless innovators try many different ideas – a new product, for example, or a new teaching method. The ideas that do not work are soon abandoned, but those that improve life are copied and spread by other people. But government control of economic and social institutions denies innovators any scope: the constant but gradual process of trial and error is slowed.

Furthermore, when governments intervene, it is generally on a big scale. They make decisions for the whole population on issues such as what products are to be manufactured or what teaching methods are to be adopted. Inevitably, this slows innovation and progress too. And when governments make mistakes – as inevitably they will – they are huge, catastrophic mistakes.

## Why have government at all?

There are still good reasons to have governments doing certain things. We might need an authority to decide and enforce some essential rules about how we act – deciding which side of the road we drive on, for example, or making sure that we honour our contracts.

In addition, there may be some projects that it is in every- one's interest to have done, but which are unlikely to be done (or done well) by any individual. These are the so-called public goods. Defence and policing might be examples: while everyone benefits from improved security, why should anyone volunteer to serve? Another example is the air pollution that chokes the air of cities in many developing countries. Using smokeless fuels for heating, fitting catalytic converters to cars, and installing waste filters on factory chimneys might help cure the problem and make life better all round. But people will not volunteer for the expense of doing that, when they know that everyone else could simply 'free-ride' on their sacrifice, and enjoy cleaner air at their expense. So instead we may decide such issues politically, and force everyone to curb their pollution, or tax everyone to pay for police and security. Then we achieve things that produce wide- spread benefits, but which the market does not deliver.

Some proponents of freedom – we might call them libertarians – would argue that we do not need government at all. They say that free societies are extremely good at finding ways to cooperate and ways to deliver benefits to everyone, for example by means of philanthropic giving, or by finding clever ways to discourage free-riding by limiting benefits to people who pay. They are not even convinced that we need governments to enforce contracts or protect our lives from attack and our property from theft, thinking that individuals or groups can do all these well enough for themselves.

Other advocates of a free society – classical liberals – argue that at least some political decision-making, and some govern- ment power, is needed to protect us, to enforce agreements and to deliver public goods – though it should be limited to these func- tions. Libertarians, however, still fear that if you give governments an inch they will take a mile: nearly all the world's governments today have found roles for themselves – at the public's expense – that go well beyond these core functions.

## Views on personal and economic freedom

Deciding on how far the role of government should extend is not a simple matter of 'left' versus 'right'. People disagree not only on whether decisions should be made by individuals or collectively, but also on whether that should apply to both our personal and our economic decisions.

### Question: Surely government must provide things like defence?

No. There are certainly some things that must be decided collectively, such as whether to go to war, but there are very few things that cannot be provided privately. Many countries contract at least some of their defence functions to private companies, which make the vehicles, ships, aircraft and equipment, build and maintain the barracks, and provide the food and logistics.

It was not long ago that we used to think that only governments could deliver the mail, run the telephone system, operate the railways, provide water, gas and electricity, build roads, hospitals and prisons, or even produce steel and make cars. Now private firms do all these things. And, because they face competition, the quality they have to produce is higher.

We might identify four different viewpoints.

- The first group we might call individualists. They hold that individuals should be free to make their own decisions about both their personal and economic lives.
- Diametrically opposite are the authoritarians, who advocate collective control over both personal and economic behaviour.
- The third group is those who advocate individual freedom in economic decisions but collective authority over people's personal choices. They might be called conservatives (though the term means different things in different cultures). This mixture of economic freedom but social control is a common feature of many Asian countries.
- The last group is those who want collective control over economic life but who would leave individuals to run their personal lives.

It is particularly hard to find a good name for this last group. In the United States, they would be called liberals, but this is a very misleading use of the word. In most other countries, liberal means classical liberal – the idea that some framework of government rules is needed, but that most economic and personal decisions should be left up to individuals. In effect, the term has been stolen by American politicians and intellectuals who believe in personal freedom but who want government to have more control over economic life.

All these one-word descriptions are rather inexact ways of describing what is in reality a spectrum of views about economic and social issues. There is a wide range of views even within each group. (The individualists, for example, range from the libertarians, who would argue for total freedom, to the classical liberals, who see a limited role for government. The authoritarians, meanwhile, range from totalitarians, advocating total control, to statisticians who see a limited role for private decision-making.)

Nevertheless, it is useful to be aware that political views cannot adequately be described on a simple 'left-right' spectrum, which would lump together people with quite different views of society. It is more useful to think about it in terms of how much freedom people think there should be across two different parts of life, the economic and the personal.

## **Why individual choice?**

There are strong reasons to prefer freedom in both economic and personal life. For a start, people know their own needs much better than distant governments ever could. They feel their own hopes, fears, dreams, desires, needs, wants and ambitions. They are much more aware of their own circumstances and those of the friends, family and communities they cherish and seek to help. They know much better the opportunities that are open to them, and the problems that different actions might cause. So they are in by far the best position to make decisions about their own lives and future.

There is also the moral point that people whose decisions are made for them are not whole human beings but mere slaves. And having no personal responsibility for what happens, they never learn from their successes and mistakes. They may suffer the evils of bad policy made by the authorities, but can do little to prevent it happening again, so see no reason to try. But individuals who enjoy the benefits of their successes, and suffer the costs of their mistakes, are strongly motivated to repeat what works and avoid what does not.

## **Diversity promotes progress**

There is also advantage in diversity. People who are free to make their own decisions will act in a variety of different ways. They can choose the actions that they think are right for their own circumstances. They can try out different lifestyles – 'experiments in living', as the English philosopher John Stuart Mill called it in his 1859 essay 'On liberty'.<sup>1</sup> Some of these may be successful, others not. But we can all learn from them, and advance our own progress, doing more of what seems to work and less of what does not.

In an authoritarian society, by contrast, only one way of doing things prevails because the decisions are made collectively. Any mistakes are catastrophic for everyone. And even if the official approach succeeds, we are not allowed to try other things that might work even better. Decision-making will be slower and more bureaucratic. Our progress in such a world will be slow and often painful.

In a free economy, producers get continual feedback from their customers. Every moment of every day, people are choosing the products they prefer over others. They are constantly weighing up price, reliability, size, shape, colour and scores of other qualities for each and every product they buy. Those diverse preferences are instantly transmitted to producers, who see what sells and what does not. Mindful that their competitors are doing the same, suppliers will move as fast as they can to produce more of what people want, and less of what they do not. And they will be stimulated to experiment with introducing new and different products that they hope customers will like even more.

Contrast that, again, with an economy where the authorities decide what is produced. It does not matter whether they control the whole economy, or just certain parts of it, as is usually the case: decision-making about what should be produced and how will still be a slow and clumsy business. At best, customers may be able to express their choices every few years, at elections. But they will not be voting on individual products and qualities: if they get a real choice at all they will be voting on a whole package of policies that might include everything from defence, schooling and healthcare to irrigation, agriculture and rural transport. The authorities have nothing like the constant, incentivising feedback that customers give suppliers in a market economy. There is little pressure on the authorities to innovate, and consumers do not get what they really want.

## **Depressive effects of intervention**

There are few countries today where the government runs – or even tries to run – the entire production of the nation. Much more common is that governments control specific sectors – particularly those seen as essential, such as healthcare, education, agriculture or policing – or that they try to steer production more generally through subsidies, price caps and regulations on businesses.

Even when governments try to run just a few sectors, the problems of slow and clumsy decision-making remain, especially where these sectors are the ones of most critical importance. The government might run only the production of food, for example: but if it fails to produce sufficient quantities of the food that people need, the result could be widespread famine.

Likewise, government efforts to steer production more generally produce the same mismatch of supply and demand. For example, politicians may try to keep down the prices of some goods or services – food, say, or healthcare, or interest rates – by imposing price caps on them. But producers then earn less from supplying these things. The price they get does not justify the effort they spend on production. So they produce less, or leave the sector entirely.

The result is shortages. At the artificially low prices imposed by law, producers will supply less, but consumers will want to buy more. Food may officially be cheap, but there is none on the shelves; interest rates may be low but loans are impossible to find; healthcare may be free but you have to queue up to get it.

There are similar problems when governments try to steer production by subsidising the production of particular goods or services. The European Union, for example, has long subsidised and protected its farming sector, supposedly to ensure a strong and continual supply of food, but in fact to protect inefficient European farmers against international competition (and to buy the support of this politically important group). Subsidies encouraged massive over-production – with ‘mountains’ of unwanted butter and ‘lakes’ of unsold wine.

But there are other consequences, less visible than these. The biggest gainers from Europe’s agricultural subsidies

have been the biggest landowners, not the poorest farmers. And corruption has been rife, with farmers claiming subsidies for food that they never produced. There are countless similar stories from around the world, and indeed from history: in his 1776 book *The Wealth of Nations*, the Scottish economist Adam Smith complained of herring boats being equipped so as to maximise their subsidies rather than their catch.

Subsidising any form of production draws resources to that sector and away from others where time, effort and capital might be employed better. For example, many governments are currently subsidising expensive wind and solar power, taking money from individuals and businesses that could find much more cost-effective ways of investing it. That is a drag on economic growth that depresses the long-term prosperity of the public.

## **Decisions by the few**

Another reason to prefer decision-making by individuals rather than by the authorities is that choices are made by the many rather than by a powerful few. Inevitably, the authorities that make the decisions for everyone will need to have the power to put their decisions into effect. But the authorities are also human beings; and it is asking too much of them to resist the temptation to use that power to promote their own interests and those of their family or friends or neighbourhood or clan or political party. Contracts and monopolies are awarded to their associates. A disproportionate amount of public spending goes to senior politicians' home districts. Jobs in government, the police and the judiciary go to favourites, instead of being awarded on merit.

But the less that is decided politically, and the more by individuals themselves, the less scope there is for this kind of corruption. Government can be focused on its primary role of minimising coercion – rather than profiting from it.

Sometimes the profiteering is too subtle to see. 'There is no art which one government sooner learns of another,' wrote the father of modern economics Adam Smith, 'than that of draining money from the pockets of the people.'<sup>3</sup> By borrowing, for example, governments can spend on projects that win them elections and enrich their supporters, while passing the cost on to others. They can even pass the cost to the next generation. If their debt gets too daunting, they can simply print money and repay their creditors in devalued currency. But such theft, open or hidden, discourages people from building up wealth. They become less likely to start new businesses and build up productive capital, and the whole society is made worse off.

The government of a truly free society would not be permitted to borrow except in extreme situations, and even that would be limited. Nor would it have a monopoly over the currency and be able to print more when it needed money. And taxes in a free society would be low and levied on a broad base – not heaped on political opponents or minorities such as 'the rich'. Taxes would be simple, transparent, easy to pay and predictable. They would not be 'farmed' by public or private agencies that have an interest in boosting the amount they pull in from taxpayers.

## **The paternalist argument**

A very common viewpoint among ruling elites is that they have to take all the decisions because the public are, like children, incapable of making decisions for themselves. This is self-contradictory: it degrades 'the people' from whom their power is supposed to come. And it is illogical to suggest that the people have enough collective wisdom to elect the right government, but not enough individual wisdom to manage their own lives.

**Question: Surely we all have responsibilities to the government?**

No. In a free society, the government has responsibilities to us.

In many places, governments were established, and remain in power, only through force. This is not a legitimate form of government. The government of a free society is one that is formed by the people as an agency to decide or do those few things that have to be decided or done collectively (such as defence) or impartially (such as justice). It is there to serve the citizens – not the other way round.

There are certainly cases where the whole society would benefit if people behaved a little better. But most of these are moral issues that it is no business of the law to enforce. And while we might urge people morally to do things that would help others, the government of a free society cannot make them. It is empowered only to prevent harm being done to others, not to force people to benefit others. There is a 'public goods' argument for making people contribute to certain common projects such as defence, but such cases are rare.

It is true that people often show surprising apathy over issues such as how state-run services are delivered. But that is usually because they know that complaining is a waste of breath, since nothing will change. If anything actually improved as a result of people getting involved, more people would.

## **Ways to limit government**

### *Democracy*

In the rare cases where collective decisions are inescapable, a free society consults the whole population, since the whole population is affected by the outcome. In other words, there is some kind of democracy.

It may not be that the whole population takes every decision – that would be far too cumbersome and time-consuming. Normally, the whole population elects representatives to decide on their behalf. Such representatives are not mere delegates, expected slavishly to reflect the views of their electors; they bring their own judgement into the process.

Democracy is not the same as populism. The majority of the public may well believe that religious or ethnic minorities should be slaughtered, but the government of a free society cannot do that. It exists to prevent harm to others, not to facilitate it. An old joke describes democracy as two wolves and a sheep deciding what to have for dinner. But in a free society there are limits on the powers of majorities in order to protect minorities.

The biggest problem is not how to choose governments, but how to restrain them. They are only human: the power they wield can corrupt them. If freedom is to be safeguarded, there must be some mechanism to remove our leaders. Elections in a free society are not just about choosing leaders, but also about getting rid of them.

Some authoritarians argue that elections merely create instability as different governments, perhaps with radically different policies, are voted in and out. But because the power of governments is limited in a free society, the extent of any instability is reduced. If governments are seen to be legitimate, the chances of disruptive instability are smaller, not greater, than if they are not. Through force of arms, an illegitimate government can remain in power a long time; but the only real alternatives are periodic, peaceful elections or occasional, bloody revolutions. In free societies elections are preferred, which limit coercion and violence, and allow change and progress to happen faster.

Certain conditions are required if elections are to be accepted as legitimate. There must, for example, be a genuine choice of parties. It is not a free election if there is only one candidate to vote for: in a free society there will always be a diversity of views. That in turn implies that different candidates must be able to express and publish their views, and be free to criticise other candidates and parties. And people must be able to vote for

their preferred candidate without fear of retribution – so ballots must be secret. Some countries put limits on election campaign expenditure in order to ensure that rich candidates or parties do not have an advantage. Many impose fixed terms between elections, rather than allowing the incumbent government to decide when they should be held.

## **Public decision-making**

The governments of most non-free countries came to office through force. Some remain there through force, though many have found ways to give themselves the appearance of legitimacy – by setting themselves up as the sole custodians of the religious or cultural heritage, for example. In a free society, by contrast, government exists only for very limited purposes and by the consent of the public.

Even so, governments often stray well beyond their purposes of preventing harm and doing collectively what cannot be done individually. For example, they often monopolise the delivery of public goods. While decisions about what public goods should be provided might have to be collective, they can still be delivered, in whole or part, by private agencies. Charities, for example, can deliver care to the poor and the sick. And in terms of preventing harm to others – such as the effects of pollution – the degree of harm done can be hard to measure, and government intervention may not in fact be fully justified.

If some decisions must be made collectively, by what rules should those decisions be made? The ideal would be unanimity: everyone takes part in the decision-making, and no action is taken unless everyone agrees. Since people are unlikely to vote for collective action that they think would harm them, there is then little chance of any individuals or groups being harmed by the collective decisions.

But unanimity is hard to achieve. For a start, it would be very time-consuming for every person to take the time to study and vote on every proposal. That is why we elect representatives instead. And reaching any agreement at all would be a struggle, because any one person could veto the whole plan. Hence, collective decisions – whether made through popular elections, referenda or votes in the legislature – are generally made by a majority. It may be a simple (50 per cent +1) majority or a qualified (say two-thirds) majority. That reduces the difficulty of making decisions, while still ensuring that decisions are made by the greater part of the population rather than by small elites.

## **Voters' self-interest**

There is a story about the Roman emperor who, asked to judge the finalists in a singing contest, hears one and gives the prize to the other, on the grounds that the second could not be worse. And today, people have a tendency to think that whenever we are unsatisfied with what a free society and a free economy produce, government action must improve things. If the market fails to deliver public goods such as defence or welfare, for example, the government must provide them instead. Or if a factory pollutes the air, government action is needed to stop it. But this does not necessarily follow.

Markets might indeed fail to meet our needs on occasions. But when we speak of 'market failure' we must remember that there is government failure too. Even in relatively free societies, governments are not objective, measured, dispassionate, public-spirited forces. Self-interest runs through government, from top to bottom. People imagine elections as a means to identify the 'public interest' and put it into effect. But in a free society there are many different interests – and those interests conflict. Voters who want lower taxes are at odds with others who want more public spending. Those who would benefit from a new highway oppose those whose homes would be demolished. Elections do not establish 'the' public interest. They simply balance many competing interests. Collective decisions are made on this foundation of conflict.

## **Politicians' self-interest**

Just as voters have their own interests to serve, so do politicians. Many see office as a way to get rich or do down their enemies. They might even be thought weak if they do not exploit office like this. And even in more-free societies, corruption can be a problem.

Even if the politicians really want to serve the public, they first have to get into power. They need to collect enough votes to be elected. But this does not mean that they must therefore reflect broad public opinion. They may win more votes by appealing to small, unrepresentative minorities.

Small groups with strong interests dominate the political process because they have something specific to gain by getting a favourable policy in place – such as a subsidy to their own industry. Being small and highly motivated, they are easy to organise, and more likely to put effort into campaigning and lobbying. But much broader groups, such as consumers or taxpayers, with less specific views, are harder to organise. And they are less motivated, because the costs of policies such as the industry subsidy are spread thinly between them all.

## **Coalitions and logrolling**

The dominance of minority views becomes even greater when interest groups form pacts with others to pool their voting strength. A coalition of several groups, all threatening to desert a candidate, has even more leverage over the candidate than any one alone.

The same pandering to special interests occurs in the legislature. Politicians who desperately want public spending projects in their own district may trade votes with others who desperately want other projects in theirs. But the result of these 'you vote for my measure and I will vote for yours' arrangements – known as logrolling – is that more such proposals succeed and that government grows larger than anyone really wants. And when these laws do go into effect, more self-interest comes into play. The officials who are delegated to administer them will have interests of their own. Their status and pay depend in part on having a large staff, and – consciously or unconsciously – they may make the bureaucratic process more complicated in order to justify that larger staff, a process known as empire building. And again, they will receive more lobbying from small interest groups than from the general public, so may concede more to the special interests, and perhaps even take bribes from them.

## **Setting the rules**

To sum up, in choosing governments, making laws and administering laws, minorities with concentrated interests count for more than majorities with more diffused views. Decisions made politically are very poor at reflecting the broad views of the public. And the government sector has an inherent tendency to grow well beyond what most people want, beyond what makes sense and well beyond what is needed to maintain a free society – to the point, indeed, where freedom is actually eroded.

The more-free societies adopt various rules to try to limit these problems. Elections are a vital part of this. But they are a weak restraint on politicians and officials. They come rarely, and are often dominated by larger parties, making change slow. Stronger restraints are needed.

## **Constitutional agreement**

A common way to restrain the political process is to adopt a constitution that is agreed by everyone, or by an overwhelming majority, and which sets out the rules by which elections are run and political decisions are

made. If everyone has to agree to what the rules are, it becomes impossible for governments to impose rules designed for their own benefit – for example, by banning opposition candidates or imposing disproportionate taxes on opposition voters.

The political process can be further restrained by the separation of powers. Instead of a single person or a single body wielding all the law-making power, the idea is to split that authority between different institutions, each of which can block, modify or restrain what the others can do. For that reason it is sometimes called a system of checks and balances.

If a single body, such as a politburo or legislative council, has all the power, political majorities and sectional group interests will certainly try to capture it for their own benefit. But if the constitution divides power between two different chambers of government, it makes power harder for interest groups to capture. If those chambers are elected in different ways, it will be even harder for the same group interests to dominate both. If either chamber can block or modify decisions made in the other, it makes logrolling, and the exploitation of minorities, still more difficult.

As a longstop in this system of checks and balances, many constitutions of more-free societies also appoint a president as the representative of the whole people, who (it is hoped) can rise above the political fray and veto legislation that injures minorities. A further longstop against exploitation is an independent judiciary. This is essential for a free society. Judges must not be politically aligned, and must be able to strike down unconstitutional laws and the exploitation of minorities – and to do so without fear of retribution by politicians. Constitutions sometimes put other restraints on the activities of government, such as balanced budgets – insisting that its budgets should balance over some fixed period (say, three to five years), and setting budget limits on annual borrowing and the total of public debt. Some even limit the proportion of the national income that government may spend, in order to curb its inherent tendency to grow. In addition there may be term limits so that politicians cannot remain in office for years, and sunset clauses to prevent government agencies outliving their usefulness.

## **Qualified majorities**

A further way to protect minorities is through qualified majority voting. Freedom would be very insecure, for example, if the ruling authorities were able to change the constitutional rules by a simple vote in the legislature. So a free society sets much higher barriers – such as a two-thirds vote in both chambers plus equally high margins in a plebiscite or in the individual regions or states.

On issues where it is easy to exploit minorities in very damaging ways, decisions should require very high majorities. For example, it is easy to design taxes that can impose very great burdens on particular groups. Some advocates of a free society therefore demand that the tax rules – not the rate of tax but who pays what taxes – must be decided unanimously so that the minority is protected, even if the majority is an overwhelming one.

## **The captive public**

In the market economy, you are free to take your business elsewhere if you feel that a trader is cheating you or giving you poor value for money. But if your government is cheating or exploiting you, there is nowhere else to go. You might perhaps leave the country – but given language and other barriers, this is not an option for most people. This is a recipe for coercion – which makes it all the more important to ensure that the role and actions of government, and every part of it, are carefully specified and strictly limited to those required to preserve and expand the freedom of the population.



Chapter 4  
Entrepreneuership

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## WHY CARE ABOUT ENTREPRENEURSHIP?

### The unseen factor of production

Entrepreneurship is more important to us than we think. Most of us realise that land, labour and capital are needed in order to produce the goods and services that sustain and improve our lives. But entrepreneurship is the unseen factor of production. Land, labour and capital produce nothing until they are actively put to work. They need to be directed and focused by some human mind – an entrepreneurial mind that realises how they can be used to create value.

*Classical economics established four fundamental factors of production: land, labor, capital, and entrepreneurship ... With a few exceptions, the last factor disappeared, along with purposeful action, from economic theory sometime around the beginning of the 20th century.*

— Frédéric Sautet

Indeed, entrepreneurship is so overlooked that even the concept of it is comparatively recent. The word's roots lie in the thirteenth-century French *entreprendre*, meaning to do or undertake something. By the sixteenth century

it was being applied to people running businesses. But it was not until 1730 that the Irish-French economist Richard Cantillon (c. 1680–1734) used it for someone who took a financial risk in running a business; and 1803 when the French economist Jean-Baptiste Say (1767–1832) explained the key role of entrepreneurs in finding more productive uses for resources.

Further embellishment of the idea came in 1848, when the British philosopher and economist John Stuart Mill (1806–73) identified entrepreneurs as people who assume both the risk and the management of a business. Today, economists focus on the role of entrepreneurs as innovators or in spotting opportunities or taking risks in a world of future uncertainty. And attempts to clarify the concept continue.

### Innovation and economic growth

None of these aspects of entrepreneurship is more important to human progress and economic growth than innovation. Progress and growth are not simply the result of applying more of the seen factors of production but are largely the result of innovation in making human economic activity more productive. In a competitive economy, entrepreneurs face constant pressure to innovate as they strive to find ever-more cost-effective ways to create the cheaper, better, faster, neater, smarter products that will attract customers. (Just think of the developments in phone or automobile technology, for example, and the revolutions in how they are manufactured.) That constant pressure to raise productivity – finding more efficient processes and more effective products – explains most of the rise in our living standards. Indeed, back in the 1950s, the American Nobel economist Robert Solow (1924–) calculated that a remarkable 87 per cent of economic growth came from innovation (Solow 1956). Yet the British science writer Matt Ridley (1958–) believes the figure is even higher today, since new materials, new machines and more efficient methods allow us to spend less and less time and resources on supplying our needs and wants (Ridley 2020). Innovation does not just create better products, it creates new resources too, says the American management expert Peter Drucker (1909–2005). Entrepreneurs change valueless things like sand into valuable ones like silicon computer chips (Drucker 1985). And in turn those new resources can be used to create things of even greater value, such as smartphones, robots and driverless cars.

But innovation is not just about new gadgets. It is, says Ridley (2020), ‘the great equaliser’. Today, people in the poorest countries have mobile phones that work as well as any in the richest. Innovation is why the number of people living in extreme poverty is shrinking fast, and why it will continue to do so.

Innovation, then, improves our lives; and there is a powerful link between innovation and the number of new businesses being created. Fast-growing industries (such as IT, AI, VR, biotech, telehealth, fintech) are mostly populated by young, growing firms, not old established ones (Sanandaji and Sanandaji 2014). Certainly, large firms, with their capital and personnel resources, can be entrepreneurial too: remember the Sony Walkman. But it is new, smaller, growing companies that account for most innovation, and most new job creation.

## How to promote entrepreneurship

Some Westerners worry that their entrepreneurial business dynamism is declining. The rate of new start-ups has slowed, less productive firms are surviving longer, and the most productive firms are employing more technology and fewer people (Decker et al. 2016). Given the economic importance of entrepreneurs in boosting productivity through new products and processes, and their social importance in improving all our lives, this opens up a crucial question: are Western policymakers still maintaining the right conditions for entrepreneurship to thrive, and what must they do to encourage it?

Unfortunately, there are no easy answers. There are few hard facts to go on because ‘entrepreneurship’ is difficult to define and identify. It might be found mostly in new small companies, but the number of new small businesses in a country is not a good measure of entrepreneurship. After all, there are lots of self-employed house painters or taxi drivers, but they are not normally regarded as entrepreneurs. That term is reserved for more dynamic and creative people who reorganise production methods and produce something new. As Peter Drucker put it, there are plenty of small restaurants in American suburbs. But the McDonald’s owner, Ray Kroc, standardised the product, revolutionised the process of making it, and created a new market: that is why he is regarded as an entrepreneur (Drucker 1985):

The husband and wife who open another delicatessen store or another Mexican restaurant in the American suburb surely take a risk. But are they entrepreneurs? All they do is what has been done many times before ... But by applying management concepts and management techniques (asking, What is ‘value’ to the customer?), standardizing the ‘product,’ designing process and tools, and by basing training on the analysis of the work to be done and then setting the standards it required, McDonald’s both drastically upgraded the yield from resources, and created a new market and a new customer. This is entrepreneurship.

Policymakers might aim to boost entrepreneurship by giving subsidies and other aid to all new businesses. That may well help a few entrepreneurs to flourish, but it would waste taxpayers’ money on supporting many other new businesses that are not really entrepreneurial at all. Moreover, most new businesses fail. Typically, a fifth of new businesses fail within one year, a third within two years, and around half within five (US Small Business Administration Office of Advocacy 2014). Only a tiny few become hugely successful. The rest fail for many and diverse reasons that may have nothing to do with how entrepreneurial or not they are, or how innovative and useful their products might be. If taxpayers’ money is used to subsidise all new businesses, it will benefit few successes and be lost on many failures. And, sadly, there is no certain way of predicting which new businesses will prosper – which is why governments’ attempts to ‘pick winners’ have usually failed too.

## Encouraging experimentation

A better strategy, say some economists, is to try to create the right conditions under which entrepreneurship might arise and thrive (see, for example, Lerner 2009). The entrepreneurial process, by which innovative

companies and products either fail or break through to economic success, is an evolutionary process, much like the process of natural selection by which living species evolve. The more experimentation we can encourage, the greater chance we have of finding success. And for the same 'trial and error' reason, the easier it is to fail – but still recover – the more fertile the process becomes. Indeed, most successful entrepreneurs have had past failures, often many of them. Thomas Edison had more than a thousand failed attempts to develop a lightbulb. Steve Jobs lost Apple millions with his Apple I and Apple Lisa, and even got fired from his own company. Sir James Dyson tried over five thousand prototypes before creating his bagless vacuum cleaner. Peter Thiel ran a hedge fund, which lost 95 per cent of its assets.<sup>1</sup> When Amazon branched out from books to toys, Jeff Bezos bought tens of millions of toys to stock, but sold only half of them. Failure teaches entrepreneurs what sorts of processes and products do not work, and through their past experience they learn what the market does want. Bezos's online auction site failed too – but the experience enabled him to develop Amazon Marketplace.

*I have not failed. I've just found 10,000 ways that won't work.*

— Thomas Edison

While there is some science to encouraging entrepreneurship, there is a great deal of guesswork too. Silicon Valley – nickname of the southern San Francisco Bay Area that is home to some of the world's biggest high-tech companies and thousands of tech start-ups – is a celebrated entrepreneurial success story. But few if any places have been able to emulate it, and nobody is quite sure how it came about. Experts argue over whether it was built on public or private investment. The presence of strong 'anchor' firms, many servicing public infrastructure and defence contracts, certainly helped (Mazzucato 2013). But then the proximity of Stanford University, a private institution, was also critical. The area also benefited from being able to attract mobile, highly educated and skilled workers, and from a thriving local business environment including venture capitalists from whom start-ups could obtain both funding and advice. Then the whole 'clustering' effect of similar tech firms entering the area helped create valuable cross-fertilisation between different companies and increased the specialisation that was available in the jobs market. It was, perhaps, all a lucky accident, which other places would struggle to recreate.

## **How economists neglect entrepreneurship**

Mainstream economists, however, can give us scant guidance on how to boost the entrepreneurial process, because they almost entirely overlook it.

Entrepreneurship is crucial to us all as the driver of economic growth and prosperity (Kritikos 2014). It motivates, directs and organises the other factors of production into the creation of value. Yet mainstream economists rarely appreciate this important catalytic function. In the mainstream economics textbooks, for example, the 'firm' is an entirely abstract idea. There are no explanations of why firms exist, how they are born, how different and diverse they are (apart perhaps from size), how they change and develop, what they mean to their founders, workers and customers – or even why they fail. In other words, human beings and entrepreneurial minds are entirely painted out of the picture. But human beings in general and entrepreneurs in particular are the key to understanding all economic life. It is they who motivate action, commerce and trade. Land, capital and even labour produce nothing of value until they are directed by some human mind to some purposive end. Sand is just sand, until human beings make it into concrete or computer chips; capital goods are just idle equipment until put to work on producing things of value; digging ditches is wasted effort unless it helps us drain or irrigate farmland or provide the footings for buildings or serve some other human purpose. Before we can understand economics, we must understand human motives and interactions.

Sadly, it is much easier for people to comprehend a simple 'mechanical' model of the economy than such richly complex human explanations. The easy textbook concepts such as 'perfect markets' – an imaginary world of identical products and identical buyers and sellers for whom trade is free and costless – are simpler to grasp than the swirling change and diversity of real markets. But those concepts are sterile and unreal. Even more unfortunately, the 'perfect markets' idea suggests that wherever we find real markets to be 'imper-

fect, we (or specifically our government policymakers) should immediately intervene and try to bring them back to 'perfection'. But markets are not and never can be 'perfect'. If our economic life were perfect, nobody would have any reason to innovate or supply or sell or buy any product, because they could never improve things. No market would be needed; no market would exist at all. In reality, it is the very imperfections in economic life that cause people to take productive action and to trade things between each other. And tomorrow, circumstances will be different again. Markets respond to those changing circumstances. They are dynamic – a perpetual flux of changing demand for and supply of countless goods and services. That flux itself exposes other surpluses, shortages and opportunities just like the whirlpools and eddies that open up in a fast-flowing mountain stream. It is entrepreneurs who take action to fill those eddies with new processes and products. To do so, they innovate. And by innovating, they bring people new goods, services and choices that they might not even have imagined just a short time before.

Entrepreneurs do all this, even without the 'perfect information' that the textbooks imagine. They cannot know in advance which processes will prove practicable and profitable, nor what products the public might want, of what quality and at what price. Their task is all guesswork – albeit, in the case of many successful entrepreneurs, inspired and thoughtful guesswork. Entrepreneurs take risks, make investment decisions, and commit time, effort, capital and other resources into their project, while facing a fog of uncertainty about what the future will bring and what the needs and choices of future consumers will be. Who would have dreamed, for example, that nearly half the world's population would even want a smartphone, never mind buy one? What producer of encyclopaedias, atlases, reference books, diaries, newspapers, calculating machines, cameras, music players or department stores would have predicted that their businesses would be devastated by some pocket gadget? But taking risks against such a background of uncertainty is, according to some theorists, the very definition of entrepreneurialism (McMaken 2014).

## **The importance of competition**

The textbook view also suggests that competition is a state of affairs – a fixed situation in which there are large numbers of identical buyers and sellers. But as the Anglo-Austrian Nobel economist F. A. Hayek (1899–1992) realised, competition is better thought of as an active and ongoing process. Moreover, it is a process in which entrepreneurs and entrepreneurship play a vital part (Hayek 1978).

Hayek called competition a discovery procedure. As entrepreneurs juggle with the changing demands of customers and variations in the price and supply of resources, they discover new information. They find better and cheaper ways of producing goods and services, and identify the needs, wants and tastes of customers more precisely.

Under the pressure of competition, there is also a premium on entrepreneurs satisfying those desires as quickly as possible. Surpluses, shortages and opportunities occur all the time in markets – a natural result of their dynamism and complexity, and the daily fluctuations and mismatches in supply, demand and prices that inevitably open up. Entrepreneurs are rewarded for acting to stem the surpluses, plug the shortages and seize the opportunities that occur – and for anticipating future surpluses and shortages and acting in advance to correct them. Under market competition, entrepreneurs must act fast, or competitors will gladly exploit those opportunities and gain the rewards of success instead. In a competitive market, therefore, mismatches are corrected quickly, far quicker than could happen if the market was governed by government planners or dominated by monopolists, neither of whom would have such an urgent interest in doing so. The greater the competition, the faster must entrepreneurs be in spotting and plugging gaps, the more accurate they must become in anticipating future demands, and the more innovative and imaginative they must be in correcting imbalances. The more rapidly they serve the true needs of the public, and the better they are at it, the more their actions make the whole society better off.

*Nobody talks of entrepreneurship as survival, but that's exactly what it is and what nurtures creative thinking.*  
— Anita Roddick, founder of BodyShop

Again, competition can be seen as an evolutionary process of selection. But it is not producers, not businesses and entrepreneurs, who select what products we will have. It is consumers, constantly choosing the products that best satisfy their needs and give them the highest value for the least price. If someone else can produce a better or cheaper product that delivers them better value for money, they can (and generally will) drop their existing suppliers and spend their money on that new product and new supplier instead. Build a better mousetrap, as the saying goes, and the world will beat a path to your door – though there is much more to entrepreneurial success than mere invention.

Through the competitive market selection process, resources are steered systematically into the better mousetraps and countless other uses of goods and services that deliver the public most value. Every penny spent by consumers, in innumerable daily transactions, acts like a vote in a continual ballot. Each one sends out a signal to entrepreneurs, telling them exactly how much of each and every good and service should be produced. That prompts entrepreneurs to divert resources and production processes towards their most valued uses. It also prompts them to innovate and seek out new ways of creating and supplying better and better-value products. The result is that available resources are used as effectively as they can be. Value is enhanced and the whole society benefits.

*In the political democracy only the votes cast for the majority candidate or the majority plan are effective in shaping the course of affairs. The votes polled by the minority do not directly influence politics. But on the market no vote is cast in vain. Every penny spent has the power to work upon the production processes.*

— Ludwig von Mises, Human Action

## Entrepreneurship and diversity

The approach of mainstream economics has yet another shortcoming. It underestimates, indeed ignores, the importance of diversity. In so-called ‘perfect competition’, products are identical. In reality, they are obviously not. Think of the variety and choice we have in everyday goods: different kinds of tea, bread, footwear, hats, chairs, phones, cars or housing; and in different services too, like hairdressing, banking, entertainment, job training, transport or veterinary services. True, the ‘perfect competition’ model is only a theoretical abstraction that is designed to help us think. But by glossing over the real diversity and complexity of economic activity, it actually misleads us, and encourages some very mistaken ideas. It makes many people conclude, for example, that having more than one producer of anything – cars, chemicals, ships, paper, clothing or whatever else – must be ‘wasteful’. After all, ‘economies of scale’ mean that a single large firm should be able to produce things far more cheaply than numerous small ones. At the same time, distribution systems could be unified and there would be no need for competitive advertising.

Yet, far from promoting any ‘wasteful’ duplication of identical products, real-life competition spurs entrepreneurs to create products that are different. They want to win customers from their competitors by offering them products that are not the same, but better or cheaper or both. They want to create products that stand out from the crowd, products that capture customers’ attention and imagination, and make them switch their spending patterns. As a result, consumers enjoy a huge variety of products to choose from, with different features and at different levels of price and quality. No two models of car, computer or cosmetic are identical. Even seemingly standard products like soap or orange juice or hamburgers are made, styled, packaged and marketed in different ways. Nor would we even want to have the same clothes, footwear, watches or hairstyles as everyone else. Yet the ‘perfect competition’ model ignores this diversity and therefore overlooks the role and importance of entrepreneurship in creating it – and, indeed, in driving innovation and human progress.

In the real world, there is certainly plenty of competition. But entrepreneurs are not trying to give us all some identical product. They are striving to find out what sorts of products we prefer. That brings their ingenuity and innovation to bear on supplying what the public really wants. In the process, they make new discoveries, develop new systems, improve productivity, increase value and promote progress.

Those are all very important reasons why we should care about entrepreneurship and try to understand and encourage it (Seth 2019).

## The Economic Role of Entrepreneurship

Thus far we have looked at entrepreneurship in terms of the common way that ordinary people think about it. Economists, however, see entrepreneurship in a different way and have their own views about what the economic role of entrepreneurship actually is. At least, those who think about the subject at all do.

### Economics and uncertainty

The mainstream economic textbooks, as already mentioned, have relatively little to say on the subject of entrepreneurship. The core reason for this is perhaps that economists, envying the success of the natural sciences, have tended to model their own subject on the natural sciences such as physics and mechanics. As a result, they picture economic activity as an interplay of impersonal forces; they attempt to explain, quantify and predict the results using numerical measures, correlations, graphs and formulae.

In reality, economic life is nothing like that. Even expert investors cannot accurately forecast daily stock prices or weekly exchange rates. Nor can central banks, with all the resources available to them, accurately predict the next quarter's economic growth. Such things are impossible because economic life is not an impersonal mechanism. It is the complex result of the unknowable personal aims and the countless different actions of diverse individuals who each face different and changing circumstances. It is also affected by natural and other events that we cannot anticipate with any confidence – tsunamis and droughts, for example, or discoveries and lucky accidents.

Since markets are in constant flux, and since we do not fully understand what moves them, those who are active in the market, such as entrepreneurs, can do no more than act on their best guesses. As the Chicago economist Frank Knight (1885–1972) put it, market players have to navigate both risk and uncertainty (Knight 1921). Risk is where we can quantify the probability of certain events (e.g. a casino operator can calculate mathematically the long-run odds of making a profit on a roulette wheel and even, through experience, the same on the blackjack tables). Uncertainty is where we have no information on which to make predictions (e.g. that changes in political events or moral attitudes will conspire to force casinos out of business entirely). Entrepreneurs have to make their best guesses about the future. And they may well come to different opinions as to what will succeed.

With this in mind, some economists see entrepreneurs primarily as people who direct resources in the face of risk and uncertainty. Others stress that entrepreneurs take responsibility for the risks and benefits of pursuing their particular vision of the future. Some have emphasised the disruptive nature of entrepreneurs as they introduce innovations that challenge the existing order. Others, by contrast, see entrepreneurs as people who are alert to opportunities and who fill gaps, restoring order in markets (Klein 2009; Vaz-Curado and Mueller 2019). It is worth looking at some of these different interpretations, starting again with the textbook approach.

### The textbook model

The mainstream ideas of 'perfect competition' and 'equilibrium' (where markets settle into perfect balance) assume away innovation and change. In these mechanical models there is no human motivation, no need for new products or processes, no explanation of why new firms are created or fail, and therefore no purpose for entrepreneurship. Every fleeting disruption in supply or demand repairs itself, and everything returns swiftly and automatically into balance. But as the Austro-American economist Ludwig von Mises (1881–1973) pointed out, there is no reason to believe any of that at all (Mises 1951). Human beings make mistakes and act

on predictions that turn out to be false. As a result, markets are never going to be perfect and self-correcting. Moreover, it takes time and entrepreneurial action to plug gaps, repair mismatches and correct imbalances. Even before that has happened, things will have moved on again, and yet further gaps and mismatches will have opened up.

If markets were perfect, there would be no role for entrepreneurs (or anyone) to do anything at all. Since nobody can improve on perfection, why bother? The very fact that markets are not perfect is what motivates people to action. They take action in the hope of improving life. Entrepreneurs do this in various ways: spotting mismatches in supply and demand; creating new and better technologies and products; and taking risks and organising resources to that end. That requires them to actively and mindfully mix labour and capital, manage production and market their products, according to their best judgement about an uncertain future.

Furthermore, the inputs they must put together are complex. No two parcels of land are identical, no two workers have identical skills, no two pieces of capital equipment are necessarily interchangeable. That diversity is ignored by the textbooks – which talk about the ‘stock’ of labour and capital as if all plumbers, farmers and ballerinas, or all trucks, printing presses and computers were the same. The fact that they are not makes combining resources both complex and risky. Additionally, entrepreneurs must invest their own time, energy and ‘human capital’ skills. And they need to convince others to trust them and join with them.

Most will not anticipate the future correctly or will struggle to manage resources or will fail to enjoin others, and their business will fail. But those failures still provide a useful lesson to them and to others, while their few successes promote the general prosperity of the whole population. That is because, in an open and competitive economy, the only source of financial profit is customers who voluntarily part with money in exchange for something they value more – the entrepreneur’s product. After all, neither would bother to exchange unless they both considered themselves better off by it. The wider free exchange is, the more value is created and spread throughout the community – something the Scottish economist Adam Smith (1723–90) noted 250 years ago (Smith [1776] 1981).

*You don't learn to walk by following rules. You learn by doing and falling over.*  
— Sir Richard Branson, founder, Virgin Group

## **The entrepreneur as creative disruptor**

The idea of the entrepreneur as an innovator and disruptor is associated principally with Joseph Schumpeter. To him, the key role of the entrepreneur was innovation. That did not mean merely inventing or discovering new things but also having new business ideas and forming innovative growth-focused firms. That process might involve using new combinations of resources to create new and better technologies or products. Or discovering and acting on new information that makes new products possible. Or opening up new markets or new sources of supply. Each implies the entrepreneur abandoning the common way of thinking and creating something new and different. It implies having a dream and the abilities to make it happen.

With all this in mind, Schumpeter regarded entrepreneurship and entrepreneurial innovation as a disruptive force. Constant innovation brought constant disruption but it was still vital for economic advance. It not only expanded the range and quality of products available to customers, it also inspired new production methods and created whole new industries, even clusters of industries. And those new methods and products themselves became resources that future entrepreneurs can use to create yet other products – as the microchip became for the producers of computers, and computers became for the development of driverless cars.

*The essential point to grasp is that in dealing with capitalism we are dealing with an evolutionary process.*  
— Joseph A. Schumpeter,  
Capitalism, Socialism and Democracy

**Creative disruption.** As pioneers were copied by others, thought Schumpeter, new methods and products would spread. Unable to compete, old industries would decline, and old jobs might be lost. But that too has a benefit: it leaves labour and other resources available to be re-focused on the creation of higher-value products and processes. Schumpeter called this process ‘creative destruction’.

The phrase is unfortunate, because it focuses attention on the ‘destruction’ and suggests that capitalism and entrepreneurship are a threat to jobs. Perhaps ‘creative disruption’ might have been a happier term. But Schumpeter wanted to emphasise the dynamism of entrepreneurial innovation, shifting resources to more productive uses, in contrast to the textbook notion that markets naturally remained stable and balanced.

While entrepreneurial change is disruptive, it is rarely destructive, except in radical circumstances where completely new technologies suddenly make entire old industries redundant – e.g. online maps replacing printed atlases, digital photography replacing film, or word processors replacing typewriters. In most cases, the transition is less rapid, and producers have more time to adjust. For example, motor vehicles replaced horse-drawn ones only slowly, because they remained expensive luxuries – at least until another innovation, Henry Ford’s mass production process, made them cheaper. Certainly, the industrial landscape of many countries is disfigured by the hulks of abandoned mines, factories and docks, all testament to the ‘destruction’ inherent in Schumpeter’s ‘creative destruction’. Yet the obvious creative benefits of economic advance must be set against those losses. None of us would want to give up the many innovations that gave us wealth and leisure, to go back to spending much of our waking lives finding and carrying back food, water and fuel.

## The entrepreneur as discoverer

Another – arguably incompatible – view of the economic role of the entrepreneur comes from the prominent Anglo-American economist Israel Kirzner (1930–). To Kirzner, entrepreneurship means being alert to untapped profit opportunities and attempting to realise those profits. Entrepreneurs, being alert, notice gaps and mismatches that others have not yet seen – unsatisfied demand, say, or prices that do not fully reflect market conditions – and move to profit by acting on those discoveries (Kirzner 1973).

*Entrepreneurs see change as the norm and as healthy. Usually, they do not bring about the change themselves. But – and this defines entrepreneur and entrepreneurship – the entrepreneur always searches for change, responds to it, and exploits it as an opportunity.*

— Peter F. Drucker, *Innovation and Entrepreneurship*

This kind of entrepreneurship seems more commonplace than Schumpeter’s creative disruptors. It does not rely on a few people with innovative genius. Indeed, all of us look for opportunities – hunting for better jobs, for example, or taking a training course to make ourselves more employable. We do not even have to be very alert: sometimes we are just the right person in the right place to take advantage of what turns up: we merely have to grasp the opportunity. And, of course, to decide to see it through. Kirzner’s entrepreneur is primarily an opportunity-spotter but also a decision-maker.

**Entrepreneurs and coordination.** Instead of disrupting markets, this entrepreneur is someone who restores order to them. Markets generally work well, but they are never perfect, and mistakes do occur. There may be gaps in people’s knowledge about the potential of new technologies, say, or confusion about the true state of supply and demand conditions, causing things to go out of sync. Kirzner’s entrepreneur sees such gaps and mismatches not as problems but as profit opportunities. And in pursuing that profit, the entrepreneur actually helps to close the gaps. For example, entrepreneurs might notice that market prices are out of step with the real state of supply or demand and then start buying things they believe are under-priced or selling things that they believe are over-priced – much as stockbrokers and asset managers do every day. Their motive is to make a financial profit, but their action also has the effect of bidding up the price of the under-valued items and bidding down the price of the over-expensive ones. That prompts prices to come back into balance – all the more so when others see what they are doing and copy it.

Kirzner therefore sees the entrepreneur as someone who promotes the coordination of economic resources, rather than someone who disrupts things. If markets are out of kilter, he maintains, it is because market players are ignorant of something and do not spot the opportunity to correct the mistake. However, the alertness and action of entrepreneurs helps spread a greater awareness of the real facts. As they and their imitators drive prices up or down, resources are drawn into more-valued uses and away from less-valued ones.

## Entrepreneurs as information processors

That is not to say that buying low and selling high is easy. Entrepreneurs cannot know everything about the present, and the future is even more uncertain. In addition, products take time to design, manufacture and bring to market; so, entrepreneurs must try to anticipate and fill future gaps in supply and demand. Since nobody can predict the future for sure, entrepreneurs need to take a view on how things might turn out. There is no 'right' view: different entrepreneurs will take different positions, based on their different appetites for risk and their assessments of future uncertainties.

Certainly, they are more likely to succeed if their view is informed. So, they may invest in research and testing to understand what potential customers might choose, to establish what production options exist and to explore the viability of their business idea. But they will still have to make decisions on information that is uncertain, incomplete, scattered and often hard to obtain and interpret.

*What makes profit emerge is the fact that the entrepreneur who judges the future prices of the products more correctly than other people do buys some or all of the factors of production at prices which, seen from the point of view of the future state of the market, are too low.*

— Ludwig von Mises, *Profit and Loss*

Entrepreneurs must also consider the countless other uses of their time, energy and capital – what economists call opportunity costs – and assess which of many possible strategies might be the most fruitful. Yet, as the German economist Ludwig Lachmann (1906–90) noted, there is a multiplicity of human purposes, a multiplicity of possible goods that could be produced to satisfy them, and a multiplicity of different ways of producing those goods (Lachmann 1986). Choosing between them is no straightforward task.

Given the multiplicity of choices, entrepreneurs have to experiment not just with new products but with new production technologies and processes. They combine different inputs, evaluate the results and then try other combinations in order to make their networks as productive and cost-effective as they can in producing what their customers actually want. Again, there are many possibilities to juggle with, and it is not surprising that many mistakes are made. But with many entrepreneurs all experimenting competitively with different products and processes, knowledge is gained and spread. The long-run productivity of the whole economy is raised – which benefits everyone.

*We are living in a world of unexpected change; hence capital combinations ... will be ever changing, will be dissolved and reformed. In this activity, we find the real function of the entrepreneur.*

— Ludwig Lachmann,

*The Market as an Economic Process*

## Entrepreneurs and uncertainty

This is a continuous process. Entrepreneurs can never create a 'perfect' product, nor a 'perfect' production method. It is always possible that another will top them. The most we can say is that in competitive markets, less successful products and processes give way to more successful ones (Mises 1951). They do not have to be perfect and forever – merely better fitted to the market conditions that happen to prevail at the time. But inevitably, those conditions too will change. The supply of oil or foodstuffs might be hit by wars or droughts, for instance, or the demand for disability scooters might rise because the population is getting older and richer.

Such changes will open up opportunities for yet other entrepreneurs to come along and fill the gaps.

Since markets are never at rest, entrepreneurs must make their production choices within a very risky and uncertain environment. But Kirzner (say his critics) over-looks this risk and uncertainty. His entrepreneur is on the alert for gaps to fill: but spotting gaps is the easy part. The real problem is that it takes time to design, produce and market a solution that coordinates things again. By then other changes may have occurred and the entrepreneur's guess is out of date before it is born.

## **Entrepreneurs and judgement**

Building on this, the American economist Peter G. Klein (1966–) suggests that the defining characteristic of entrepreneurship is judgement under uncertainty (Klein and Foss 2014). The entrepreneur faces an uncertain future and must take a view about how things might turn out. No-body can know that outcome for sure, of course: hence the need for judgement. Research and experience may help the entrepreneur, but as Mises put it, entrepreneurial judgement 'defies any rules and systematisation. It can be neither taught nor learned' (Mises 1949). Entrepreneurs must make plans, focus resources and produce the products they hope will succeed on the basis of their own particular view of how future market conditions will turn out.

It is the diversity of those views that makes entrepreneurship potentially profitable. If everyone thought that nuclear fusion was on the verge of bringing the world safe and virtually free energy, they would all scramble to invest in it and the potential profits would be spread very thinly between them. Significant profits come to entrepreneurs only when they make correct judgements while others are making wrong ones. As Mises again put it, an entrepreneur sees the future differently from others. That is why entrepreneurs are able to buy and assemble low-cost resources today in order to produce high-price services in the future, without everyone else bidding up their costs.

The former head of IBM, Thomas Watson, probably never uttered his supposed 1943 statement, 'I think there is a world market for maybe five computers'. But that was not an uncommon view in the 1940s and 1950s. Then, computers took up whole floors and were so expensive that only the largest institutions could afford one. Their potential was regarded as largely limited to solving specialist mathematical problems. As the technology advanced, however, others such as Steve Jobs of Apple took a radically different view – that everyone would demand affordable, user-friendly home computers to help with a wide variety of everyday tasks. He also had the creativity and drive to make that happen. As IBM lost its market dominance, Jobs made a fortune out of his vision and judgement. It is hard to find a better example of what we all understand by an 'entrepreneur'.

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## The Importance of Entrepreneurship

Some of the economic benefits of entrepreneurship (such as raising productivity and steering resources to higher value uses) have already been mentioned. But there are other benefits, both economic and social, which it generates too.

### Economic benefits

**Product improvement.** As we have seen, entrepreneurship spurs economic growth by enabling us to produce more. But it also spurs economic development by enabling us to produce better. Entrepreneurs look for new and better production technologies to raise productivity and create products that are not just cheaper and more plentiful but more useful and higher quality too.

**The results are evident.** Our cars break down less often. They also warn us of problems, are more fuel-efficient and park themselves. Our computers are smaller, faster and better networked. Our suitcases are lighter and stronger and have polyurethane wheels that save us struggling to carry them. We no longer get our fingers stained because our pens do not need to be filled each day from a bottle of ink. Bulky gramophones have given way to tiny pocket devices that give us instant access to the best performances of the world's best musicians at a superb level of quality. Our televisions are larger, slimmer, sharper and smarter. Our toothbrushes are electric and tell us if we are brushing properly or not. Our books take up no space at all on our pocket readers. Shampoo no longer stings our eyes. Soon our cars will drive themselves, and all these other products will be improved on too.

Entrepreneurs provide customers with products that improve their lives, sometimes dramatically, as (say) an industrial robot can do for a manufacturer, bubble wrap can do for a retailer, a hearing aid can do for a deaf person or a smartphone can do for just about anyone. And this progress continues on.

**Better information.** Entrepreneurs' activities also spread information about which processes are better and which products are most valued. By experimenting with new ways of combining and using inputs to reduce costs and improve product quality, they reveal better ways of working to others. By buying up resources that they think are undervalued, or selling things they consider overvalued, they alert others to those opportunities. By supplying products that customers actively prefer, they show others where the demand is.

The spread of better and more complete information in this way improves the operation and efficiency of markets. As others strive to copy the pioneering entrepreneurs' success, they draw resources such as capital and labour from less valued applications and direct them to the more valued ones, helping to generate more value out of fewer resources.

**Cascading development.** Sometimes, entrepreneurs' products enable the development of other products or even whole industries. For example, microprocessors and touchscreens made possible tablets and smartphones, which in turn made possible ride-sharing apps and paperless ticketing.

The rise of the IT and communications industries in India during the 1990s unleashed a similar sort of cascade, making possible new businesses such as call centres, and creating demand for new construction, networks, hardware, software and maintenance, all of which boosted employment. Greater connectivity, nationally and internationally, made people more aware of market conditions outside their own community, allowing a new generation of entrepreneurs to see and exploit opportunities not just locally but globally.

Nor was this development merely economic. The new employment opportunities in India drew people away from a harsh agricultural existence and into a more prosperous and comfortable life in the cities. Education and

training bodies arose, or expanded, to teach skills to the new workers. The new industries also started to break down the caste system, since they needed employees with skill and brains, regardless of their caste. Meanwhile, even those who remained on the land benefited from the IT revolution. Women created new businesses renting out mobile phones to others in their villages. And with web-enabled phones, farmers now could check the prices of their rice, wheat, cotton, sugarcane, onions or tea in commodities markets hundreds of miles away, and negotiate better prices for themselves instead of having to accept what local agents might offer.

## Rising productivity

**Long-term improvement.** As new and more productive firms spring up, creating cheaper and better products and getting them to customers more effectively, older and less productive businesses lose market share. They may even drop out entirely. But in turn the new firms may be supplanted by yet other enterprises that produce even better products even more efficiently. The result is a systematic and long-term improvement in economic productivity and value creation. Resources such as labour and capital are drawn into more highly valued uses; more and better products are produced using fewer and cheaper inputs.

**Internationalism.** Indeed, this happens on an international scale. Financial capital is highly mobile. No longer do entrepreneurs have to save up their own money to expand their business, or rely on money from friends, family or local investors. If their idea is promising and they have good management skills and a strong business case, they can tap capital markets anywhere in the world, borrowing the funds they need or selling a share in their business in return for capital. That is particularly important for entrepreneurs in poorer countries, where local funding is hard to find. Potentially it gives them access to the same funding that is available to entrepreneurs in even the richest countries.

The same internationalism applies to management as well. Like financial capital, 'human capital' is mobile; managers and consultants can take their skills to any country where they are appreciated. Again, this is particularly valuable to entrepreneurs in poorer countries where management education and training may be less advanced and where good managers may be hard to find. Like access to capital, access to better management and advice helps entrepreneurs to boost their productivity, and with it, the productivity and prosperity of their community and country.

**Research and development.** There are other economic benefits too. Being focused on improving products and processes, entrepreneurs are commonly a focus of research and development, creating new understandings, new ventures, new technologies and new products, as well as researching and opening up new markets. Established industries may hit a revenue ceiling as the demand for their product becomes fully satisfied. But new products open up the untapped market demand for something better or cheaper. As better products become more plentiful and more affordable, the public experiences a rise in wealth, while the new production processes generate new employment opportunities and the prospect of higher earnings. Indeed, most new jobs come from small businesses and start-ups.

## Human benefits

There are human and social benefits from entrepreneurship as well as the economic ones. Entrepreneurs' focus on delivering new and better products make us less dependent on old, slow and often labour-intensive technologies. Our grandparents would spend hours each day bringing buckets of coal into the house, making up the fire, cleaning out the ash and disposing of it afterwards. Modern central heating takes up no time at all. Our grandparents also spent days each week washing clothes on a scrubbing board, putting them through a mangle, drying them on a line (weather permitting) and then pressing them with irons that were heated on the fire. Now we have automatic washer/dryers and non-iron fabrics. Nor do these improvements reflect some

inevitable march of technology: they exist only because entrepreneurs have purposefully created them.

The result of these and many other improvements, in sectors from agriculture through healthcare and retail to transport and more, is that we have a galaxy of diverse products to choose from. We do not have to spend so much time worrying about basic necessities and comforts. Entrepreneurial innovations make our work more productive – and also easier, with less manual labour and risk of injury – and our leisure more plentiful and rewarding, with more time to ourselves.

Furthermore, new entrepreneurial firms open up employment opportunities. That is particularly beneficial for migrants, minorities, young people and women who may be discriminated against by the workers and managers in larger, established industries. It allows workers to build up the savings and capital they need to improve their lives and undertake the education that will further boost their ‘human capital’ and employability. These are all personal and human benefits, not just dry ‘economic’ ones.

## **Social benefits**

There are social benefits too. A community that has a diversity of entrepreneurial businesses is likely to be much more stable and relaxed than one which is dominated by some large heavy industry – a large mine, steel works or carmaker for example. Change and development can then happen gradually. Businesses can come and go, and workers can move between them as they choose. They do not live in fear of massive widespread unemployment should the dominant employer collapse.

Also, successful entrepreneurs are large investors in charities and community projects. There may of course be a strictly business motive behind that. Perhaps they may hope to promote goodwill towards the business among suppliers, workers and customers. By supporting local schools and hospitals, they may be able to recruit a healthier and more skilled workforce. By improving the local environment, they may improve their workers’ morale and retain them for longer. They may even promote higher education, research and development projects in the hope of them discovering new opportunities that their business could potentially exploit. Yet much of entrepreneurs’ charitable activity is purely philanthropic. The Scottish-American steel magnate Andrew Carnegie (1835–1919) spent much of his fortune establishing and improving free public libraries. Through the Bill & Melinda Gates Foundation, the Microsoft entrepreneur directs billions of dollars into poorer countries, with research and delivery initiatives focusing on agricultural improvement, sanitation, nutrition, immunisation, malaria control and more. Many entrepreneurs promote higher learning and research, not in pursuit of commercial benefits to themselves, but because cutting-edge science and technology excites them. That might explain why so many of today’s super-entrepreneurs are fascinated with space exploration – something far too risky to be explained as a straightforward commercial project.

And over the decades and centuries, entrepreneurs have been disproportionately responsible for radical innovations that have changed people’s lives on a massive scale. These innovations include things like the printing press; steam engines; carding, spinning and weaving machines; the telephone; railways; gramophones; aeroplanes; float glass; and home computers. Indeed, the list is endless. Often the inventors were looking for something else when they chanced on their discovery, as with the microwave oven, or penicillin, even Corn Flakes and Super Glue. Occasionally they have sparked the creation of entire new industries, modernised entire economies and changed our lives and culture.

## **The social role of profit**

Most entrepreneurs may be motivated by the prospect of personal financial gain, but that does not mean that they can succeed only by robbing others. On the contrary, in an open and competitive economy, they can make money only by delivering value to others. Their financial reward comes only through customers, whose lives are improved by their products, and who think the voluntary exchange of money for those products is a fair

one. And in that process, entre-preneurs spread value through the population, from which everyone gains.

Remember that profit does not mean only financial profit. An entrepreneur's customers profit in that they receive a product that they value more than the money they pay for it. Profit simply means getting more value out than the value you put in – like turning useless and valueless sand into useful, productive and valuable computer chips. Profit is not something to decry but something to celebrate on account of its economic and social benefits. If we can use fewer resources to create more value, after all, we are all made better off.

Inasmuch as entrepreneurs pursue financial profit – earning more money from a venture than the amount they spend on materials and manufacturing – that profit motive has the positive social effect of boosting value, widening choice and improving products for everyone. Indeed, the bigger the profit, the bigger the general social gain is likely to be. Financial profit is a rough indicator of the additional value that the entrepreneur creates. It shows that the entrepreneur has found a way to reduce cost – allowing expensive resources to be redirected to more productive uses – and increase the value produced by supplying cheaper, more plentiful or better-quality products to willing purchasers. Indeed, the more open and competitive the economy, and the easier it is for competitors to enter and leave the market, the greater is the pressure on entrepreneurs to keep on reducing input costs and raising product value. If they slack off, after all, others will gladly step in to capture the reward.

The result, once again, is a continual improvement in productivity and value creation. As that improvement goes on, things that were once luxuries and affordable only to the few – fresh meat, running water, domestic heating, electricity, cars, washing machines, computers – become better and cheaper. Access to them spreads out through the community, like ripples on a pond. Cheaper products mean that everyone has more to spend on things they value more; improving quality means that everyone gets more value for the same cost.

We can thank entrepreneurs for such improvements. They may well profit financially from it, but we all gain in other ways. They may even come by their financial profit more by good luck than by shrewd judgement and hard work, but the social benefit is the same.

In fact, it is hard to distinguish how much luck and how much judgement and effort go into any entrepreneur's success. Even good luck has to be grasped and channelled productively if it is to be turned into a profit. Many people envy the 'windfall gains' that come through good luck, and even demand that they should be taxed; but the only effect of that is to reduce the number of entrepreneurs on the alert for missed opportunities – to the detriment and loss of the whole society. Society would be better off if we encouraged more people to think and act entrepreneurially and allowed those who did to enjoy the rewards of their value creation.



Chapter 5  
Private Property

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## **Self-Ownership in Nepalese Society**

February 11, 2009 | Surath Giri

When looked upon from the vantage point of freedom, Nepalese society seems to be in infant stage. A mature society implies respect for the right of an individual to enjoy maximum freedom as to what to do with his life, actions and property and hence live a life he chooses while respecting similar rights of others. This viewpoint of a mature society arises from the concept of self-ownership which may seem bizarre to a society like ours. Despite gaining political and civil liberties to some extent as a result of various political movements and revolutions and the impact of globalization, Nepalese society hasn't yet embraced the concept of respect for the rule of law and social and economic freedom.

### **What is self-ownership?**

The concept of self-ownership can be traced back to John Locke who said the individual "has a right to decide what would become of him and what he would do, and as having a right to reap the benefits of what he did." To put it simply, the concept of self ownership means that every person owns himself and is responsible for all his actions, which means that you have the highest claim to your life. No other person or groups of person own your life nor do you own the life of others. If anyone else would have a higher claim to your life than you do then it would imply that you are a slave, not a free person. Every person is equal and therefore they also have the highest claim to their life. So, what person "A" does with his life or his body shouldn't be of any concern to "B" until and unless A doesn't breach B's rights of self ownership. No individual has the right to initiate force to take away other person's life or liberty. The right to own oneself is hence, "self-evident."

Another facet of self-ownership is that the state is merely a body representing individuals for the sole purpose of safe-guarding the natural rights of its people. Government officials don't enjoy any rights more than we civilians do. Officials don't have the right to take away someone else's life, liberty or property without their voluntary consent. Since we don't have these rights, naturally our representatives can't have that right. One cannot give what one doesn't have is a universal truth. Rights to life, liberty and property don't come from the state they are with us from birth. State is there to safeguard our rights.

### **Self-Ownership and Personal freedom**

A society with respect for self-ownership rights gives maximum freedom of choice to individuals; making them responsible for their own actions which in turn drives the society towards progression through better decisions, competition and innovations. Only in such societies is a person free to choose the course of his life, his religious values, his culture and traditions and live a dignified life.

### **Self-Ownership and Private Property**

The concept of self-ownership and private property are interdependent. Self-ownership states that property is something a person acquires by using his labor and liberty. Property is part of the nature which individual turns to valuable use or something he/she acquires through voluntary exchange. A person has the highest claim over his justly acquired property. No one has the right to exert forceful aggression against anyone else's property. A person is free to choose what to do with his property. He can choose to destroy it, lend it, throw it, utilize it, underutilize it and whatnots until and unless there isn't any aggression on somebody else's property.

## **Why is it necessary for a prosperous society?**

As we can see that in a society where self-ownership rights of the individuals are respected, every person has to be responsible for himself. He/She cannot think of prospering on someone else's expenses. Every decision she makes and every action she performs is of utmost importance to her as the consequences are to be borne by him/her. When a person feels responsible for herself, she starts acting for her own best interests seriously. When every one feels responsible for their life and starts working to improve their life sincerely, society moves towards progression.

The property right of a person acts as an incentive for him to work more and be prosperous. The people who put more efforts in their life get more whereas people unwilling to work for themselves won't prosper or survive because they can't forcefully take someone else's property. Property right motivates people to work more, innovate new things, use their resources more efficiently and productively which contributes in the economy of a society.

## **What is the present condition in Nepalese Society?**

Self-ownership is a new concept for our society. There are many instances where our culture and practices prevent people from becoming self-responsible. Let take the example of the practice of inheritance. According to our culture and our law, a person inherits the wealth of his parents. A person regardless of his wishes, has to give his property to his wife and children. The children who receive huge wealth from their parents without having to work for it take it for granted. There is no incentive for them to work hard and make a fortune for themselves. If someone's father is earning well, then the son doesn't think it necessary to work for his living as he is sooner or later going to inherit the wealth.

Another example can be the tendency of Nepalese people living with their parents even after attaining adulthood. The free scholarship and free lodging –fooding we receive from our parents is making us less responsible in our studies and life. Most of our youngsters today complain more and take less responsibility for their life.

On a higher level, if we look at our society, even a small problem in the neighborhood awaits the government's action. A strict government is the panacea to all the problems. "The government should take more action..."; "Our government should provide us this and that ...."; "That's not my job, the government should do it..." are one of the most common phrases we hear everyday. Our expectations from government ranges from free education, free health services to employment. Our expectations from the government are not only too many but ridiculous as well. Letting government be responsible for many aspects of our life, we have increased the government's control on our lives. There are very few aspects of our life which are free from government control. Letting government take decisions for us, every child born in Nepal has an increasing debt of more than Rs.13000 on his head.

Lack of respect for self-ownership rights appear time and again in our news. Husbands killing their wives for dowry issues and feeling no regret, labour unions shutting down industries, various women groups attacking the beauty pageants and refusing to let the participants make their decision on whether the pageants are using them as commodities or not, security personnel killing civilians, ruling party seizing the property of civilian and refusing to return them are some very common news in our media.

## ***Conclusion***

The society with respect for self-ownership rights is the most practical, ethical and prosperous society. It's the society where its members learn to be responsible for their lives and enjoy maximum freedom to shape up and live their lives as they choose. Due to responsible citizens, the resource in such societies are utilized most efficiently and productively. A free and responsible society is the ultimate stage of any civilization. Sadly, our society lags far behind in this regard. While we are talking about a new prosperous Nepal, every Nepalese

should realize that the pathway to our goals is a free and responsible society and works towards the attainment of the same.

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## The Property Right Paradigm

### INTRODUCTION

*ECONOMICS* textbooks invariably describe the important economic choices that all societies must make by the following three questions: What goods are to be produced? How are these goods to be produced? Who is to get what is produced? This way of stating social choice problems is misleading. Economic organizations necessarily do resolve these issues in one fashion or another, but even the most centralized societies do not and cannot specify the answer to these questions in advance and in detail. It is more useful and nearer to the truth to view a social system as relying on techniques, rules, or customs to resolve conflicts that arise in the use of scarce resources rather than imagining that societies specify the particular uses to which resources will be put. Since the same resource cannot simultaneously be used to satisfy competing demands, conflicts of interest will be resolved one way or the other. The arrangements for doing this run the full gamut of human experience and include war, strikes, elections, religious authority, legal arbitration, exchange, and gambling. Each society employs a mix of such devices, and the difference between social organizations consists largely in the emphasis they give to particular methods for resolving the social problems associated with resource scarcity.

Capitalism relies heavily on markets and private property rights to resolve conflicts over the use of scarce resources. These fundamental characteristics of an idealized capitalistic system have been taken for granted by most mainstream economists even though the discipline of economics developed contemporaneously with Western style capitalism. It is unfortunate that the study of the underpinnings of capitalism has been left by default to its critics on the left.

But recent years have witnessed increasing attention to the subject of property rights and to the beginning of a somewhat different approach to the analysis of social problems that find their source in scarcity. Three questions are suggested by this growing literature: (1) What is the structure of property rights in a society at some point of time? (2) What consequences for social interaction flow from a particular structure of property rights? and, (3) How has this property right structure come into being? Economic historians can contribute very much to overcoming our ignorance about the answers to these questions, and our purpose here is to facilitate historical research on these problems by clarifying somewhat the content of these questions.

### THE STRUCTURE OF RIGHTS

In common speech, we frequently speak of someone owning this land, that house, or these bonds. This conversational style undoubtedly is economical from the viewpoint of quick communication, but it masks the variety and complexity of the ownership relationship. What is owned are rights to use resources, including one's body and mind, and these rights are always circumscribed, often by the prohibition of certain actions. To "own land" usually means to have the right to till (or not to till) the soil, to mine the soil, to offer those rights for sale, etc., but not to have the right to throw soil at a passerby, to use it to change the course of a stream, or to force someone to buy it. What are owned are socially recognized rights of action. The strength with which rights are owned can be defined by the extent to which an owner's decision about how a resource will be used actually determines the use. If the probability is "1" that an owner's choice of how a particular right should be exercised actually dominates the decision process that governs actual use, then that owner can be said to own absolutely the particular right under consideration. For example, a person may have an absolute right to pick apples off a tree, but not to prune the tree.

The domain of demarcated uses of a resource can be partitioned among several people. More than one party

can claim some ownership interest in the same resource. One party may own the right to till the land, while another, perhaps the state, may own an easement to traverse or otherwise use the land for specific purposes. It is not the resource itself which is owned; it is a bundle, or a portion, of rights to use a resource that is owned. In its original meaning, property referred solely to a right, title, or interest, and resources could not be identified as property any more than they could be identified as right, title, or interest.

Distinct from the partitioning of the domain of uses to which a resource may be put is the decision process that may be relied upon to determine that use: The exercise of a particular right may depend on a decision process in which many individuals share, such as in the use of majority voting. The right to vote may be exercised individually, but it is the pattern of votes by many individuals that determines the way in which a right to use a resource will be exercised.

There are two important questions that can be asked about the structure of property rights in a society. The first asks which property rights exist. There may exist a particular right of use in a society that did not exist earlier or that does not exist in other societies. For example, early in the history of radio, users of frequencies did not own the right to prevent members of the community from broadcasting on these same radio frequencies. Any person who wished to could broadcast on any frequency, and that is still true today for certain bands of radio frequencies. The right to offer heroin for sale on the open market does not exist in the United States although it may in other countries. The right to advocate particular political doctrines exists in greater degree in the United States than in Russia. (It should be noted that the right to advocate is a right to use resources, for no advocacy could take place without the use of a place and other facilities.)

The second question calls attention to the fact that the identity of right owners may vary. Perhaps the most important ownership distinction is between state (public) ownership and private ownership. An easement right may be owned by the state or by an individual. The right to deliver first class mail is owned by the state, whereas the right to board troops without permission is not. Needless to say, the classification of social systems according to the degree of centralization of control is closely related to the degree to which property rights are owned exclusively by the state.

There is some ambiguity in the notion of state or private ownership of a resource, because the bundle of property rights associated with a resource is divisible. There can and does exist much confusion about whether a resource or “property” is state or privately owned. Some rights to some uses of the resource may be state owned and others privately owned. While it is true that the degree of private control is increased when additional rights of use become privately owned, it is somewhat arbitrary to pass judgment on when the conversion to private control can be said to change the ownership of the bundle of rights from public to private. The classification of owners can be carried beyond the important state and private dichotomy. Corporate, school, and church owners of property are also of interest. The structure of rights can have important consequences for the allocation of resources, some of which we now illustrate.

## **THE SOCIAL CONSEQUENCES OF THE STRUCTURE OF RIGHTS**

The significance of which rights exist can be appreciated by contrasting situations in which there is and is not a right to exclude. We shall use the phrase “communal rights” to describe a bundle of rights which includes the right to use a scarce resource but fails to include the right of an “absentee owner” to exclude others from using the resource. Operationally this means that the use of a scarce resource is determined on a first-come, first-serve basis and persists for as long as a person continues to use the resource. The use of a city sidewalk or a “public” road is communal, and the rights to till or hunt the land have been subjected to this form of ownership frequently. Often communal ownership is technically associated with state ownership, as in the case of public parks, wherein the state technically has the capability of excluding persons from using its property. If this right is exercised by the state frequently, as it is on military reservations, then the property right is more properly identified as state owned, but if the right to exclude is seldom exercised by the state, as in public parks or thoroughfares, then as a practical matter the users of the resource will treat it as communal. Communal

rights mean that the working arrangement for the use of a resource is such that neither the state nor individual citizens can exclude others from using the resource except by prior and continuing use of the resource. The first driver to enter the public road has a right of use that continues for as long as he uses the road. A second driver can follow the first but cannot displace or exclude him.

The difficulty with a communal right is that it is not conducive to the accurate measurement of the cost that will be associated with any person's use of the resource. Persons who own communal rights will tend to exercise these rights in ways that ignore the full consequences of their actions. For example, one of the costs of hunting animals, if they are not superabundant, is the resulting depletion in the subsequent stock of animals. This cost will be taken into account only if it is in someone's interest to do so. This interest is provided if someone can lay claim to or benefit from the increase in the stock of animals that results from a curtailment in his hunting activities. Under a communal right system anyone who refrains from hunting does so not to his benefit but to the benefit of others who will continue to exercise their communal right to hunt. Each person, therefore, will tend to hunt the land too intensively and deplete the stock of animals too rapidly.

Often the exercise of communal rights forces persons to behave in ways that are thought to be immoral. In 1970, the newspapers carried stories of the barbaric and cruel annual slaughter of baby seals on the ice floes off Prince Edward Island in the Gulf of St. Lawrence. The Canadian government permitted no more than 50,000 animals to be taken, so hunters worked with speed to make their kills before the legal maximum was reached. They swarmed over ice floes and crushed the babies' skulls with heavy clubs. Government offices received many protests that the seals were inhumanely clubbed (by humans) and often skinned alive. The minister of fisheries warned the hunters of the strong pressure he was under to ban the hunt and that he would do so unless the killing methods were humane in 1970. Clearly, it is not the hunters who are to blame but the regulations governing seal hunting that impose a communal right to hunt on hunters until 50,000 baby seals have been taken. The first 50,000 animals are offered free on a first-come, first-serve basis, a rationing system that is bound to encourage rapid hunting techniques and to make a condition for success the degree to which the hunter can be ruthless.

The problems posed by communal rights are abundantly clear when we analyze the causes of pollution. Since the state has invited its citizens to treat lakes and waterways as if they are free goods, that is, since the state generally has failed to exclude persons from exercising communal rights in the use of these resources, many of these resources have been over utilized to the point where pollution poses a severe threat to the productivity of the resource.

An attenuation in the bundle of rights that disallows exchange at market clearing prices will also alter the allocation of resources. The interests pursued by men are both varied and many. If a price ceiling or price floor prevents owners from catering to their desires for greater wealth, they will yield more to the pursuit of other goals. For example, effective rent control encourages owners of apartments to lease them to childless adults who are less likely to damage their living quarters. Effective rent control also prompts landlords to lease their apartments to persons possessing personal characteristics that landlords favor. In a Chicago newspaper, the percentage of apartment for rent advertisements specifying that the apartment was for rent only on a "restricted" basis or only if the renter purchased the furniture rose from a pre-war low of 10 percent to a wartime high of 90 percent during the period of World War II when rent control effectively created queues of prospective renters. Attenuations in the right to offer for sale or purchase at market clearing prices can be expected to give greater advantages to those who possess more appealing racial or personal attributes.

The reallocation of resources associated with the absence of a right to exclude and the inability to exchange at market clearing prices is attributable to the increase in the cost of transacting brought about by these modifications in the property right bundle. A price fixing law raises the cost of allocating resources vis-à-vis the price mechanism and, therefore, forces transactors to place greater reliance on non-price allocation methods. This is obvious; but not equally obvious is the role played by transaction cost when the right to exclude is absent.

Consider the problem of congestion during certain hours in the use of freeways. No one exercises the right to exclude drivers from using freeways during these hours. The right to drive on freeways is a communal right. But drivers who desire less congestion are not legally prohibited from paying others to use alternative routes during these hours. This right system, however, encourages drivers to let someone else pay persons to use alternative routes, since those who do not pay cannot be excluded from the use of the freeway under a communal right system. The communal right system raises transaction cost by creating a free rider problem. Moreover, even if some temporary reduction in congestion is purchased, there may be many persons not now using the freeway who are attracted to it by the temporary reduction in congestion. The supply of freeway space is very likely to create a demand for its use under the communal right system because these new users cannot be excluded. They also must be paid to return to alternative routes, and this burdens the allocation system with additional costly transactions. A right system that includes the right to exclude nonpayers, such as is possible with tollroads, eliminates both these sources of high transaction cost. Persons not now using the road can use it only if they value the route enough to pay the toll, and the owner of the toll road is not handicapped by the psychology of a freeloader.

The social consequences of the identity of right owners also can have allocative effects. At the more obvious level, government and private owners, respectively, will respond in greater degree to political and market incentives, and this can be expected to yield differing resource uses. But the effect on resource allocation of altering the identity of owners, all of whom are private owners, is not so obvious. As a first approximation, each and all private owners can be expected to respond to market incentives in the same way so that the particular identity of owners will not alter the uses to which resources are put. All private owners have strong incentives to use their property rights in the most valuable way. Under certain conditions, this approximation can be expected to be very good. The most important of these conditions is that the cost of transactions be negligible; in this case, it will be easy for those who can put resources to their most valuable uses to contact and negotiate with those persons presently owning the rights to these resources. If the cost of transactions is not negligible, then an alteration in the identity of right owners can have allocative effects because negotiations toward a unique utilization of resources may be inhibited by positive transaction costs.

The most important effect of alterations in institutional arrangements may well be the impact of such reorganizations on the cost of transacting. The enclosure movement, for example, may have significantly reduced the cost of carrying on transactions among those possessing rights of use, and this may have eased the task of putting resources to their most productive uses. Perhaps some new insights about the consequences of the enclosure movement can be obtained if the researcher focuses his attention on the cost of transacting.

## **THE DEVELOPMENT OF PROPERTY RIGHT STRUCTURES**

Under a communal right system each person has the private right to the use of a resource once it is captured or taken, but only a communal right to the same resource before it is taken. This incongruity between ownership opportunities prompts men to convert their rights into the most valuable form; they will convert the resources owned under communal arrangements into resources owned privately, that is, they will hunt in order to establish private rights over the animals. The problem can be resolved either by converting the communal right to a private right, in which case there will be no overriding need to hunt the animals in order to establish a private claim, or the incentive to convert communal rights to private rights can be restrained through regulation.

There is a basic instability in an arrangement which provides for communal rights over a resource when that resource takes one form and private rights when it takes another form. The private right form will displace the communal right form. In itself this has important consequences only if the conversion of communal ownership into private ownership is costly. Thus, if unbranded animals are held to be communal property while branded animals are private, there will be a rush to place brands on the animals. This would not be very costly, especially since branding would be desirable for identification purposes anyway. There would be no need to kill the animals in order to establish private rights, so that these animals can be husbanded appropriately once the cost of branding is incurred. But a conversion process that requires that the animals be killed in order to establish

private rights must incur the larger social cost of depleting the stock of animals.

If the social adjustment to the incongruity between communal and private rights is resolved in favor of eliminating the private right, then the immediate problem is replaced by another—the problem of providing incentives to work. Thus, if we suppose that the communal right to hunt is supplemented by the stipulation that killed animals belong to the community, in which all citizens can share according to custom, and do not belong exclusively to the hunter, then the incentive to hunt will be diminished. This may cure the overhunting problem by creating an under hunting problem in which the able-bodied wait for others to do the hunting, the results of which will be shared by all. In order to reduce the severity of the shirking problem that is thereby created, it is necessary for societies which fail to establish private rights to move ever closer to a social organization in which the behavior of individuals is directly regulated by the state or indirectly influenced by cultural indoctrination. The option to hunt or not to hunt cannot be left with the individual who, unable to claim the fruit of his effort, will tend to shirk. Instead, the state will find it increasingly necessary to order the hunt, to insist on participation in it, and to regulate more closely the sharing of the kill. Or, possibly, the community can invest in cultural indoctrination that leads to an increase in the willingness to hunt. This is in fact the course that events have taken among many primitive peoples. The animals they hunt are “free” to all on a first-come, first-serve basis, but the kill must be shared according to detailed ritual procedures, and the question of participating in the hunt is not left open to individuals. The attempt to resolve scarcity-created problems by reducing the scope of private rights must inevitably result in a more centrally regulated or indoctrinated society. One need not go so far afield to find this process at work. Our public schools are offered on a “free” right to use basis. As good schools attract increasing numbers of students, the community either must expand its resource commitment to public schools, in order to offset what it views as overutilization, or it must somehow regulate the flow of newcomers. Zoning restrictions and building codes frequently have been used to restrict the rate of immigration into such communities.

If private rights can be policed easily, it is practicable to resolve the problem by converting communal rights into private rights.<sup>1</sup> Contrary to some popular notions, it can be seen that private rights can be socially useful precisely because they encourage persons to take account of social costs. The identification of private rights with anti-social behavior is a doctrine as mischievous as it is popular.

The instability inherent in a communal right system will become especially acute when changes in technology or demands make the resource which is owned communally more valuable than it has been. Such changes are likely to bring with them harmful and beneficial effects which can be measured and taken account of only by incurring large transaction costs under the existing property right structure. In such situations, we expect to observe modifications in the structure of rights which allow persons to respond more fully and appropriately to these new costs and benefits. The coming of the fur trade to the New Continent had two consequences. The value of furs to the Indians increased and so did the scale of hunting activities. Before the coming of the fur trade, the Indians could tolerate a social arrangement that allowed free hunting, for the scale of hunting activities must have been too small to seriously deplete the stock of animals. But after the fur trade, it became necessary to economize on the scale of hunting. The control system adopted by the Indians in the Northeastern part of the continent was to substitute private rights in land for free access to hunting lands. By owning the right to exclude others from their land, Indian families were provided with an incentive to inventory their animals. Under a free access arrangement, such inventories would have been depleted by other hunters. 145th private rights to hunt the land these inventories could be maintained at levels more consistent with the growing market for furs.

Similarly, Professor North notes that twelfth-century England experienced a relative rise in the value of land which led to efforts to convert the existing right structure into one that allowed for exclusive ownership and transferability<sup>2</sup>. During the thirteenth century, England experienced the development of an extensive body of

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1 Alternately, of course, the communal right can be converted to a state right in which the state seeks to exclude, perhaps by adopting a price mechanism, the issue raised by state vs. private ownership as not so much one of what can be done but one of what will be done by state owners.

2 D. North and R. Thomas, “The Rise and Fall of the Manorial System: A Theoretical Model,” *JOURNAL OF ECONOMIC HISTORY*, XXXI (December 1971), pp. 777- 803.

land law, the initiations of enclosure, and, finally, the right to alienate land, and there were similar experiences on the Continent.

The relaying of radio signals between nations in Europe provides an interesting example of the breadth of the property right adjustment that is likely to follow from an economically significant technological development. The telephone company in Holland decided in 1926 that it would use its facilities to relay radio programs received from outside Holland to subscribers in Holland in return for the payment of subscription fees. However, many of the programs originating from such countries as England, France, and Germany were owned under copyright, and the copyright owners were not compensated by the Holland telephone company. The use of a resource that automatically became available to one country once it was produced in another posed unusual legal problems that led to heated controversy and to the Berne Convention in 1928. That conference gave to copyright owners the sole right to authorize any communication to the citizens of signatory countries, whether over wires or not, of the radio transmission of the copyright material. And by 1938, in the United States, the Federal Radio Commission appeared to regard the unauthorized relay of broadcast signals as illegal.

We have merely touched on a few cases of evolving structures of property rights to which some contemporary thought has been given. There exist very many property right phenomena that could benefit from thoughtful attention. Consider the problem of the capital structure of corporations. The well-known Modigliani-Miller theorem that the value of an enterprise is independent of its capital structure is a special application of the assumption that the cost of transacting is zero. Titles of various kinds are assigned to parts of an enterprise's wealth and the value of these titles are no more nor less than the present value of the enterprise's wealth potential, at least so long as entitlements are well defined, partitionable, and transferable at zero cost. Further, they will be revised and exchanged in ways that maximize the utility of their owner subject only to the constraint imposed by the wealth potential of the enterprise.

But, in fact, these bundles of rights are not costlessly transferable or revisable, so that a question remains as to what bundles of rights are most appropriate for an enterprise to issue initially. Bonds, common stocks, preferreds, convertibles, warrants? Given the cost of transacting and of revising these bundles of rights, are there any factors that would explain the initial mix? We conjecture that differences in beliefs by investors about the potential performance of the enterprise can account for differences in the initial mix. An enterprise that desires to maximize the sum it raises from the sale of ownership claims would find it desirable to offer different bundles of rights; a warrant, for example, to optimistic investors and a bond to pessimistic investors, given that markets do not function costlessly. If the market could produce these different bundles costlessly, there would be no need for the firm to be concerned with different financial instruments. For, then, financial intermediaries could supplement and convert any financial instrument issued by the firm into the mix of financial instruments preferred by optimistic and pessimistic investors who hold different expectations about the firm's prospects.

Although articles dealing with property rights and transaction costs are accumulating at a rapid pace, they tend to be primarily of the "speculative theory" variety. Only a handful of empirical studies have been concluded, a few of which are concerned with phenomena old enough to be historical. But economic historians have much more to contribute, and we hope that we have made some of you curious enough to examine the partial bibliography appended to this paper.

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## Property and Justice

### Private property

#### *The meaning of property*

People's ability to own property is fundamental to the operation of a free society. Property ownership means that you are able to hold and control something, and – crucially – that you are entitled to exclude others from it. You can enjoy it, rent it out, sell it, give it away or even destroy it, but other people cannot use it or take it from you without your permission. Your property cannot legitimately be removed from you.

Individuals can own property, but so can groups, such as married couples, business partnerships and corporations, and governments and public bodies.

Property is not always something physical and immovable such as a piece of land or a building. It can be something movable, such as a farm animal, a truck or an item of clothing. It can be something non-physical too. It may be intellectual property such as a trademark or the copyright on something you have written or recorded, or patents on something you have designed. It can include shares in a company, a debt that somebody owes you, or your savings. It may be a lease to occupy someone else's land for a specified time or the right of a radio station to use a certain frequency. Property, then, is not necessarily something fixed and physical.

Property can be created too. A truck or an item of clothing is assembled out of component parts to make a new item of property. A farm animal is bred and nurtured to maturity. People write new books, or develop new savings packages. Digital technology has allowed the creation of huge numbers of mobile phone channels – a completely new form of property.

Importantly, your property also includes your rights over your own body and your right to enjoy the fruits of your own labour. In a free society, you cannot be arrested and imprisoned without good reason. You cannot legitimately be forced to work for someone else. Nor are others allowed to steal what you have created through your own skill, talent, knowledge or effort.

#### *Property and progress*

The institution of private property is as old as humanity, though it has not always been respected. In ancient Sparta, the idea of personal property was scorned. More recently, countries such as Russia and China experimented with collective ownership of farms and factories. But it was only with the gradual acceptance of private property, and its protection, that modern trade emerged – bringing an enormous increase in wealth among the trading nations.

It is easy to see why. The ecologist Garrett Hardin wrote of 'the tragedy of the commons'.<sup>1</sup> When people own a resource, they are far more interested in preserving and nurturing it than if they do not. Land owned privately is better cultivated than that farmed collectively. The common stairwells and landings of apartment blocks are often dirty and dilapidated, though the individual apartments may be beautifully kept. People do not see why they should spend time and effort on something that does not belong to them, since other people would reap the benefits even if they did not do any of the work.

The protection of property and the respect for property ownership allow people to build up productive capital.

1 Garrett Hardin, 'The tragedy of the commons', *Science*, 162(3859), 1968, pp. 1243–8.

Farmers are more likely to plant seed, cultivate crops and purchase tractors if they own the harvest that results. Entrepreneurs are more likely to take the risk of investing in factories, equipment and production networks if they can decide for themselves how that property is used and know that others have no right to take it. If property rights are protected and respected, people build up productive capital and productivity then grows, which helps the whole society. But if property can be stolen or destroyed by others, or someone else can take the things it produces, there is no incentive for people to invest their skill, time, money, effort and expertise in production – and the whole society suffers.

### ***Property and other rights***

The rights and freedoms that people enjoy in a free society are anchored in the institution of property. Without private property there can be no rights and no freedom.

Take, for example, the right of people to speak freely, to associate with others, and to take part in the political process. If there were no private property – say, if some government controlled all resources – how could candidates mount an election campaign? To communicate their message, they would need to hire meeting halls, print leaflets and broadcast their views. But if the government owned all the meeting places, controlled the supply of print and paper, and ran the broadcast media, it could effectively stop anyone's campaign.<sup>2</sup> (Indeed, if the candidate was critical of the government or its policies, the chance of that happening seems very high.) Worse still, if people had no property in their own person, there would be nothing to stop the government from silencing its critics by arresting or even murdering them. (It is shocking, but examples of this are all too common.)

Without property, there is no justice. Unless you have rights over your own body, your labour and your possessions, they can be taken from you without redress. If you have no right to your body, you can be arbitrarily arrested, imprisoned and murdered; if you have no right to your labour, you can be enslaved; if you have no right to your possessions, you can be robbed. There would be no protection from injustice.

### ***Moral benefits of property***

Property, and the protection of property rights, gives individuals a crucial buffer against the power of government and the coercion of others. Owning property gives individuals the ability to protect themselves, and to make their own choices, fashion their own plans, pursue their own ambitions or express their own views, without being subjected to the arbitrary will of others, either governments or individuals.

Property, and the rules of trade and exchange that grow from it, also allows individuals to cooperate peacefully to their mutual advantage. It enables them to live alongside each other and share both natural resources and the fruits of their labour according to agreed rules, without disputes, violence and coercion.

Not only does property promote peaceful cooperation; it makes cooperation a necessity for anyone who wants to better their own condition. People cannot simply take what they want by force. Property can be transferred – sold, rented, shared, leased out, or given away – only with the consent of the owner. The more-free societies have strong mechanisms to protect this important right, such as the rules on paying debts and honouring contracts. Free people regard this as a more moral way of transferring resources than their being taken by force or stolen through fraud.

### **A stake in society**

It is not only those who own property who benefit from all this. By promoting investment, capital creation and trade, the whole society benefits. For example, city dwellers with no land of their own are fed thanks to farmers' incentive to nurture their crops and trade them voluntarily with customers. That is thanks to farmers' rights of ownership in their land and their crops. And the outcome is in striking contrast to countries in which property

<sup>2</sup> A point made well in F. A. Hayek, *The Road to Serfdom*, Routledge, London, 1944.

rights have not been protected – for example, in Robert Mugabe’s Zimbabwe, where people were encouraged to occupy the land of the established farmers as their own. As the (mostly white) farmers fled, the result was not greater prosperity, but less: without clear landownership rules, production plummeted and city dwellers found themselves desperately short of food.

In a free society, the protection of people’s property rights is therefore an important duty of government. It helps individuals protect themselves from coercion by criminals and by powerful or wealthy elites. The institution of private property gives everyone a stake in society and an interest in peaceful cooperation. Everyone gains from property rights that encourage owned resources to be well managed and efficiently used, allowing productive capital to be built up and maintained. Property ownership in a free society is not a special privilege of the few. It is open to everyone and it benefits everyone.

## **The rules of justice**

### ***Finding justice***

Justice refers to the rules by which rewards and punishments are given out. It is based on our common human feelings of what people deserve as a result of their actions. If an individual deliberately harms others, for example, most human beings agree that they should compensate the victim and face punishment for their crime.

The rules of justice are not something that we can make up for ourselves. They are part of our very nature. Some people believe that this ‘natural law’ is given to us by our Creator and is revealed to us through our religion. Others, such as the Nobel economist and philosopher F. A. Hayek, take an evolutionary view, arguing that the rules of justice have grown up with us because they help us to live together peacefully as social creatures. Either way, it seems that we have natural feelings of justice that help promote cooperation and a well-functioning human society. If we had no such feelings and felt no injustice – if we took no action when people were robbed or murdered, say – we would not survive long.

The legislature and judiciary of a free society therefore cannot dictate what justice should be. Any rules they could dream up are unlikely to work better than those that are part of our nature. All they can hope to do is to discover what the rules of justice are.<sup>3</sup>

One can see this in the operation of common law or local legal systems. Disputes between individuals – boundary disputes between neighbours, for example – are brought to court. The court has to decide what outcome would be just, given the particular circumstances of the case. A second boundary dispute may be similar in some ways but not in others, and the court has to make another attempt to find the just outcome. The judges do not arbitrarily come to a decision. They apply long-accepted principles to new situations. And through a long process of testing like this, there gradually emerges a common understanding of what behaviour between neighbours is considered just and what is considered unjust.

### ***Justice is not law, morality or equality***

A fundamental feature of the rules of justice in a free society is that they should apply equally to everyone. Different people in the same circumstances should be treated the same way.

Laws and justice are not always the same thing. For example, laws may not always treat people equally. They may be created by elites precisely in order to help friends and harm enemies. These are unjust laws.

Nor are justice and morality the same thing. Many people might regard premarital sex as highly immoral. But that does not make it unjust. Nobody else is harmed by consensual actions like these; so under the no-harm rule, it is not just to inflict punishment on those who undertake them. Again, laws that do so are unjust laws.

3 This point is made in F. A. Hayek, *The Mirage of Social Justice*, University of Chicago Press, Chicago, IL, 1978.

If the law can punish people merely because others find their behaviour offensive, there would be no freedom left for any of us.

Equality, likewise, is not the same as justice. The fact that some people are rich and others poor does not make a society unjust. An unequal society can be every bit as just as an equal one. Provided that people gain their property legitimately and without coercion, they act entirely justly.

Some critics of private property say that property can have originated only in theft. This is not true. The first people who might have staked a claim to a tract of unused and unwanted wilderness did no harm to anyone else. If they then benefited by farming it or discovering precious minerals under it, that was their good fortune: nobody else was left worse off, so no injustice was done. Similarly, if an entrepreneur invents a new product or process, and becomes wealthy from selling it to willing buyers, nobody has been harmed: on the contrary, the whole world benefits from the innovation.

### ***The enforcement of justice***

A key aim of a free society is to minimise the use of force. But justice has to be enforced somehow. If people harm others, we expect them to be punished, say with a fine or imprisonment. That means using force against the criminal. If justice is to prevail, some coercion is inevitable.

A free society resolves this dilemma by giving the monopoly on coercion to the civil authorities. Only they can use force, and even then only for the enforcement of justice and the protection of citizens from internal and external enemies. The use of force by other individuals is forbidden.

If the government is to have a monopoly on force, it must be strictly limited. Governments are made up of human beings, and no human being can be trusted to wield coercive power dispassionately. The temptation to use it for self-interest is too great.

Accordingly, the justice system of a free society incorporates strict rules that limit the coercive power of the authorities. For example, there must be strong rules on the authorities' powers of investigation and arrest, on how cases are tried, and on how punishments are meted out. These procedural rules are about how decisions are made, not about what is decided. These rules must be followed in order for the judicial process to be considered fair and just.

### ***Threats to justice***

This framework needs to be robust if individuals are not to be persecuted unjustly by the coercive power of the authorities. It is easily undone, even by people who think they are acting in the interests of justice. Judges, for example, sometimes think that their job is to create a fair outcome rather than to follow the procedural rules. But such judicial activism places judges' personal opinions above justice. It also makes the outcome of judicial proceedings unpredictable: the same offence could be given different punishments, depending on the particular judge. And it gives those in power greater influence over judicial outcomes: if they can bribe or intimidate the judges, they can change people's punishments. But if there are firm procedural rules that must be followed in every case, such influence is curbed. This is a crucial protection for those who come before the courts.

Another approach that undermines the administration of justice is the idea of 'social justice'. The deliberate creation of a more equal distribution of wealth and income is at odds with the principles of property and justice. To create the equal distribution, property has to be taken from some people and given to others. The rules of ownership, which give people the right to hold property and dispose of it as they choose, have to be torn up. Again, once we give authorities such sweeping power, nobody is safe. Enterprise will be thwarted, too: why should anyone take risks or expend effort to acquire property, if the authorities can confiscate it?

The precise rules that should apply to property ownership are not always obvious, however. Does my ownership of a piece of land give me the right to exploit the minerals underneath it? Does it allow me to forbid people flying over it in an aircraft? Can I prevent a nearby factory polluting my air with a smoky chimney? These details have to be determined.<sup>4</sup> And in a free society they are, by being continually tested and refined in the courts, by dispassionate judges who attempt only to pinpoint what the rules of justice actually are.

## ***Natural justice***

In a free society, all law-making and law enforcement must follow principles of justice – principles so deeply rooted in our humanity that they are called natural justice.

Firstly, the law must be known, clear and certain. If a law is secret or keeps changing, individuals cannot know if they are breaking it, and so cannot protect themselves against prosecution.

Laws must also be predictable. Individuals should be able to work out where laws do and do not apply, and what the consequences of breaking them will be. Even in supposedly free societies, laws are often introduced for one purpose – such as to counteract terrorism or organised crime – and then are used for a completely different one. Citizens may find themselves facing severe penalties for what are in fact minor offences.

Secondly, laws cannot be retrospective. They can apply only to future actions. Otherwise, people can find themselves prosecuted for actions that were perfectly legal when they performed them. Again, supposedly free societies fail at this. For example, a 2008 United Kingdom law outlawing certain tax-avoidance schemes amended earlier legislation in ways that imposed a tax liability on 3,000 people who were not acting illegally at the time.

A third rule of justice is that the law cannot require individuals to do something infeasible, since that too would make it impossible for people to avoid breaking the law. Even supposedly free countries also fail this test, particularly where laws conflict: thus fire regulations may require an owner to install a fire escape on a building that planning laws forbid from being altered – so either way, the owner is breaking the law. More disturbing still, unjust governments may use deliberately infeasible laws to persecute their opponents.

Another key rule of natural justice is the presumption of innocence. Nobody can be treated like a guilty person until proved so, even if the case against them seems watertight. Crucially, that means it is up to the authorities to prove their guilt, not for them to prove their innocence. This makes it harder for governments to harass their enemies with trumped-up charges: all charges have to be proved in court before people can be punished.

A last key principle is that judges and courts should be independent of the political authorities. There needs to be a separation of powers between those who make the law and those who adjudicate on it. The judges must not be mere agents of the politicians: their political views should be irrelevant to how they handle cases. If judges are so close to politicians that they are easily influenced or intimidated by them, then the court system comes to serve political interests rather than genuine justice. The more-free societies often have independent panels to appoint judges, or appoint them for life, which reduces the leverage that politicians can exert over them.

## **The rule of law**

### ***Meaning of the rule of law***

Nothing distinguishes a free from a non-free society more clearly than the rule of law. This is the idea that citizens should be governed by clear and general principles of law, rather than by the arbitrary whim of monarchs and politicians. Legislators cannot just do as they please. Their laws must apply equally to everyone,

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<sup>4</sup> This point is raised by Milton Friedman and Rose Friedman, *Capitalism and Freedom*, University of Chicago Press, Chicago, IL, 1962.

including themselves.

The purpose of the rule of law is to protect individuals against the exercise of arbitrary power. If we give governments the monopoly on force, we must ensure that it is used only for the purposes intended, predictably, with due accountability, and for the general benefit of the whole society, not some elite.

The rule of law also ensures that those in authority face the same criminal penalties for wrongdoing as everyone else. A disturbing number of countries grant their current and former government leaders immunity from prosecution – and a disturbing number of those leaders have escaped justice as a result. While there is a case for protecting public figures – and anyone else – from unfounded (or politically motivated) and vexatious prosecutions, there is no case for granting anyone immunity from genuine justice.

The rule of law, then, rests on general and enduring principles, rather than the changing and arbitrary decisions of rulers. It guarantees us natural justice through rules such as equality before the law, the due process of law, an independent judiciary, blind justice, habeas corpus (not being held for long periods without trial), not being harassed by the authorities (say, by being tried over and over again for the same offence – so-called double jeopardy), the presumption of innocence (such that you are not treated as guilty until actually convicted) and the certainty, stability and feasibility of laws. And crucially, those who make laws are bound by them along with everyone else. A society cannot be free if some people, however elevated, are not accountable for their actions.

## **PROPERTY AND JUSTICE**

### ***Protecting the rule of law***

Countries have different ways to prevent the rule of law being eroded by those in authority. These include written constitutions, a judicial process built on common law and precedent, and a basic commitment to natural justice.

Written constitutions can give strength to the rule of law. But it is much easier to create such a constitution at the birth of a new country, when citizens are coming together for the first time, rather than in a mature country, where elites and vested interests already have a grip on power and are likely to twist any new constitution to benefit themselves.

The rule of law can also be supported by years of precedent as different cases are taken to court. Individuals can object to the rulings of legislators and officials, and test their justice and legality in court. Gradually, a body of precedent marks out the limits of official power.

A third way of bolstering the rule of law is by promoting discussion on the rules of justice and the principles underpinning social harmony. If free speech prevails and anyone is free to discuss these ideas, it becomes much harder for the authorities to twist the understanding of them for their own advantage.

One key idea that comes out of discussions of the rule of law is that, if people were coming together for the first time to decide the principles by which they were to be governed, nobody would agree to be coerced by others, except in ways – such as punishments for theft or violence – that they would all see as being in their own long-term interests. So we might reasonably infer that all free societies should be based on general rules that limit coercion and prevent particular groups being able to exploit others.

### ***Administration of justice***

Whatever general routes are chosen to safeguard the rule of law, there are some specific measures that certainly help.

Judges must be personally, as well as politically, independent. Otherwise, the judicial system will not be respected, and huge injustices will be done in the name of justice. In many countries, judges are underpaid, unaccountable and poorly monitored: so they decide cases on the basis of bribes rather than the law. Instead, judges must be properly paid and regularly scrutinised so that such corruption is neither necessary nor tolerated.

The justice system also needs to be supported by a good court administration. In many countries it can take months or even years for even a small dispute to reach the courts because of the enormous bureaucracy involved and officials' lack of incentives to manage cases. A legal system based on precedent needs rapid access to past cases and judgements, so cases are not brought wastefully to court simply because there are no records of past precedents.

In many countries, the police are also part of the problem rather than the solution. Because of their power of arrest and detention, they can inflict great injustices on people and benefit themselves through corruption. Officers imposing small 'fines' for real or imagined minor traffic offences is symptomatic of this. It becomes part of the prevailing culture – but once the principle of bribery is accepted, there is no rule to prevent much worse things. Police need to be properly trained and monitored, ideally with an independent agency empowered to investigate and act on complaints against them.

Likewise the bureaucracy must be appointed on merit, rather than through political favours. They must be properly accountable. Taking decisions for political or personal gain should be punished.

Elections must be fairly run if justice and the rule of law are to prevail. There must be free speech so that candidates who are critical of the authorities can stand and put across their point of view. There must also be secret ballots and a genuinely independent election commission to ensure that electoral boundaries are drawn fairly and elections are conducted honestly.

### ***Justice and economic progress***

The rule of law is economically as well as socially important. Each year, the World Bank ranks countries in terms of the ease of doing business in them. Attracting business and investment from abroad, and making it easier for people to trade at home, is of course an important factor in the economic development and prosperity of the population. The index looks at the transparency of taxes and regulations, levels of corruption among officials, and how easily people can start a business, register property, trade across borders, deal with insolvencies, and so on.

Singapore, which is very free in economic terms (though much less free socially), has topped the global rankings for seven years, followed by other relatively free countries such as Hong Kong, New Zealand, Denmark, the United Kingdom and the United States. Next comes the Republic of Korea, another economically free but socially rather restricted country. At the bottom of the rankings come countries where justice and the rule of law are notoriously weak – such as Congo, Venezuela, Zimbabwe, Iraq, Cameroon, Bolivia and Uzbekistan.

### ***Threats to the rule of law***

In many countries, particularly developing countries, various systems of justice prevail. In addition to state-level laws and justice systems, there are often local, tribal or religious legal systems, as well as private or contract law between individuals.

Corruption is more likely in the state systems. The local, religious and private legal systems usually have much deeper roots in natural justice, and therefore more widespread acceptance. State systems, by contrast, were often imposed by colonial or occupying powers. They may never have had much acceptance, but their power and patronage remain for any corrupt person to exploit.

People in government and state judiciaries often see nothing wrong in exploiting state power. The military,

police and officials take bribes. Politicians are almost expected to rob the state to benefit their local community, or even themselves. But what is regarded as wrong in personal life should be seen as wrong in the public sphere too.

In places where travel and communications are difficult and local issues are the most urgent and crucial ones, a mixture of systems may make sense. But the aim must be for all systems of justice to have the authority and consent of local laws, the clarity and principle of state laws, and the objectivity of the rule of law.

## **Human rights**

### ***Defining human rights***

From such reflections on justice emerges the idea of human rights.<sup>5</sup> This is the idea that people are due basic freedoms by virtue of their humanity – rights that, like natural law, promote the smooth working of society, but rights that are specifically acknowledged as universal (applying everywhere and to everyone) and inalienable (they cannot be given up, nor denied by others).

These human ‘rights’ might better be called human freedoms. They include such freedoms as owning property, self-determination and self-ownership of your own body and labour, freedom to move and locate where you choose, and freedom to practise your own religion. Their effect is to limit the state in how it can treat people.

Unfortunately, ‘human rights’ are often confused with legal rights that are delivered through the political structure, or with social and cultural norms. But laws giving workers paid holidays, for example, are not human rights because they are not universal. They apply only to workers and only in countries where such luxuries are affordable. And they can be alienated – a worker can give up holiday entitlement in exchange for money, without losing any freedom. Likewise, laws on equal pay for men and women are not human rights because they are not a claim to human freedom but a coercive demand on employers.

Group rights are not human rights either. They do not apply universally. The special treatment given to, say, the native peoples of America are merely legal privileges: other people do not enjoy them. Something cannot be a ‘human’ right if it focuses not on people’s humanity but on their membership of some special group.

## **Freedoms, rights and duties**

It is important to be clear about such issues. Confusing human rights with social norms and legal privileges gives a false authority to the latter and undermines the whole idea of the former. While some things – equal pay, paid holidays or even special recognition of some disadvantaged group – may be desirable, the fact is that not everything that is desirable is a human right.

Human ‘rights’ guarantee our freedom – they do not put coercive demands on anyone else. Freedom of speech, for example, imposes no obligation or duty on anyone else, other than the obligation or duty to respect it. Nobody is required to provide you with a newspaper column or a radio show so that your views can be broadcast, nor to help make sure that you do actually speak freely, nor even to listen to what you might say.

By contrast, the United Nations Declaration of Human Rights lists the ‘right’ to free education. But free education is not a human right because this implies that other people are obliged to pay for it. The provision of education has a cost – time, effort, materials and money are all spent in providing it. In a truly free society, nobody can have a right to enjoy an education free of charge, because that would put an obligation on other people to provide those resources. (Of course, many people might be perfectly willing to share the cost: but a

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5 For more on this, see Nigel Ashford, *Principles for a Free Society*, Jarl Hjalmarson Foundation, Stockholm, 2003.

free society cannot compel them to.)

Too often, people talk about rights without mentioning, or even recognising, the implied obligations on others, the compulsion that is needed to enforce them, and the wider damage that this compulsion creates.

Once again, there is no right to welfare in free societies: that would imply that some people have an obligation to support others, when the only obligation is to do them no harm. But this does not mean that poor or disabled people fare any worse than in a welfare culture. The tax costs of welfare might discourage work and enterprise, making the whole society poorer, and welfare benefits may encourage dependency. And the philanthropic bodies in a rich, free society might well support those in need better than bureaucratic government agencies.

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Chapter 6  
Spontaneous Order

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## Spontaneous orders

Spontaneous order is an old idea. It certainly goes back as far as the French philosopher Montesquieu (1689–1755), who explained how self-interested individuals could unintentionally create a generally beneficial social order; the Scottish Enlightenment scholar Adam Ferguson (1723–1816) talked of social institutions as ‘the result of human action, but not of human design’ – an idea that Adam Smith described as the ‘invisible hand’.

More recently, Hayek updated the idea. He noted that we tend to divide the world into *natural* and *artificial* – imagining *natural* things as wild, irrational, unstructured and disorderly, and *artificial* things as planned, rational, structured and methodical – and simply presume that the latter is preferable.

But, says Hayek, there is another category of things that are orderly, but are not planned or deliberate. Examples are the V-formation of migrating geese, or the complex societies of bees or termites. These social structures are not consciously designed by the creatures involved, but are the orderly consequence of their individual behaviour.

Such spontaneous orders are found in human society too. We have *language*, for example: our complex language and grammar was never deliberately designed by anyone, it simply grew because it was useful. (It is interesting that Esperanto, deliberately designed to be a pan-European language, never caught on, while the other, spontaneous languages of Europe still flourish.)

The *common law*, similarly, was never intentionally created, as the legal code of Napoleon was; it simply emerged from thousands of rulings in individual cases. *Markets*, *prices* and *money* also developed because they are useful, not because anyone consciously invented them.

The conclusion is that social orders do not need government, or planning, to be functional, efficient or even rational. They emerge through the free interaction of individuals, each pursuing their own private aims but respecting the rights and freedoms of others. Indeed, government intervention is more likely to turn that order into chaos.

### The evolution of spontaneous orders

Spontaneous orders evolve. Language, common law, morals, customs and markets all change and adapt to the needs of the time. Such orders are self-organising and generally self-regulating – requiring a few broad rules to keep them working well, but not needing anyone to design and plan them.

They may not adapt perfectly all the time, but the ones that adapt well will survive and prosper better than others. And that trial-and-error evolutionary progress will be much faster when individuals are free to produce their own ideas in abundance than when only the authorities’ ideas prevail.

Consider, for example, the throng in a busy railway station, all rushing between their different trains and the different exits and entrances. Somehow, everyone gets to their destination without bumping into each other. That is because they each adjust their direction to take account of others getting in their way. Their eventual route between train and doorway may be very far from a straight line, but generally they get there quickly and without incident. The alternative – to direct those thousands by asking their destination and then plotting their most efficient routes through the station – would be a management nightmare. But luckily the problem solves itself, quite spontaneously.

## Rules and order

The problems described above solve themselves because we adapt to others in predictable ways – in the station case, trying to avoid collisions by subtly indicating where we are heading and adjusting to others' indications too. Such behavioural regularities, or 'rules of conduct,' produce a spontaneous, beneficial result. If, by contrast, we all behaved unpredictably, it would create only confusion and conflict.

In real-world spontaneous orders, these 'rules' may not be written down and may well be very complex. Bees, for example, have no writing or command structure, yet they sustain thriving colonies of 50,000 or more simply through the structured labours of each individual.

Regarding human orders, schoolchildren will attest that the rules of grammar, on which our language is built, are very hard to describe, even though we use them un- thinkingly every day. The same is true of the rules of justice, or fair play, or morality; we can sense when the rules have been breached, even though we cannot always explain what they are.

But then these order-promoting rules have evolved because they are useful and adaptive, not because we have consciously designed them. They put voluntary limits on our actions, making them more predictable, so easing social life. Rules such as property rights, traditions, customs, morals, honesty, respect and habit are the fire basket that contains the fire of individual freedom. Nobody invented them, yet they contain an unconscious 'wisdom' about how to behave in order to promote smooth social interaction.

## Justice and the rule of law

Spontaneous order, then, rests on predictable individual behaviour and would be impossible without it. And the basis of our social or political order, say classical liberals, is the *rules of justice*.

Like grammar, the rules of justice are not consciously designed, but evolve because they are useful; and broadly we follow them, even though we cannot always explain precisely what they are. We do, of course, *try* to write them down and codify them in law books. But that is not us *creating* the rules of justice; it is us trying to *discover* what they are.

Legislators can pass 'laws,' but they may not be just laws. For example, they may be *retrospective* (punishing people for actions that were not criminal at the time), or *infeasible* (impossible to comply with), or *incomprehensible* (contradictory or too complicated to understand), or *un- fairly enforced* – all of which offend the idea of justice that has grown up with us, or as some classical liberals would say, offend the *natural law*. Such pieces of legislation are therefore unworthy of the name 'law'.

## The rule of law

Classical liberals believe that a spontaneous, cooperative, predictable, non-violent, stable and fair social order arises only by following rules that are *general* (without a bewildering mass of exceptions), *universal* (applying to everyone) and *stable* (not changing so often that people get confused about what they are).

Since most of us could not explain the rules of grammar, never mind the rules of social life, it makes sense to keep things simple. Having rules that are *general* and *stable* means that everyone knows what is expected of them, making our actions more predictable, and allowing us to make plans with greater confidence. So do rules

that are *universal* – with the further, crucial advantage that they make it impossible for particular people or groups to be favoured or exploited.

This is the rule of law, in contrast to the arbitrary rule of those in authority. Classical liberals stress that it prevents politicians, police, courts and other officials abusing their coercive power. It spares us from many common evils: arbitrary arrest, imprisonment without trial, double jeopardy (being tried multiple times for the same offence), unfair trials, biased judges, rigged elections and unjust legislation.

## Protecting the rule of law

Though classical liberals believe in *limited* government, they see maintaining the rule of law as no *small* task. It requires mechanisms to ensure that elections and appointments are open and fair, that judges remain independent, and that the generality and universality of laws are scrutinised. That requires committing resources to the justice system: justice is not served, for example, if it takes years for cases to get to trial because the court bureaucracy is overwhelmed, or if police and judges are so badly paid that they rely on taking bribes instead.

*Constitutions* can help protect this natural justice: they can enshrine the due process of the legal system, to ensure equal treatment; and they can define a personal sphere into which legislation and officialdom can never intrude. The common law tradition is another bastion of freedom:

individual cases are aired and considered in court, and from that we grow our understanding of what the rules of justice actually are. A third protection is free speech: if people can openly criticise legislation and the administration of justice, more thought will go into legislating, and people can actively object to unjust legislation and unjust legal processes.

## Threats to the rule of law

This is all very far from the view of many legislators today. They want the courts to defer to the elected majority, who, they say, are more in touch with public concerns than are judges. They ignore constitutional limits, arguing that they understand present circumstances better than the constitution-writers of decades or centuries ago. They see rights not as natural and inviolable, but as privileges granted to us by the legislature. And they believe that legislation should promote the ‘public good’ even at the cost of individual liberty.

But almost any legislation, however unjust and coercive, can be excused on the grounds of ‘public good’ – which, inevitably, is defined by the legislators themselves. And, far from being out of touch, classical liberals see the courts as crucial guardians of individual rights and freedoms, checking the short-termism and vested interests of the legislators, striking down unjust legislation and ensuring that just laws are obeyed, even by those in power.

It is for this reason that Hayek argued strongly that the common law, which grew up through disputes being argued in the courts, was a better guarantee of justice than laws passed by politicians – and most classical liberals would agree. To them, the rule of law demands that legal rules should apply justly and uniformly to everyone. While the common law generally fits this description, too often the laws made by politicians are designed to favour (or disfavour) particular groups – one of the reasons why classical liberals are so sceptical of such legislation.

## The rationality of natural orders

Though many people imagine that a society without central direction must be wild and irrational, classical

liberals believe that spontaneous orders are actually more rational. They are able to process and use far more information than centralised societies, leading to better decision making, quicker adjustment to changing circumstances, and more rapid progress. (For illustration, recall the economic backwardness of the old, centrally directed Soviet bloc, compared with its less centralised Western neighbours.)

The reason, according to F. A. Hayek, who worked out the details of this line of thought, is that most of the knowledge on which social progress depends is dispersed knowledge. It is local, personal, fragmented and partial, and cannot be centralised.

Ordinary people have a better grasp of their own circumstances than central authorities could ever do. They also have specialist skills, and more personal understanding of their particular market and of their customers' needs and values. And much of the changing market information they process would be out of date even before it could be transmitted to some central planning agency.

Some might argue that apps such as Über, and modern supercomputers, do make it possible to collect and process rapidly changing market data such as the fluctuating demand for and the availability of taxis at any particular time and place. It is true that the scale upon which information can be efficiently collected and used will change over time and between uses. But, a process of competition is needed to discover the best way of collecting, interpreting and using information given the available technology. And this information is processed and used in different ways by different people in the process chain – Über or the taxi company, drivers and customers. Central planning simply could not replicate this.

In any event, the problem is not one of computing but of understanding. The data would certainly not be processed any better by a government central authority. No government authority could forecast taxi customers' demand (which changes constantly due to things like family emergencies, the weather or public transport delays). Nor could we expect central planners to have the same in-depth knowledge that taxi drivers have of things like the local weather, temporary road closures and ways round them, local events that attract large crowds, and countless other factors that affect the market.

Also, local suppliers have a much more urgent interest in adapting rapidly to local demand than do central planners. Their motivation drives progress: with thousands of suppliers all vying for business, innovation will be more rapid than it would be if left to a single central agency. And it is better that innovation should be done by individuals: if their innovations do not work, they can be abandoned with only modest, local losses; whereas a nationwide innovation by a central planning agency risks disaster for the whole economy.

It is not that the spontaneous society is unplanned: on the contrary, it relies on the plans of millions of individuals, each with their own specialist knowledge, rather than on some single planning body. Such a society, based on a vast amount of dispersed individual knowledge, is so complex that no central mind could ever comprehend it. This explains, in part, classical liberals' suspicion of government power, particularly of attempts to redesign society wholesale. If we cannot fully understand our social institutions, we are unlikely to be able to redesign them with any success.

## **Civil society**

Classical liberals do not imagine that the people who comprise the spontaneous society are isolated, atomistic individuals (though there were hints of this among the early social contract theorists, and more recently in the economists' notions of rational expectations and of the rational, self-interested homo economicus). They know that people in the real world are not detached and mechanical.

Rather, by choice or birth, individuals are members of different, overlapping groups, with different family, moral, religious, cultural and other allegiances. Their values are influenced by these allegiances, and they rely

on the mutual loyalty of their fellow members. They pursue their ambitions less through the political process than through these institutions of civil society – charities, unions, self-help groups, campaigns, religions and many other groupings.

Communists and fascists are highly critical of civil society because they see it as diverting people's allegiances away from the state. Classical liberals cherish the idea of civil society for precisely the same reason. To them, civil society enables individuals to pursue their own goals without being subservient to a powerful, centralised political authority. Indeed, different people can pursue mutually contradictory purposes, without having to sacrifice their ambitions to some majority view. Furthermore, there is less excuse for governments to take on additional powers if civil society is strong. A lively charitable sector, for example, means there is less need to create a state welfare system – a relief to classical liberals, because they fear the growth and potential abuse of centralised power. And it is more rational for tasks to be undertaken locally and in a variety of different ways, than to be attempted by distant, centralised authority.

Some classical liberals welcome civil society as sparing us, not just from the dangers of excessive centralisation, but from the dangers of excessive individualism too. For example, the French political thinker and historian Alexis de Tocqueville (1805–59) criticised the individualism of America for smothering civic virtue and restraint, creating the possibility of tyranny by the masses, backed up by the power of the state.

## **Spontaneous order and natural rights**

It may be worth noting the conflict between the ideas of spontaneous order and natural rights. If society develops spontaneously, no social contract between isolated, free individuals is needed to explain it. It is not the product of rational negotiation, but the entirely unintended, evolutionary consequence of individuals adapting to each other's actions.

To many classical liberals, this suggests a less radical, more conservative approach to social issues than does the natural rights approach. One of the criticisms of the natural rights view is that it might produce something near anarchy, since there is probably very little that discrete individuals, jealously guarding their natural rights, would actually agree on, leaving almost no role for government at all. The spontaneous order approach, by contrast, suggests that we can and do agree on a great deal – even if our agreement is unconscious and scarcely understood.

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## The spontaneous order of the market

Alongside social and political freedom, classical liberals also advocate economic freedom. They believe people should be free to invent, create, save, accumulate property and exchange things voluntarily with others.

But they also believe that economic freedom is the best way to create general prosperity. That is because economic freedom allows people to adjust spontaneously to each other's needs and cooperate for their mutual benefit – creating and spreading value in the process.

The rules that create this particular spontaneous order are those of property, contract, honesty and justice. Between them, they create an economic order of incomprehensible scale and complexity – far larger and more complex than any conscious agency could grasp, embracing the whole world.

### The spontaneous 'miracle' of prices

What keeps the economic activities of so many millions of people in such remarkably smooth adjustment is what Hayek called the 'miracle' of the price system. We did not invent this – it emerged spontaneously, yet it drives the creation of value and spreads prosperity throughout the human community.

Prices are simply the rates at which people are willing to exchange some things for others. Usually they are expressed in money – but that is only because money has emerged as a useful good that can be exchanged for other things. In Milton Friedman's words, it saves hungry barbers having to seek out bakers who need a haircut – making exchange much easier and smoother.

Note that prices do not measure value. Value, like beauty, exists in the mind of the beholder, and people value the same things differently. That is why they trade. While hungry barbers value bread more than the amount of money the baker demands for it, the baker values the cash more than the bread. A single price is exchanged, but they each value things differently, and each consider themselves better off by the trade.

### Prices as telecommunication

But prices do reveal scarcity. Higher prices can show where the demand for things is outstripping their supply, such that consumers are prepared to pay more. And they induce suppliers to satisfy that demand by stepping up their production in order to capture the higher rewards on offer. Falling prices, similarly, can indicate that demand is weak and suppliers should cut back production. In this way, prices indicate where resources can create most value, and draw them towards those applications and away from wasteful, less valued uses.

These beneficial adjustments spread out from market to market. Suppose, to take Hayek's example, that manufacturers find some new use for tin. They will then demand more tin, and will be prepared to pay higher prices to obtain it. Those higher prices will induce mining firms to produce more tin, and wholesalers to supply it. But equally, existing users of tin will now start looking for less expensive substitutes. That will bid up the price of those substitutes – which will prompt users of those substitutes to look for other substitutes. A whole series of adjustments spread out, like ripples in a pond – all thanks to what Hayek called the 'vast telecommunications system' of prices, constantly showing people where their effort and resources will generate most value.

## Markets without commands

Unlike the textbook ‘equilibrium’ diagrams, which suggest that markets stay in constant balance, classical liberals see markets as a dynamic process, like a mountain stream, never settling in one place. Instead of imagining ‘the economy’ as an abstract, mechanical system, classical liberals see market phenomena as the unplanned, unpredictable result of the constant, mutual adjustment of millions of individual human beings, each with their own purposes and values.

This spontaneous economic order is, like others, the result of predictable rules of behaviour among the individuals who comprise it. It is motivated by self-interest and profit, but regulated by factors such as competition, contract, property rights and justice – principles that classical liberals believe the state must uphold in order to keep the market order functioning beneficially.

## Rules and property

Property rights are fundamental to the operation of this beneficial order. People with secure ownership can exchange items of their property with others who value them more – benefiting both sides. Even more profoundly, secure ownership means that people can produce what they are good at producing and exchange it with others for what they are good at producing. This specialisation, or division of labour, makes us all much more productive than if we tried to do everything, amateurishly, for ourselves.

Secure ownership rights also allow people to build capital, investing in tools and equipment that enable them to produce more, faster and better. And they enable people to resist exploitation by political majorities; indeed, they give people the resource to stand up to overweening governments.

## Property rules

Property rights enable people to hold and use property, to exclude others from using it, to earn income from it (say, by renting it out) and to transfer it to others by sale or gift. These rights are enforced by the justice system. But for someone’s ownership to be legitimate, property must be acquired without coercion. It might be acquired through trade or gift. Or perhaps by taking something that nobody else owns or wants, such as a piece of wasteland – a process that injures nobody, even if the new owner finds profitable use for it.

Property is not just land, buildings and moveable property. It can include complex intangibles, such as shares and bonds, or intellectual property such as patented designs and copyrighted music – and indeed, the property we all have in our own lives and freedoms. It can be held by individuals, organisations, governments, or by no one (sea fisheries, for example) – though classical liberals believe that private owners generally manage property better than government owners, and that ownership by no one risks the ‘tragedy of the commons’ in which resources are over-exploited because nobody has an owner’s interest in conserving them.

The rules of property may be complex, but they enable countless people to cooperate peacefully through specialisation and voluntary exchange. They have evolved precisely because they make that beneficial cooperation possible.

When people have clear and enforceable ownership rights, they are more likely to conserve and invest in a property resource, and maintain it in productive use. That plainly benefits the owner; but it benefits everyone else too. It means the fruits of that investment are available to be traded. That trade, in turn, promotes specialisation, productivity and the spread of value. Contrast that with war-torn or lawless countries in which farmers see no point in planting and tending crops that will be stolen or destroyed by marauding thieves or armies.

## **The arguments for economic freedom**

Unlike traditional economic approaches, classical liberals do not construct any all-embracing model to explain economic phenomena. To them, economic phenomena like prices are the unpredictable result of the complex mutual adjustment of millions of individuals. But that does not mean it is random and irrational. On the contrary, market processes contain a great deal of 'wisdom' that has accumulated over long periods of trial and error.

## **Personal and dispersed information**

In fact, there is more wisdom and planning in this arrangement than in any deliberately designed and planned economy, because the free economic order has much more – and more relevant – information to work on.

All those millions of individuals have much better knowledge of their own local circumstances, of their own values, and of the priorities of their customers and suppliers, than any distant economic planning agency ever could.

Nor could planners even collect this information. Not only is it vast in scale, dispersed and partial, but it is also personal. Skills, experience, a market understanding, a feel for customers' wants – these are the essential knowledge that drives economic life, but which cannot be transmitted to central planners. Should we produce oil or wine? It is not a matter of arithmetical calculation. The only reason we go to the effort of producing things is to consume them, and what people want to consume depends on their needs and values – feelings that cannot be summed or subtracted, that are deeply subjective, and which change from moment to moment depending on countless unpredictable factors.

But the spontaneous economic order is not unplanned. On the contrary, it is the result of continuous planning by millions of individuals, each using their dispersed, partial and personal knowledge in order to anticipate the wants and needs of others and to plan how to direct resources into satisfying those wants.

## **Competition**

Economic freedom works because, in the absence of coercion, the only way to promote our own self-interest is to meet the needs and interests of others. Classical liberals see open competition as the key driver of this, because when consumers have a choice of suppliers and products to choose from, producers are spurred to serve their needs as cost-effectively as they can. Real competition is not the bloodless textbook model of 'perfectly' identical suppliers, products and consumers. It is a dynamic and human process in which diverse producers strive to differentiate their offerings so as to appeal to diverse customers with many different preferences.

These 'imperfections' are what give markets their dynamism and drive innovation, efficiency and improvement. It is shortages and unfulfilled wants – revealed by rising prices – that prompt producers to step in and fill them. It is surpluses that tell producers that productive resources are being wasted. It is the variety and diversity of goods on offer that enable the different – and even contradictory – tastes of consumers to be satisfied.

## **Public utility**

The free economy reconciles people with different values. Buyers and sellers can freely cooperate with each other precisely because they differ in how they value a particular good or service. Through the medium of money, we can even trade with people on the other side of the world, whose values, religion, morality and world-view may be completely different from ours. And arguably, the global economic interdependence of

peoples with such diverse views is the most powerful force for peace in human history.

It may be self-interest that motivates individuals, but through property, specialisation, markets and exchange, that self-interest is harnessed for the general benefit. Things are produced more cost-effectively; consumers are served well by the upward pressure on quality and downward pressure on price; new property is created and value is increased; wants are filled; choice is expanded; human diversity and individuality are celebrated.

And even if individuals are motivated by philanthropy, they have the same interest in preserving that same system, which allows them to maximise the value of what they can create and disperse to others.

## **The destabilising effects of government**

Economic freedom is important to us, and not just because economic activity occupies so much of our waking hours. It is also fundamental to our social and political freedoms. For example, freedom of speech is compromised if those in power control the newspapers, TV, radio and online media. Free association would be threatened if the political authorities owned all the meeting halls. We could not enjoy the fruits of our own labour if the state managed our offices and factories. Classical liberals therefore see economic freedom and private ownership as an essential bulwark against excessive state power.

When countries such as the UK and the US became rich, their governments were much smaller than they are today. Now, nearly all countries have large government establishments that require high taxes to sustain them. Classical liberals see that as an attack on property rights. Modest taxes may be inescapable in order to provide for essential government functions such as defence and justice. But high taxes discourage work and saving, dampen the creative dynamism of markets, and divert resources from highly valued uses to those chosen by (often unrepresentative) political authorities. Regulation, too, may be needed in order to keep markets free – upholding open competition and countering exploitation, for example. But again, by restraining commercial agreements, regulation can diminish the value that is created out of voluntary exchange. And in any case, many regulations are created to serve political and vested interests, not the general public.

Classical liberals conclude that government intervention in economic life is usually catastrophic. Since taxation is unpopular, governments borrow – taking money from the next generation, without their consent. They let the value of their currency erode, so they can repay their debt in devalued money; but that inflation destabilises the price system, drowning the signal of changing relative prices among the noise of generally rising prices, making it harder for people to see where their effort and resources would be most valuably applied. And governments are frequently tempted to manipulate money and interest rates in the hope of stimulating economic booms – a defiance of market realities that invariably ends in busts, unemployment and recession. Classical liberals would much prefer to prohibit these damaging interventions.

## **Health, education and welfare without the state**

Classical liberals are also sceptical about government involvement in services such as health, education and welfare – which consume most of the government budget in developed countries.

Welfare, for example, aims to eliminate poverty, but arguably does the opposite, adversely tilting the balance between (subsidised) unemployment and (taxed) employment. Most of the leading classical liberal thinkers argue for at least some minimum welfare provision by the state, but they believe that such support is best provided through market mechanisms. For example, they would prefer that people insured themselves against unemployment, sickness and disability, with charities – re-energised by the retreat of the state – helping in hardship cases, or with the state paying the premiums of those who could not afford the cover. This, they say, would be much less wasteful. And it would create more positive incentives, and fewer perverse incentives, than today's state benefit systems, which often promote dependency (both among beneficiaries and among the state bureaucrats who administer the systems).

Healthcare, too, is often government provided or highly regulated, leaving people with no choice of insurer or provider. Since competition works well in other markets, classical liberals ask why it should not work in hospitals too, keeping costs down and quality high – from which the poor, who presently find healthcare unaffordable or inaccessible, would benefit most. And genuinely competitive insurance would make people aware of the potential cost of unhealthy lifestyles, without any need for state hectoring.

Education is often another state monopoly, crowding out alternative providers – and indeed alternative ideas, which can only be harmful in a supposedly free society. So classical liberals argue for competition in schooling, which again would help the poor, trapped in ‘sink’ schools, the most. Some classical liberals, such as Mill, believe that basic education should still be compulsory, though others insist that there is no need, since schooling is one of parents’ highest priorities for their children; and that charities again would solve cases of hardship.

## **Trade and protectionism**

Classical liberals maintain that international trade should be just as free as domestic commerce. That allows countries to specialise in what they do well; and it allows consumers to enjoy goods from all over the world. Historically, countries that have been open to trade, such as Hong Kong, have grown most quickly; and the recent opening up of trade with countries such as China and India has taken billions of people out of abject poverty.

International trade, classical liberals argue, spreads international cooperation, tolerance and ideas. yet, motivated by politics, far too many nations try to protect their own producers with import quotas and tariffs. This prevents potential importers benefitting from the fruits of their own labour, and means less choice for consumers, less specialisation, less efficient use of resources, and a loss of value. It also leads to tit-for-tat retaliation, trade wars and international tension. But this occurs only because governments encroach too readily on free economic activity.

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## The Spontaneous Society

### Order without commands

A free society can run itself without needing a large state. That may sound surprising, but human life abounds with examples. As the American economist Daniel B. Klein observes, you might think that a roller-skating rink – with perhaps a hundred or more people from toddlers to grandparents, with wheels strapped to their shoes but no helmets, knee pads or skating qualifications, all going round a hard floor at different speeds – would be a series of accidents waiting to happen. But, in fact, skaters manage to navigate their way round the rink, avoiding others, without any need for official speed limits, turn signals and stop lights<sup>1</sup>. It does not require some planner or policing agency to tell them where and how fast to skate. By each looking out for themselves, plus a little common courtesy to others, they achieve their mutual interests of having fun while avoiding collisions.

Even more impressively, human language is highly structured and hugely beneficial to us, though it has not been consciously designed by any authority. The rules of grammar that make language work have grown up quite naturally over the centuries, because they enable us to understand each other. We follow these rules even though they are subtle and complex and we would have difficulty writing them down. No government commission could ever create rules of such complexity, subtlety and effectiveness. They have simply evolved with us.

Many parts of human society work like this. Without having to be told how to behave by officials, we nevertheless act in orderly, regular, predictable ways, simply by following a few basic rules that we have grown up with as part of our nature. By following them, we create vast and hugely beneficial social orders. The simple rules that allow us to trade peacefully together, for example, have created the international market economy through which the whole world cooperates.

### Rule-guided societies

The interpersonal rules of a free society give people much more latitude than they have in a government-controlled society. Free individuals can do any of the many things that are not specifically forbidden, rather than being limited to the few things that the authorities specifically permit. This means that free societies can be a lot more flexible and adaptive, responding easily to changing circumstances rather than having to wait for orders.

These rules – such as the rules of ownership and property in a market economy – embody a kind of wisdom, discovered over the years, about what works and what does not. They adapt and change as circumstances change, reflecting the lessons of trial and error over many years and millions of human interactions. They include behavioural norms about how to treat other people, legal norms that attempt to express the natural law in writing, and common law that is built up over a large number of test cases.

This rule-guided, spontaneous society is not only more creative and adaptive; it can be far more complex than one directed from the centre. Like language, it can be so complicated that none of us can even describe all its rules – and yet still work very well. A society based on the commands of some authority is inevitably limited, in both size and nature, to what those few in authority can get their minds round. But a society based on rules that have been built up as a result of millions of human interactions over thousands of years contains a much broader and deeper wisdom. The centrally directed society relies on the limited wisdom of a few; the rule-

1 Daniel B. Klein, 'Rinkonomics: A window on spontaneous order', Online Library of Liberty (Articles), 2006.

guided society encapsulates the wisdom of multitudes.

Hence the mistake often made by government authorities, that they could plan out a society or an economy better and more rationally than the everyday rules of social and economic interaction. By discarding and twisting the wisdom contained in this complex rule system, they invariably make things worse.

## **Dispersed knowledge and power**

The inherent wisdom of the spontaneous, rule-guided society does not exist at some centre. It is held by millions of individuals as they go about their everyday lives. Since power is dispersed, those individuals can try their own, small-scale experiments in living. They can take risks and chances that threaten nobody but themselves. But if those risks pay off, they are available for everyone to adopt and benefit from. That promotes experimentation and adaptation to changing circumstances, giving the spontaneous society a greater chance of success in a world of change. Government authorities, by contrast, take decisions for everyone, and thereby risk everyone's lives and fortunes. So they have to act more conservatively than do free individuals – or risk making massive mistakes. And as a result, non-free societies adapt less quickly and successfully.

Of course, the spontaneous society and economy can never be perfect. They are the product of human action (though not human design) and human beings are never perfect. We cannot predict the future, for example, so we make errors in our attempts to adapt to it. And the information that each of us has is inevitably partial and local. But in a world of free human interaction, this partial and local information drives a remarkably intelligent and adaptive society and economy.

In a free society, people have to find out for themselves how best to adapt to other people – who are in turn trying to adapt to the actions of everyone else. It is rather like a busy railway station at rush hour when everyone is trying to make their way to one of many exits, or coming in at one of a number of entrances and trying to get to their particular train. They each have an eye to where they are going, though their route there will probably not be at all direct. They will have to weave around other people, all of whom are trying to do the same, changing direction as others step into their path. It might look like chaos, but in fact everybody gets to their destination without conflict. If some authority had to tell each of the hundreds or thousands of people in the station exactly where and when to move, it would be hours or days before any of them got anywhere. The problem is far too complicated to be solved centrally. But the spontaneous society solves it easily and in real time.

## **Toleration**

### *The meaning of toleration*

In this way, people in a free society each have to adapt to the actions of others. So it is important that people show toleration towards others – including those whose actions and lifestyles they disagree with or even find shocking.

In a free society we cannot prevent someone from doing something just because we dislike it. We could intervene only if their actions were causing or were likely to cause harm to others. John Stuart Mill was clear that this meant physical harm. If 'harm' included things such as shock, moral indignation or embarrassment, then almost every action could be forbidden and there would be no freedom at all. In any case, the moral outrage of those who wanted to forbid the behaviour would be matched by the moral outrage of those who resented their freedom to practise it being curbed. No matter how numerous or emotional each side might be, there is still no objective way to decide between them. And since a free society does not allow disputes to be settled by force, each side simply has to tolerate the opinions, behaviour and lifestyles of the other.

That is not the same as moral indifference. A parent who did not discourage the bad behaviour of a child would not be acting with toleration, but would be neglecting the child's moral education. If adults behave in ways

that we regard as shocking, we have a perfect right to say so and to try to persuade them to act differently – though not to force them.

Nor is toleration the same as moral relativism – the idea that all morality is equally valid because people disagree about morality and there is no objective way to choose between them. We are perfectly entitled to believe that our own moral or religious codes are better than other people's – but not to force our ideas on anyone else.

## **Toleration, heterogeneity and choice**

Tolerating others may be difficult when populations are becoming increasingly heterogeneous. Easier international travel, falling immigration barriers and our more globalised economy are only some of the reasons why the populations of many countries are far more diverse than they were a few decades ago.

Some people argue that greater choice will lead to the different racial, cultural, national, linguistic or religious groups becoming even more separate, stoking up tensions that would undermine toleration. For example, parents may want their children to grow up with others of the same race, and if they can choose their own schools there may be more chance of segregation than if children simply have to attend the school specified by the government authorities.

In reality, schools are likely to be less integrated when the government assigns school places, since children will usually be sent to the nearest school. And since people of the same ethnic group tend to live alongside each other, the school population will reflect this lack of mix. But if parents can choose schools, they may well choose schools in other neighbourhoods, or ones that select for some other characteristic that they value more highly than ethnicity, such as academic, musical or linguistic abilities.

Ethnic segregation is quite natural, and people tend to pick their friends and work colleagues from the same group. But there is every difference between that and being intolerant of other communities. The worst ethnic tensions are in places where some groups are denied the rights and advantages of others – in other words, when the basic principles of a free society are breached.

## **The fundamentalist threat to toleration**

The biggest threat to toleration of others is moral, ideological or religious fundamentalism. Many people with strong religious views, say, might consider homosexuality or premarital sexual relations as disgusting, shameful, shocking or immoral. They might well consider things like sacrilege, making images of the deity, denying the religious texts, rejecting the moral code of the religion or adhering to some other religion as pure evil. This they would see as reason enough for such behaviours to be outlawed and punished.

But however much disgust or shock a person's actions create in others, and however evil they might be judged on religious grounds, no one has the power to prohibit them in a free society unless they physically harm others, or threaten to do so. Again, this does not stop members of the religion from criticising these actions and arguing against them, or excluding their practitioners from the religious community – provided that none of this turns into intimidation or actual harm. But nor does it allow anyone, including governments, to restrain, censor, arrest, imprison, torture, maim, exile or execute any person or group for these views and actions.

The founding texts of many of the world's religions embrace toleration of others, though in some cases the authorities have interpreted them differently for their own ends. Foreign powers that have occupied a territory have often occupied its religion too, diverting its moral and judicial codes into justifying and serving their own administration. Some totalitarian governments even attempted to suppress religion entirely, seeing it as a rival to their own ideology and power. But it does not matter in a free society whether the fundamentalism in question is religious or ideological. It still provides no authority to coerce others whose actions, morality, religion or ideology are different.

## Political correctness

There is a more subtle threat to toleration: political correctness. This is where social and political pressure is put on individuals to accept the attitudes and opinions of some prevailing elite. Commonly, those who do not agree with the prevailing opinion are caricatured as deranged or wicked, the aim being to taint their opinions as deranged or wicked too. This allows those opinions to be conveniently dismissed rather than debated. It also suggests that the elite's views are more solid than they really are.

This process relies on a subtle form of coercion, in which those with different opinions are tainted so that they find it difficult to make their way through society. For example, academics who question the evidence for man-made climate change might be denied jobs or promotion in the universities. In a free society, employers are not bound to hire people they disagree with, of course; nor are the media obliged to report controversial theories. But where educational institutions or the media are government-run monopolies or near-monopolies, this exclusion of people with minority views amounts to real coercion.

## Toleration and the quest for truth

Toleration in a free society goes well beyond the toleration of religious or ideological differences. For example, it includes freedom of expression – in speech, writing, broadcast or any other medium – which in turn implies the absence of censorship.

Some people may regard a world without censorship as deeply worrying. Many might be deeply shocked by the words, images, arguments and ideas that could be put forward in so free a world. But in a free society we have no right to prevent free speech and block people's opinions, even if nearly all of us disagree with what is said, find it offensive or believe it immoral.

There is, of course, a case for some curbs on free speech if what is said causes danger to others – such as shouting 'Fire!' in a theatre. We would legitimately punish someone who recklessly risked injury to others like this. Similarly, we protect children against words or images that we believe might corrupt them. We might not allow explicit advertisements for drugs, say, to appear on billboards near schools. And there is a strong case for giving people information – such as movie classifications – so that they do not stumble unwittingly across things that would distress them.

That is very different to outright censorship – preventing particular words, images, arguments and ideas from being aired at all. There can be no such censorship in a genuinely free society because a free society is based on openness and choice. People must know the options available to them if they are to choose rationally and try new ideas that might improve everyone's future. Censorship closes off those options and choices and thereby denies us progress.

Nor can we trust the censors. Truth and authority are two different things. Those in power may have their own reasons – such as self-preservation – for forbidding certain ideas being broadcast. But even if the censors have the public's best interests at heart, they are not infallible. They have no monopoly of wisdom, no special knowledge of what is true and what is not. Only debate, argument and experience will determine that. The censors may suppress the truth simply by mistake. They can never be sure if they are stifling ideas that will eventually prove to be correct. Some ideas may be mostly wrong, and yet contain a measure of truth, which argument can eke out. The truth of other ideas may become obvious only over time.

The way to ensure that we do not stifle true and useful ideas is to allow all ideas to be aired, confident that their merits or shortcomings will be revealed through debate. That means allowing people to argue their case, even on matters that the majority regard as certainties. Truth can only be strengthened by such a contest. It was for this reason that, from 1587 until 1983, the Roman Catholic Church appointed a 'devil's advocate' to put the case against a person being nominated for sainthood. It is useful to expose our convictions to questioning. If we

believe others are mistaken in their views, those views should be taken on and refuted, not silenced.

From Socrates onward, history is littered with examples of people who have been persecuted for their views. Such persecution often cowers people into staying silent, even though their ideas are subsequently vindicated. Fearing the wrath of the Roman Catholic Church, Nicolaus Copernicus did not publish his revolutionary theory that the planets rotated about the sun until just before his death in 1543. His follower Galileo Galilei was tried by the Inquisition and spent his remaining days under house arrest. Such intimidation suppresses truth, debate and progress. It harms society as well as the heretics who are persecuted.

If we simply accept prevailing ideas without allowing any argument, those ideas rest on a very insecure foundation. Their acceptance is uncritical. They become platitudes rather than meaningful truths. And when new ideas eventually do break through, it is likely to be violently and disruptively.

It can be unsettling when people say things with which we fundamentally disagree, express ideas we believe are profoundly wrong, do things we regard as deeply shocking, or even scorn our moral and religious beliefs. But our toleration of these things shows our commitment to freedom, and our belief that we make more progress, and discover new truths faster, by allowing different ideas to be debated rather than suppressed.

## Prohibitions

We would be furious if many of the things that we enjoyed in our everyday existence were banned. Unfortunately, many of them already are<sup>2</sup>.

The no-harm rule says that we have no right to prevent actions unless they harm or risk harm to others. But many activities are banned on the grounds that they harm those who do them. This is the reasoning behind bans on drug-taking, smoking, alcohol and much more. The trouble is that the justification of saving people from harming themselves would allow just about any activity to be banned. It is too easy to argue that people are harmed or put at risk by drinking sugary drinks, eating fatty foods, taking part in dangerous sports, engaging in prostitution or homosexuality, adopting a different religion or questioning authority. Given the number of people who argue exactly these things, once the principle is lost it cannot take long for freedom itself to be suppressed. Prohibitions often have practically damaging results too. By driving the demand for certain things underground, they become more difficult to monitor and control, and criminals may move in to supply them. The United States, for example, still suffers from the presence of a criminal mafia whose power grew in the Prohibition years of a century ago, when supplying alcohol was a criminal offence. The continued illegality of gambling and prostitution in most parts of the USA has further promoted such criminal elements, who are happy to supply these services to meet the demand for them.

Prohibitions also make it more difficult for people to understand the effects of their behaviour. People still demand drugs, but if drugs are illegal it becomes harder to get good information about their dangers. It is also hard for users to check the quality of what they are buying. It becomes difficult for people who do become dependent on drugs to seek medical or social help, since to do so is to admit their own criminality. And people become exposed to other risks, such as the risk of AIDS contracted through unsterilised needles, because the illegality of drugs makes it impossible to take them in a safe environment. The result is that much if not most of the harm that drugs do is due to the fact that they are illegal<sup>3</sup>.

Prohibitions like these criminalise otherwise honest people who see no harm in taking recreational drugs, or gambling, or drinking alcohol at home with friends, none of which harms other people at all. And having flouted the law with trivial offences, they may go on to risk more serious and potentially harmful ones.

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2 For an excellent discussion of prohibitions, see John Meadowcroft (ed.), *Prohibitions*, Institute of Economic Affairs, London, 2008.

3 A point made strongly in Milton Friedman and Rose Friedman, *Capitalism and Freedom*, Chicago University Press, Chicago, IL, 1962.

### **Question: Don't we have to protect people from themselves?**

No. Do you want to be 'protected' from yourself? Or do you think you should make your own decisions about how to live your life? Allowing governments to decide what is good and bad for us is inefficient: we are in a much better position than distant officials to judge the risks we take. And it is dangerous: governments may start by banning things that everyone agrees are harmful, but once the principle is conceded, they can ban everything.

Should we be prevented from snorting cocaine, smoking tobacco, drinking alcohol, eating fatty food or swigging sugary drinks? Should we be forced by law to take exercise, give up dangerous sports and attend church? Should we be barred from reading 'dangerous' books or from criticising our rulers? The answer in a free society is no. If people are offending our morals or doing something dangerous, we should tell them so. But as long as they are doing no harm to anyone else, we have no right to stop them.

Prohibitions almost never work. Alcohol prohibition in the United States merely drove drinking underground to where it could not be controlled. Strict drug laws and large penalties for drug dealing around the world have not prevented a trade that is estimated to be worth many hundreds of billions of dollars.

Trying to eradicate commonplace behaviour is wasteful. And it is a threat to freedom because a massive monitoring and enforcement apparatus is needed if it is to make any impact at all. That simply diverts law enforcement resources from the investigation and prosecution of genuinely harmful offences. It also opens up opportunities for corruption among the police and the courts; even though little or no harm may be done to others by gambling or drug-taking, the penalties may be large, enabling officials to extract large bribes from those involved in them.

### **Public and private behaviour**

The rules of a free society govern public behaviour – how individuals behave with respect to others. But private behaviour – affecting only the individual concerned – remains in the private sphere. It becomes a legal matter only if it causes harm to others.

Yet in a free society it is necessary to be very careful that the actual harm or risk of harm is genuine. Should people be permitted to sell poisons? Given that poisons have many uses that do not involve harm to humans, more harm might be done by banning their sale than permitting it. There may well be a case for logging the names of those who sell and buy poisons, so that poisoners know that they are likely to be detected; but no more than that<sup>4</sup>.

Should there be a rule against public drunkenness? Or against the operation of brothels or gambling houses? Yes, if they cause violence, which is why many countries choose to license them. But for the most part, these activities affect only the people concerned. Other people might be disgusted by the thought of them, but if we allow activities to be banned on the grounds of anything but objective harm caused to other people, no human activity is safe from the moralists.

Should people be permitted to trade on holy days? Or engage in polygamy? It is their own business, not ours; it does no harm to anyone else. The laws of a free society exist to preserve and expand the freedom of individuals, not to impose the morality of some people on others.

Nevertheless, in a free society people are allowed to set their own rules on their own property, provided that the no-harm rule is not broken. In many countries, some public spaces (such as shopping malls) are privately owned rather than controlled by the political authorities. Thus in 2005 the Bluewater shopping centre in south-

<sup>4</sup> This and the following points are made well in John Stuart Mill, *On Liberty*, 1859, in John Stuart Mill, *On Liberty and other Essays*, Oxford University Press, Oxford, 2008.

east England banned swearing, smoking, loafing and wearing clothes that obscure the face (such as hooded tops). In Bournville, central England – the factory town created by chocolate-maker George Cadbury and run by a private trust that remains true to his principles – the open sale of alcohol is not permitted. Since Bluewater and Bournville are private property, they are fully within their rights.

## **The problem of altruism**

Many people are disturbed by the thought that free societies and free economies operate on the basis of the self-interest of those involved. They would prefer a world that was driven instead by altruism – a selfless concern for the interest and wellbeing of others. But this leads to even more problems than it solves<sup>5</sup>.

## **No guide for helping others**

How, for a start, can we ever know what is in the interest of other people? We have no direct access to their minds and values. If we were trying to do what was in their interest, we would surely make major mistakes. Anyone who has ever received a completely inappropriate birthday present knows how even family and friends can be poor judges of a person's taste. The giving culture seems an inefficient basis on which to run a whole society.

It is also hard to be critical of the things that other people give us. We accept gifts with seeming gratitude, even if we hate them. This means that people in an altruistic society would never learn exactly what others really want. That is in stark contrast to an economy built on self-interest, where if customers do not get exactly what they want from a supplier, they say so, and threaten to take their business elsewhere. Self-interest focuses suppliers on giving people exactly the right products as cheaply as possible.

## **Altruism produces conflict**

If deliberately trying to help others was what motivated business transactions, there would be just as much tension between buyers and sellers as there is in today's world of self-interest. Buyers would demand higher prices in order to benefit the sellers. Sellers would pitch prices low to maximise the benefit to the buyers. It is just the mirror image of what happens today.

In a market economy, self-interested people are in conflict with each other, but they can resolve their conflicts by bargaining. If the only motive were to benefit others, there would be no way to resolve conflicts. Each altruist would insist on making the other better off. Since neither wants to gain from the deal, the urgency of their own needs would not help them to agree.

## **Self-interest and cost–benefit**

Self-interest focuses providers – and customers too – on making sure that the benefits of a transaction exceed its costs. An altruistic supplier who worked for no reward would send out a very misleading signal to everyone – the signal that their time and expertise had zero cost. Customers, taking this signal at face value, would soon overwhelm the suppliers with their demand. Suppliers would have no way to refuse to provide a service, even if its benefit was marginal or was dwarfed by the cost.

Leatherworkers, for example, would face endless lines of people with goods to repair. In the self-interested

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5 For a fuller explanation of this, see Mao Yushi, 'The paradox of morality', in Tom G. Palmer, *The Morality of Capitalism*, Students for Liberty and Atlas Foundation, Arlington, VA, 2011.

market economy, such traders would tell customers point-blank if their goods were not worth repairing; or else they would quote a price so high that the customer would decide not to bother. The market manages demand, and focuses effort on what is really worthwhile. In an altruistic world, people would be rushing to help neighbours with all sorts of tasks – building a house, say. But in practical and cost-effectiveness terms, it might be better for the neighbour to go to the marketplace and hire a professional house builder, rather than rely on the unskilled labour of friends. The loss is compounded if those neighbours could use their talents more effectively in other kinds of work. The market encourages people to put their time and skills where they are most valued.

**Question: Shouldn't we control prices so poor people can afford things?**

No. Prices are signals of scarcity. They tell us where there are surpluses and shortages. They tell producers that more of a product is needed, and consumers that they should cut back or look for alternatives. Price controls suppress these signals and so demand outstrips supply and there are shortages. This commonly leads to rationing of the scarce products, which is even less efficient.

An example is rent controls, designed to make housing affordable. What they actually do is make housing worse or unavailable, as owners decide the rents they get are not worth their while, and take their property off the rental market.

If some people cannot afford essentials, the best solution is not to interfere with the market mechanism, but to give them money – either through private charity or through a tax-funded minimum income scheme. Then they can buy these things in the same efficient and competitive market as everyone else.

## **The morality of the marketplace**

The fact that a free-market economy is based on self-interest does not make it immoral. In markets, people can prosper only by cooperating with others by supplying the things that they want. Anti-social behaviour is punished: why should anyone trade with a rude misanthrope when there are plenty of more agreeable people out there, willing to do business?

There are also rules to make sure that markets work smoothly without coercion. But formal rules cannot deal with every specific case. Markets inevitably rely on trust, and they reward those who have a reputation for being trustworthy and reliable. Even though the driving force is self-interest, markets promote a mutually beneficial morality.

## **Corporate social responsibility**

Many people want businesses to act more morally, and promote 'corporate social responsibility'. Many large international businesses now publish annual reports explaining what they are doing to be good citizens. But only individuals can be responsible or irresponsible, moral or immoral. Groups have no separate morality of their own. A country, a town, a race, a tribe, a club or a company cannot be moral or immoral – only its individual members. Certainly, we would like business leaders to build a moral culture in their organisations. But morality and responsibility are reflected in actions – and actions are taken by individuals, not groups.

The corporate social responsibility movement is actually an attempt to pass the cost of civic and welfare programmes on to business. Businesses try to show how responsible they are by funding local schools, community groups and so on. It may make good business sense for them to do this: after all, they have to recruit from the local schools and a positive relationship with them could make recruitment easier. But this should be

a business decision made willingly by executives and shareholders, not forced upon them in the name of ethics. If business were properly competitive, there would in any case be no spare cash to support local projects that did not serve the commercial prospects of the business. If firms have money to spare on such projects, it is an indication that the market is not working (for example, government regulation is protecting the companies from competition). In a truly competitive market, those firms would lose out to others who scrapped the window-dressing local projects, and skimmed off the resultant profits.

Nor are business people particularly good at making sure the money they devote to community projects is in fact well spent. They would be better advised to concentrate on their core role of earning profits by providing the goods and services that people really want – which in turn would generate the general wealth that makes philanthropy affordable

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Chapter 7  
Free Market and Competition

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## Bastiat's famous Candlestick makers' Petition

**Frédéric Bastiat**

<http://bastiat.org/>

### Sources

Originally published on the web by The New Australian. Unknown translator (maybe someone from the FEE). Slightly edited by François-René Rideau for Bastiat.org.

On Bastiat.org, you may also find the original text in French “Pétition des marchands de chandelles...”, and other works of Bastiat, either in French or translated into English.

### A PETITION

FROM THE MANUFACTURERS OF CANDLES, TAPERS, LANTERNS, STICKS, STREET LAMPS, SNUFFERS, AND EXTINGUISHERS, AND FROM PRODUCERS OF TALLOW, OIL, RESIN, ALCOHOL, AND GENERALLY OF EVERYTHING CONNECTED WITH LIGHTING.

*To the Honourable Members of the Chamber of Deputies.*

Open letter to the French Parliament, originally published in 1845 (Note of the Web Publisher)

#### *Gentlemen:*

You are on the right track. You reject abstract theories and have little regard for abundance and low prices. You concern yourselves mainly with the fate of the producer. You wish to free him from foreign competition, that is, to reserve the *domestic market* for *domestic industry*.

We come to offer you a wonderful opportunity for your — what shall we call it? Your theory? No, nothing is more deceptive than theory. Your doctrine? Your system? Your principle? But you dislike doctrines, you have a horror of systems, as for principles, you deny that there are any in political economy; therefore we shall call it your practice — your practice without theory and without principle.

We are suffering from the ruinous competition of a rival who apparently works under conditions so far superior to our own for the production of light that he is *flooding* the *domestic market* with it at an incredibly low price; for the moment he appears, our sales cease, all the consumers turn to him, and a branch of French industry whose ramifications are innumerable is all at once reduced to complete stagnation. This rival, which is none other than the sun, is waging war on us so mercilessly we suspect he is being stirred up against us by perfidious Albion (excellent diplomacy nowadays!), particularly because he has for that haughty island a respect that he does not show for us.

We ask you to be so good as to pass a law requiring the closing of all windows, dormers, skylights, inside and outside shutters, curtains, casements, bull's-eyes, deadlights, and blinds — in short, all openings, holes, chinks, and fissures through which the light of the sun is wont to enter houses, to the detriment of the fair industries

with which, we are proud to say, we have endowed the country, a country that cannot, without betraying ingratitude, abandon us today to so unequal a combat.

Be good enough, honourable deputies, to take our request seriously, and do not reject it without at least hearing the reasons that we have to advance in its support.

First, if you shut off as much as possible all access to natural light, and thereby create a need for artificial light, what industry in France will not ultimately be encouraged?

If France consumes more tallow, there will have to be more cattle and sheep, and, consequently, we shall see an increase in cleared fields, meat, wool, leather, and especially manure, the basis of all agricultural wealth.

If France consumes more oil, we shall see an expansion in the cultivation of the poppy, the olive, and rapeseed. These rich yet soil-exhausting plants will come at just the right time to enable us to put to profitable use the increased fertility that the breeding of cattle will impart to the land.

Our moors will be covered with resinous trees. Numerous swarms of bees will gather from our mountains the perfumed treasures that today waste their fragrance, like the flowers from which they emanate. Thus, there is not one branch of agriculture that would not undergo a great expansion.

The same holds true of shipping. Thousands of vessels will engage in whaling, and in a short time we shall have a fleet capable of upholding the honour of France and of gratifying the patriotic aspirations of the undersigned petitioners, chandlers, etc.

But what shall we say of the *specialities* of *Parisian manufacture*? Henceforth you will behold gilding, bronze, and crystal in candlesticks, in lamps, in chandeliers, in candelabra sparkling in spacious emporia compared with which those of today are but stalls.

There is no needy resin-collector on the heights of his sand dunes, no poor miner in the depths of his black pit, who will not receive higher wages and enjoy increased prosperity.

It needs but a little reflection, gentlemen, to be convinced that there is perhaps not one Frenchman, from the wealthy stockholder of the Anzin Company to the humblest vendor of matches, whose condition would not be improved by the success of our petition.

We anticipate your objections, gentlemen; but there is not a single one of them that you have not picked up from the musty old books of the advocates of free trade. We defy you to utter a word against us that will not instantly rebound against yourselves and the principle behind all your policy.

Will you tell us that, though we may gain by this protection, France will not gain at all, because the consumer will bear the expense?

We have our answer ready:

You no longer have the right to invoke the interests of the consumer. You have sacrificed him whenever you have found his interests opposed to those of the producer. You have done so in order to encourage industry and to increase employment. For the same reason you ought to do so this time too.

Indeed, you yourselves have anticipated this objection. When told that the consumer has a stake in the free entry of iron, coal, sesame, wheat, and textiles, ``Yes," you reply, ``but the producer has a stake in their exclusion." Very well, surely if consumers have a stake in the admission of natural light, producers have a stake in its interdiction.

“But,” you may still say, “the producer and the consumer are one and the same person. If the manufacturer profits by protection, he will make the farmer prosperous. Contrariwise, if agriculture is prosperous, it will open markets for manufactured goods.” Very well, If you grant us a monopoly over the production of lighting during the day, first of all we shall buy large amounts of tallow, charcoal, oil, resin, wax, alcohol, silver, iron, bronze, and crystal, to supply our industry; and, moreover, we and our numerous suppliers, having become rich, will consume a great deal and spread prosperity into all areas of domestic industry.

Will you say that the light of the sun is a gratuitous gift of Nature, and that to reject such gifts would be to reject wealth itself under the pretext of encouraging the means of acquiring it?

But if you take this position, you strike a mortal blow at your own policy; remember that up to now you have always excluded foreign goods because and in proportion as they approximate gratuitous gifts. You have only half as good a reason for complying with the demands of other monopolists as you have for granting our petition, which is in complete accord with your established policy; and to reject our demands precisely because they are better founded than anyone else’s would be tantamount to accepting the equation:  $+ X + = -$ ; in other words, it would be to heap absurdity upon absurdity.

Labour and Nature collaborate in varying proportions, depending upon the country and the climate, in the production of a commodity. The part that Nature contributes is always free of charge; it is the part contributed by human labour that constitutes value and is paid for.

If an orange from Lisbon sells for half the price of an orange from Paris, it is because the natural heat of the sun, which is, of course, free of charge, does for the former what the latter owes to artificial heating, which necessarily has to be paid for in the market.

Thus, when an orange reaches us from Portugal, one can say that it is given to us half free of charge, or, in other words, at half price as compared with those from Paris.

Now, it is precisely on the basis of its being semigratuitous (pardon the word) that you maintain it should be barred. You ask: “How can French labour withstand the competition of foreign labour when the former has to do all the work, whereas the latter has to do only half, the sun taking care of the rest?” But if the fact that a product is half free of charge leads you to exclude it from competition, how can its being totally free of charge induce you to admit it into competition? Either you are not consistent, or you should, after excluding what is half free of charge as harmful to our domestic industry, exclude what is totally gratuitous with all the more reason and with twice the zeal.

To take another example: When a product — coal, iron, wheat, or textiles — comes to us from abroad, and when we can acquire it for less labour than if we produced it ourselves, the difference is a gratuitous gift that is conferred up on us. The size of this gift is proportionate to the extent of this difference. It is a quarter, a half, or three-quarters of the value of the product if the foreigner asks of us only three-quarters, one-half, or one-quarter as high a price. It is as complete as it can be when the donor, like the sun in providing us with light, asks nothing from us. The question, and we pose it formally, is whether what you desire for France is the benefit of consumption free of charge or the alleged advantages of onerous production. Make your choice, but be logical; for as long as you ban, as you do, foreign coal, iron, wheat, and textiles, in proportion as their price approaches zero, how inconsistent it would be to admit the light of the sun, whose price is *zero* all day long!

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## Do we really have a free market economy?

April 25, 2011

**Surath Giri**

Around the world, the growing consensus is that free markets and entrepreneurship are the most effective tools for tackling poverty and bringing growth and innovation to every nation. They are the primary sources of prosperity. In Nepal, however, free markets don't seem to enjoy the same kind of respect like they do in other parts of the world. The general notion is that Nepal is a free market economy and the sorry state of affairs is largely due to markets being too free. Anything that could go wrong and that has gone wrong is being blamed upon free markets. Political speeches invariably eulogize central planning and authoritarian state. Newspapers are rife with articles condemning free markets. Talk shows conclude with demanding more regulations and expanded role of the government. Ideological rhetoric rather than the facts or logic reign in the public debates. A foreigner would surely have the impression that, Nepal must be the epitome of failure of free markets.



So, are free markets and liberalization the most pertinent aspects of Nepalese economy? Hardly so. Economic Freedom of the World report, an annual report prepared by Fraser Institute, an independent Canadian think tank with collaboration of more than 80 other think tanks around the world ranks Nepal as 125th most economically free nation out of the 141 nations

the survey is carried out in. The report uses only secondary and objective data rather than rhetoric to formulate the rankings which makes it difficult to refute its findings. Contrary to the prevailing opinions, Nepalese economy is miles away from being a free market and the miserable performance until now, can largely attributed to the lack of free markets.

It could come as a surprise to the critics of free markets in Nepal that even China, the so called communist country ranks at 82nd position in the report way ahead of us, the so called liberal economy. Another neighbor of ours, India who has written socialism as the only tolerable political ideology in the constitution ranks at 87th in terms of economically free nation.

### Free Market: What does it look like?

Free market is a summary term used to refer to all the voluntary exchanges that take place in a society. The existence of free market implies that the exchanges in a society take place voluntarily without the use of any force or tools of coercion.

When translated into policies, free markets mean lack of price controls, lack of subsidies to one group at the expense of other, security of property and lives of every citizen, easy and affordable mechanism to enter into a business, run it and close it down if needed, enforcement of rules and regulations that encourage competition and discouragement of market distorting forces like monopoly and cartels, presence of necessary regulations to save people from fraud and theft but lack of over-burdening regulations that prevent people from making their own choices without harming anyone else, proper enforcements of contracts between people, fast, affordable and independent judiciary system, low inflation rates and lack of deficit budgeting, promotion of free trade and foreign investment, transparency in government policies and expenditures, flexible labor laws, low tax rates among other things.

## Freeing Nepal's Market

Nepal's economy with more than 70 percent of work force still employed in traditional and subsistence farming and informal sector as the dominant sector of the economy and absence of any major industries can be classified as 'pre capitalistic' economy. A pre capitalist economy is typically very poor with few if any of the institutions associated with free markets. The late advent of democracy, more than 3 decade's long autocracy, the dominance of left leaning political parties has hardly done anything that could develop Nepal into a well functioning free market economy. The bulk of the power and wealth is held by the state and a small group of individuals and families which is the characteristics of feudalism or oligarchic capitalism at best.

Lack of stable policies, security of property rights, wide spread corruption, irresponsible government spending and lack of rule of law plague Nepalese economy. The state has continuously suppressed private sector development and political instability has left the country devoid of any economic reform plans or strategies. Lack of infrastructure development and protectionist approach to handling economy has resulted in Nepal's economy lacking the entrepreneurial dynamism that would propel economic growth and long-term economic development.

Government created monopolies like Nepal Oil Corporation and Nepal electricity authority continue to be a drain in the economy. State owned enterprises such as Janakpur cigarette factory have accumulated billions of rupees as losses and debts. Almost all of the state owned enterprises are suffering losses and mismanagement of properties. Monopoly of Nepal electricity authority, mismanagement, corruption in hydropower license distribution has resulted in country suffering for more than 14 hours of power cuts and whatever industries that are left are being crippled by the power crisis.

Anti-employer labor laws and politicization of labor unions have made Nepal one of the most difficult countries to fire an incompetent worker. Dominance of political agendas within the industries and the militant labor unions let businesses run not more than 6 months in a year. Nepotism and favoritism in distribution of licenses and promotion of industries had resulted in oligarchy in almost every sector of the economy.

Anti-competitive practices like price fixing, syndicates and cartels in every sector have driven the costs of goods and services to general public tremendously and have made formal sectors of the economy virtually inaccessible to the poorer and less powerful segment of the populace. Burdensome and costly regulations to start up, run or close down a business has forced the majority of the population to remain within the informal or extralegal sector.

The policies allowing and empowering the politicians and government bureaucrats to make decisions as per their discretion has created such an avenue for corruption that corruption is the norm rather than the exception in any government procedures. Nepal ranks 146th in the Transparency International's Corruption Perception Index making it one of the most corrupt countries in the world.

Similarly, Nepal ranks 100th out of 129 countries in International Property Rights Index which can provide a glimpse of how insecure the lives and properties of Nepalese citizens are. Property stealing and grabbing culture spearheaded by the political parties themselves has instilled fear and insecurity among people discouraging investment and entrepreneurship. In such a scenario, calling Nepalese economy a free market economy and blaming free markets for the sorry state of affairs is not just naivety but outright lie.

## Free Enterprise And Trade

### **The free-market economy**

The economic system in a free society is the free-market economy. It works through the voluntary exchange of goods and services between people – sometimes directly but usually through the medium of money. Individuals are free to choose if, how, when, where and with whom they work, spend, invest, save and trade. Nobody is forced into such transactions.

### ***Rules to promote cooperation***

The free-market economy is not a lawless free-for-all in which people can do what they want, regardless of the consequences for others. The no-harm principle still prevails. And there is a framework of law, which covers the acquisition, ownership and exchange of property, people's rights over their own labour, and the enforceability of contracts. These rules cover not just the behaviour of individuals, but groups such as partnerships, companies and charities. The role of government is to maintain the rules that protect people's property and freedom, and to enforce their contracts.

That role is limited, however. The rules are not there to direct commerce, but to facilitate it. They are like a fire basket that contains the fire. And it is important that the energy of the market economy is not smothered by excessive rules and regulations. But the basic rules of property, exchange and contract allow people to cooperate, however they choose, for mutual benefit, on a basis of trust, confidence and security. That encourages greater economic cooperation and multiplies the many benefits that stem from it.

### ***The benefits of voluntary exchange***

It is easy to imagine that only sellers benefit from commerce. After all, they end up with more money from the deal, while the buyer ends up with less. That makes some people think that sellers are greedy and interested in their own profit, not in other people.

This is mistaken. What, after all, is the point of money? In the days when money comprised gold and silver, it at least had some use as a metal that could be made into jewelry and ornaments. But money made from paper and base metals has few other uses. The only useful thing you can do with it is to exchange it for other goods and services.

In other words, money is a medium of exchange. A buyer exchanges it for a good or service; the seller then exchanges it for different goods and services from someone else. Both consider themselves better off from the deal. They would not agree to it otherwise.

### ***How trade creates value***

Since nobody would exchange one thing for another that is worth less, how can both end up better off? The reason is that value, like beauty, is in the eye of the beholder. It is not some scientific quality of objects, like weight or size. It is what each individual thinks of that object. People in a rainy country would put little value on a cup of water; but those in the desert might consider it precious. A new clothing fashion may be a must-have for teen-agers, while their parents might think it ridiculous.

It is precisely because human beings differ in how they value things that they can each gain from exchange. A customer buying a chicken from a market trader values the chicken more than the money exchanged for it. But the trader values the money more than the chicken. When the trader then uses the money to buy other things – bread, say – the same happens. The trader values the bread more than the money that the baker demands for it. All three have gained, which is why they all voluntarily agree to these exchanges. In fact, the greater the difference in value that they put on the chicken, the money and the bread, the more they each gain from exchanging them. All they need to agree on is the rules by which they trade things – the rules of property, honesty and contract that form the framework of the free-market economy. Apart from that, the partners in each deal are entirely self-interested: each makes their exchanges to benefit themselves, not to benefit the other person.

Yet by following these rules, each unintentionally benefits the others – as if guided by ‘an invisible hand’, as Adam Smith put it<sup>1</sup>. Though motivated only by self-interest, they willingly cooperate with each other.

Through the medium of money, each of us can now trade – and cooperate – not just with others in the same marketplace but with millions of others in countries we will never visit, whose languages we cannot speak and whose cultures and politics we may even disapprove of. In these countless daily transactions, each side gains. People cooperate. Value is created. Human beings are made better off. Humanity prospers.

### ***The poor gain most***

So natural and beneficial is this free exchange system that it has spread everywhere. It even exists illicitly, or is tolerated, in countries that reject free markets as a matter of ideology. Many countries (including several in Asia) that grant their citizens little freedom in personal and social matters nevertheless allow them considerable economic freedom.

Indeed, commerce and trade were important factors in the early years of the Islamic world and its subsequent spread. The opening up of world trade routes created the enormous wealth of Renaissance Europe, which in turn produced a flowering of art, culture and learning. The Americas prospered through their trading links with Europe, and then China.

But it is not the rich who are buoyed up most by this rising tide of human prosperity. Where economic freedom has spread, the living standards of the poor have risen the most. As the American economist Milton Friedman put it, domestic running water was an unimaginable luxury in Imperial Rome; but a Roman senator had no need of it because he had running servants to bring it instead<sup>2</sup>. The poor of Imperial Rome lived in squalor; but the poor of modern Rome now take the luxury of hot and cold running water for granted.

This effect can be seen vividly in the recent opening up of international trade and the spread of market principles in countries such as China and India. In just three decades, perhaps a billion or more people have been raised out of abject poverty as a result. Millions more can now aspire to be middle class and to enjoy luxuries such as mobile phones, televisions and motor transport – and indeed to work in cool, dry, comfortable offices and factories rather than out in all weathers on the land.

### ***How to grow rich***

*Producers have to serve customers*

In a free society, customers have choice. They are not forced to buy from particular producers, such as the monopolies run by governments or their cronies. Providers may try to collude to raise prices, but it is hard to make such collusion stick, since any of them could cheat by lowering their prices to attract more customers. Meanwhile, other providers are free to enter the market and compete with the firms that are trying to keep prices high.

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1 Adam Smith, *The Wealth of Nations*, 1776, Book IV, ch. II, para. IX.

2 Milton Friedman and Rose Friedman, *Free to Choose*, Harcourt Brace Jovanovich, New York, 1980, p. 147.

In a genuinely competitive free-market economy, therefore, producers have no power to exploit their customers. Unless they produce what customers want, with the quality they want and at a price that is attractive, they will soon lose business. Individuals are not held prisoner to the power of corporations. On the contrary, producers survive only by responding to the changing demands of the public.

A company may be big, but it still faces competition. A large firm probably makes many different products and is engaged in many different businesses. But not only does it face potential competition from other big companies. It also faces competition from many smaller ones that can compete for particular parts of the business. Smaller companies with fewer overheads may be able to produce some of the large company's products better or more cheaply. New and innovative companies may produce new products that render one or more of the large company's products obsolete. It is a myth, therefore, that capitalism leads to bigger and bigger companies, and eventually to monopolies, as firms pursue economies of scale. Scale has its costs too: large organisations are very difficult to manage and slow on their feet. It is instructive to look at any Western magazine of, say, fifty years ago. Few of the companies then advertising still exist. They have all been overtaken by competitors who started small but were more innovative or cost-effective.

### ***No hold on economic power***

So, there is no intergenerational hold on economic power by companies, nor by the people who run them. Individuals can become wealthy in a free economy, but only so long as they continue to serve the public and attract customers. Indeed, 'from shirt sleeves to shirt sleeves in three generations' is a common phenomenon in the more-free societies: people set up companies and make money for their families, but by the time their grandchildren come into the business, other companies have begun to outcompete them.

#### **Question: Aren't competition, profit and advertising wasteful?**

No. Profit is what spurs people to perform, to search out opportunities and to create the products and services that other people quite willingly choose to buy. Profit also indicates that resources are being used to produce goods or services that the community values more than the raw resources themselves.

Advertising is important because it tells people about new products and improvements to existing products. Competition gives people a choice between different products, pushing suppliers to innovate and provide better quality at lower cost. Without competition, consumers would be powerless. They would have to take what the monopoly provider deigned to supply – or go without.

This is a much fairer system than where elites control access to both political and economic power, and make sure that they and their families hold on to it. In a free economy, anyone with talent and determination can aspire to build wealth – provided that they serve others. The chance of becoming wealthy is not restricted to the friends, family or party of those in power, nor to those in particular ethnic or religious groups. Indeed, some of the most prosperous people in free societies are immigrants, who come in with different experiences and ideas and produce new products or services that people are keen to buy.

Where there is a powerful government that can dispense favours to its friends, however, business people will try to use it for their own benefit. They may seek regulation that keeps out competitors, or even a complete monopoly. Though they might try to justify this by saying that it will protect the public from substandard goods, their real motive is to corner the market. But this would give them a coercive power that is incompatible with a free society. Governments should not have the power to skew markets and create monopolies; rather, their role should be to extend freedom and competition.

## ***Entrepreneurship***

Success in a free economy is not always about working hard – though that often helps. You have to supply goods and services that other people want and are willing to buy. That can involve taking a risk – guessing what new products people will demand – and organising a chain of production that may involve many other suppliers, workers and distributors. Comparatively few people are willing to take on these risks and responsibilities; but the successful anticipation of demand and organisation of production systems, networks and effort is the real contribution of these entrepreneurs. They take big risks, and if the public do indeed buy their products, they are well rewarded.

That in turn encourages productivity and innovation. It spurs people into creating new and better products and processes in the hope that they too will achieve the wealth that past entrepreneurs have acquired. And that constant improvement and invention benefits customers and therefore benefits the whole society. Inventions that save people labour or otherwise improve their lives raise prosperity and spread wealth far better than any government welfare scheme.

Customers benefit from goods and services they could never find or produce on their own. It takes a good deal of research and expertise, for example, to develop and supply an effective medicine. Individuals are unlikely to have the chemical, biological and manufacturing expertise needed – but specialist drugs firms do. Even local pharmacists can accrue specialist knowledge of the use, efficacy and side effects of perhaps five hundred or more medicines in their stock. Customers could not possibly acquire such specialist knowledge – certainly not if they also had to become experts on food, drink, clothes, shoes and all the other things that they need in their daily lives.

Entrepreneurs may accumulate wealth. But they do not do it at other people's expense. The money they earn comes only from the voluntary payments of their customers. They get rich only by helping others, not by taxing or exploiting people. And they keep their wealth only as long as they continue to serve the public. To keep earning, they have to understand their customers and anticipate their needs. So they are always looking for some unfilled product niche and seeking to fill it. It is a constant process of trying to keep customers satisfied.

## ***Profit and speculation***

The prospect of profit, then, spurs producers – big and small – to take risks, innovate, organise and work to serve other people.

Many critics of free economies disparage the idea of 'profit' – but actually all of us are profit seekers. We sacrifice some things in order to gain something that we value more. For example, we spend time and effort cleaning in order to have a neat and tidy house. We value the clean house more than the effort of cleaning; the difference is our profit. It is not a financial profit, but in other ways it is just like an entrepreneur buying in supplies and producing something that sells for more than the inputs cost. Even when we engage in community or philanthropic projects – serving on a school board, say – we do it for our own ends, even though these ends may be that we want to see all local children well educated. That too is a (non-financial) profit to us. But it is only financial profit which critics seem to notice and dislike. This is illogical and inconsistent.

The same is true when speculation is criticised. In reality, speculation is not confined to financial markets. We are all speculators. Farmers plant seeds in the hope of raising a marketable crop. We go to school to gain qualifications that we hope will make us more employable. These are speculative ventures.

In the financial world, speculation is hugely important. Ships would never sail if insurance companies and underwriters were not prepared to speculate and take a risk on their safe passage. Much modern production relies on large and long-term contracts – such as supply agreements, or contracts to build and maintain a factory. Individual producers cannot reasonably take on the whole risk. So they invite others to buy shares in their enterprise. That is another form of speculation. In stock markets, speculators buy and sell in the hope of

making profits, but to do so they need to have an expert understanding of the firms they are trading, and of their future prospects. That expertise brings useful information to the market, and helps prices reach their right level more quickly than they would without it, making the whole market more responsive and efficient. Making a profit is not the same as being greedy. People pursue profit for their own self-interest, but that is not the same as greed. Some measure of self-interest is essential if we are each to survive, avoid injury and nourish our bodies. But greed is a moral notion, indicating that someone is excessively self-interested, to the detriment of others. In a free society, producers can satisfy their self-interest only by helping others.

### ***Business and relationships***

Crucial though it is, business is not the whole of life. Even the most hard-working business person in a free society has family and other interests such as sports or hobbies, or groups and associations with shared enthusiasms. One need only look at capitalist countries such as Italy, where family relationships are very strong, to realise that family and the market economy sit easily together.

Being in business does not justify treating other people callously, and certainly does not justify harming others – that is ruled out by the no-harm principle. And many of the most rewarding relationships are actually with business colleagues in the workplace. A free-market economy promotes social relationships in other ways too. It gives people the wealth and time to devote to other interests, such as religious or community organisations and philanthropic causes.

### ***How markets work***

#### *The telecommunications system of prices*

Most markets work through the medium of money. There can be direct exchange – bartering or swapping – without it; but money brings convenience. A seller can exchange a good or service for it, then shop around for the best value before exchanging it for other goods and services. It means that hungry barbers do not need to seek out bakers who need haircuts in order to trade.

Prices are usually expressed in money. Prices are not a standard of value, because value exists in the minds of those involved and different people value the same thing differently. But prices reveal something about people's demand for products and about their scarcity. They reflect the rate at which people are prepared to exchange one thing for another.

As an indicator of scarcity, prices are hard to beat<sup>3</sup>. And not only do they reveal where demand is strong. High prices also induce suppliers to meet that demand. Seeing the high prices, producers step into the market in order to capture the potential profit, focusing resources such as labour and capital on satisfying the demand. Low prices, similarly, indicate that demand is weak and that resources are better used elsewhere.

In this way, prices play a vital role in a free economy, helping move resources to where the need for them is highest and drawing them away from where there are surpluses. They also help squeeze out waste: to make the highest profit, suppliers need to find the most cost-effective inputs. That helps conserve resources and ensure that they are used as productively as they can be.

This effect spreads out from market to market across the whole economy, and indeed across the whole world. For example, suppose that some new use is discovered for tin. Manufacturers then start demanding more tin. They will be prepared to pay more for it than before. The high prices will induce mining companies to produce more tin, and wholesalers to supply it. But equally, other users of tin will start looking for substitutes, rather than pay the higher prices. They will demand more of those substitutes, and their price will rise. That encourages people to produce more of the substitutes, and induces users to look for substitutes for those substitutes.

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3 These points are made well in F. A. Hayek, *Individualism and Economic Order*, University of Chicago Press, Chicago, IL, 1949. For a brief summary, see Eamonn Butler, *Friedrich Hayek: The Ideas and Influence of the Libertarian Economist*, Harriman House, Petersfield, 2012.

In this way, prices transmit information about scarcity throughout the entire economic system. The Nobel economist F. A. Hayek called it the 'vast telecommunications system' of the market, constantly revealing where surpluses and shortages exist and telling people where best to commit their effort and resources.

### ***Markets cannot be perfect***

If you read an economics textbook, you might get the impression that markets rely on 'perfect competition' between large numbers of identical suppliers selling identical products to identical customers. They do not. These are only theoretical abstractions. In reality, markets work – and can only work – because people and products are different.

If everyone shared the same values, nobody would ever trade anything. Both sides would value goods identically, so there would be no point in exchanging them. Exchange happens only because we disagree on value. And again, if each supplier offered identical products at identical prices, there would be nothing for customers to choose between them. No supplier could beat the competition and earn high profits.

But higher profits are what drive entrepreneurs to outdo the competition. They do that by making their product cheaper – say, by streamlining production. But more importantly, they do it by making their own particular product better. They innovate and differentiate their products. They give consumers something new and better than the old goods they are used to. And they highlight those changes in the hope that buyers will indeed prefer their products to those of others.

This makes free markets amazingly dynamic – not static, frozen and unmoving like the textbook supply and demand graphs. Suppliers are constantly innovating to produce more attractive products, and customers are constantly looking out for improvements.

### ***The impossibility of central planning***

Government attempts to steer the economy and produce the goods that people want cannot match the dynamism of this market system.

There are few pressures on government monopolies to innovate. Nor can government bureaucrats know what members of the public actually want and value. They might undertake occasional opinion polls, but that is far removed from the constant competition of the market, in which consumers' buying choices give producers minute-by-minute information about their demand.

**Question: haven't free markets failed to protect the environment?**

No. Markets have not failed. There is simply no market in many environmental goods. Markets work well when things are scarce and when non-payers can be excluded, not when things are plentiful or where non-payers cannot be kept out.

People are beginning to see, however, that there can be markets in environmental goods too. Rather than allow sea fish stocks to be harvested to destruction, for example, a number of countries now set a sustainable limit and issue permits to harvest part of that total. The permits are tradable, and a market quickly emerges, promoting efficiency while keeping stocks high.

And as people grow richer, thanks to the free-market economy, they can afford to take more care with their environment. China suffers severe pollution from its industries, but people there value basic economic growth more than the luxury of clean air. As they grow richer, like every rich country before them, standards will change and they will be able to afford cleaner industrial processes that pollute much less.

To succeed, entrepreneurs have to understand their customers. They cannot wait years to get their opinion on a whole package of products, as governments do at elections. They need to keep alert to what customers want, and on the cost and availability of supplies and inputs. An estate agent, for example, needs to know what is happening in the local property market – which potential buyers are interested in certain types of houses, for example – not just from month to month, but from day to day and even from hour to hour. No central authority could even collect this rapidly changing information, never mind act on it before it all changes again.

Some people think that because a free economy is not planned from the centre, it must be haphazard and irrational. In fact, markets are very orderly. By following the agreed rules of property and exchange, people are able to trade and cooperate, and anticipate the actions of others, with great certainty. Markets are more rational too. They use the local expertise and knowledge of millions of individuals, who are all making their own plans and adjusting to the changing plans of others. A lot more planning goes on in a free economy than in a centrally controlled one – it just happens to be done at the level of individuals rather than at the level of the state.

### ***State-sponsored enterprises***

Few states today believe that they can effectively own and manage the entire productive activity of their nation. Most of the world's economies are 'mixed' economies in which governments own only some industries and attempt to direct and manage the output of others through planning, regulations, subsidies, taxes and state shareholdings.

The twentieth century saw many countries nationalising industrial sectors that were said to be of particular strategic importance, and many countries continue to own and control these industries – which can include telecommunications, transport, banking, utilities, mining and much else.

Unfortunately, state ownership of such industries almost always creates a government monopoly. Such monopolies are often far too big for anyone to manage effectively. But it does not matter whether a monopoly is public or private; it will invariably become bloated and lazy and provide a poor service at a high cost.

The strategic importance of these industries is still no reason why the state has to own them. The banks of most of the richest countries are private: indeed, turning them into a state monopoly would soon ruin the banks and the businesses and families that rely on them. Commercial companies, operating as suppliers to the government or dealing directly with consumers, now provide much of the world's telecommunications, transport and utilities. Many countries have privatised their state-owned companies, recognising that these important services can be delivered better by competitive firms that can bring in private management expertise

and private capital.

Governments have learned, however, that they can control industries without owning them. They might simply buy a stake in an important (and nominally privately owned) company, and use their rights as shareholders to control what the company does and who gets appointed to the board. Sometimes they give themselves 'golden shares' that give them the final say on key issues.

Such creeping interference would be rejected in a free society. It amounts to state ownership and expropriation, allowing governments to make decisions for the industry without having to purchase it. The owners – including ordinary people who may invest their savings and pensions in blue-chip companies – are effectively robbed of their property. And the opportunities for corruption are rife – cronies can be rewarded with lucrative board positions, factories can be located in favoured areas, and output can be used to benefit supporters.

Governments can also take effective control of private companies through regulation. Regulations can limit or dictate how companies operate, what they produce, how much they can charge, where they can invest and create jobs, how much they have to pay their workers – and much else. This sort of state control of private resources is very common, even in countries that call themselves free – but it is completely contrary to the principle of private property that is an essential foundation of a genuinely free society.

## ***International trade***

### *Trade versus protectionism*

The benefits that arise from free commerce between individuals in the same country are also generated when people trade across international borders. Trade allows nations to specialise in what they do best, and send their surpluses to countries that are better placed to do other things. A large proportion of the world's cut flowers, for example, originate in Kenya, where the soil and climate are good for growing them; while Chile, Australia and France are known as leading wine producers because of their land and climate conditions and the expertise they have built up. India, with its relatively cheap but well-educated workforce, has become an important country for IT services and production. International trade allows people to specialise and build up capital such as tools and equipment to make their production more cost-effective.

And because the values of people in different countries probably differ more profoundly than the values of people in the same country, the potential opportunities for mutual gain through trade are that much greater. In medieval times, for example, European travellers would pay huge prices for products such as tea that grew easily and plentifully in India and China, or for spices that were cheap and commonplace in the Middle East. Today, people fly halfway round the world to visit the architecture of Venice or the culture of Thailand, marveling at how different they are from their home countries.

A free society is open to products from all countries. It recognises the dynamic benefits from trade, and how trade helps spread prosperity. The alternative is protectionism, whereby countries attempt to protect their own suppliers by keeping out imports from other countries. This gives the domestic suppliers an easy time. But it means domestic consumers are denied better or cheaper goods and services that come from abroad. They pay higher prices to the protected domestic producers, have less choice and have to put up with poorer products.

### ***Protectionism is waste***

When a country produces something at home that could be produced better or cheaper abroad, it wastes resources (including environmental resources). Adam Smith pointed out that by means of greenhouses, grapes could be cultivated in cold, rainy Scotland – but at about thirty times the expense of growing them in the natural sunshine of France. Why waste resources – your time, money and effort – on trying to do something

yourself when someone else does it better or more cheaply?<sup>4</sup>

Not surprisingly, efficient producers resent other countries trying to keep out their products through prohibitions, quotas and tariffs. They may well retaliate by raising barriers of their own. Such trade wars benefit nobody. It is much better – particularly for the poorest residents of both countries, who have most to gain from cheaper imports – if all barriers are removed and people are allowed to trade as they choose.

The same goes for immigration. In a free society the government would not place barriers on people moving between countries. Immigrants bring energy and new ideas that benefit the country they move to. Waves of immigration in Europe and to North America, for example, created enormous prosperity. Abandoning controls that have been in place for decades may not be easy, and may cause huge temporary problems: but it should remain an ultimate objective for believers in a free society.

### ***Free trade in practice***

Countries with open trading regimes grow faster and become more prosperous than those without. Consider small trading cities such as Hong Kong and Singapore – neither of which has many natural resources to help them. In the 1960s, they were as poor as many African and Caribbean countries that had enormous resources. Today, thanks to trade and economic freedom, they are many times richer.

The spread of trade has reduced world poverty on a huge scale. Some people fear that allowing in imports, and foreign investment in particular, will lead to the exploitation of local populations – such as ‘sweatshops’ producing shoes or clothing. The truth is that nobody forces anyone to work in factories; but most people much prefer work in factories for a regular wage to backbreaking labour in the fields under a hot sun for an uncertain and lower reward. In countries such as Vietnam, where foreign investment has come in, those factory workers can now aspire to owning motor scooters, televisions and other luxuries that they had not dreamed of before. Almost any sophisticated product today – such as a mobile phone or handheld computer – involves resources, skills and expertise gathered from all over the world. The designers might live in California, but the manufacture may well be managed by people in Hong Kong and done by others in China. Metals and other materials used in the product may be mined from Asia, Australia or South America. The products may be transported by shipping lines based in Greece or airlines based in the Netherlands. And the users, of course, are all over the world.

As people trade with those in other countries, they come to understand them better, or at least to respect them. Traders cannot afford to imagine themselves superior to those of other nations or races. To benefit themselves, they have to trade peacefully with others as suppliers or collaborators or customers. International trade generates understanding and peace, which has its own, wider, benefits. It is no surprise that the most free and open societies are those that have the most free and open trade.

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4 Adam Smith, *The Wealth of Nations*, 1776, Book IV, ch. II.

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## I, Pencil

Tuesday, March 3, 2015

### My Family Tree as Told to Leonard E. Read

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#### Introduction by Lawrence W. Reed

Eloquent. Extraordinary. Timeless. Paradigm-shifting. Classic. Six decades after it first appeared, Leonard Read’s “I, Pencil” evokes such adjectives of praise. Rightfully so, for this little essay opens eyes and minds among people of all ages. Many first-time readers never see the world quite the same again.

Ideas are most powerful when they’re wrapped in a compelling story. Leonard’s main point—economies can hardly be “planned” when not one soul possesses all the know-how and skills to produce a simple pencil—unfolds in the enchanting words of a pencil itself. Leonard could have written “I, Car” or “I, Airplane,” but choosing those more complex items would have muted the message. No one person—repeat, no one, no matter how smart or how many degrees follow his name—could create from scratch a small, everyday pencil, let alone a car or an airplane.

This is a message that humbles the high and mighty. It pricks the inflated egos of those who think they know how to mind everybody else’s business. It explains in plain language why central planning is an exercise in arrogance and futility, or what Nobel laureate and Austrian economist F. A. Hayek aptly termed “the pretence of knowledge.”

Indeed, a major influence on Read’s thinking in this regard was Hayek’s famous 1945 article, “The Use of Knowledge in Society.” In demolishing the spurious claims of the socialists of the day, Hayek wrote, “This is not a dispute about whether planning is to be done or not. It is a dispute as to whether planning is to be done centrally, by one authority for the whole economic system, or is to be divided among many individuals.”

Maximilien Robespierre is said to have blessed the horrific French Revolution with this chilling declaration: “On ne saurait pas faire une omelette sans casser des oeufs.” Translation: “One can’t expect to make an omelet without breaking eggs.” A consummate statist who worked tirelessly to plan the lives of others, he would become the architect of the Revolution’s bloodiest phase—the Reign of Terror of 1793–94.

Robespierre and his guillotine broke eggs by the thousands in a vain effort to impose a utopian society with government planners at the top and everybody else at the bottom. That French experience is but one example in a disturbingly familiar pattern. Call them what you will—socialists, interventionists, collectivists, statist—history is littered with their presumptuous plans for rearranging society to fit their vision of the common good, plans that always fail as they kill or impoverish other people in the process. If socialism ever earns a final epitaph, it will be this: Here lies a contrivance engineered by know-it-all who broke eggs with abandon but never, ever created an omelet.

None of the Robespierres of the world knew how to make a pencil, yet they wanted to remake entire societies. How utterly preposterous, and mournfully tragic! But we will miss a large implication of Leonard Read's message if we assume it aims only at the tyrants whose names we all know. The lesson of "I, Pencil" is not that error begins when the planners plan big. It begins the moment one tosses humility aside, assumes he knows the unknowable, and employs the force of the State against peaceful individuals. That's not just a national disease. It can be very local indeed.

In our midst are people who think that if only they had government power on their side, they could pick tomorrow's winners and losers in the marketplace, set prices or rents where they ought to be, decide which forms of energy should power our homes and cars, and choose which industries should survive and which should die. They should stop for a few moments and learn a little humility from a lowly writing implement.

While "I, Pencil" shoots down the baseless expectations for central planning, it provides a supremely uplifting perspective of the individual. Guided by Adam Smith's "invisible hand" of prices, property, profits, and incentives, free people accomplish economic miracles of which socialist theoreticians can only dream. As the interests of countless individuals from around the world converge to produce pencils without a single "master mind," so do they also come together in free markets to feed, clothe, house, educate, and entertain hundreds of millions of people at ever higher levels. With great pride, FEE publishes this new edition of "I, Pencil." Someday there will be a centennial edition, maybe even a millennial one. This essay is truly one for the ages.

## I, Pencil

### *My Family Tree as told to Leonard E. Read*

I am a lead pencil—the ordinary wooden pencil familiar to all boys and girls and adults who can read and write. Writing is both my vocation and my avocation; that's all I do.

You may wonder why I should write a genealogy. Well, to begin with, my story is interesting. And, next, I am a mystery—more so than a tree or a sunset or even a flash of lightning. But, sadly, I am taken for granted by those who use me, as if I were a mere incident and without background. This supercilious attitude relegates me to the level of the commonplace. This is a species of the grievous error in which mankind cannot too long persist without peril. For, the wise G. K. Chesterton observed, "We are perishing for want of wonder, not for want of wonders."

I, Pencil, simple though I appear to be, merit your wonder and awe, a claim I shall attempt to prove. In fact, if you can understand me—no, that's too much to ask of anyone—if you can become aware of the miraculousness which I symbolize, you can help save the freedom mankind is so unhappily losing. I have a profound lesson to teach. And I can teach this lesson better than can an automobile or an airplane or a mechanical dishwasher because—well, because I am seemingly so simple.

Simple? Yet, not a single person on the face of this earth knows how to make me. This sounds fantastic, doesn't it? Especially when it is realized that there are about one and one-half billion of my kind produced in the U.S.A. each year.

Pick me up and look me over. What do you see? Not much meets the eye—there's some wood, lacquer, the printed labeling, graphite lead, a bit of metal, and an eraser.

### *Innumerable Antecedents*

Just as you cannot trace your family tree back very far, so is it impossible for me to name and explain all my antecedents. But I would like to suggest enough of them to impress upon you the richness and complexity of my background.

My family tree begins with what in fact is a tree, a cedar of straight grain that grows in Northern California and Oregon. Now contemplate all the saws and trucks and rope and the countless other gear used in harvesting and carting the cedar logs to the railroad siding. Think of all the persons and the numberless skills that went into their fabrication: the mining of ore, the making of steel and its refinement into saws, axes, motors; the growing of hemp and bringing it through all the stages to heavy and strong rope; the logging camps with their beds and mess halls, the cookery and the raising of all the foods. Why, untold thousands of persons had a hand in every cup of coffee the loggers drink!

The logs are shipped to a mill in San Leandro, California. Can you imagine the individuals who make flat cars and rails and railroad engines and who construct and install the communication systems incidental thereto? These legions are among my antecedents.

Consider the millwork in San Leandro. The cedar logs are cut into small, pencil-length slats less than one-fourth of an inch in thickness. These are kiln dried and then tinted for the same reason women put rouge on their faces. People prefer that I look pretty, not a pallid white. The slats are waxed and kiln dried again. How many skills went into the making of the tint and the kilns, into supplying the heat, the light and power, the belts, motors, and all the other things a mill requires? Sweepers in the mill among my ancestors? Yes, and included are the men who poured the concrete for the dam of a Pacific Gas & Electric Company hydroplant which supplies the mill's power!

Don't overlook the ancestors present and distant who have a hand in transporting sixty carloads of slats across the nation.

Once in the pencil factory—\$4,000,000 in machinery and building, all capital accumulated by thrifty and saving parents of mine—each slat is given eight grooves by a complex machine, after which another machine lays leads in every other slat, applies glue, and places another slat atop—a lead sandwich, so to speak. Seven brothers and I are mechanically carved from this “wood-clinched” sandwich.

My “lead” itself—it contains no lead at all—is complex. The graphite is mined in Ceylon [Sri Lanka]. Consider these miners and those who make their many tools and the makers of the paper sacks in which the graphite is shipped and those who make the string that ties the sacks and those who put them aboard ships and those who make the ships. Even the lighthouse keepers along the way assisted in my birth—and the harbor pilots.

The graphite is mixed with clay from Mississippi in which ammonium hydroxide is used in the refining process. Then wetting agents are added such as sulfonated tallow—animal fats chemically reacted with sulfuric acid. After passing through numerous machines, the mixture finally appears as endless extrusions—as from a sausage grinder—cut to size, dried, and baked for several hours at 1,850 degrees Fahrenheit. To increase their strength and smoothness the leads are then treated with a hot mixture which includes candelilla wax from Mexico, paraffin wax, and hydrogenated natural fats.

My cedar receives six coats of lacquer. Do you know all the ingredients of lacquer? Who would think that the growers of castor beans and the refiners of castor oil are a part of it? They are. Why, even the processes by which the lacquer is made a beautiful yellow involve the skills of more persons than one can enumerate!

Observe the labeling. That's a film formed by applying heat to carbon black mixed with resins. How do you make resins and what, pray, is carbon black?

My bit of metal—the ferrule—is brass. Think of all the persons who mine zinc and copper and those who have the skills to make shiny sheet brass from these products of nature. Those black rings on my ferrule are black nickel. What is black nickel and how is it applied? The complete story of why the center of my ferrule has no black nickel on it would take pages to explain.

Then there's my crowning glory, inelegantly referred to in the trade as “the plug,” the part man uses to erase

the errors he makes with me. An ingredient called “factice” is what does the erasing. It is a rubber-like product made by reacting rapeseed oil from the Dutch East Indies [Indonesia] with sulfur chloride. Rubber, contrary to the common notion, is only for binding purposes. Then, too, there are numerous vulcanizing and accelerating agents. The pumice comes from Italy; and the pigment which gives “the plug” its color is cadmium sulfide.

### ***No One Knows***

Does anyone wish to challenge my earlier assertion that no single person on the face of this earth knows how to make me?

Actually, millions of human beings have had a hand in my creation, no one of whom even knows more than a very few of the others. Now, you may say that I go too far in relating the picker of a coffee berry in far-off Brazil and food growers elsewhere to my creation; that this is an extreme position. I shall stand by my claim. There isn't a single person in all these millions, including the president of the pencil company, who contributes more than a tiny, infinitesimal bit of know-how. From the standpoint of know-how the only difference between the miner of graphite in Ceylon and the logger in Oregon is in the type of know-how. Neither the miner nor the logger can be dispensed with, any more than can the chemist at the factory or the worker in the oil field—paraffin being a by-product of petroleum.

Here is an astounding fact: Neither the worker in the oil field nor the chemist nor the digger of graphite or clay nor any who mans or makes the ships or trains or trucks nor the one who runs the machine that does the knurling on my bit of metal nor the president of the company performs his singular task because he wants me. Each one wants me less, perhaps, than does a child in the first grade. Indeed, there are some among this vast multitude who never saw a pencil nor would they know how to use one. Their motivation is other than me. Perhaps it is something like this: Each of these millions sees that he can thus exchange his tiny know-how for the goods and services he needs or wants. I may or may not be among these items.

### ***No Master Mind***

There is a fact still more astounding: The absence of a master mind, of anyone dictating or forcibly directing these countless actions which bring me into being. No trace of such a person can be found. Instead, we find the Invisible Hand at work. This is the mystery to which I earlier referred.

It has been said that “only God can make a tree.” Why do we agree with this? Isn't it because we realize that we ourselves could not make one? Indeed, can we even describe a tree? We cannot, except in superficial terms. We can say, for instance, that a certain molecular configuration manifests itself as a tree. But what mind is there among men that could even record, let alone direct, the constant changes in molecules that transpire in the life span of a tree? Such a feat is utterly unthinkable!

I, Pencil, am a complex combination of miracles: a tree, zinc, copper, graphite, and so on. But to these miracles which manifest themselves in Nature an even more extraordinary miracle has been added: the configuration of creative human energies—millions of tiny know-hows configuring naturally and spontaneously in response to human necessity and desire and in the absence of any human masterminding! Since only God can make a tree, I insist that only God could make me. Man can no more direct these millions of know-hows to bring me into being than he can put molecules together to create a tree.

The above is what I meant when writing, “If you can become aware of the miraculousness which I symbolize, you can help save the freedom mankind is so unhappily losing.” For, if one is aware that these know-hows will naturally, yes, automatically, arrange themselves into creative and productive patterns in response to human necessity and demand—that is, in the absence of governmental or any other coercive master-minding—then one will possess an absolutely essential ingredient for freedom: a faith in free people. Freedom is impossible without this faith.

Once government has had a monopoly of a creative activity such, for instance, as the delivery of the mails, most individuals will believe that the mails could not be efficiently delivered by men acting freely. And here is the reason: Each one acknowledges that he himself doesn't know how to do all the things incident to mail delivery. He also recognizes that no other individual could do it. These assumptions are correct. No individual possesses enough know-how to perform a nation's mail delivery any more than any individual possesses enough know-how to make a pencil. Now, in the absence of faith in free people—in the unawareness that millions of tiny know-hows would naturally and miraculously form and cooperate to satisfy this necessity—the individual cannot help but reach the erroneous conclusion that mail can be delivered only by governmental “masterminding.”

### ***Testimony Galore***

If I, Pencil, were the only item that could offer testimony on what men and women can accomplish when free to try, then those with little faith would have a fair case. However, there is testimony galore; it's all about us and on every hand. Mail delivery is exceedingly simple when compared, for instance, to the making of an automobile or a calculating machine or a grain combine or a milling machine or to tens of thousands of other things. Delivery? Why, in this area where men have been left free to try, they deliver the human voice around the world in less than one second; they deliver an event visually and in motion to any person's home when it is happening; they deliver 150 passengers from Seattle to Baltimore in less than four hours; they deliver gas from Texas to one's range or furnace in New York at unbelievably low rates and without subsidy; they deliver each four pounds of oil from the Persian Gulf to our Eastern Seaboard—halfway around the world—for less money than the government charges for delivering a one-ounce letter across the street!

The lesson I have to teach is this: Leave all creative energies uninhibited. Merely organize society to act in harmony with this lesson. Let society's legal apparatus remove all obstacles the best it can. Permit these creative know-hows freely to flow. Have faith that free men and women will respond to the Invisible Hand. This faith will be confirmed. I, Pencil, seemingly simple though I am, offer the miracle of my creation as testimony that this is a practical faith, as practical as the sun, the rain, a cedar tree, the good earth.

### **Afterword**

*By Milton Friedman, Nobel Laureate, 1976*

Leonard Read's delightful story, “I, Pencil,” has become a classic, and deservedly so. I know of no other piece of literature that so succinctly, persuasively, and effectively illustrates the meaning of both Adam Smith's invisible hand—the possibility of cooperation without coercion—and Friedrich Hayek's emphasis on the importance of dispersed knowledge and the role of the price system in communicating information that “will make the individuals do the desirable things without anyone having to tell them what to do.”

We used Leonard's story in our television show, “Free to Choose,” and in the accompanying book of the same title to illustrate “the power of the market” (the title of both the first segment of the TV show and of chapter one of the book). We summarized the story and then went on to say:

“None of the thousands of persons involved in producing the pencil performed his task because he wanted a pencil. Some among them never saw a pencil and would not know what it is for. Each saw his work as a way to get the goods and services he wanted—goods and services we produced in order to get the pencil we wanted. Every time we go to the store and buy a pencil, we are exchanging a little bit of our services for the infinitesimal amount of services that each of the thousands contributed toward producing the pencil.

“It is even more astounding that the pencil was ever produced. No one sitting in a central office gave orders to these thousands of people. No military police enforced the orders that were not given. These people live in many lands, speak different languages, practice different religions, may even hate one another—yet none of these differences prevented them from cooperating to produce a pencil. How did it happen? Adam Smith gave

us the answer two hundred years ago.”

“I, Pencil” is a typical Leonard Read product: imaginative, simple yet subtle, breathing the love of freedom that imbued everything Leonard wrote or did. As in the rest of his work, he was not trying to tell people what to do or how to conduct themselves. He was simply trying to enhance individuals’ understanding of themselves and of the system they live in.

That was his basic credo and one that he stuck to consistently during his long period of service to the public—not public service in the sense of government service. Whatever the pressure, he stuck to his guns, refusing to compromise his principles. That was why he was so effective in keeping alive, in the early days, and then spreading the basic idea that human freedom required private property, free competition, and severely limited government.



Chapter 8  
Globalization and International  
Trade

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## Globalization and Free Trade

Richard M. Ebeling

For thousands of years most people lived, worked, and died within a small radius of the place where they were born. Households and small communities went about the business of life with a high degree of local self-sufficiency. Of course, there was always a limited amount of what today we would call “international” trade even among the ancient Greeks and Romans. But, for most people, goods produced in faraway lands were unavailable because of the natural difficulties of transportation, or were too expensive.

This began to change during the last 200 years. Railways and steamships made traveling easier and less expensive in the nineteenth century. Modern engineering shortened the distances between different parts of the world as tunnels were built through mountains, bridges spanned wide and powerful rivers, and canals were dug across strips of land connecting continents.

But most important, the nineteenth century saw the triumph of classical-liberal ideas—ideas that emphasized individual liberty, private enterprise, limited government, and free trade. It was the lowering of political barriers separating peoples and regions that enabled the feats of technology and engineering to bring the world closer together, and allowed men on the five inhabited continents to trade with each other.

Now people could purchase resources and raw materials that before had been far beyond their geographical and financial reach, and invest their capital and labor wherever it seemed most profitable and advantageous. Moreover, the growing number of different finished goods manufactured with those resources could be sold to tens of millions of people everywhere around the planet.

Even with the collectivist forces of the twentieth century, which reimposed political barriers to trade through central planning, regulation, and protectionism, the impulse toward the internationalization of production and trade has continued up until our own time. But the two world wars and the reactionary attempts to coercively establish socialist systems on many parts of the globe created perverse imbalances in the extent and speed of economic development in various countries and continents.

Because the United States was exempt in the twentieth century from the direct physical destruction of war that impacted so many other nations, and because experiments with socialist and interventionist ideas were implemented less pervasively in America than in many other parts of the world, U.S. economic development and growth dwarfed the rest of the planet in the immediate decades after 1945. America, therefore, had an absolute and a comparative advantage in a wide variety of agricultural and manufactured goods. The American people consumed a large proportion of the world’s output because they produced a huge amount of it.

But over the last six decades more and more of the rest of the world have been catching up. During the late 1940s and 1950s, European and Japanese reconstruction overcame the destruction of World War II. In the 1970s and 1980s a small but growing number of countries in East Asia moved toward more market-oriented economies. In the 1990s the crushing weight of socialist central planning was lifted from many countries in Eastern Europe, Asia, and South America. As a result, a growing number of these countries began to rapidly industrialize, increase their production and productivity in agriculture, and improve the quality of their “human capital” through more and better education for millions.

## Changing Patterns of Trade

This process of economic development and growth around the world has inevitably been changing the patterns of trade and the comparative advantages of many of the nations that have been or are becoming to a greater extent America's trading partner. Labor and manufacturing specializations that the United States has long been dependent on for employment, income, and profits are now shifting to other parts of the globe. Once peoples and markets on continents outside North America began to become relatively freer and less collectivist—though certainly not *laissez faire*, unfortunately—these changes in the structure of the international division of labor were inevitable.

But besides their inevitability, the changes also are opening healthy and desirable opportunities for hundreds of millions of people to finally raise themselves out of the poverty that has been the lot of mankind for all of human history. We should hail this as one of the greatest moments in the thousands of years of man's time on this earth.

The United States' place in the global division of labor is also changing. Goods and services that were long taken for granted as being "Made in America" are and will increasingly be available to the American people at lower cost and in better quality and greater quantities from suppliers in other parts of the world. This will require U. S. industry and agriculture to shift over time into a number of different lines of investment and employment. Capital will have to be used in different ways, and workers will have to learn new skills in order to supply the exports that will pay for these better, cheaper, and more plentiful imports. The structure of prices and wages, as well as the relative incomes of some American workers, will have to change to reflect the new and more productive global economy.

By bringing about these changes with competitive flexibility and optimism about a better and wealthier world in the 21st century, the American people will not only participate in a potentially more prosperous future, but will also set the pace for the rising standard of living that can belong to us and countless others around the globe.

The path to this bright economic future is a policy of free trade. Governments—including the U.S. government—do not have the wisdom or ability to guide or assist this process. They can only hinder it with controls and restrictions that slow down progress and serve special interests who don't want to face the future.

The best way for mastering the global challenges and opportunities of our new century is to allow each individual to use his own knowledge and ability in the competitive market, free from the controlling hand of government. Freedom will enable us triumphantly to find our way in the new global economy.

## **Globalization, Human Rights, and Democracy**

Daniel Griswold

When trade and globalization are discussed in the U.S. Congress and in the American media, the focus is almost entirely on the economic impact at home—on manufacturing, jobs, and wages. But trade is about more than exporting soybeans and machine tools. It is also about exporting freedom and democracy.

Since September 11, 2001, the Bush administration has articulated the argument that trade can and must play a role in promoting democracy and human rights in the rest of the world. In an April 2002 speech, President Bush said, “Trade creates the habits of freedom,” and those habits “begin to create the expectations of democracy and demands for better democratic institutions. Societies that are open to commerce across their borders are more open to democracy within their borders.”

### **Trade, Development, and Political Reform**

The connection between trade, development, and political reform is not just a throwaway line. In theory and in practice, economic and political freedoms reinforce one another. Political philosophers from Aristotle to Samuel Huntington have noted that economic development and an expanding middle class can provide more fertile ground for democracy.

Trade and globalization can spur political reform by expanding the freedom of people to exercise greater control over their daily lives. In less developed countries, the expansion of markets means they no longer need to bribe or beg government officials for permission to import a television set or spare parts for their tractor. Controls on foreign exchange no longer limit their freedom to travel abroad. They can more easily acquire tools of communication such as mobile phones, Internet access, satellite TV, and fax machines.

As workers and producers, people in more open countries are less dependent on the authorities for their livelihoods. For example, in a more open, market-driven economy, the government can no longer deprive independent newspapers of newsprint if they should displease the ruling authorities. In a more open economy and society, the “CNN effect” of global media and consumer attention exposes and discourages the abuse of workers. Multinational companies have even greater incentives to offer competitive benefits and wages in more globalized developing countries than in those that are closed.

Economic freedom and rising incomes, in turn, help to nurture a more educated and politically aware middle class. A rising business class and wealthier civil society create leaders and centers of influence outside government. People who are economically free over time want and expect to exercise their political and civil rights as well. In contrast, a government that can seal its citizens off from the rest of the world can more easily control them and deprive them of the resources and information they could use to challenge its authority.

### **Increased Democratization**

As theory would predict, trade, development, and political and civil freedom appear to be tied together in the real world. Everyone can agree that the world is more globalized than it was 30 years ago, but less widely appreciated is the fact that the world is much more democratized than it was 30 years ago. According to the most recent survey by Freedom House, the share of the world’s population enjoying full political and civil freedoms has increased substantially in the past three decades, as has the share of the world’s governments that are democratic.

In its annual survey, released in December 2005, the human rights research organization reported that 46 percent of the world's population now lives in countries it classifies as "Free," where citizens "enjoy open political competition, a climate of respect for civil liberties, significant independent civic life, and independent media." That compares to the 35 percent of mankind that enjoyed a similar level of freedom in 1973. The percentage of people in countries that are "Not Free," where political and civil liberties are systematically oppressed, dropped during the same period from 47 percent to 36 percent. The percentage of the population in countries that are "Partly Free" has remained at 18 percent. Meanwhile, the percentage of the world's governments that are democracies has reached 64 percent, the highest in the 33 years of Freedom House surveys.

Thanks, in good measure to the liberating winds of globalization, the shift of 11 percentage points of the world's population in the past three decades from "Not Free" to "Free" means that another 650 million human beings today enjoy the kind of civil and political liberties taken for granted in such countries as the United States, Japan, and Belgium, instead of suffering under the kind of tyranny we still see in the most repressive countries. Within individual countries, economic and political freedoms also appear to be linked. A 2004 study by the Cato Institute, titled "Trading Tyranny for Freedom," found that countries that are relatively open to the global economy are much more likely to be democracies that respect civil and political liberties than those that are relatively closed. And relatively closed countries are far more likely to deny systematically civil and political liberties than those that are open.

## **From Economic Reform to Political Reform**

In the past two decades, a number of economies have followed the path of economic and trade reform leading to political reform. South Korea and Taiwan as recently as the 1980s were governed by authoritarian regimes that did not permit much open dissent. Today, after years of expanding trade and rising incomes, both are multiparty democracies with full political and civil liberties. Other countries that have most aggressively followed those twin tracks of reform include Chile, Ghana, Hungary, Mexico, Nicaragua, Paraguay, Portugal, and Tanzania.

In other words, governments that grant their citizens a large measure of freedom to engage in international commerce find it increasingly difficult to deprive them of political and civil liberties, while governments that "protect" their citizens behind tariff walls and other barriers to international commerce find it much easier to deny those same liberties. Of course, the correlation between economic openness and political freedom across countries is not perfect, but the broad trends are undeniable.

The application for U.S. foreign policy is that trade and development, along with its economic benefits, can prove to be powerful tools for spreading broader freedoms and democracy around the world.

In mainland China, for example, economic reform and globalization give reason to hope for political reforms. After 25 years of reform and rapid growth, an expanding middle class is experiencing for the first time the independence of home ownership, travel abroad, and cooperation with others in economic enterprise free of government control. The number of telephone lines, mobile phones, and Internet users has risen exponentially in the past decade. Millions of Chinese students and tourists travel abroad each year. That can only be good news for individual freedom in China, and a growing problem for the government.

Free trade and globalization can also play a role in promoting democracy and human rights in the Middle East. In a May 2003 address outlining his plan for a Middle East free trade area, President Bush said, "The Arab world has a great cultural tradition, but is largely missing out on the economic progress of our time. Across the globe, free markets and trade have helped defeat poverty, and taught men and women the habits of liberty." Economic stagnation in the Middle East feeds terrorism, not because of poverty but because of a lack of opportunity and hope for a better future, especially among the young. Young people who cannot find meaningful work and who cannot participate in the political process are ripe pickings for religious fanatics and terrorist recruiters. Any effort to encourage greater freedom in the Middle East must include an agenda for promoting economic liberty and openness.

## **The Future**

On a multilateral level, a successful agreement through the World Trade Organization (WTO) would create a more friendly climate globally for democracy and human rights. Less developed countries, by opening up their own, relatively closed markets and gaining greater access to rich-country markets, could achieve higher rates of growth and develop the expanding middle class that forms the backbone of most democracies. A successful conclusion of the WTO Doha Development Round of trade negotiations that began in 2001 would reinforce the twin trends of globalization and the spread of political and civil liberties that have marked the last 30 years. Failure would delay and frustrate progress on both fronts for millions of people.

For the past three decades, globalization, human rights, and democracy have been marching forward together, haltingly, not always and everywhere in step, but in a way that unmistakably shows they are interconnected. By encouraging globalization in less developed countries, we not only help to raise growth rates and incomes, promote higher standards, and feed, clothe, and house the poor; we also spread political and civil freedoms.

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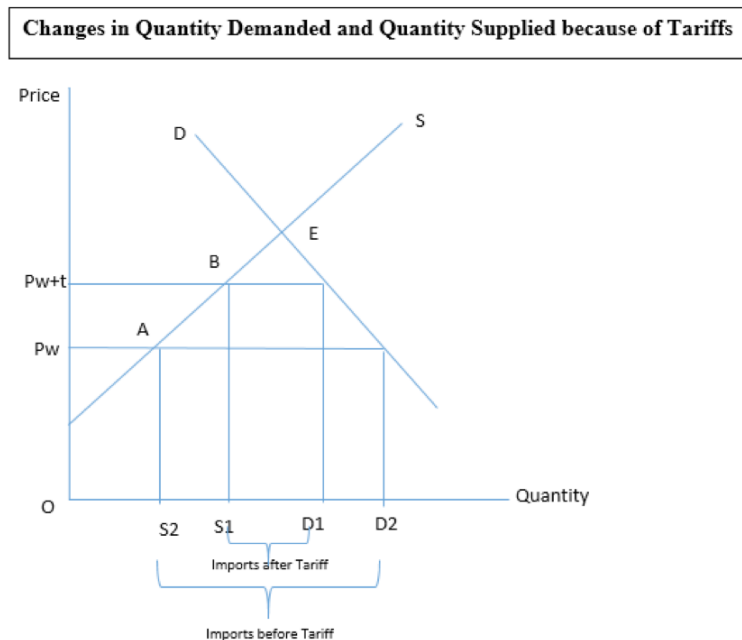
## Tariffs and Trade

Prakash Maharjan

The COVID-19 pandemic has brought plenty of changes in our lives. Social distancing, staying indoors, virtual seminars, workshops, etc. are the new normal. Likewise, the pandemic has also brought significant changes in the policies of states. Many states have reduced/removed their tariffs to foster free trade to meet the demand of their citizens as domestic industries were shut because of the threat of the disease.

Nepal also followed suit and imposed a lockdown throughout the country. To meet the medical needs of the citizens, the government removed all tariffs imposed on medical equipment. Nepalese people are now able to access medical products such as masks, gloves, etc. at a cheap price.

Let me illustrate the above phenomenon using a simple demand and supply graph for masks.



Here,

$P_w$  refers to World Price of masks in general

$P_w+t$  refers to the price of masks in Nepal after tariff

S and D refer to Quantity supplied and quantity demanded respectively.

$S_1$ ,  $D_1$ , and  $S_2$ ,  $D_2$  refers to the Quantity supplied and Quantity demanded before and after tariffs respectively.

Since the country chooses to engage in trade the prices are below the equilibrium in the domestic market.

Now as the graph represents, when the Nepal government used to impose tariffs on medical equipment, the demand and supply for masks were  $D_1$  and  $S_1$ . After the pandemic, when the government decided to remove the tariffs, the quantity demanded and supplied were  $S_2$  and  $D_2$ . As we can see the quantity demanded for masks has increased whereas the supply from Nepalese producers has decreased.

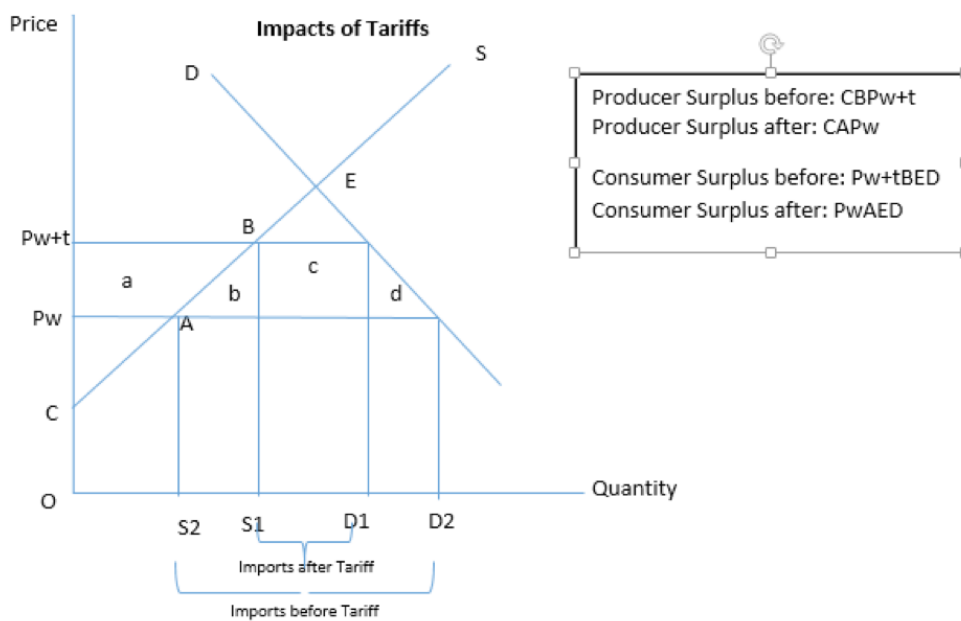
From the graph, we can see that since the products are now available at a lower price because of the free trade, consumer surplus has increased because they can buy a better quality product at the same or lower price while the producer surplus has decreased because of the competition as consumers switch to different products.

This has been a case in Nepal as people started demanding N-95 masks rather than the cotton masks produced domestically because of the pandemic and the removal of tariffs.

So then, why does our government impose tariffs even when there is a loss to the consumers?

It is mainly because of the lobbying of the domestic producers and the revenue our government earns. As the graph shows, when tariffs are imposed, the consumers in Nepal are forced to pay a high amount for masks. The loss to a consumer because of the tariffs is the summation of  $a+b+c+d$  because of the extra amount that needs to be paid by the consumer for N-95 masks. The producers in the domestic market gain more revenue as people switch from N-95 masks to domestically produced masks which are denoted by  $a$ .

As the tariffs are imposed there is a loss of  $b+c+d$  in the operation. The area represented by  $b$  and  $d$  is efficiency loss as the tariffs cause distortion in the market mechanism and decrease the overall quantity demanded and quantity supplied in the country. 'b' is the production distortion loss whereas 'd' is the consumption distortion loss and 'c' represents Nepal Government's revenue.



Before, when the government used to impose tariffs on the medical equipment, the government used to earn revenue share equal to 'c' but the consumers were facing loss in their surplus but now when there are no tariffs imposed on medical equipment the revenue of the government has decreased but there is a significant increase in the consumer surplus as the prices of masks has decreased and they get better protection from the virus.

Now imagine the increase in consumer surplus because of the availability of quality products at a cheaper price if the Nepal government did not impose any tariffs at all and accepted the policy of free trade.

It is not only the consumers who gain from free trade in Nepal. Even though the producer surplus decreases in the short run it is eventually beneficial for the producers as well. The import of raw materials to produce the products will be cheaper when there are no tariffs which at the end of the day, raises the efficiency and the production standards in the country making it beneficial for all parties.

## Who's "Protected" by Tariffs?

### 1

A mere recital of the economic policies of governments all over the world is calculated to cause any serious student of economics to throw up his hands in despair. What possible point can there be, he is likely to ask, in discussing refinements and advances in economic theory, when popular thought and the actual policies of governments, certainly in everything connected with international relations, have not yet caught up with Adam Smith? For present-day tariff and trade policies are not only as bad as those in the seventeenth and eighteenth centuries, but incomparably worse. The real reasons for those tariffs and other trade barriers are the same, and the pretended reasons are also the same.

In the century and three-quarters since *The Wealth of Nations* appeared, the case for free trade has been stated thousands of times, but perhaps never with more direct simplicity and force than it was stated in that volume. In general Smith rested his case on one fundamental proposition: "In every country it always is and must be the interest of the great body of the people to buy whatever they want of those who sell it cheapest." "The proposition is so very manifest," Smith continued, "that it seems ridiculous to take any pains to prove it; nor could it ever have been called in question, had not the interested sophistry of merchants and manufacturers confounded the common-sense of mankind."

From another point of view, free trade was considered as one aspect of the specialization of labor:

It is the maxim of every prudent master of a family, never to attempt to make at home what it will cost him more to make than to buy. The tailor does not attempt to make his own shoes, but buys them of the shoemaker. The shoemaker does not attempt to make his own clothes, but employs a tailor. The farmer attempts to make neither the one nor the other, but employs those different artificers. All of them find it for their interest to employ their whole industry in a way in which they have some advantage over their neighbors, and to purchase with a part of its produce, or what is the same thing, with the price of a part of it, whatever else they have occasion for. What is prudence in the conduct of every private family can scarce be folly in that of a great kingdom.

But whatever led people to suppose that what was prudence in the conduct of every private family could be folly in that of a great kingdom? It was a whole network of fallacies, out of which mankind has still been unable to cut its way. And the chief of them was the central fallacy with which this book is concerned. It was that of considering merely the immediate effects of a tariff on special groups, and neglecting to consider its long-run effects on the whole community.

### 2

An American manufacturer of woolen sweaters goes to Congress or to the State Department and tells the committee or officials concerned that it would be a national disaster for them to remove or reduce the tariff on British sweaters. He now sells his sweaters for \$15 each, but English manufacturers could sell here sweaters of the same quality for \$10. A duty of \$5, therefore, is needed to keep him in business. He is not thinking of himself, of course, but of the thousand men and women he employs, and of the people to whom their spending in turn gives employment. Throw them out of work, and you create unemployment and a fall in purchasing power, which would spread in ever-widening circles. And if he can prove that he really would be

forced out of business if the tariff were removed or reduced, his argument against that action is regarded by Congress as conclusive.

But the fallacy comes from looking merely at this manufacturer and his employees, or merely at the American sweater industry. It comes from noticing only the results that are immediately seen, and neglecting the results that are not seen because they are prevented from coming into existence.

The lobbyists for tariff protection are continually putting forward arguments that are not factually correct. But let us assume that the facts in this case are precisely as the sweater manufacturer has stated them. Let us assume that a tariff of \$5 a sweater is necessary for him to stay in business and provide employment at sweater making for his workers.

We have deliberately chosen the most unfavorable example of any for the removal of a tariff. We have not taken an argument for the imposition of a new tariff in order to bring a new industry into existence, but an argument for the retention of a tariff that has already brought an industry into existence, and cannot be repealed without hurting somebody.

The tariff is repealed; the manufacturer goes out of business; a thousand workers are laid off; the particular tradesmen whom they patronized are hurt. This is the immediate result that is seen. But there are also results which, while much more difficult to trace, are no less immediate and no less real. For now sweaters that formerly cost \$15 apiece can be bought for \$10. Consumers can now buy the same quality of sweater for less money, or a much better one for the same money. If they buy the same quality of sweater, they not only get the sweater, but they have \$5 left over, which they would not have had under the previous conditions, to buy something else. With the \$10 that they pay for the imported sweater they help employment—as the American manufacturer no doubt predicted—in the sweater industry in England. With the \$5 left over they help employment in any number of other industries in the United States.

But the results do not end there. By buying English sweaters they furnish the English with dollars to buy American goods here. This, in fact (if I may here disregard such complications as multilateral exchange, loans, credits, gold movements, etc. which do not alter the end result) is the only way in which the British can eventually make use of these dollars. Because we have permitted the British to sell more to us, they are now able to buy more from us. They are, in fact, eventually forced to buy more from us if their dollar balances are not to remain perpetually unused. So, as a result of letting in more British goods, we must export more American goods. And though fewer people are now employed in the American sweater industry, more people are employed—and much more efficiently employed—in, say, the American automobile or washing-machine business. American employment on net balance has not gone down, but American and British production on net balance has gone up. Labor in each country is more fully employed in doing just those things that it does best, instead of being forced to do things that it does inefficiently or badly. Consumers in both countries are better off. They are able to buy what they want where they can get it cheapest. American consumers are better provided with sweaters, and British consumers are better provided with motor cars and washing machines.

### 3

Now let us look at the matter the other way round, and see the effect of imposing a tariff in the first place. Suppose that there had been no tariff on foreign knit goods, that Americans were accustomed to buying foreign sweaters without duty, and that the argument were then put forward that we could bring a sweater industry into existence by imposing a duty of \$5 on sweaters.

There would be nothing logically wrong with this argument so far as it went. The cost of British sweaters to the American consumer might thereby be forced so high that American manufacturers would find it profitable to enter the sweater business. But American consumers would be forced to subsidize this industry. On every American sweater they bought they would be forced in effect to pay a tax of \$5 which would be collected from

them in a higher price by the new sweater industry.

Americans would be employed in a sweater industry who had not previously been employed in a sweater industry. That much is true. But there would be no net addition to the country's industry or the country's employment. Because the American consumer had to pay \$5 more for the same quality of sweater he would have just that much less left over to buy anything else. He would have to reduce his expenditures by \$5 somewhere else. In order that one industry might grow or come into existence, a hundred other industries would have to shrink. In order that 20,000 persons might be employed in a sweater industry, 20,000 fewer persons would be employed elsewhere.

But the new industry would be visible. The number of its employees, the capital invested in it, the market value of its product in terms of dollars, could be easily counted. The neighbors could see the sweater workers going to and from the factory every day. The results would be palpable and direct. But the shrinkage of a hundred other industries, the loss of 20,000 other jobs somewhere else, would not be so easily noticed. It would be impossible for even the cleverest statistician to know precisely what the incidence of the loss of other jobs had been—precisely how many men and women had been laid off from each particular industry, precisely how much business each particular industry had lost—because consumers had to pay more for their sweaters. For a loss spread among all the other productive activities of the country would be comparatively minute for each. It would be impossible for anyone to know precisely how each consumer would have spent his extra \$5 if he had been allowed to retain it. The overwhelming majority of the people, therefore, would probably suffer from the optical illusion that the new industry had cost us nothing.

#### 4

It is important to notice that the new tariff on sweaters would not raise American wages. To be sure, it would enable Americans to work in the sweater industry at approximately the average level of American wages (for workers of their skill), instead of having to compete in that industry at the British level of wages. But there would be no increase of American wages in general as a result of the duty; for, as we have seen, there would be no net increase in the number of jobs provided, no net increase in the demand for goods, and no increase in labor productivity. Labor productivity would, in fact, be reduced as a result of the tariff.

And this brings us to the real effect of a tariff wall. It is not merely that all its visible gains are offset by less obvious but no less real losses. It results, in fact, in a net loss to the country. For contrary to centuries of interested propaganda and disinterested confusion, the tariff reduces the American level of wages.

Let us observe more clearly how it does this. We have seen that the added amount which consumers pay for a tariff-protected article leaves them just that much less with which to buy all other articles. There is here no net gain to industry as a whole. But as a result of the artificial barrier erected against foreign goods, American labor, capital and land are deflected from what they can do more efficiently to what they do less efficiently. Therefore, as a result of the tariff wall, the average productivity of American labor and capital is reduced.

If we look at it now from the consumer's point of view, we find that he can buy less with his money. Because he has to pay more for sweaters and other protected goods, he can buy less of everything else. The general purchasing power of his income has therefore been reduced. Whether the net effect of the tariff is to lower money wages or to raise money prices will depend upon the monetary policies that are followed. But what is clear is that the tariff—though it may increase wages above what they would have been in the protected industries—must on net balance, when all occupations are considered, reduce real wages.

Only minds corrupted by generations of misleading propaganda can regard this conclusion as paradoxical. What other result could we expect from a policy of deliberately using our resources of capital and manpower in less efficient ways than we know how to use them? What other result could we expect from deliberately erecting artificial obstacles to trade and transportation?

For the erection of tariff walls has the same effect as the erection of real walls. It is significant that the protectionists habitually use the language of warfare. They talk of “repelling an invasion” of foreign products. And the means they suggest in the fiscal field are like those of the battlefield. The tariff barriers that are put up to repel this invasion are like the tank traps, trenches, and barbed-wire entanglements created to repel or slow down attempted invasion by a foreign army.

And just as the foreign army is compelled to employ more expensive means to surmount those obstacles—bigger tanks, mine detectors, engineer corps to cut wires, ford streams, and build bridges—so more expensive and efficient transportation means must be developed to surmount tariff obstacles. On the one hand, we try to reduce the cost of transportation between England and America, or Canada and the United States, by developing faster and more efficient ships, better roads and bridges, better locomotives and motor trucks. On the other hand, we offset this investment in efficient transportation by a tariff that makes it commercially even more difficult to transport goods than it was before. We make it \$1 cheaper to ship the sweaters, and then increase the tariff by \$2 to prevent the sweaters from being shipped. By reducing the freight that can be profitably carried, we reduce the value of the investment in transport efficiency.

## 5

The tariff has been described as a means of benefiting the producer at the expense of the consumer. In a sense this is correct. Those who favor it think only of the interests of the producers immediately benefited by the particular duties involved. They forget the interests of the consumers who are immediately injured by being forced to pay these duties. But it is wrong to think of the tariff issue as if it represented a conflict between the interests of producers as a unit against those of consumers as a unit. It is true that the tariff hurts all consumers as such. It is not true that it benefits all producers as such. On the contrary, as we have just seen, it helps the protected producers at the expense of all other American producers, and particularly of those who have a comparatively large potential export market.

We can perhaps make this last point clearer by an exaggerated example. Suppose we make our tariff wall so high that it becomes absolutely prohibitive, and no imports come in from the outside world at all. Suppose, as a result of this, that the price of sweaters in America goes up only \$5. Then American consumers, because they have to pay \$5 more for a sweater, will spend on the average five cents less in each of a hundred other American industries. (The figures are chosen merely to illustrate a principle: there will, of course, be no such symmetrical distribution of the loss; moreover, the sweater industry itself will doubtless be hurt because of protection of still other industries. But these complications may be put aside for the moment.)

Now because foreign industries will find their market in America totally cut off, they will get no dollar exchange, and therefore they will be unable to buy any American goods at all. As a result of this, American industries will suffer in direct proportion to the percentage of their sales previously made abroad. Those that will be most injured, in the first instance, will be such industries as raw cotton producers, copper producers, makers of sewing machines, agricultural machinery, typewriters and so on.

A higher tariff wall, which, however, is not prohibitive, will produce the same kind of results as this, but merely to a smaller degree. The effect of a tariff, therefore, is to change the structure of American production. It changes the number of occupations, the kind of occupations, and the relative size of one industry as compared with another. It makes the industries in which we are comparatively inefficient larger, and the industries in which we are comparatively efficient smaller. Its net effect, therefore, is to reduce American efficiency, as well as to reduce efficiency in the countries with which we would otherwise have traded more largely.

In the long run, notwithstanding the mountains of argument pro and con, a tariff is irrelevant to the question of employment. (True, sudden changes in the tariff, either upward or downward, can create temporary unemployment, as they force corresponding changes in the structure of production. Such sudden changes can

even cause a depression.) But a tariff is not irrelevant to the question of wages. In the long run it always reduces real wages, because it reduces efficiency, production and wealth.

Thus all the chief tariff fallacies stem from the central fallacy with which this book is concerned. They are the result of looking only at the immediate effects of a single tariff rate on one group of producers, and forgetting the long-run effects both on consumers as a whole and on all other producers.

(I hear some reader asking: “Why not solve this by giving tariff protection to all producers?” But the fallacy here is that this cannot help producers uniformly, and cannot help at all domestic producers who already “outsell” foreign producers: these efficient producers must necessarily suffer from the diversion of purchasing power brought about by the tariff.)

## 6

On the subject of the tariff we must keep in mind one final precaution. It is the same precaution that we found necessary in examining the effects of machinery. It is useless to deny that a tariff does benefit—or at least can benefit—special interests. True, it benefits them at the expense of everyone else. But it does benefit them. If one industry alone could get protection, while its owners and workers enjoyed the benefits of free trade in everything else they bought, that industry would benefit, even on net balance. As an attempt is made to extend the tariff blessings, however, even people in the protected industries, both as producers and consumers, begin to suffer from other people’s protection, and may finally be worse off even on net balance than if neither they nor anybody else had protection.

But we should not deny, as enthusiastic free traders have so often done, the possibility of these tariff benefits to special groups. We should not pretend, for example, that a reduction of the tariff would help everybody and hurt nobody. It is true that its reduction would help the country on net balance. But somebody would be hurt. Groups previously enjoying high protection would be hurt. That in fact is one reason why it is not good to bring such protected interests into existence in the first place. But clarity and candor of thinking compel us to see and acknowledge that some industries are right when they say that a removal of the tariff on their product would throw them out of business and throw their workers (at least temporarily) out of jobs. And if their workers have developed specialized skills, they may even suffer permanently, or until they have at long last learnt equal skills. In tracing the effects of tariffs, as in tracing the effects of machinery, we should endeavor to see all the chief effects, in both the short run and the long run, on all groups.

As a postscript to this chapter I should add that its argument is not directed against all tariffs, including duties collected mainly for revenue, or to keep alive industries needed for war; nor is it directed against all arguments for tariffs. It is merely directed against the fallacy that a tariff on net balance “provides employment,” “raises wages,” or “protects the American standard of living.” It does none of these things; and so far as wages and the standard of living are concerned, it does the precise opposite. But an examination of duties imposed for other purposes would carry us beyond our present subject.

Nor need we here examine the effect of import quotas, exchange controls, bilateralism, and other devices in reducing, diverting or preventing international trade. Such devices have, in general, the same effects as high or prohibitive tariffs, and often worse effects. They present more complicated issues, but their net results can be traced through the same kind of reasoning that we have just applied to tariff barriers.

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## The Drive for Exports

ceeded only by the pathological dread of imports that affects all nations is a pathological yearning for exports. Logically, it is true, nothing could be more inconsistent. In the long run imports and exports must equal each other (considering both in the broadest sense, which includes such “invisible” items as tourist expenditures and ocean freight charges). It is exports that pay for imports, and vice versa. The greater exports we have, the greater imports we must have, if we ever expect to get paid. The smaller imports we have, the smaller exports we can have. Without imports we can have no exports, for foreigners will have no funds with which to buy our goods. When we decide to cut down our imports, we are in effect deciding also to cut down our exports. When we decide to increase our exports, we are in effect deciding also to increase our imports.

The reason for this is elementary. An American exporter sells his goods to a British importer and is paid in British pounds sterling. But he cannot use British pounds to pay the wages of his workers, to buy his wife’s clothes, or to buy theater tickets. For all these purposes he needs American dollars. Therefore his British pounds are of no use to him unless he either uses them himself to buy British goods or sells them to some American importer who wishes to use them to buy British goods. Whichever he does, the transaction cannot be completed until the American exports have been paid for by an equal amount of imports.

The same situation would exist if the transaction had been conducted in terms of American dollars instead of British pounds. The British importer could not pay the American exporter in dollars unless some previous British exporter had built up a credit in dollars here as a result of some previous sale to us. Foreign exchange, in short, is a clearing transaction in which, in America, the dollar debts of foreigners are cancelled against their dollar credits. In England, the pound sterling debts of foreigners are cancelled against their sterling credits. There is no reason to go into the technical details of all this, which can be found in any good textbook on foreign exchange. But it should be pointed out that there is nothing inherently mysterious about it (in spite of the mystery in which it is so often wrapped), and that it does not differ essentially from what happens in domestic trade. Each of us must also sell something, even if for most of us it is our own services rather than goods, in order to get the purchasing power to buy.

Domestic trade is also conducted in the main by crossing off checks and other claims against each other through clearing houses.

It is true that under an international gold standard discrepancies in balances of imports and exports are sometimes settled by shipments of gold. But they could just as well be settled by shipments of cotton, steel, whisky, perfume, or any other commodity. The chief difference is that the demand for gold is almost indefinitely expansible (partly because it is thought of and accepted as a residual international “money” rather than as just another commodity), and that nations do not put artificial obstacles in the way of receiving gold as they do in the way of receiving almost everything else. (On the other hand, of late years they have taken to putting more obstacles in the way of exporting gold than in the way of exporting anything else: but that is another story.)

Now the same people who can be clearheaded and sensible when the subject is one of domestic trade can be incredibly emotional and muddleheaded when it becomes one of foreign trade. In the latter field they can seriously advocate or acquiesce in principles which they would think it insane to apply in domestic business. A typical example is the belief that the government should make huge loans to foreign countries for the sake of increasing our exports, regardless of whether or not these loans are likely to be repaid.

American citizens, of course, should be allowed to lend their own funds abroad at their own risk. The government should put no arbitrary barriers in the way of private lending to countries with which we are at peace. We should give generously, for humane reasons alone, to peoples who are in great distress or in danger

of starving. But we ought always to know clearly what we are doing. It is not wise to bestow charity on foreign peoples under the impression that one is making a hardheaded business transaction purely for one's own selfish purposes. That could only lead to misunderstandings and bad relations later.

Yet among the arguments put forward in favor of huge foreign lending one fallacy is always sure to occupy a prominent place. It runs like this. Even if half (or all) the loans we make to foreign countries turn sour and are not repaid, this nation will still be better off for having made them, because they will give an enormous impetus to our exports.

It should be immediately obvious that if the loans we make to foreign countries to enable them to buy our goods are not repaid, then we are giving the goods away. A nation cannot grow rich by giving goods away. It can only make itself poorer.

No one doubts this proposition when it is applied privately. If an automobile company lends a man \$1,000 to buy a car priced at that amount, and the loan is not repaid, the automobile company is not better off because it has "sold" the car. It has simply lost the amount that it cost to make the car. If the car cost \$900 to make, and only half the loan is repaid, then the company has lost \$900 minus \$500, or a net amount of \$400. It has not made up in trade what it lost in bad loans.

If this proposition is so simple when applied to a private company, why do apparently intelligent people get confused about it when applied to a nation? The reason is that the transaction must then be traced mentally through a few more stages. One group may indeed make gains—while the rest of us take the losses.

It is true, for example, that persons engaged exclusively or chiefly in export business might gain on net balance as a result of bad loans made abroad. The national loss on the transaction would be certain, but it might be distributed in ways difficult to follow. The private lenders would take their losses directly. The losses from government lending would ultimately be paid out of increased taxes imposed on everybody. But there would also be many indirect losses brought about by the effect on the economy of these direct losses.

In the long run business and employment in America would be hurt, not helped, by foreign loans that were not repaid. For every extra dollar that foreign buyers had with which to buy American goods, domestic buyers would ultimately have one dollar less. Businesses that depend on domestic trade would therefore be hurt in the long run as much as export businesses would be helped. Even many concerns that did an export business would be hurt on net balance. American automobile companies, for example, sold about 10 percent of their output in the foreign market before the war. It would not profit them to double their sales abroad as a result of bad foreign loans if they thereby lost, say, 20 percent of their American sales as the result of added taxes taken from American buyers to make up for the unpaid foreign loans.

None of this means, I repeat, that it is unwise to make foreign loans, but simply that we cannot get rich by making bad ones.

For the same reasons that it is stupid to give a false stimulation to export trade by making bad loans or outright gifts to foreign countries, it is stupid to give a false stimulation to export trade through export subsidies. Rather than repeat most of the previous argument, I leave it to the reader to trace the effects of export subsidies as I have traced the effects of bad loans. An export subsidy is a clear case of giving the foreigner something for nothing, by selling him goods for less than it costs us to make them. It is another case of trying to get rich by giving things away.

Bad loans and export subsidies are additional examples of the error of looking only at the immediate effect of a policy on special groups, and of not having the patience or intelligence to trace the long-run effects of the policy on everyone.



Chapter 9  
Economics and Oriental thought

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## वैदिक साहित्यमा बजार अर्थशास्त्रका मिल्का

(भाग १)

- मुराहरि पराजुली

यो लेख वैदिक कालको आर्थिक इतिहास होइन । यसमा वैदिक काल भनेको के हो, वैदिक ग्रन्थ कुन हुन, भौगोलिक हिसाबले यसको प्रभाव क्षेत्र कुन हो र तत्कालिन कालखण्डमा प्रचलित आर्थिक सोच कस्तो थियो, ती आर्थिक सोचका प्रणेता को थिए भन्ने सामान्य सोधीखोजी गरिएको छ । भारतीय उपमहाद्विपमा आर्थिक सोच कस्तो थियो, हाल बजार अर्थशास्त्र भनिने अवधारणा वारे तत्कालिन समाज जानकार थियो/थिएन भन्ने प्रश्नमा यो लेख केन्द्रीत छ ।

सामान्यतया 'अर्थशास्त्र'लाई अंग्रेजीको 'इकोनोमिक्स' को समानार्थी शब्दको रूपमा बुझिदै आएको छ । पश्चिममा मुलुकमा 'इकोनोमिक्स' भनेर जुन सामाजिक विज्ञानको अध्ययन, अध्यापन, अनुसन्धान हुँदै आएको छ त्यसलाई हामी 'अर्थशास्त्र' भन्छौं । हाम्रा विश्वविद्यालयमा अध्ययन, अध्यापन र अनुसन्धान हुने वा अरु औपचारिक/अनौपचारिक मञ्चहरूमा प्रयोगमा आउने 'अर्थशास्त्र' युरोपबाट उदय भएको 'इकोनोमिक्स' नै हो । यसको अर्थ पूर्वीय परम्परामा मौलिक अर्थशास्त्र, आर्थिक प्रणाली, विधि वा सोच भन्ने छैन जस्तो देखिन्छ ।

'इकोनोमिक्स' भन्ने शब्द ग्रीक 'ओइकोस' र 'नोमोस' मिलेर बनेको हो भनिन्छ । ओइकोसको अर्थ घर र नोमोसको अर्थ परम्परा वा नियम हो । अर्थात घर चलाउने नियम । पश्चिममा आधुनिक अर्थशास्त्रको जरा खोज्दै जाँदा यही ओइकोनोमिक्समा लगेर टुंग्याउने चलन छ । अर्थशास्त्र एउटै जरा भएको शास्त्र भने होइन । तर गैर पश्चिम क्षेत्रमा भएको आर्थिक चिन्तनको चर्चा मुलधारको अर्थशास्त्रमा पाइदैन । ती चिन्तन प्रणालीको लिखित प्रमाण नहुनु, कतिपय अवधारणा व्यवहारिक प्रयोगमा नआएका अमूर्त सोचमा मात्र सीमित हुनु र प्रयोगमा आएका अवधारणाले पनि पछिल्ला कालखण्डमा निरन्तर नपाउनु लगायतका कारणले मुलधारको अर्थशास्त्रमा तिनले स्थान नपाएको हुन सक्छ ।

आर्थिक सोच र आर्थिक प्रणाली फरक विषय हुन । प्राचिन भारतीय महाद्विपमा कस्तो आर्थिक प्रणाली थियो भन्ने सन्दर्भमा वेद, महाभारत, शुक, बृहस्पति, कौटिल्य, कमाण्डकलाई उद्धृत गरिन्छ । ती शास्त्र र आचार्यहरूले भनेका कुराहरू तत्कालिन समाजमा लागू भएका थिए भन्ने यकिन गर्न सकिदैन । तत्कालिन आचार्यहरूको सोच र शासकहरूले व्यवस्था गरेको आर्थिक प्रणाली एउटै थिएनन् । तसर्थ हामी यो लेखमा आर्थिक सोचहरूको चर्चा गर्छौं, आर्थिक प्रणालीको इतिहास केलाउदैनौं ।

### समय

वैदिक साहित्यका वारेमा हालसम्म भएका अध्ययनहरूले निश्चित कालखण्ड र क्रमवद्धताको टुंगो लगाएका छैनन् । रचना र लेखकका वारेमा पनि अनुसन्धाताविचमा मतैक्यता छैन । उदाहरणका लागि आर्थिक सोचको कुरा गर्दा कौटिल्यको अर्थशास्त्र चर्चित ग्रन्थ हो । यसको रचयिता कौटिल्य, चाणक्य वा विष्णुगुप्त हुन भनिन्छ । कसैले यी तिन नाम फरक व्यक्तिका हुन भनेका छन् कसैले एउटै हुन भनेका छन् । धेरैले अर्थशास्त्रको रचनाकार कौटिल्य हुन जो चन्द्रगुप्त (ईपू ३२२-२९८ शासनकाल) का मन्त्री थिए भन्छन् ।

विष्णुगुप्त कौटिल्यको वास्तविक नाम हो, चाणक्यका छोरा भएकाले चाणक्य भनिएको हो र उनको गोत्र कौटिल्य हुनुपर्छ भनेर तर्क गर्नेहरू पनि छन् । कौटिल्य अर्थशास्त्रको प्रस्तावनामा बृहस्पति र शुकलाई अभिवादन गरिएको छ । बृहस्पतिको अर्थशास्त्रमा बुद्ध र जैन चिन्तकहरूको नाम उल्लेख छ । यसको अर्थ बृहस्पतिको समय बुद्ध (सिद्धार्थ गौतम, ईपू ६ शताब्दी) भन्दा पछिको हो भन्ने बुझिन्छ ।

तसर्थ वेद र वेद निसृत साहित्यमा आर्थिक विषयको खोजी गर्दा समयको निष्कर्ष गर्न महत्वपूर्ण हुन आउँछ । जर्मन भाषाविद म्याक्स मुलर वेदलाई ईपू १३०० मा रचना गरिएको मान्छन् । त्यसैगरी भारतीय इतिहासकार पिभी काणे ईपू ४५०० देखि १००० सम्मको समयलाई वेदको रचनाकाल मान्छन् । अर्का भारतीय इतिहासकार एसी दास ईपू २५०० मा वेद रचना भएको दावी गर्छन् । सयन्तानी पालले पूर्ववैदिक काल (ईपू १५००-१०००) र उत्तरवैदिक काल (ईपू १०००-६००) मा विभाजन गरी प्राचीन भारतको आर्थिक इतिहास प्रस्तुत गरेकी छन् ।

### भूगोल

प्राचीन भारतको इतिहास र वैदिक साहित्यको तत्कालिन प्रभाव क्षेत्र एउटै होइन । हाल भारत भनेर जुन भूखण्डलाई चिनिन्छ, वेद रचनाकालको भूखण्ड उही थिएन । केही विद्वानले पूर्ववैदिक काल भनेर ईपू १५०० देखि १००० सम्मको इरान, अफगानिस्तान, पाकिस्तान र उत्तरपश्चिम भारतको क्षेत्रलाई चिनाएका छन् । ती विद्वानका अनुसार उत्तरवैदिक काल (ईपू १००० देखि ६००) मा यसको प्रभाव विस्तारै दक्षिण र पूर्व भारततिर

सरेको, बर्मा, कम्बोडिया र इन्डोनेयिसम्म पुगेको थियो ।

## स्रोत

संहिता, ब्राम्हण र उपनिषदले वैदिक साहित्य विकासका विभिन्न चरणको प्रतिनिधित्व गर्छन् । यी ग्रन्थहरू प्राचीन हिन्दु धर्म, संस्कृति, सोच तथा साहित्यका स्रोत तथा आधार हुन् ।

ऋग्वेद, सामवेद, अथर्ववेद र यजुर्वेद चार वेद हुन् । यीनलाई श्रुती वा संहिता पनि भनिन्छ । सबैभन्दा पुरानो ऋग्वेद हो । यसमा अग्नि, सोम, मारुत, इन्द्र, वरुण आदिको स्तोत्र, आराधना तथा उपासना गरिएको छ । जन्म, विवाह, अन्त्येष्टी लगायतका संस्कारका लागि उपयोगी मन्त्रहरू पनि यसमा छन् । ऋग्वेद १० मण्डल र १०२८ सुक्तमा विभाजित छ । पहिलो र दसौं मण्डल ऋग्वेद संहितामा पछि थपिएको भन्ने मत धेरै विद्वानको छ ।

सामवेदको मुख्य विषयवस्तु संगीत, नृत्य कला हो । यसलाई ऋग्वेदको निरन्तरता मानिन्छ । अथर्ववेदले जादु, मन्त्र, चमत्कारलाई समेटेको छ । यजुर्वेदले बलि, यज्ञ, उपासनालाई जोड दिएको छ । गेयात्मक काव्यका रूपमा रहेको वेदलाई अनादि र अपुरुषेय भनिएको छ ।

आयुर्वेद, धनुर्वेद, गान्धर्ववेद, अर्थवेद र शिल्पवेद गरी पाँच उपवेद छन् । यसैगरी स्वनविज्ञान, निरुक्तम, व्याकरण, छन्द, ज्योतिष, कल्प (सुत्र, सुक्ति, वचन), श्रोतसुत्र, गृहसुत्र, धर्मसुत्र, धार्मिक कर्मकाण्डलाई वेदांग भनिएको छ ।

ऐतरीय, सांख्ययान, कौशिकी, शतपथ, ताण्ड्य, गोपथ नामका ब्राम्हण वेदमाथि गरिएको टिप्पणी हुन् । ब्राम्हणहरूको सारांश अरण्यकमा पाइन्छ । यसमा कमर्काण्ड र उपासनालाई जोड दिइएको हुन्छ । सुत्रहरू वेदनिस्त भिन्न किसिमका ग्रन्थ हुन् । खोजकर्ताले २५० मध्ये ५७ सुत्र पहिल्याएका छन् । यसैगरी स्मृतिहरूमध्ये मनुस्मृति (मानवधर्मशास्त्र), याज्ञवल्क्यस्मृति, नारदस्मृति, पराशरस्मृति, नीतिशतक प्रसिद्ध छन् ।

उपनिषद १०८ छन् भनिन्छ । तीमध्ये ११ उपनिषद महत्वपूर्ण छन् । उपनिषदको मुख्य विषय ज्ञानकाण्ड हो यसलाई 'परमात्माको नजिक पुऱ्याउने' विद्याको रूपमा लिइन्छ । अधिभौतिक पदार्थको विवेचना उपनिषदहरूमा गरिएको छ ।

वैदिक ग्रन्थ परिवारको लोकप्रिय कृति रामायण र महाभारत हुन् । यीनलाई इतिहास र महाकाव्य पनि भनिन्छ । यी ग्रन्थहरूको रचना ईपू ६०० देखि ४०० सम्म भएको मानिन्छ । महाभारतमा रामायणका प्रसंगहरू आउने भएकाले रामायण महाभारतभन्दा पुरानो हो भन्ने बुझिन्छ । यसै गरी विदुरनीति, चाणक्यनीति, भातृहरनीति, शुकनीति पनि चर्चित छन् ।

प्राचीन भारतीय ग्रन्थहरूमा जीवजन्तु, वनस्पति, दर्शन, संगीत, कला, पौराणिक कथा, द्रव्य लगायतका धेरै विषय समेटिएका छन् । धार्मिक तथा दर्शनका क्षेत्रमा धेरै विचारधाराहरू थिए । खासगरी दर्शनका क्षेत्रमा वेदनिस्त ६ वटा दर्शन (सांख्य, योग, न्याय वैशेषिक, पूर्व वेदान्त र उत्तर वेदान्त), सौत्रान्तिक, योगाचार, वैभाषिक र मध्यमक गरी चार बौद्ध दर्शन अनि जैन, चार्वाक लगायतका अन्य दर्शन प्रचलनमा थिए र केही अद्यापि छन् ।

यीनीहरूमध्ये केहीले इहलोक र परलोक सुधार्ने विषयमा जोड दिन्थे, केहीले व्यक्तिगत मूर्त्तीमा जोड दिन्थे, केहीले पुण्य कर्ममा जोड दिन्थे भने केहीले देहिक आनन्दको कुरा गर्थे । तर समग्रमा यी सबैलाई एउटै डालोमा राखेर यीनीहरूको विषयवस्तु परलौकिक मात्रै हो भन्ने मान्यता व्याप्त छ । यी ग्रन्थहरू त्याग, समर्पण, भक्ति, आत्मसन्तुष्टी जस्ता ह्यासवादी विषयमा केन्द्रीत छन् भन्ने बुझाई छ । उत्पादन, लाभ, समृद्धि, निर्माण, संग्रह, सुधारजस्ता वृद्धिउन्मुख सोच यीनमा पाइदैन भन्ने मतले घर गरेको छ ।

## वैदिक साहित्यमा बजार अर्थशास्त्रका मिल्का

(भाग १)

- मुराहरि पराजुली

### आर्थिक सोचका मलक

वैदिक परम्परामा चिन्तक वा लेखक को हो भन्दा पनि सन्देश के हो भन्ने कुराले प्राथमिकता पाएको देखिन्छ। त्यसैले कतिपय ग्रन्थका लेखक तथा अवधारणाका प्रणेता को हुन भन्ने छुट्टिदैन। भारतीय महाद्विपमा प्राचिन कालदेखि नै आर्थिक व्यवहार बारे पर्याप्त चर्चा भएको लिखित प्रमाण फेला परेका छन्। यो प्रसंगमा धेरैको मनमा झट्ट आउने नाम कौटिल्यको अर्थशास्त्र हो। तर कौटिल्यको अर्थशास्त्र अघि नै भारतीय उपमहाद्विपमा वैदिक परम्पराको वेद तथा उपनिषदहरूमा र बौद्ध सम्प्रदायको त्रिपिटकमा वर्गीकृत ग्रन्थहरूमा आर्थिक सोचका मलकहरू पाइन्छन्। महाभारतको शान्ति पर्वमा एउटा यस्तो वर्णन छ : त्रिवर्ग विज्ञान (धर्म, अर्थ र काम) लाखभन्दा बढी अध्यायमा फैलिएका थिए। त्यसमा वेद, तर्क, वार्ता, दण्डनीति र राजधर्म समावेश थिए। यसलाई भगवान शिवले दस हजार अध्यायमा भाँडे। पछि देवराज इन्द्रले पाँच हजार अध्यायमा सीमित बनाए। बृहस्पति पहिलो मानव थिए जसले त्रिवर्ग विज्ञान (जसलाई पछि अर्थशास्त्र भनियो) लाई तीन हजार अध्यायमा ल्याए। यसलाई बृहस्पतय नीतिशास्त्र भनियो। अन्तिममा शुक्राचार्यले लोकको हितका लागि एक हजार अध्यायमा सीमित गरे।

यी त्रिवर्गमै भएका कुराहरूमा पछिल्लो समयका आचार्यहरूले चर्चा गरेका छन्। कौटिल्यले यसलाई अर्थशास्त्र भनेका छन् भने शुक्र, कमण्डकको कृतिलाई नीतिसार वा नीतिशास्त्र भनिएको छ।

वेदमा 'अर्थशास्त्र' शब्द भेटिँदैन तर धन र धन प्राप्तिका क्रियाकलापका सन्दर्भमा 'अर्थ' शब्दको प्रयोग धेरै भएको छ। त्यतिवेला अर्थशास्त्र पश्चिममा संसारमा बुझिएको 'इकोनोमिक्स' जस्तो छुट्टै शास्त्र वा ज्ञानको शाखा थिएन। बरु यसलाई राजाको कर्तव्यको रूपमा बुझाइएको थियो। शुक्रनीतिमा राजधर्मको चर्चा हुँदा अन्य कुराहरूका अतिरिक्त राजाले विभिन्न स्रोतहरूबाट अर्थ संकलन गरी लोककल्याणमा खर्च गर्नुपर्छ भनिएको छ। कौटिल्यका अनुसार अर्थशास्त्र प्राचिन आचार्यहरूले सुझाएका राज्य प्राप्ति, सम्बर्द्धन र नागरिक सुरक्षाको उपाय हो। यसलाई विद्वानहरूले राजनीतिक, प्रशासनिक तथा आर्थिक व्यवहार सञ्चालनका लागि राजाले अख्तियार गर्ने विधिको अध्ययन हो भनेर अर्थ्याएका छन्। बरु वैदिक साहित्यमा पश्चिममा इकोनोमिक्ससँग मिल्दोजुल्दो अवधारणा 'वार्ताशास्त्र'मा पाइन्छ। यसलाई कतैकतै 'वार्ता' मात्र भनिएको छ। पाणिनिको अष्टाध्यायीमा वार्ताशास्त्रलाई कृषि, वाणिज्य, पशुपालन लगायत लोकको जीवनयापनका साधनहरूको अध्ययन गर्ने विद्या हो भनिएको छ। 'वार्ता' शब्द 'वृत्ति' बाट बनेको हो जसको अर्थ जीवनयापन भन्ने हुन्छ।

बृहस्पतिको अर्थशास्त्रमा वार्तालाई स्पष्टसँग कृषि, गाईपालन र व्यापारको अध्ययन हो भनिएको छ। 'सापटी लिनेदिने, कृषि, व्यापार र गाईपालनलाई वार्ताले समेटेको हुन्छ। वार्तामा सहभागी मान्छे समृद्ध र भयरहित हुन्छन्,' शुक्रनीतिमा भनिएको छ। शुक्रले धन र धनको अभावसँग जोडिएको विषयलाई वार्ताले अध्ययन गर्छ भनेका छन्। शासकले तर्क, वेद, वार्ता र दण्डनीति अध्ययन गर्नपर्ने उनले बताएका छन्। विभिन्न ग्रन्थमा उल्लेख भए पनि वार्ताशास्त्रको अलग्गै कृति अन्वेषकहरूले फेला पारेका छैनन्।

कौटिल्यकृत अर्थशास्त्र सबैभन्दा चर्चित छ। यसलाई पश्चिम शैलीको अर्थशास्त्र भन्दा दण्डनीति, शासन विधि वा शासन विज्ञानसँग जोडेर हेरिनुपर्ने विद्वानहरूको राय छ।

यो ग्रन्थ १५ अधिकरण, विभिन्न प्रकरण, अध्याय र सूत्रमा विभाजित छ। प्रथम अधिकरणमा राजा, राजकुमार, मन्त्री, पुरोहितका दैनिक व्यवहारको चर्चा छ। दोस्रोमा भूमिको विकास, नगर र गढी निर्माण, राज्यकोष, राजाको अधिकार, उच्च अधिकारी अन्य सरकारी कर्मचारीको कामकर्तव्य, सार्वजनिक यातायात, सेना, गुप्तचरसँग सम्बन्धित छ। तेस्रो प्रकरणमा विवाह, महिलाको सम्पत्ति, अंश, राज्य तथा खेतवारीको सीमा निर्धारण, कर्जा, सेवक तथा दासहरूको आचारसंहिता परेको छ। चौथोमा व्यापार, कालिगढ, शिल्प, पेसा, गुप्तचर, चोरी अपराध नियन्त्रण, मिसावट, तौल तथा वस्तुको गुणस्तर नियन्त्रणका कुरा छन्। पाँचौंमा राजद्रोह तथा दण्ड, कर, शुल्क, राजस्व संकलन, कामदारको सुरक्षा, कर्मचारीको तलब तोकिएको छ।

यसरी विभिन्न अधिकरणमा कुनै राज्यमा हुने राजनीतिक, प्रशासनिक, आर्थिक, सामाजिक व्यवहारलाई मिश्रित रूपमा प्रस्तुत गरिएको छ। छैठौं अधिकरणमा प्रकृतिको चरित्र, शान्तिको चर्चा छ भने सातौंमा अन्य राजाहरूसँग सम्बन्ध, शासकहरूबीचको एकता, मध्यम वर्ग, प्रदेशहरूका बारेमा बोलिएको छ।

यसैगरी पछिल्ला अधिकरणहरूमा प्राकृतिक विपत्ति तथा उद्धार, राज्यको क्षमता, सेना परिचालन, व्यापारमा नाफा नोक्सान, शत्रुनाश, युद्धको समस्या, सेनाको परिपालन, सेनाको विभाग, युद्धस्थल छनोट, मन्त्रयुद्ध, अनैतिक साधनबाट शत्रुदमन, कुटिल विधि, विदेशमा गुप्तचरको चर्या, शत्रुको गढी कब्जा, शत्रुनष्ट, तन्त्रको प्रयोग, जडिबुटीको प्रयोग, शत्रुको षडयन्त्र विफल बनाउने विधि, जीवनमा सफल हुने सुत्र, वादविवादमा जित्ने तरिका, योजना लगायतका विषयहरू छन् ।

कौटिल्यको अर्थशास्त्रलाई तत्कालिन समयको राजनीतिक, सामाजिक, सांस्कृतिक, आर्थिक विकासको उपज मान्न सकिन्छ । भारतीय परम्परामा आर्थिक चिन्तनका हिसाबले कौटिल्यको अर्थशास्त्रलाई प्राचिन संस्कृत धार्मिक ग्रन्थहरूको उत्कर्ष मान्ने विद्वानहरू पनि छन् । यसमा केन्द्रीकृत प्रशासनिक प्रणाली अन्तर्गत आर्थिक तथा राजनीतिक स्थायित्व प्राप्त गर्ने गरी एउटा कार्यविधि तर्जमा गर्ने उद्देश्य राखिएको देखिन्छ ।

यसबाट के बुझिन्छ भने कौटिल्य लगायतका आचार्यहरूको अर्थशास्त्र बृहत विज्ञान थियो र अहिले हामीले बुझ्ने गरेको अर्थशास्त्र भने वार्तशास्त्रका रूपमा थियो र अर्थशास्त्र नाम नदिइएका ग्रन्थहरूमा पनि आर्थिक विषयहरू थिए । ती ग्रन्थमा विभिन्न प्रसंगमा 'अर्थ' लाई भौतिक कल्याण, भूमि प्राप्ति र विकास एवं सर्वसाधारणको जीवनयापनसँग जोडिएको छ ।

## अर्थशास्त्रको परिभाषा

कौटिल्य आफुले लेख्दै गरेको अर्थ विज्ञानको बृहत विषयवस्तुका बारेमा सचेत थिए । यसमा प्राचिन आस्तिक तथा नास्तिक दर्शन, अधिल्ला तीन वेद (ऋग, यजुर र साम), आर्थिक कर्म (कृषि, पशुपालन, व्यापार) र दण्डनीति (राजनीतिक प्रशासन) लाई समेटिएको उनले उल्लेख गरेका छन् । तर्क विद्या र आध्यात्मिक उन्नयनलाई पृष्ठभूमिमा राखेर आर्थिक कल्याण र राजनीतिक सुशासनलाई एकिकृत गर्ने प्रयास अर्थशास्त्रले गरेको दाबी कौटिल्यको छ ।

उनले अध्याय १५ मा अर्थशास्त्रको परिभाषा यसरी गरेका छन्: अस्तित्व रक्षा र जीवन निर्वाहका लागि मान्छेलाई धन चाहिन्छ, यस्तो धन प्रकृति (पृथ्वी) बाट प्राप्त हुन्छ । अर्थशास्त्र दिगो रूपमा त्यस्तो धन प्राप्त गर्ने साधन हो । आध्यात्मिक वस्तु, भौतिक वस्तु र प्रेम तथा आनन्द प्राप्त गर्ने मानव जातीको तीन उद्देश्यमध्ये भौतिक वस्तु प्राप्त गर्ने उद्देश्य उत्तम हो, बाँकी दुई यसैमा निर्भर हुन्छन् । योगक्षम (प्रजाको कल्याण) सुनिश्चित गर्ने दायित्व शासकको हो । प्रजाको खुसीमा नै राजाको खुसी निर्भर हुन्छ ।

यसबाट भण्डै २४ सय वर्ष अघि कौटिल्यले जनताको आर्थिक कल्याणलाई सहज बनाउने कर्तव्य राज्यको हो भनेका थिए भन्ने बुझिन्छ । उनले जनताको खुसी र कल्याणका लागि सामाजिक तथा आर्थिक सन्तुलनको कुरा गरेका छन् । सामाजिक तथा आर्थिक आधारशिलाका रूपमा उनले चार आश्रम (ब्रम्हचर्य, गृहस्थ, सन्यास र वानप्रस्थ), चार पुरुषार्थ (धर्म, अर्थ, काम र मोक्ष) तथा वर्ण व्यवस्था (ब्राम्हण, क्षत्रिय, वैश्य, शूद्र) लाई अघि सारेका छन् । ब्रम्हचर्य आश्रम विद्यार्थीको हो, गृहस्थ आश्रम आर्थिक कर्ममा सक्रिय हुनेहरूको हो, सन्यास अवकाश लिनेहरूको र वानप्रस्थ त्याग गर्नेहरूको हो ।

यसैगरी नैतिक व्यवहारलाई धर्म भनिएको छ, धनको संकलनलाई अर्थ, प्रेम र आनन्दलाई काम र सांसारिक कर्मबाट मुक्तिलाई मोक्ष भनिएको छ । कौटिल्यले परिकल्पना गरेको कल्याणकारी राज्य कुनै धार्मिक राज्य थिएन । अर्थशास्त्रमा उनले राज्य सञ्चालनको कुनै पनि पक्षमा हस्तक्षेप गर्ने गरी संगठित धार्मिक निकायको सिफारिस गरेका छैनन् । कल्याणकारी राज्यलाई विकसित बनाउन उनले राजाको आचरण, राज्य प्रशासन, आन्तरिक सुरक्षा, राष्ट्रिय सुरक्षा र आर्थिक गतिविधिमा ध्यान दिएका छन् ।

## सार्वजनिक वस्तुको व्यवस्था

सरकारले हस्तक्षेप गर्नपर्ने क्षेत्रको पहिचान कौटिल्यले गरेका थिए जसलाई आधुनिक अर्थशास्त्रको भाषामा 'सार्वजनिक वस्तु', 'सार्वजनिक स्रोत तथा सम्पत्ति' भनिन्छ । उदाहरणका लागि उनले स्थलमार्ग, जलमार्ग, पानी टंकी, पोखरी, कुलो सरकारले बनाउनुपर्ने बताएका छन् । खेती नगरिने जमिन, पशु चरन वा वन भाडामा लगाउनुपर्ने विचार उनले व्यक्त गरेका छन् । उनले त्यस्ता क्षेत्रमा बसोबास गर्नेको पहिचान गरी उनीहरूलाई नै कृषि तथा वन उद्यममा प्रोत्साहित गर्नपर्छ भनेका छन् । धातु तथा नुनको खानी राज्यको स्वामित्वमा हुनुपर्छ र यसलाई भाडामा लगाएर राजस्व संकलन गर्न सकिन्छ । गरिबी निवारण पनि राज्यकै कर्तव्य भएको उनले उल्लेख गरेका छन् । उनले असहाय केटाकेटी, वृद्ध तथा आपतमा परेकालाई राज्यले आश्रय दिनुपर्छ भनेका छन् ।

## सार्वजनिक वित्त

ऋग्वेद, दसौं मण्डलको १७३ सुक्तमा प्रजाले राजालाई तिरेको करको प्रसंग आउँछ । महाभारतको शान्ति पर्वमा यसलाई थप व्याख्या गरिएको छ, करलाई राज्यको वैधानिक अधिकार भनिएको छ ।

'राजाले राज्यलाई दुहुँदा (कर लगाउँदा) मौरीले फुलबाट रस चुसे जसरी दुहुनु पर्छ । राजाले प्रजालाई (कर) को भार बढाउँदा कुनै किसानले बहरे गोरुलाई क्रमिक रूपमा भार बढाए जसरी बढाउनुपर्छ ।'

भण्डै दुई हजार वर्षपछि पश्चिमा अर्थशास्त्रीहरूले गरेको भार बारे यस्तै विचार व्यक्त गरेका छन् । करका आधुनिक सिद्धान्तमा उल्लेख गरिएको खासगरी प्रगतिशील गरेको भाव बारे प्राचिन भारतीय चिन्तक जानकार थिए भन्ने यसले देखाउँछ ।

कालिदासको रघुवंशमा करका बारेमा रोचक कथन छ । अध्याय १.१८ मा भनिएको छ, 'राज्यले प्रजाको वृहत कल्याणका लागि कर संकलन गर्छ । उसले जनताबाट यसरी कर उठाउँछ जसरी सूर्यले पानीबाट बाफ लिएर आफुले लिएको भन्दा कैयौं गुणा बढी वर्षा दिन्छ ।'

कालिदासको यो बिम्बलाई आधुनिक अर्थशास्त्रमा सार्वजनिक वस्तुमा सरकारले गर्ने खर्चबाट व्यक्तिको आम्दानीमा पर्ने गुणक प्रभावका रूपमा व्याख्या गरिएको हुन्छ ।

कौटिल्यका अनुसार सरकार आर्थिक स्रोतहरूमा निर्भर हुन्छ त्यसैले शासकले राज्यकोषमा ध्यान दिनुपर्छ । शासकले सुव्यवस्था कायम गरेको, समग्र कल्याणमा वृद्धि गरेको र सुरक्षाको प्रत्याभूति दिएवापत राजस्व संकलन गर्ने उनको धारणा थियो ।

कौटिल्यको अर्थशास्त्र बाहेक अरु शास्त्रमा पनि करको उल्लेख छ । कतै यसलाई 'बलि' भनिएको छ भने कतै 'भाग' भनिएको छ । पूर्ववैदिककालमा कर अनिवार्य थिएन । नगर राज्य वा संगठित राज्य नै नभएको समुदाय मुलत पशुपालनमा निर्भर रहेको, कृषि कर्म पूर्ण रूपमा विकास भइनसकेको तत्कालिन अवस्थामा समुदायका सदस्यले प्रमुखलाई कर तिर्ने चलन थिएन । उत्तरवैदिककाल र त्यसपछि नगर राज्यको विकास हुँदै गएपछि कर चलनमा आएको हो भन्ने धारणा विद्वानहरूको छ ।

करको आवश्यकता र सीमा बारे कौटिल्य सचेत थिए । करको मामिलामा शासकको हात माथि हुँदैन भन्ने उनको तर्क थियो । धेरै कर लगाए सीमावर्ती क्षेत्रका मान्छे देशै छोडेर जान सक्ने उनले बताएका थिए । बगैँचामा काँचो फललाई पाक्न दिएर पाकेको फल मात्र टिप्ने गरिए जस्तै दिगो हुने गरी कर संकलन गर्नपर्ने अन्यथा जनतामा असन्तुष्टी बढ्ने उनको विचार थियो ।

उनले राजस्वका स्रोतहरू बारे विस्तृत चर्चा गरेका छन् । कृषिदेखि चिडियाघरमा राखिने जनावर, धेरै किनबेच हुने उद्योग उत्पादित वस्तुको लामो सूची उनले बनाएका छन् । कृषि उत्पादन राज्यकोषको सबैभन्दा महत्वपूर्ण स्रोत थियो । उदाहरणका लागि राज्यको स्वामित्वमा भएको जमिन भाडामा लगाउने र त्यसमा हुने उब्जनीको आधा राज्यले लिनुपर्ने उनले बताएका थिए । खेती गर्ने बिऊबिजन नभएका, जोत्नका लागि हलगोरु नभएका, कामदारलाई ज्याला दिन नसक्नेलाई सरकारले ऋण दिएर उब्जनीको तीन चौथाई लिनसक्ने, आफ्नै जमिनमा खेतीपाती गर्नेले उब्जनीको ६ भागको एक भाग सरकारलाई बुझाउनुपर्ने व्यवस्था उनले सुझाएका थिए ।

उनका अनुसार नुन, चिनी, मदिरा तथा जुवातासमा ५ प्रतिशत, रेशमका कपडा, विभिन्न धातुहरू, श्रीखण्डमा १० प्रतिशत र आयातीत वस्तुमा २० प्रतिशत कर उठाउनु पर्थ्यो ।

कौटिल्य राज्यकोषको न्यायोचित प्रयोगमा जोड दिन्थे । उनले सरकारी कर्मचारीलाई दिइने तलब लगायतका खर्चहरूको विस्तृत विवरण तयार पारेका थिए । मन्त्री, सेनाप्रमुख र शिक्षकलाई वार्षिक ४८ हजार पण (चाँदी र तामा मिश्रित मौर्यकालमा प्रचलित धातुको मुद्रा), कोषाध्यक्ष (राजस्व प्रमुख) लाई २४ हजार पण गर्दै सेवकसम्मको तलब तोकेका थिए । यसरी सरकारी खर्चको मिहिन व्यवस्था गरेका उनले समग्रमा राज्यले प्रदान गर्ने तलब तथा ज्याला कुल आम्दानीको २५ प्रतिशतभन्दा बढी हुन नहुने उल्लेख गरेका छन् ।

शुक्रले राज्यकोष बलियो बनाउनु पर्ने बताएका छन् । राज्यकोषले शक्ति र शक्तिले राज्यकोष बढाउन मद्दत गर्ने दावी उनले गरेका छन् । जुन राजाले ३० वर्षसम्म राज्यलाई पुग्ने गरी कोष निर्माण गरेका छन् त्यसलाई उत्तम, १६ वर्षसम्म पुग्ने गरी गरिएको व्यवस्थालाई मध्यम र १२ वर्ष वा सोभन्दा कमलाई पर्याप्त राज्यकोषको व्यवस्था गर्ने राजालाई अधम भनेका छन् । त्यतिबेला र पछिसम्म पनि अधिनस्थ (पराजित) राज्यबाट वर्सेनि ठूलो परिमाणमा शुल्क (नजराना/कोसेली/फिरौती) उठाउने चलन थियो । त्यसैले अरु राज्य जितेर प्राप्त हुने धन अनि आफ्ना प्रजालाई भार नपर्ने गरी करबाट संकलन गरिएको कोषलाई उनले पहिलो कोटीको, व्यापार र उद्यमबाट कर संकलन गर्नेलाई दोस्रो र मन्दिर, दण्ड जरीवानाबाट राजस्व संकलन गर्ने तरिकालाई तेस्रो कोटीमा राखेका छन् । उनले राज्यकोष हेर्ने अधिकारी इमान्दार, धनी, रणकौशल, दयावान र मितव्ययी हुनुपर्ने बताएका छन् ।

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## वैदिक साहित्यमा बजार अर्थशास्त्रका मिल्का

(भाग ३)

- मुराहरि पराजुली

### बजार, सम्पत्ति अधिकार, मूल्य र व्यापार

बढी कर संकलनभन्दा आर्थिक गतिविधिलाई सहज बनाउने र उत्पादन बढाएर यो लक्ष्य प्राप्त गर्न सकिन्छ, भन्ने कौटिल्यको धारणा थियो। उनले प्रगतिउन्मुख गतिविधिलाई प्रोत्साहित गर्दा, प्रचुर उत्पादन हुँदा, चोरीडकैती तथा आपतबाट सुरक्षा प्रदान गर्दा राज्यकोषमा वृद्धि हुन्छ भनेका छन्। सम्पत्ति अधिकारको रक्षाबाट जीवन निर्वाहलाई सहज बनाउन सकिने उनको मत थियो।

व्यक्तिको सम्पत्ति अधिकार उल्लंघन गर्नेलाई कौटिल्यले दण्डजरीवानाको व्यवस्था गरेका थिए। उनको तेस्रो ग्रन्थमा खासखास करार, अचल सम्पत्ति, निक्षेप तथा ऋण, पैतृक सम्पत्ति, विवाह आदिमा न्यायाधिशाहरूले गर्नुपर्ने कार्यसम्पादनको विस्तृत चर्चा गरिएको छ।

चार किल्ला बन्द नगरमा विभिन्न वस्तुको व्यापारका लागि ठाउँ अलग्याइएको थियो, गोदाम घर, तबेला, व्यापारीक संघलाई पनि अलग्गै स्थानको व्यवस्था गरिएको थियो। बजार निरीक्षक (संस्थाध्यक्ष) ले नाप तौल उचित तरिकाले भए नभएको, कालोबजारी तथा ठगी नियन्त्रणका लागि बजार अनुगमन गर्ने र दण्ड जरीवाना गर्ने गर्थे। मुद्रा टंकन गर्दा धातुको उचित मिश्रण हुनुपर्ने त्यसो नगरे के कति जरीवाना गर्ने भन्ने उनको निर्देशिकामा उल्लेख थियो।

कौटिल्य खेतीयोग्य जमिनको उत्पादकत्व बारेमा जानकार थिए। बर्खा, सिचाईको सुविधा, जमिनको गुणस्तर, लगाइने बाली, जनघनत्व लगायतका कारणले कृषि उत्पादनमा आउने बढोत्तरी तथा गिरावटको विश्लेषण उनले गरेका थिए। वन्यजन्तु, जंगली मान्छे, डकैत, छिमेकी देशका शासकको व्यवहारले पनि कृषि उत्पादनमा फरक पार्ने विषयमा उनी सचेत थिए। त्यसैले उनले शासकलाई बजार, वस्ती तथा कृषि कर्मका लागि सुरक्षित स्थान र पूर्वाधारहरूको प्रबन्ध गर्न सुझाएका थिए।

व्यापारीहरूको गठबन्धनले आपूर्ति सीमित गरी एकाधिकारी मूल्य लागु गर्न सक्ने सम्भावना बारे कौटिल्य सचेत थिए। त्यसैले व्यापारीले जुन काम गर्नुपर्ने हो सो नगरेर वा मिलेमतोमा खरिद र बिक्री मूल्य निर्धारण गरे भने तिनलाई हजार पण दण्ड गर्नु भन्ने नियम उनले बनाएका थिए। उनले बजारमा अधिक आपूर्ति भयो भने सरकार (संस्थाध्यक्ष) ले बिक्री रोकेर मूल्य तल भर्न दिनुहुँदैन भनेका थिए।

कौटिल्य न्यायोचित मूल्यका पक्षमा थिए। व्यापार हेर्ने निरीक्षक (संस्थाध्यक्ष) ले उत्पादनको लागत हेरेर वस्तुको मूल्य निर्धारण गर्थे। यो आयात र निर्यात दुवैमा लागु हुन्थ्यो। आन्तरिक रूपमा उत्पादन भएको र आयातीत वस्तुमा परल मूल्यभन्दा क्रमशः ५ प्रतिशत र १० प्रतिशत नाफा लिएर बिक्री गर्न पाइन्थ्यो। यसभन्दा बढी मूल्य लिएको खण्डमा जरीवाना गरिन्थ्यो। न्युन विजकीकरणका बारेमा पनि कौटिल्य सचेत थिए। त्यसैले न्युन विजकीकरण गरेको फेला परेमा आठ गुणा बढी शुल्क लिनु भन्ने नियम उनले बनाएका थिए।

कौटिल्य खुला व्यापारका पक्षमा थिए। उनले आपूर्ति बढाउन निश्चित वस्तुहरूको आयातमा भन्सार छुटको व्यवस्था गरेका थिए। नगरभित्र बजार पूर्वाधार विकासका लागि गुरुयोजना नै बनाएका थिए। विदेशी व्यापारीका लागि अलग्गै बजार क्षेत्र तोकेका थिए।

ऋग्वेदको चौथो मण्डल २४ औं सुक्तमा बजार मूल्य कायम गर्ने माग र आपूर्तिको आधारभूत शक्तिको चर्चा गरिएको छ। खरिदकर्ता र बिक्रेताले कसरी मोलतोल गर्छन् भन्ने प्रसंग त्यसमा छ। 'एउटा ग्राहक मदिरा (सोम) र इन्द्रलाई खुसी पार्ने गरी यज्ञमा चढाउन जाँ किन्न खोज्छ। त्यो ग्राहक थोरै मूल्य तिर्न तयार छ जुन मूल्यमा पसलेले बेच्दैन। दस वटा गाई दिँदा पनि पसले मान्दैन। आवश्यकताले बाँधिएको ग्राहक र धूर्त पसले एकअर्कालाई चुसेर छोडछन्।'।

### कर्जा, जोखिम र ब्याजदर

कर्जा पहुँच बजार सहजीकरणको महत्वपूर्ण अंग हो। मध्यकालसम्म युरोपमा ऋण दिनुलाई ग्राह्य मानिए पनि ब्याज लिनुलाई हत्या जत्तिकै अपराध मानिएको थियो। ईशापूर्व ७०० को पाणिनीको व्याकरणमा ब्याज दर हिसाब गर्ने विधिको चर्चा भएकोले ऋण दिने र ब्याज लिने चलन थियो भन्ने अनुमान गर्न सकिन्छ। साधारण ब्याज मात्रै नभएर चक्रवृत्ति ब्याज गणना गर्ने विधि पाणिनीले तर्जुमा गरेका थिए भनिन्छ।

ब्याज दरमा हुने उतारचढावलाई कौटिल्यले बुझेका थिए। ऋणमा हुने जोखिम, अनिश्चितता र ऋण लिनुदिनुपर्ने परिस्थितिले ब्याज दर निर्धारण हुने व्याख्या उनले गरेका छन्। उदाहरणका लागि धितोसहितको ऋणमा उनले प्रतिमहिना १.२५ प्रतिशत र व्यापारका लागि ५ प्रतिशत ब्याज दर निर्धारण गरेका छन्। वनको बाटो भएर हुने व्यापारका लागि १० प्रतिशत र समुन्द्री मार्गबाट हुने व्यापारलाई उनले १५ प्रतिशत ब्याज दर तोकेका थिए। सैन्य अभियानका लागि उनले सामान्यभन्दा दोब्बर ब्याज लिन सकिने बताएका छन्।

आपत परेका बेला राज्यले धनी साहु महाजनसँग ऋण लिनसक्ने सिफारिश पनि आचार्यहरूले गरेका छन्। महाभारतको एक प्रसंगमा एउटा राजाले अर्को राजासँग सापटी लिने कार्यलाई पनि राजस्वको स्रोतका रूपमा औल्याइएको छ।

## धन सम्पत्तिको चाहना

वैदिक साहित्यमा धेरैतिर धनको चरित्र र महत्वका बारेमा चर्चा भएको छ। शुकले पशु, खाद्यान्न, लुगाकपडा, पराल लगायतका उपयोगी वस्तु धन हुन भनेर परिभाषा दिएका छन्। उनले मुद्रा र धनको भेद पनि बताएका छन्। सिपी वा गहनाजस्ता विनिमयको साधनका रूपमा प्रयोग गरिने वस्तुलाई मुद्रा भनेका छन्। विनिमयका लागि सुन प्रयोग गरिन्छ भने त्यो मुद्रा हो अन्य प्रयोजनमा लगाईयो भने धन हो भनेर उनले उदाहरण दिएका छन्।

धन प्राप्तिको विधि भने न्यायोचित हुनु पर्ने तर्क आचार्यहरूले गरेका छन्। महाभारतमा ऋषि परासरले राजा वा प्रजा दुवैले धन प्राप्तिको इमान्दार प्रयास गर्नुपर्ने बताएका छन्। उनले अनैतिक र अधर्मी तरिकाले आर्जन गरिएको धनको आलोचना गरेका छन्। धन प्राप्तिका लागि अधि र नहुन पनि उनले सल्लाह दिएका छन्।

ऋग्वेदमा भौतिक उन्नति, मूल्य, सौदाबाजी र करका प्रसंगहरू आएका छन्। ऋग्वेदको नवौं मण्डलको ११२ सुक्तमा यस्तो उल्लेख छ : 'हामी सबैको विविध आशा र योजना छन्। धनका लागि हामी विविध बाटाहरू अपनाउँछौं। हामी हाम्रा चाहनाहरू लाई त्यसरी नै पछ्याउँछौं जसरी गाईहरूले एकपछि अर्कालाई पछ्याइरहेका हुन्छन्। एउटा भ्यागुतोले बाढी पखिरहेको हुन्छ, तिर बनाउनेले कसैले उसलाई सुनका मुद्रामा भुक्तानी गरोस भन्ने चाहेको हुन्छ, कालिगढले काम खोजिरहेको हुन्छ, पुरोहितले उपासक खोजिरहेको हुन्छ।'

ऋग्वेदकै दोस्रो मण्डलको २१ औं सुक्तमा श्रेष्ठ धन, चेतनायुक्त सामर्थ्य, निरोग, ऐश्वर्य र मधुर वाणीका लागि इन्द्रलाई आह्वान गरिएको छ। यसैगरी अर्को सुक्तमा रुद्रसँग उपभोग्य वस्तु, ऐश्वर्य, खुसी, शक्ति र आध्यात्मिक सुखको माग गरिएको छ।

ईशापूर्व २०० को सेरोफेरोमा रचना भएको पञ्चतन्त्रको एउटा कथामा पैसाको महत्व देखाइएको छ। यसमा भनिएको छ, 'राजाले आफ्नो सेवकलाई हप्काउन सक्छ, तर उसले अन्तिममा ज्याला दिन्छ भने सेवकले काम गर्ने पर्छ। थुनबाट दूध आउन छोडेपछि बाच्छोले आमालाई छोड्छ। पैसाले सबैथोक तत्कालै उपलब्ध गराउन सक्छ। त्यसैले बुद्धिमान मान्छेले नगद रोज्नुपर्छ।'

महाभारतको शान्ति पर्वमा युद्ध जितिसकेपछि राज्य सञ्चालनमा अरुचि देखाएका युधिष्ठिरलाई अर्जुनले अन्य कुराहरूका अतिरिक्त धनको महत्व दर्शाउँदै राजगद्दीमा बस्न र सन्यासी हुने विचार त्याग्न जोड दिएको वर्णन छ। अर्जुन भन्छन्, 'तालिमे हात्तीले अरु जंगली हात्तीलाई पक्रिन मद्दत गरे भै धनले धन बढाउन मद्दत गर्छ। धार्मिक कार्य, आनन्द, साहस, क्रोध, सिकाई, सम्मानको भाव सबैथोक धनबाटै सुरु हुन्छ।'

शान्ति पर्वमा चार पुरुषार्थ (धर्म, अर्थ, काम र मोक्ष) मध्ये प्रधान कुन हो भन्ने चर्चा छ। विदुरले धर्मलाई जोड दिएका छन् अर्जुन, नकुल र सहदेवले अर्थलाई जोड दिएका छन्, भिमले कामलाई र युधिष्ठिरले मोक्षलाई जोड दिएका छन्।

वैदिक परम्पराका धेरै आचार्यहरूले चार पुरुषार्थमध्ये धर्मको बाटो समाएपछि बाँकी तीन स्वतः प्राप्त हुने बताएका छन्। शुकले भनेका छन्, 'मान्छे धनको दास हो, धन मान्छेको दास होइन त्यसैले मान्छेले धनलाई पछ्याउनुपर्छ। धन नभएको गरिब पुरुषले जतिसुकै पुण्य गरेको भए पनि उसका श्रीमती र छोराछोरीले छोडेर जान्छन्।'

भारतीय दर्शन परम्परामा प्रचलितमध्येको एक नास्तिक दर्शन चार्वाकको हो। यसलाई लोकायत दर्शन पनि भन्छन्। लोकले सुन्दा मिठो (चारु) सुनिने कुरा (वाक) गर्ने भएकाले यसलाई चार्वाक भनिएको हो यो कुनै दर्शन होइन भन्नेहरू पनि छन्। चार्वाकको हो भनेर चिनिएको एउटा उक्ति निकै प्रचलित छ, 'जबसम्म बाच्छो सुखले बाँच। ऋण काढेरै भए पनि घिऊ पिउनु। खरानी भएर जाने यो चोला फर्किएर आउँदैन।'

## आधारभूत आवश्यकता र उपभोग

पञ्चतन्त्रकै अर्को कथामा विष्णु शर्माले मान्छेको आधारभूत आवश्यकता पूर्ति नभएसम्म उसले अरु उच्च आकांक्षा नराख्ने बताएका छन्। त्यसमा भनिएको छ, 'मान्छेको पेट भरिएको छैन उसले सुमधुर संगितको चाहना गर्दैन, लज्जा वा विवेकको कुरा गर्दैन, आफ्नै शरिरको ख्याल गर्दैन, न उसले कुनै विद्वानको नाम सम्झिन्छ, पुण्य वा सामाजिक मर्यादाको पर्वाह गर्छ, भगवानको जस्तो ज्ञान वा युवा वयको सौन्दर्य कुनै चिजको

मतलब हुदैन ।’

प्राचीन भारतीय ग्रन्थहरूमा गरिबीलाई जिउँदै मर्नु बराबर ठानिएको छ र सांसारिक धनको चाहनालाई नैतिक ठहर्‍याइएको छ । यजुर्वेदको ४० औं अध्यायमा गृहस्थ र आध्यात्मिक जीवनको भेदको वर्णन गरिएको छ । जीवात्मा र ब्रम्हको एकत्वको चर्चा गर्दा मान्छेले सय वर्ष बाँच्न असल गृहस्थी कार्य गर्नुपर्ने बताइएको छ । यसमा सम्पत्ति अधिकारको कुरा गरिएको छ । संसारमा भएका जति सबै चिज ईश्वरको अधिनमा रहेकोले अधिक लोभ गर्न नहुने, अनुशासित जीवनयापन गर्नुपर्ने र गरिबीमा बाँच्न हुदैन भनिएको छ । उपनिषद कालपछि विकास भएको भक्ति मार्गमा पनि व्यक्तिको दैनिक घरायसी काम प्रतिको लगाव ईश्वर भक्तिभन्दा कम होइन भन्ने मानिएको छ ।

वैदिक साहित्यमा आधुनिककालमा जस्तो उत्पादन, वितरण, विनिमय र उपभोग गरी अर्थशास्त्रलाई विभाजन गरिएको छैन तापनि यी अवधारणाहरू बारे उनीहरू जानकार नै थिएनन् भन्ने होइन । शुक्रले जीवित मान्छेको रक्षाका लागि धनको उपयोग गर्ने कार्यलाई उपभोग भनेका छन् । ‘अन्न, लत्ताकपडा, आवास, बगैँचा, हात्ती, रथ, शिक्षा, राज्य र अभै बढी धन प्राप्तिका लागि धन खर्च गर्ने कार्यलाई उपभोग भनिन्छ,’ शुक्रनीतिमा भनिएको छ । उनले शासकलाई धन खर्च गर्दा मितव्ययी हुनुपर्ने सुझाव दिएका छन् । श्रीमती र छोराछोरीका लागि मात्र धन सञ्चय गर्ने कार्यले नर्क पुऱ्याउने, मान्छेलाई खुसी नदिने उनले बताएका छन् ।

## आर्थिक दुर्घटना र दान

प्राचीन भारतीय ग्रन्थहरूमा आर्थिक गतिविधि सधैं सामान्य हुन नसक्ने मान्छेहरू गरिबी र विपन्नताको खाडलमा पर्न सक्ने सम्भावनालाई पनि उक्तिकै ध्यान दिइएको छ । ऋग्वेददेखि का सवैजसो ग्रन्थहरूमा दानको महिमा गाइएको छ । उदाहरणका लागि ऋग्वेदको दसौं मण्डल, सुक्त ११७ मा भोकमरीलाई ईश्वरले मृत्युका रूपमा व्यवस्था गरेका होइनन् भनिएको छ । विभिन्न रूपमा आउने कालले पर्याप्त खान पाउने धनी मान्छेसँग गरिबलाई जस्तै समान व्यवहार गर्छ । रथको पांग्राजस्तै धनी र गरिबका बीचमा काल समान तवरले गुडेर आउने बताइएको उक्त सुक्तमा धनीले गरिबलाई दान दिनुपर्ने उल्लेख छ । तिनै गरिब भविष्यमा धनीका मित्र हुन्छन् भनिएको छ ।

भावगत गितामा दानको थप चर्चा गरिएको छ । दानको असल र खराब रूपको भेद छुट्याइएको छ । कुनै अपेक्षा नराखी गरिने दानलाई सात्विक भनिएको छ, अहंकारप्रेरित दानलाई रजस र कुत्सित मनसाय प्रेरित दानलाई तमस भनिएको छ । यी ग्रन्थहरूले दानको महत्वलाई दर्शाएर मान्छेहरूलाई अभिप्रेरित गरे पनि कानूनबाट अनिवार्य गरिनुपर्छ भनेर वकालत गरेका थिएनन् ।

## श्रम विभाजन र वितरण न्याय

श्रम विभाजन र विशिष्टिकरणलाई ऋग्वेदको अन्तिम खण्डमा पहिचान गरिएको मानिन्छ । जसलाई आज जातीय व्यवस्थाको रूपमा बुझिन्छ त्यतिबेला वर्ण व्यवस्थाको रूपमा उदाएको थियो । भागवद गीतामा वर्ण भनेको के हो भन्ने व्याख्या गरिएको छ । ‘मैले मानव समाजलाई गुण र कर्मका आधारमा ४ वर्णमा विभाजन गरेको छु । मानवीय श्रमको विभाजन उनीहरूमा अन्तर्निहित प्रकृतिका आधारमा गरिएको हो,’ कृष्णले अर्जुनलाई भनेका छन् ।

यसबाट ब्राम्हण, क्षत्रीय, वैश्य र शुद्र भनेर गरिएको विभाजनमा मान्छेको ज्ञानको खोजी गर्ने, योद्धा, व्यापार-व्यवसाय गर्ने र कालिगढी वा किसानी गर्ने स्वभावसँग जोडिएको देखिन्छ, जन्मसँग होइन । यसैगरी महाभारतको शान्तिपर्वमा ऋषि भारद्वाजले भृगुलाई भनेका छन्, ‘सबै वर्णका मान्छे एकआपसमा मिसिएका हुन्छन् र लालच, क्रोध, भय, लोभ, शोक, चिन्ता, भोक, कठिन श्रमको बन्धनमा बाँधिएका हुन सक्छन् । यीनीहरूलाई एक अर्काबाट सजिलै अलग्याउन सकिदैन । सृष्टिकर्ताले समान रूपमा सिर्जना गरेका मान्छे उनीहरूका कर्मका कारण विभिन्न वर्गमा विभाजित भएका हुन्छन् ।’

महाभारतकै अनुशासन पर्वमा जन्म, शिक्षा, वंश, किताबी ज्ञानले मान्छेको गुणलाई निर्धारण नगर्ने बताइएको छ । उसको गतिविधि, गुण र सदाचारले उसको गुणवत्ता निर्धारण गर्ने कुनै पनि वर्ण अर्कोभन्दा श्रेष्ठ हुदैन । त्यसैगरी शुद्धता र अशुद्धता वर्णमा नभई व्यक्तिमा निहित हुने उल्लेख छ ।

सीप, क्षमता र पेशागत विभाजन बाहेक वर्ण व्यवस्थाको आर्थिक पक्ष पनि छ । प्राचीन भारतमा ज्ञान, हतियार, भौतिक सम्पत्ति र भूमिलाई शक्तिको स्रोत मानिएको छ । यी कुनै पनि स्रोतमाथि कसैको एकाधिकारी नहोस भन्ने उद्देश्यले ऋषिमुनीहरूले यस्तो व्यवस्था गरेका हुन भन्ने दाबी गर्ने विद्वानहरू पनि छन् । ब्राम्हणले ज्ञान हासिल गर्न सक्छ तर उसले भिक्षा र दक्षिणाबाट गुजारा चलाउनुपर्छ । क्षत्रियले हतियारबाट शासन गर्न सक्छ तर उसले नीतिगत निर्णय गर्दा ब्राम्हणको सल्लाह लिनुपर्छ । वैश्यले व्यापारबाट धन कमाउन सक्छ तर समाजबाट प्रशंसा प्राप्त गर्न दान गर्नुपर्छ । शुद्रले खेती गरेर वा वस्तु तथा सेवा उत्पादन गरेर अरुलाई उपलब्ध गराउनुपर्छ भन्ने व्यवस्था गरिएको हो भन्ने मान्यता ती विद्वानहरूको छ ।

तर मनुस्मृति र अरु धर्मशास्त्रहरूले वर्ण व्यवस्थालाई जाती व्यवस्थामा परिणत गरेको मान्ने खोजकर्ताहरू धेरै छन् । उनीहरूका अनुसार भार

तीय उपमहाद्विपको समाज वर्ण व्यवस्थाबाट जाती व्यवस्थामा एकाएक गएको होइन् । वर्ण व्यवस्थामा जोडिएको अर्को अवधारणा 'आश्रम' को हो । बच्चा जन्मिएर एउटा उमेरमा पुगेपछि गुरुकुलमा गई १२ वर्षसम्म ब्रह्मचर्य आश्रममा बस्ने र उसको दिक्षान्त (उपनयन) पछि, उसको वर्ण अनुसारको पेशा रोज्ने व्यवस्था तत्कालिन समाजमा थियो । यो व्यवस्थालाई मनुस्मृतिले विकृत बनाएको हो भनिन्छ । मनुस्मृतिमा बालकको परिवारले नै सानै उमेरमा उसको पिताको वर्ण अनुसार उपनयन गरिदिने थिति बसालिदियो । यसले वर्ण व्यवस्थाको गतिशील र बहुआयामीक चरित्रलाई बदलिदियो र संकुचित बनाइदियो ।

कौटिल्यले प्रत्येक सरकारी तथा गैर सरकारी सेवाका लागि ज्याला तोकिदिएका थिए । कामदार र उसको परिवारका लागि खानाको व्यवस्था रोजगारदाताले गर्नुपर्थ्यो । कृषि श्रमिकको ज्याला नगदमा भुक्तानी गर्ने विषयमा कुरा नमिले उत्पादनको १० प्रतिशत जिन्सीका रुपमा उपलब्ध गराउनुपर्ने नियम उनले बनाएका थिए । अदक्ष श्रमिकको न्यूनतम ज्याला तोकेजस्तै उनले चिकित्सक, कथावाचक, कलाकार जस्ता दक्ष कामदार लाई अन्यत्र उत्तिकै सीप भएका कामदारले पाउने जत्तिकै पारिश्रमिक दिनुपर्ने बताएका थिए ।

उनलाई श्रमको उत्पादकत्व र ज्यालाबीचको सम्बन्ध बारे पनि राम्रो जानकारी थियो । ऊनी, अरु कपडा र हतियार बनाउने काममा श्रमिकले उत्पादन गर्ने परिमाण, लिएको समय र कामको गुणस्तर हेरी ज्याला दिनु भनेका थिए । राम्रो काम गर्ने श्रमिकलाई कपाल धुने वस्तु (स्याम्पु), अत्तर वा अरु उपहार (बोनसका रुपमा) दिएर प्रोत्साहित गर्नुपर्ने उनको राय थियो ।

कामदारको अधिकार र कार्यस्थलमा सुरक्षाका बारेमा पनि कौटिल्य सचेत थिए । कामदार बिरामी भयो, दुर्घटना वा अन्य विपत्तिमा पर्थो भने उसले कामबाट छुटकारा पाउनुपर्छ र अर्को कामदारको व्यवस्था गर्नुपर्छ भन्ने नियम उनले बनाएका थिए । उनका अनुसार कामदारले तोकिएको काम अर्कोबाट गरायो वा तोकिएको समयभन्दा छिटो गर्थो भने त्यसलाई काम पूरा भएको मानेर पूरा ज्याला दिनुपर्थ्यो । संघर्षमा फर्त कामदार भर्ती गरिएको भए रोजगारदातालाई खबर नगरी कामबाट निकाल्न पाइदैनथ्यो, त्यसो गरी जरीवाना तिर्नुपर्थ्यो ।

सामान्यतया बधुँवा मजदूर (दास) राख्न पाइदैनथ्यो । ऋण तिर्न नसकेका, युद्धमा हारेका, अपराध प्रमाणित भएका, दण्ड जरीवाना तिर्न नसकेकालाई दासदासीका रुपमा राख्ने चलन थियो । तर तिनीहरूले पनि ऋण, सजाय वा जरीवाना भुक्तानी गरेपछि मुक्त हुनुपर्छ भन्ने मान्यता कौटिल्यको थियो र उनले त्यसै अनुरूप नियम बनाएका थिए । बधुँवा मजदुरको न्यूनतम ज्याला अन्य कामदार सरह हुन्थ्यो । आठ वर्ष मुनिकालाई बधुँवा मजदुरका रुपमा काममा लगाउन पाइदैन थियो । महिलालाई पनि बधुँवा कामदारका रुपमा काममा लगाउन वा दिसापिसाब सोहोर्ने वा अरु कुनै कडा सजाय दिने कार्य दण्डनीय थियो । बधुँवा मजदुरले सम्पत्ति राख्न पाउँथ्यो र हकवालालाई उक्त सम्पत्ति दिन पाउँथ्यो ।

## राज्यको आर्थिक नीति

शुक्रले राजाको प्रमुख दुई कर्तव्यको चर्चा गरेका छन् । प्रजाको रक्षा गर्ने र असामाजिक तत्वलाई निवारण गर्नु राजधर्म हो भनेका छन् । अरु आचार्यहरू र आधुनिक अर्थराजनीतिमा दावी गरिने कल्याणकारी राज्यले गर्नुपर्ने कार्यलाई उनले सहायक कर्तव्यका रुपमा प्रस्तुत गरेका छन् । कृषि, व्यापार, गाईपालन, सापटी तथा हस्तकलाको प्रवर्द्धनलाई शुक्रले आवश्यक कार्य भनेका छन् ।

महाभारतको सभा पर्व अध्याय ५ को एक वर्णन अनुसार युधिष्ठिरको राज्याभिषेकमा नारद आएका हुन्छन् । उनले राजाको कर्तव्यका बारेमा नारदलाई केही जिज्ञासा राख्छन् । उनले सोधेका धेरै प्रश्नमध्ये केही आर्थिक विषयका छन् ।

नारदले युधिष्ठिरलाई आम्दानीको एक चौथाई देखि एक तिहाईसम्म मात्र खर्च गर्नुपर्छ भन्छन् र आपतकालिन अवस्थामा मात्र आम्दानीको आधासम्म खर्च गर्न सचेत गराउँछन् । लेखापालले प्रत्येक दिन मध्याह्नअघि राज्यको आम्दानी र खर्चको अवस्था बारे राजालाई जानकारी गराउनुपर्ने व्यवस्था मिलाउन सुझाव दिन्छन् । कामदारको ज्याला ४ महिनाभन्दा ढिला चुक्ता गर्न नहुने, सिपाहीको तलब पनि वक्यौता राख्न नहुने बताउँछन् । राजाले कालिगढका सिर्जनाहरूको परख गर्न जान्नुपर्ने बताएका छन् । उनले कृषि, व्यापार, पशुपालन र ब्याज लिएर कर्जा दिने चार किसिमका आर्थिक गतिविधिको चर्चा गरेका छन् । यी सबै कार्यले प्रजाको आर्थिक कल्याणमा वृद्धि हुने बताएका छन् । यी कामहरू मान्छे ले इमान्दारीका साथ गरिरहेका छन् भन्ने सुनिश्चित राजाले गर्नुपर्ने नारदको भनाई हुन्छ ।

बाली लगाउन किसानलाई राजाले एक चौथाईभन्दा बढी ब्याज नलिने गरी ऋण दिनुपर्ने बताएका छन् । प्रशासकहरू प्रजाबाट संकलन गरिएको करबाट पालिएका हुनाले टाढाटाढा बाट आउने व्यापारीलाई उचित व्यवहार गर्नुपर्ने र उनीहरूबाट उचित दरमा कर उठाउनुपर्ने बताउँछन् ।

नारदले सार्वजनिक वस्तु बारे पनि राजासँग चासो व्यक्त गर्छन् । पानीको संकट व्यवस्थापन गर्न ठाउँठाउँमा पानी टंकी, पोखरी बनाइएको छ कि छैन भनेर राजासँग सोध्छन् । 'डकैतहरूबाट प्रजालाई सुरक्षाको व्यवस्था मिलाइएको छ कि छैन ? कृषि, नगर विकास, मन्दिर, गद्दी, व्यापार हेर्ने, न्याय प्रशासन लगायतका सरकारी कर्मचारी बिचमा उचित समन्वय छ कि छैन ? दृष्टिविहिन, सुस्तश्रवण लगायत मानसिक तथा शारिरीक रुपमा अपांग प्रजा, असहाय, जोगी, घरबारविहिनलाई पिताले जसरी पालनपोषण गरेका छन् कि छैनन ?' प्रश्न गर्छन् ।

नारदले वाह्य आक्रमणबाट सुरक्षालाई पनि महत्वपूर्ण सार्वजनिक वस्तु मानेका छन् । युद्ध खर्चिलो हुने भएकाले यसलाई उनले अन्तिम प्राथमिकतामा राख्नुपर्ने बताएका छन् । युद्धको सट्टा सुलहको प्रयास गर्नुपर्ने, शत्रु पक्षका अधिकारीलाई गुप्त रूपमा महंगा उपहार दिएर विग्रह ल्याउनुपर्ने तथा अरु किसिमले दबाव दिने रणनीति अपनाउनु पर्ने सुझाव उनले राजालाई दिएका छन् ।

### **अन्त्यमा**

प्राचीन भारतीय संस्कृत ग्रन्थमा लौकिक व्यवहार गरिएका चर्चाहरूका यी केही उदाहरण हुन् । यी चर्चाहरूमा एकरूपता, निरन्तरता र विस्तृत व्याख्याहरू नभेटिन सक्छ तर यीनले वृहत आर्थिक चासोलाई समेटेका छन् । भौतिक कल्याणको महत्व, दैनिक व्यवहार र परलौकिक उद्देश्य प्राप्तिको तादात्म्य, सौदाबाजी, स्वेच्छिक दान, श्रम विभाजन, बजार व्यवस्था, वितरण न्याय, कर संकलन, शासकको कर्तव्य, सार्वजनिक नीतिका बारेमा चर्चा गरिएको छ ।

बजार अर्थतन्त्रमा वस्तु तथा सेवाको उत्पादन सरकारले गर्दैन, माग आपूर्तिको अन्तर्क्रियाबाट मूल्य निर्धारण हुन्छ । वैदिक साहित्यमा भेटिने आर्थिक सोच र आधुनिक बजार अर्थशास्त्र समानार्थी होइनन् । यसो हुनु स्वाभाविकै हो । कम्तिमा ३ हजार वर्ष र त्यसअघिको समाजले जे सोच्यो, जस्तो व्यवहार गर्थ्यो ठिक त्यस्तै सोच र व्यवहार अहिलेको समाजको नहुन सक्छ । यसो भन्दैमा अधिको समाज, त्यो समाजका सदस्य, तीनीहरूको सोच र व्यवहारसँग हाम्रो कुनै सम्बन्ध छैन भन्ने होइन । उनीहरूको सोच र भोगाई हाम्रा लागि सिकाई हुन सक्छ । वैदिक कालको आर्थिक सोच बजार अर्थशास्त्रसँग मिल्दाजुल्दा छन् । तत्कालिन पश्चिममा संसारमा नगरिएको र हामीले अहिले पनि अवलम्बन गर्न संकोच मान्ने खुला आर्थिक व्यवहारका कुरा पनि त्यति बेलाका आचार्यहरूले गरेको बुझिन्छ । हाम्रो सार्वजनिक नीति निर्माणमा ती आचार्यहरूका उपायको अध्ययन अभै पनि सान्दर्भिक देखिन्छ ।

बजार सञ्चालन, मूल्य निर्धारण, एकाधिकार, बजार सहभागीको नैतिक विचलन सम्बन्धी कौटिल्यको धारणा अग्रगामी छ । उनले समस्याको पहिचान गरेका छन् र समाधान पनि दिएका छन् । खुला अन्तर्राष्ट्रिय व्यापारका पक्षपाती कौटिल्यले अहिलेको मुलधारको अर्थशास्त्रमा अध्ययन गरिने कुनै आर्थिक सिद्धान्तको प्रतिपादन गरेका होइनन् । तर उनले ती सिद्धान्तमा भनिएका धेरै कुरा उहिल्यै चर्चामा ल्याइसकेका थिए । वस्तुको बजार मूल्यमा उतारचढावलाई उक्त वस्तु प्राप्तिको चाहना र उपलब्धताले निर्धारण गर्छ भन्ने शुकनीति पनि अग्रणी आर्थिक विश्लेषण संग्रह हो । प्राचिन ग्रन्थहरूमा प्रयोग गरिएका विम्ब, राजालाई दिइएको आर्थिक सल्लाह र व्यवहारमा उतारिएका नीतिनियमले तत्कालिन समाजको अर्थ राजनीतिलाई सहज बनाएको थियो । ती संस्थागत र नीतिगत व्यवस्थालाई तत्कालिन समाजको सापेक्षमा बुझ्नुपर्छ ।





**SAMRIDDHI**  
FOUNDATION

Chapter 10  
Economic Liberalism and Nepal

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## **In defence of economic liberalism**

**- Achyut Wagle**

*(book review of Trials, Tremors, and Hope by Dr. Ram Sharan Mahat)*

The discourse of political economy in present day Nepal is heavily skewed to the left-of-the-centre. It is evident since the country's political atmosphere is overwhelmingly dominated by the faces and forces that are unmistakably communist in orientation. The intellectual defenders of the liberal order of political economy, that too through a systematic review in publication, are far rarer. In such a scenario, Ram Sharan Mahat, a Nepali Congress stalwart and six-time finance minister of Nepal since the restoration of multi-party democracy in 1990, is among a few of the rarest advocates of the liberal, free- market economy.

His recent book *Trials, Tremors and Hope: The Political Economy of Contemporary Nepal* unequivocally highlights the importance of an amalgamation of liberal political and economic orders for faster growth and prosperity. He calls the new book a sequel to his one-and-a-half-decades old publication, *In Defence of Democracy: Dynamics and Fault Lines of Nepal's Political Economy* (2005). The 12-chapter book released last month debates on mainstream economic meta-narratives, their applicability and practical implications viewed through the lens of an experienced practitioner and a staunch reformer. The book also excavates into current economic concerns and discusses the probable future course of, largely, corrective actions and strategies required to keep the Nepali economy viable in the long-run.

The author draws his point home in favour of a mixed but uncompromisingly liberal economy through four major perspectives: one, comparative analysis of key theoretical expositions that now shape the global as well as national debate on economic and development policies; two, as a sworn democrat and a disciplined member of the historic Nepali Congress party; three, as a technocrat who knows the ins and outs of managing the state treasury and; four, a ruthless reformer ready to risk the political opposition given the fact that benefit of any extensive policy and institutional reforms often invited instant resistance and criticism, even as the desirable results could only be felt in the long term.

In the first chapter, Mahat has painstakingly chronicled the evolution of the ideology of socialism, its several forms and their relevance in the contemporary world. His effort to marry the role of the state (in the event of a market failure and also as a responsible custodian of the social contract to ensure economic justice and equality) with market freedom (with unrestricted space for private sector-led investment and productivity) goes a bit overboard—but represents the current framework of Nepal's mixed economy. His interpretation of feasible socialism as a “market that works for people” is not, in essence, socialism of any form. But he seems compelled, as a Congress leader, to defend socialism at least in some contextualised form. This is because Nepali Congress has not been able to shed the term ‘socialism’ as an overarching socioeconomic goal from its formal literature, and the current constitution also aims to ‘orient’ Nepal towards socialism—albeit, without defining what exactly the term ‘socialism’ means.

The reference in the book about his discussion with the late BP Koirala, the founder of Nepali Congress, on what exactly socialism meant for Nepal provides a wider latitude of interpretation, which effectively makes the very tag irrelevant. BP did not, reportedly, claim his interpretation of socialism to be the final truth. He apparently thought the idea would be vetted and scrutinised for its viability and utility. Mahat also makes the interesting revelation that Koirala, as a visionary thinker, had foreseen the consequences of what the present-day global debate of climate change would focus on. “The essence of BP's views was being against the pursuit of unrestrained growth driven by excessive greed, joblessness and disproportionate use of the Earth's finite resources leading to unsustainable and irreversible consequences,” Mahat mentions in his book.

Above and beyond anything, the mainstay of the book, rightfully, is the agenda of economic reform— both

accomplished and pending. Mahat, who served as the vice-chair of the National Planning Commission under the first elected government after the political change of 1990, is the undisputed architect of Nepal's economic reform. Working under that Nepali Congress-led government, he laid the blueprint to liberalise the Nepali economy. The policy reforms that covered a wide range of areas including fiscal discipline, taxation, the financial sector, trade openness, divestment and privatisation, and extensive opportunities given for the private investment marked a paradigm shift. As a result, the role of the private sector has expanded; compared to that of the state, private entities have a far larger investment in key areas of the economy like banking and finance, aviation, health and education services, surface transport, agriculture, tourism etc. These policy reforms initiated by Mahat and his team then were subsequently implemented and consolidated during his multiple tenures as finance minister. This undoubtedly helped Nepal to maintain overall macroeconomic stability even during the decade-long Maoist insurgency, which he has termed in the book as a major political tremor.

The book with interwoven themes of political and economic developments that took place in Nepal— mainly over the past three decades have chapters on the pangs of writing a new federal constitution, Nepal's geo-political imperative as a 'yam' between two boulders, the boons and perils of a remittance- dependent economy and a detailed account of the current state of the country's economy. His successful role, as finance minister, in garnering substantial international support for post-earthquake recovery and reconstruction, after the 2015 natural disaster, is covered in a dedicated chapter. The final chapter, 'Challenges and Tasks Ahead,' provides an informed prescription for Nepal's current and future policy-makers, regardless of whichever political ideology the government subscribes to. He sees the need for creating institutions at the sub-national levels to make the new polity of federalism functional and the country prosperous. He advises for a rational approach with an emphasis on austerity, efficiency and growth in productivity. Uncharacteristically though, for a seasoned politician himself, Mahat's way- out from the current mess is that: 'The excessive preoccupation with politics and factional interests must give way to social mobility, quality governance, meritocracy and social justice.'

On the flip side, the book somehow misses on igniting much-needed, extensive debate on potential long-run strategies to control the alarming instances and magnitude of corruption that engulfs the highest political class. The future of federalism now hangs in precarious balance due to the rapidly burgeoning informal economy, which is about to displace the formal one. Some things that should have been covered, but the book fails to address, are the short-run priorities of the economy like enhancing productivity growth mainly of the industrial sector which has now fallen below the five percent of the GDP, employment generation which effectively is zero in the formal sector, containing the trade deficit that already has become unsustainable and reversing the absolute lack of absorption capacity of the resources by the government(s). The missing 'hows' in the book, necessitate another 'sequel' from the author.

## The Five Mysteries of Capital

*The key problem is to find out why that sector of society of the past, which I would not hesitate to call capitalist, should have lived as if in a bell jar, cut off from the rest; why was it not able to expand and conquer the whole of society? ... [Why was it that] a significant rate of capital formation was possible only in certain sectors and not in the whole market economy of the time?*

—Fernand Braudel, *The Wheels of Commerce*

The hour of capitalism's greatest triumph is its hour of crisis. The fall of the Berlin Wall ended more than a century of political competition between capitalism and communism. Capitalism stands alone as the only feasible way to rationally organize a modern economy. At this moment in history, no responsible nation has a choice. As a result, with varying degrees of enthusiasm, Third World and former communist nations have balanced their budgets, cut subsidies, welcomed foreign investment, and dropped their tariff barriers.

Their efforts have been repaid with bitter disappointment. From Russia to Venezuela, the past half-decade has been a time of economic suffering, tumbling incomes, anxiety, and resentment; of "starving, rioting, and looting," in the stinging words of Malaysian prime minister Mahathir Mohamad. In a recent editorial the *New York Times* said, "For much of the world, the marketplace extolled by the West in the afterglow of victory in the Cold War has been supplanted by the cruelty of markets, wariness toward capitalism, and dangers of instability." The triumph of capitalism only in the West could be a recipe for economic and political disaster.

For Americans enjoying both peace and prosperity, it has been all too easy to ignore the turmoil elsewhere. How can capitalism be in trouble when the Dow Jones Industrial average is climbing higher than Sir Edmund Hillary? Americans look at other nations and see progress, even if it is slow and uneven. Can't you eat a Big Mac in Moscow, rent a video from Blockbuster in Shanghai, and reach the Internet in Caracas?

Even in the United States, however, the foreboding cannot be completely stifled. Americans see Colombia poised on the brink of a major civil war between drug-trafficking guerrillas and repressive militias, an intractable insurgency in the south of Mexico, and an important part of Asia's force-fed economic growth draining away into corruption and chaos. In Latin America, sympathy for free markets is dwindling: Support for privatization has dropped from 46 percent of the population to 36 percent in May 2000. Most ominously of all, in the former communist nations capitalism has been found wanting, and men associated with old regimes stand poised to resume power. Some Americans sense too that one reason for their decade-long boom is that the more precarious the rest of the world looks, the more attractive American stocks and bonds become as a haven for international money.

In the business community of the West, there is a growing concern that the failure of most of the rest of the world to implement capitalism will eventually drive the rich economies into recession. As millions of investors have painfully learned from the evaporation of their emerging market funds, globalization is a two-way street: If the Third World and former communist nations cannot escape the influence of the West, neither can the West disentangle itself from them. Adverse reactions to capitalism have also been growing stronger within rich countries themselves. The rioting in Seattle at the meeting of the World Trade Organization in December 1999 and a few months later at the IMF/World Bank meeting in Washington, D.C., regardless of the diversity of the grievances, highlighted the anger that spreading capitalism inspires. Many have begun recalling the economic historian Karl Polanyi's warnings that free markets can collide with society and lead to fascism. Japan is struggling through its most prolonged slump since the Great Depression. Western Europeans vote for politicians who promise them a "third way" that rejects what a French best-seller has labeled *L'Horreur économique*.

These whispers of alarm, disturbing though they are, have thus far only prompted American and European leaders to repeat to the rest of the world the same wearisome lectures: Stabilize your currencies, hang tough, ignore the food riots, and wait patiently for the foreign investors to return.

Foreign investment is, of course, a very good thing. The more of it, the better. Stable currencies are good, too, as are free trade and transparent banking practices and the privatization of state-owned industries and every other remedy in the Western pharmacopoeia. Yet we continually forget that global capitalism has been tried before. In Latin America, for example, reforms directed at creating capitalist systems have been tried at least four times since independence from Spain in the 1820s. Each time, after the initial euphoria, Latin Americans swung back from capitalist and market economy policies. These remedies are clearly not enough. Indeed, they fall so far short as to be almost irrelevant.

When these remedies fail, Westerners all too often respond not by questioning the adequacy of the remedies but by blaming Third World peoples for their lack of entrepreneurial spirit or market orientation. If they have failed to prosper despite all the excellent advice, it is because something is the matter with them: They missed the Protestant Reformation, or they are crippled by the disabling legacy of colonial Europe, or their IQs are too low. But the suggestion that it is culture that explains the success of such diverse places as Japan, Switzerland, and California, and culture again that explains the relative poverty of such equally diverse places as China, Estonia, and Baja California, is worse than inhumane; it is unconvincing. The disparity of wealth between the West and the rest of the world is far too great to be explained by culture alone. Most people want the fruits of capital—so much so that many, from the children of Sanchez to Khrushchev's son, are flocking to Western nations.

The cities of the Third World and the former communist countries are teeming with entrepreneurs. You cannot walk through a Middle Eastern market, hike up to a Latin American village, or climb into a taxicab in Moscow without someone trying to make a deal with you. The inhabitants of these countries possess talent, enthusiasm, and an astonishing ability to wring a profit out of practically nothing. They can grasp and use modern technology. Otherwise, American businesses would not be struggling to control the unauthorized use of their patents abroad, nor would the U.S. government be striving so desperately to keep modern weapons technology out of the hands of Third World countries. Markets are an ancient and universal tradition: Christ drove the merchants out of the temple two thousand years ago, and Mexicans were taking their products to market long before Columbus reached America.

But if people in countries making the transition to capitalism are not pitiful beggars, are not helplessly trapped in obsolete ways, and are not the uncritical prisoners of dysfunctional cultures, what is it that prevents capitalism from delivering to them the same wealth it has delivered to the West? Why does capitalism thrive only in the West, as if enclosed in a bell jar?

In this book I intend to demonstrate that the major stumbling block that keeps the rest of the world from benefiting from capitalism is its inability to produce capital. Capital is the force that raises the productivity of labor and creates the wealth of nations. It is the lifeblood of the capitalist system, the foundation of progress, and the one thing that the poor countries of the world cannot seem to produce for themselves, no matter how eagerly their people engage in all the other activities that characterize a capitalist economy.

I will also show, with the help of facts and figures that my research team and I have collected, block by block and farm by farm in Asia, Africa, the Middle East, and Latin America, that most of the poor already possess the assets they need to make a success of capitalism. Even in the poorest countries, the poor save. The value of savings among the poor is, in fact, immense—forty times all the foreign aid received throughout the world since 1945. In Egypt, for instance, the wealth that the poor have accumulated is worth fifty- five times as much as the sum of all direct foreign investment ever recorded there, including the Suez Canal and the Aswan Dam. In Haiti, the poorest nation in Latin America, the total assets of the poor are more than one hundred fifty times greater than all the foreign investment received since Haiti's independence from France in 1804. If the United States were to hike its foreign-aid budget to the level recommended by the United Nations—0.7 percent of

national income—it would take the richest country on earth more than 150 years to transfer to the world's poor resources equal to those they already possess.

But they hold these resources in defective forms: houses built on land whose ownership rights are not adequately recorded, unincorporated businesses with undefined liability, industries located where financiers and investors cannot see them. Because the rights to these possessions are not adequately documented, these assets cannot readily be turned into capital, cannot be traded outside of narrow local circles where people know and trust each other, cannot be used as collateral for a loan, and cannot be used as a share against an investment.

In the West, by contrast, every parcel of land, every building, every piece of equipment, or store of inventories is represented in a property document that is the visible sign of a vast hidden process that connects all these assets to the rest of the economy. Thanks to this representational process, assets can lead an invisible, parallel life alongside their material existence. They can be used as collateral for credit. The single most important source of funds for new businesses in the United States is a mortgage on the entrepreneur's house. These assets can also provide a link to the owner's credit history, an accountable address for the collection of debts and taxes, the basis for the creation of reliable and universal public utilities, and a foundation for the creation of securities (like mortgage-backed bonds) that can then be rediscounted and sold in secondary markets. By this process the West injects life into assets and makes them generate capital.

Third World and former communist nations do not have this representational process. As a result, most of them are undercapitalized, in the same way that a firm is undercapitalized when it issues fewer securities than its income and assets would justify. The enterprises of the poor are very much like corporations that cannot issue shares or bonds to obtain new investment and finance. Without representations, their assets are dead capital.

The poor inhabitants of these nations—five-sixths of humanity—do have things, but they lack the process to represent their property and create capital. They have houses but not titles; crops but not deeds; businesses but not statutes of incorporation. It is the unavailability of these essential representations that explains why people who have adapted every other Western invention, from the paper clip to the nuclear reactor, have not been able to produce sufficient capital to make their domestic capitalism work.

This is the mystery of capital. Solving it requires an understanding of why Westerners, by representing assets with titles, are able to see and draw out capital from them. One of the greatest challenges to the human mind is to comprehend and to gain access to those things we know exist but cannot see. Not everything that is real and useful is tangible and visible. Time, for example, is real, but it can only be efficiently managed when it is represented by a clock or a calendar. Throughout history, human beings have invented representational systems—writing, musical notation, double-entry bookkeeping—to grasp with the mind what human hands could never touch. In the same way, the great practitioners of capitalism, from the creators of integrated title systems and corporate stock to Michael Milken, were able to reveal and extract capital where others saw only junk by devising new ways to represent the invisible potential that is locked up in the assets we accumulate.

At this very moment you are surrounded by waves of Ukrainian, Chinese, and Brazilian television that you cannot see. So, too, are you surrounded by assets that invisibly harbor capital. Just as the waves of Ukrainian television are far too weak for you to sense them directly but can, with the help of a television set, be decoded to be seen and heard, so can capital be extracted and processed from assets. But only the West has the conversion process required to transform the invisible to the visible. It is this disparity that explains why Western nations can create capital and the Third World and former communist nations cannot.

The absence of this process in the poorer regions of the world—where two-thirds of humanity lives—is not the consequence of some Western monopolistic conspiracy. It is rather that Westerners take this mechanism so completely for granted that they have lost all awareness of its existence. Although it is huge, nobody sees it, including the Americans, Europeans, and Japanese who owe all their wealth to their ability to use it. It is an implicit legal infrastructure hidden deep within their property systems—of which ownership is but the tip of

the iceberg. The rest of the iceberg is an intricate man-made process that can transform assets and labor into capital. This process was not created from a blueprint and is not described in a glossy brochure. Its origins are obscure and its significance buried in the economic subconscious of Western capitalist nations.

How could something so important have slipped our minds? It is not uncommon for us to know how to use things without understanding why they work. Sailors used magnetic compasses long before there was a satisfactory theory of magnetism. Animal breeders had a working knowledge of genetics long before Gregor Mendel explained genetic principles. Even as the West prospers from abundant capital, do people really understand the origin of capital? If they don't, there always remains the possibility that the West might damage the source of its own strength. Being clear about the source of capital will also prepare the West to protect itself and the rest of the world as soon as the prosperity of the moment yields to the crisis that is sure to come. Then the question that always arises in international crises will be heard again: Whose money will be used to solve the problem?

So far, Western countries have been happy to take their system for producing capital entirely for granted and to leave its history undocumented. That history must be recovered. This book is an effort to reopen the exploration of the source of capital and thus explain how to correct the economic failures of poor countries. These failures have nothing to do with deficiencies in cultural or genetic heritage. Would anyone suggest "cultural" commonalities between Latin Americans and Russians? Yet in the last decade, ever since both regions began to build capitalism without capital, they have shared the same political, social, and economic problems: glaring inequality, underground economies, pervasive mafias, political instability, capital flight, flagrant disregard for the law. These troubles did not originate in the monasteries of the Orthodox Church or along the pathways of the Incas.

But it is not only former communist and Third World countries that have suffered all of these problems. The same was true of the United States in 1783, when President George Washington complained about "banditti ... skimming and disposing of the cream of the country at the expense of the many." These "banditti" were squatters and small illegal entrepreneurs occupying lands they did not own. For the next one hundred years, such squatters battled for legal rights to their land and miners warred over their claims because ownership laws differed from town to town and camp to camp. Enforcing property rights created such a quagmire of social unrest and antagonism throughout the young United States that the Chief Justice of the Supreme Court, Joseph Story, wondered in 1820 whether lawyers would ever be able to settle them.

Do squatters, bandits, and flagrant disregard of the law sound familiar? Americans and Europeans have been telling the other countries of the world, "You have to be more like us." In fact, they are very much like the United States of a century ago when it too was an undeveloped country. Western politicians once faced the same dramatic challenges that leaders of the developing and former communist countries are facing today. But their successors have lost contact with the days when the pioneers who opened the American West were undercapitalized because they seldom possessed title to the lands they settled and the goods they owned, when Adam Smith did his shopping in black markets and English street urchins plucked pennies cast by laughing tourists into the mud banks of the Thames, when Jean-Baptiste Colbert's technocrats executed 16,000 small entrepreneurs whose only crime was manufacturing and importing cotton cloth in violation of France's industrial codes.

That past is many nations' present. The Western nations have so successfully integrated their poor into their economies that they have lost even the memory of how it was done, how the creation of capital began back when, as the American historian Gordon Wood has written, "something momentous was happening in the society and culture that released the aspirations and energies of common people as never before in American history." The "something momentous" was that Americans and Europeans were on the verge of establishing widespread formal property law and inventing the conversion process in that law that allowed them to create capital. This was the moment when the West crossed the demarcation line that led to successful capitalism—when it ceased being a private club and became a popular culture, when George Washington's dreaded "banditti" were transformed into the beloved pioneers that American culture now venerates.

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The paradox is as clear as it is unsettling: Capital, the most essential component of Western economic advance, is the one that has received the least attention. Neglect has shrouded it in mystery—in fact, in a series of five mysteries.

### ***The Mystery of the Missing Information***

Charitable organizations have so emphasized the miseries and helplessness of the world's poor that no one has properly documented their capacity for accumulating assets. Over the past five years, I and a hundred colleagues from six different nations have closed our books and opened our eyes—and gone out into the streets and countrysides of four continents to count how much the poorest sectors of society have saved. The quantity is enormous. But most of it is dead capital.

### ***The Mystery of Capital***

This is the key mystery and the centerpiece of this book. Capital is a subject that has fascinated thinkers for the past three centuries. Marx said that you needed to go beyond physics to touch “the hen that lays the golden eggs”; Adam Smith felt you had to create “a sort of waggon-way through the air” to reach that same hen. But no one has told us where the hen hides. What is capital, how is it produced, and how is it related to money?

### ***The Mystery of Political Awareness***

If there is so much dead capital in the world, and in the hands of so many poor people, why haven't governments tried to tap into this potential wealth? Simply because the evidence they needed has only become available in the past forty years as billions of people throughout the world have moved from life organized on a small scale to life on a large scale. This migration to the cities has rapidly divided labor and spawned in poorer countries a huge industrial-commercial revolution—one that, incredibly, has been virtually ignored.

### ***The Missing Lessons of U.S. History***

What is going on in the Third World and the former communist countries has happened before, in Europe and North America. Unfortunately, we have been so mesmerized by the failure of so many nations to make the transition to capitalism that we have forgotten how the successful capitalist nations actually did it. For years I visited technocrats and politicians in advanced nations, from Alaska to Tokyo, but they had no answers. It was a mystery. I finally found the answer in their history books, the most pertinent example being that of U.S. history.

### ***The Mystery of Legal Failure: Why Property Law Does Not Work Outside the West***

Since the nineteenth century, nations have been copying the laws of the West to give their citizens the institutional framework to produce wealth. They continue to copy such laws today, and obviously it doesn't work. Most citizens still cannot use the law to convert their savings into capital. Why this is so and what is needed to make the law work remains a mystery.

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## The Other Path by Hernando De Soto

Alina Marquez\*

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*THE OTHER PATH.* By HERNANDO DE SOTO. New York, New York: Harper & Row Publishers, Inc. 1989. Pp. 271.

Peru is a country undergoing a political, economic, and social crisis<sup>1</sup>. Peru's president since 1985, Alan Garcia Perez, has been an ineffective leader. Garcia Perez lacks the confidence of the people, and his government has "zero credibility."<sup>2</sup> President Garcia is due to transfer power in July of 1990, but until then the government continues to flounder, and the crisis mounts.<sup>3</sup>

What direction Peru will take in the future is uncertain. The Peruvian economy is crippled by an eighteen billion dollar debt, making Peru a hostage to its foreign creditors<sup>4</sup>. In addition to this precarious economic situation is the growing wave of violence perpetrated by drug traffickers and the Maoist guerilla group, the Sendero Luminoso (the Shining Path)<sup>5</sup>. Peru and many of the world's developing countries must overcome giant obstacles in their course of development. Today, development involves the reform of existing political, economic, and social mechanisms. Although the path of reform seems almost impossible, there must be a way to lead Peru and other developing countries toward stability and prosperity.

Hernando De Soto's *The Other Path* offers a path of reform for Peruvian society and for other developing countries that operates outside government laws and regulations<sup>6</sup>. *The Other Path* is a result of the studies pioneered by the Instituto de Libertad y Democracia (ILD) of which De Soto is president<sup>7</sup>. De Soto directed the ILD's research toward an analysis of a phenomenon he termed the "in- formal sector."<sup>8</sup> The informal sector, as opposed to the formal sector, operates outside government laws and regulations. In contrast to Peru's "formal" legal system, which defines and protects recognized property rights, governs 'legitimate' commercial conduct, and adjudicates certain disputes[,]" informal sector activities are conducted outside the legal framework without regard to government regulations.<sup>9</sup>

ILD's research generated information which fed directly into De Soto's premise that "this 'other' economy, which is not 'under- ground' but in fact operates quite openly, actually constitutes the heart of Peru's real economic life."<sup>10</sup> De Soto and the ILD compiled information and statistics on housing, transportation, and

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1 See Schuck and Litan, *Regulatory Reform in the Third World: The Case of Peru*, 4 YALE J. ON REG. 51, 51-56 (1986).

2 Brooke, *Peru Drained By Inflation and Violence*, N.Y. Times, Sept. 18, 1989, at D10, col. 1.

3 Id.

4 Id. at col. 2.

5 Schuck and Litan, *supra* note 1, at 55 nn.15-17.

6 H. DE SOTO, *THE OTHER PATH* (1989).

7 Id. De Soto founded the ILD, and it has become a premier research and advocacy organization in Peru. De Soto is a Peruvian entrepreneur who completed his postgraduate studies at the Institut Universitaire des Hautes Etudes in Geneva. He worked as an economist for the General Agreement on Tariffs and Trade. In the 1970's he was appointed by the President of Peru, Fernando Belaunde Terry, to the governing board of Peru's Central Bank, where he served as managing director. De Soto is also director of several Peruvian companies, as well as a member of the United Nations Committee for Development Planning.

8 Schuck and Litan, *supra* note 1, at 58.

9 Id.

10 Id. at 59.

trade, and began measuring revenue generated by the informal economy. The data indicated the vast extent of informal activity in Peru, and this led to De Soto's analysis of informality as an example of the people's fight for economic rights.

Where others saw clandestine housing and business operations, De Soto saw the poor developing informal alternatives to a formal system which locked them out. De Soto was intrigued by the "economic arrangements" of the informal sector. For example, he took a closer look at the housing arrangements and noticed that "[a]mid the destitution and apparent disorder, enclaves would emerge in which one could observe permanent housing, urban infrastructures, and neighborhood amenities."<sup>11</sup>

The Other Path includes a history of the emergence of the Peruvian informal economy, a description of how it operates, and an analysis establishing De Soto's regulatory reform proposals.<sup>12</sup> De Soto argues that the current government regulations regarding housing, transportation, and trade should be removed, and in their place, the dynamics operating in the informal economy should be allowed to clear the way for capitalism and free market activity, thereby creating a path of "market-oriented reforms."<sup>13</sup>

Part One of The Other Path is a detailed analysis of the inner workings of the informal sector. Housing, trade, and transport are the three major areas in Peruvian society dominated by informality. De Soto uses these three areas to explain how the informal economy began and how it is currently operating. The second part of the book compares the costs of implementing the informal policies with the costs of the formal policies as they currently exist. This review begins by discussing De Soto's view of the informal sector.

## I. THE INFORMAL SECTOR

### A. *Informal Housing*

For De Soto, informal housing, like other informal activity in Peru, represents an alternative system of urban development.<sup>14</sup> The system developed in response to Lima's unprecedented growth. Lima's population doubled from 2.3 million in 1965 to 4.5 million in 1980.<sup>15</sup> In the last 40 years Lima's urban area has increased by 1,200 percent.<sup>16</sup> This relentless growth is due to the influx of the rural populations to the city. As De Soto explains, these populations have utilized the path of informality in order to establish themselves in Lima.

De Soto explains that informal settlements are the result of two different types of land "invasions"; "gradual invasions" and "violent invasions."<sup>17</sup> "Gradual invasions" occur when the settlers have a previous attachment to the land; for example, when farmworkers or miners who, because of the nature of their work, live on the owner's land, and gradually take over sections of the owner's land. By contrast, "violent invasions" occur when the settlers have no previous attachment to the land they settle.<sup>18</sup>

Although "violent invasions" are unexpected by the landowner, they entail a great deal of planning by the settlers. Groups, usually from a particular region, get together and decide when and where to go. The locations are carefully chosen. The groups almost always choose to invade state land. Invasions of state land are more likely to lead to successful settlements because the state is a more passive owner and slower to react than a private owner.<sup>19</sup>

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11 Id. at 57.

12 See generally H. DE SOTO, supra note 6.

13 De Soto argues that government regulations impede the growth of the Peruvian economy. Id. For a discussion of regulatory reforms and market-oriented reforms in developing countries, see generally, Schuck and Litan, supra note 1, at 51-52.

14 H. DE SOTO, supra note 6, at 18-19

15 Schuck and Litan, supra note 1, at 57.

16 H. DE SOTO, supra note 6, at 17.

17 Id. at 19.

18 Id. at 19-20.

19 Id. at 20.

De Soto argues that despite images of land invasions as *im promptu* illegal land acquisition, there is a plan to the takeovers. The plan is fueled not by an intentional disregard of the law, but rather out of necessity. The ILD's statistics show that informal settlements account for 42.6 percent of all housing in Lima and are home to 47 percent of the city's population.<sup>20</sup> Based on these statistics, De Soto further argues that people establish informal settlements "not so [that] they can live in anarchy but so that they can build a different system which respects a minimum of essential rights."<sup>21</sup> As De Soto explains, the essential rights sought by establishing informal settlements are property rights. Informal settlements, therefore, represent "[t]he people's struggle to acquire private property"<sup>22</sup>

De Soto's analysis of informal housing settlements presents a characterization of the settlers as much more than squatters looking for a temporary place to live. The presence and prominence of informal settlements, especially in Lima, is apparent even to the casual observer. It is clear that the informal settlements are not clandestine operations. They are neighborhoods with roads and permanent structures. The extent of the informal settlements in cities like Lima indicates there is "an alternative system of urban development" already operating in Peru.<sup>23</sup>

Housing is one of the most difficult problems facing developing countries today.<sup>24</sup> The population explosion under way in developing countries has resulted in unprecedented urbanization. Because of the erratic and unstable economies of many developing countries, government efforts to solve housing problems have been largely ineffective.<sup>25</sup>

The existence of informal settlements in Peru reflects the government's inability to provide housing or land. The housing shortage is an overwhelming problem. De Soto's proposal to utilize the system of property rights operating in informal settlements is the first step, but it may not go far enough in ensuring that the right to housing of all individuals is guaranteed. Reform of the housing problem cannot be left entirely to informal dynamics.

Informality must be balanced with the streamlining, updating, and improvement of existing government policies. De Soto suggests that archaic government controls on the acquisition of legal title to land should be eliminated.<sup>26</sup> On the other hand, government programs aimed at controlling problems like overpopulation should be strengthened, since overpopulation is one of the main sources of the housing crisis.<sup>27</sup> Only through this dual approach will the advances made by adopting informality be ensured. Together, informality and well-administered formal programs can guarantee housing for all individuals.

## ***B. Informal Trade***

De Soto describes informal trade as another alternative the people of Peru have devised in order to secure their right to private property. De Soto separates informal trade in Peru into two categories, street vendors and informal markets. The numbers which De Soto and the ILD arrived at are astounding. According to their statistics, 314,000 people are dependent on street vending, and 125,000 people are dependent on informal markets.<sup>28</sup> Both the street vendors and the informal markets are predominant in the informal settlements, and they both maintain successful operations. For example, the street vendors make a net per capita income of \$58 a month, which is 38 percent more than the minimum legal wage.<sup>29</sup>

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20 Id. at 13.

21 Id. at 55.

22 22 Id.

23 Id. at 19, 55.

24 Smith, *Housing the Urban Poor in Developing Countries: Selected Legal Issues in the Provision of Serviced Land and Shelter*, 10 GA. J. INT'L & COMP. L. 527, 584 (1980).

25 Id.

26 Id.

27 Id.

28 H. DE SOTO, *supra* note 6, at 60-61.

29 Id. at 61.

De Soto explains, however, that the street vendors have low productivity because they offer only a limited range of goods and services.<sup>30</sup> The street vendor's business is further hampered by the inability to offer any customer-related services or any credit. Furthermore, their business exists without any proper storage mechanisms or safety systems. These restrictions have led to the creation of informal markets.<sup>31</sup>

By conducting their business through the establishment of an informal market, informal vendors "aspire to obtain secure private property in order to conduct business in a favorable environment."<sup>32</sup>

De Soto explains that the interest of the informal traders lies in attaining property rights. Once they acquire property rights the vendors can "... preserve resources, stimulate production, and guarantee the inviolability of investments and savings."<sup>33</sup>

De Soto's analysis of informality works exceptionally well when applied to reform of trade in Peru. In no other area is the need to cut back government regulation so apparent. The failure of the government's economic reform policies have virtually shut down economic growth in the formal sector.<sup>34</sup> Economic activity is stagnant, and there is a large percentage of capital being transferred out of Peru.<sup>35</sup> The economic reform policies have failed on many levels. For example, in 1985 the Garcia Perez government created a new currency, the inti, to replace the sol, which was prone to inflation. Today a 10,000 inti note is worth less than three US dollars, and intis are "treated like trash."<sup>36</sup>

In addition to failing to revive the economy, the government's policies have hindered the growth of the formal economy by shutting out the economic activity of the informal economy. Instead of condemning the onslaught of informality, the government should recognize informality. By loosening restrictions and cutting bureaucracy, informal trade and informal markets will expand, and their incorporation into the formal economy will benefit both sectors of the economy. Many economists agree that the survival of the Peruvian economy depends on the implementation of "enlightened economic policies."<sup>37</sup> According to Peruvian economists Carlos E. Paredes and Hernan Garrido-Lecea, such policies would include "privatizing state-owned industries that have heavy losses."<sup>38</sup> Clearly, business activity in Peru needs the activity operating in the informal economy, and those individuals working within the informal economy should be granted the formal property rights they deserve.

### ***C. Informal Transportation***

De Soto uses the expansion of informal transport to illustrate the informal sector's creativity and entrepreneurship. Informal transport expanded as a result of the expansion of informal housing and informal trade.

There are two types of informal transport in Lima. The first type is known as the "collective" transport and consists of taxis, sedans or station wagons, which carry an average of five to eight people. The second type of informal transport is the "minibus." These buses range from small Volkswagen minivans, which hold from eight to twelve people, to large buses which hold more than 80 people.<sup>39</sup> Informal transport covers routes throughout the city of Lima. In order to strengthen the operation of the informal transport system, the operators of the vehicles have organized themselves into various groups. These organizations serve to further the interests of the drivers, and of the informal transport system in general. By 1984 the informal vehicles in service accounted for 91 out of every 100 vehicles, and public transportation depended almost entirely on

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30 Id. at 72.

31 Id.

32 Id. at 91.

33 Id.

34 See Brooke, *supra* note 2.

35 Id. at col. 3.

36 Id. at col. 1.

37 Id. at col. 3.

38 Id. at col. 2.

39 H. DE SOTO, *supra* note 6, at 94.

informal transportation.<sup>40</sup>

The ILD estimates that in 1984 91 percent of the 16,228 vehicles used for mass transit were being operated informally.<sup>41</sup> De Soto explains, “[t]he fact that informality accounts for such a large proportion of mass transit means that, as in informal settlements and informal trade, a complex system of economic and legal relations must first have developed to permit the subsequent evolution.”<sup>42</sup>

De Soto’s analysis of informal transportation in Lima is the best illustration of the success of the informal economy. Informal transportation dominates public transportation in Lima. Without informal transportation there would be virtually no public transportation.

Informal transportation, like informal housing, is a direct result of the rapid urbanization of developing countries, and is one of the problems governments of developing countries repeatedly fail to solve. It is clear that “policies whereby public systems can be more efficiently managed” must be developed.<sup>43</sup> The management and operation of informal transportation in Lima is so widespread and so well administered that it can serve as a model to the government.

## II. THE LEGAL IMPEDIMENTS OF THE FORMAL SECTOR

In Part Two of *The Other Path* Hernando De Soto analyzes the Peruvian legal system by comparing the costs of formality and the costs of informality. Throughout his analysis De Soto measures the role of the law as it relates to both formality and informality. De Soto explains that the law has a direct effect on the “efficiency of the economic activities it regulates.”<sup>44</sup> De Soto further explains that “a law is ‘good’ if it guarantees and promotes economic efficiency and ‘bad’ if it impedes or disrupts it. The unnecessary costs of formality derive fundamentally from a bad law; the costs of informality result from the absence of a good law.”<sup>45</sup>

One way De Soto measures the effect of the law on the informal sector is by using the resources of the ILD to attempt to set up various small businesses through legitimate channels. Each time, the ILD was stalled by the government bureaucracy. The ILD resisted paying bribes, but in the end was forced to do so in order to continue the process of establishing the small business. The ILD found that the time and money spent in trying to establish a small business demonstrated the formal sector’s ignorance of the situation of poor people in Peru. It is only by working within the informal sector that poor people are able to put their skills to work immediately. As De Soto explains, these people “have chosen to operate outside these bad laws, which entail such high costs and such complex regulations.”<sup>46</sup>

De Soto’s analysis of “good” laws versus “bad” laws provides the framework for understanding his argument that the informal economy in Peru is really the heart of Peru’s economic life. More importantly, however, this analysis provides the necessary framework for understanding the steps that need to be taken in developing the path that the informals have established.

Here, De Soto increases the viability of his proposals by acknowledging the need for a balance between informality and formality. De Soto goes beyond simply exalting the triumphs of informality, and explains that the government must enact “good” laws. According to De Soto these “good” laws must “create incentives for people to seize the economic and social opportunities offered by the country,” and they “must facilitate the specialization and interdependence of individuals and resources.”<sup>47</sup> In effect, De Soto is proposing a formal

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40 Id. at 95, 99-100.

41 Id. at 93.

42 Id. at 94.

43 Smith, *supra* note 24, at 583.

44 H. DE SoTo, *supra* note 6, at 132.

45 Id.

46 Id. at 182.

47 Id.

system of laws. This formal system of laws would, however, be based on promoting and facilitating economic activity. Although De Soto's formal system mirrors informality, he is nonetheless suggesting the need for central regulatory reforms.

De Soto argues that despite the traditional belief that economic achievements are the cause of development, the real cause of development is "... an official set of legal and administrative institutions which encourages technical progress, specialization, exchanges, and investment."<sup>48</sup> Furthermore, De Soto argues "[i]t is because of bad laws, then, that both formals and informals are only incipient, interdependent specialists whose potentialities will remain limited as long as the state fails to give them the incentives needed for progress, namely good laws."<sup>49</sup>

### III. CONCLUSION

Hernando De Soto's proposals are ambitious. Yet, they are convincing especially when questioning and challenging the government's regulatory reforms. The ILLD's statistics and studies show that the Peruvian government's administrative and legislative procedures and regulations hamper rather than facilitate economic growth. Furthermore, all the economic indicators in Peru paint a bleak picture. Since 1981, Peru's Gross Domestic Product has dropped approximately forty percent, half the population is unemployed or underemployed, and prices of export goods are down an average of thirty-five percent.<sup>50</sup>

Clearly, reform of the operating economic programs is crucial, but will this be enough to achieve political stability and greater social justice? De Soto suggests that the path mapped out by the informal sector is in fact the only way to achieve these goals. De Soto calls for change and reform based on the dynamics already being played out in the informal sector. The need for a new path has already been recognized by the poorest of the Peruvian population. They have successfully established housing, employment, and transportation systems throughout Peru to meet their needs. Mario Vargas Llosa, currently a candidate for the Peruvian presidency, captures De Soto's underlying philosophy when he states in the Foreword of *The Other Path* that "the revolution this study analyzes and defends is ... already under way, made a reality by an army of the current system's victims, who have revolted out of a desire to work and have a place to live and who, in doing so, have discovered the benefits of freedom."<sup>51</sup>

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48 Id. at 184.

49 Id.

50 Schuck and Litan, *supra* note 1, at 54.

51 H. DE SOTO, *supra* note 6, at xxii.



# Chapter 11 Toleration

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## Coercion and toleration

Classical liberals agree that coercion is generally undesirable. Allowing people to impose their will on others through aggression, threats, intimidation or violence does not make for a good society. Regardless of whether it is other individuals or the government using force, if we can avoid it, we should.

However, there will always be conflicts between free people. They will disagree about matters of ownership, and one person's actions may harm another. So in the interests of maintaining peace and curbing violence, we need an impartial system of justice that settles such disputes and discourages aggression. But we cannot rely on everyone to respect those judgements and rules willingly: to keep the peace we will inevitably need to use some of the coercive force that classical liberals dislike so much.

Classical liberals resolve this dilemma by giving the monopoly of force to the state – an institution that they are wary of, but which they hope will be more dispassionate in using force than would ordinary people, left to themselves.

### Harm, not disapproval

So justice requires force; but force requires justification. And to classical liberals, the proper use of this institutional force is very specific: to prevent people harming or threatening others – that is, to minimise the use of violence and coercion in general. But it has to be real harm, or the threat of real harm to others. Classical liberals are adamant that coercion should not be used against individuals simply because we disapprove of them or their actions.

We may well detest other people's religion, reject their political views, abhor their lifestyle, despise their manner and loath their habits. We may be shocked by their ideas and opinions. We may even worry that they are damaging their own health with drugs or their own prospects with their anti-social behaviour. But none of these are valid reasons for using force to try to make them act differently. Classical liberals say that people's beliefs, manner, lifestyle or moral choices are not worthy of prohibition using the drastic coercive power of the state. We are free to try to help them – in overcoming a drug habit, say – but if their actions have no victims apart from themselves, we cannot justify using force.

But classical liberals are sceptical of the argument that people must be 'educated' in order to make 'meaningful' or 'correct' choices. Obviously, people who have better information – such as the potential risks of drugs, or the number of calories in foods – make better-informed choices. But classical liberals hold that most people are better informed than most interventionists imagine. They are certainly better informed about their own aims, opportunities and personal circumstances than any politician ever could be. And however much information they have, their ultimate choices remain a matter of personal judgement, not something that is objectively 'correct' or 'incorrect'. Classical liberals worry that too often the 'education' argument is advanced by interventionists as a way to impose their own values on the choices of other people.

### The arguments for toleration

Classical liberals have many reasons, both moral and practical, for such stress on toleration.

### Cost and harm

First is the enormous cost of trying to persuade people to change their deeply cherished beliefs and practices.

The cost may be financial, such as the vast expense of raising armies, defences and the tax to pay for them during the religious Crusades of the Middle Ages. Or it can be a human cost, such as the harassment of the early Christians by the Roman authorities, the persecutions of Protestants during the Reformation, and the killing of Muslims by Serbian Christians in the 1990s.

As the French philosopher Montesquieu (1689–1755) pointed out, there is a far greater chance of peace if religious beliefs are not a matter for politics. And of course political differences have cost humanity dearly too. In just over a century, we have seen the slaughter of two world wars, Stalin's purges in the Soviet Union, Mao's cultural revolution, the mass killings of opponents of the Khmer Rouge, and much more.

Was anything gained by this cost? While people can certainly be terrorised, it remains near impossible to change their deeply held beliefs. And how would we know if we had? In the words of Elizabeth I of England (1533–1603), we cannot 'make windows into men's souls'. Nor should we bother trying, according to Jefferson, since no harm is done by religious differences: 'The legitimate powers of government extend to such acts only as are injurious to others. But it does me no injury for my neighbour to say that there are twenty gods, or no god. It neither picks my pocket nor breaks my leg.'

## **Diverse interests**

A second classical liberal argument for toleration is that we cannot justify the use of force to alter people's beliefs, lifestyle or morals, when we simply cannot agree what is acceptable, unacceptable, tolerable or intolerable. As Kant argued, when people disagree so much on what is tolerable, we really need to be trying to justify our views to others, rather than trying merely to impose them.

Isaiah Berlin, more recently, explained that individuals each have many different values – such as security, autonomy, family, wealth and comfort – and they each rank them differently too. So it may be perfectly rational of them to choose different ways to live. There is no objective way of deciding whether different people's values

are more worthy or less worthy, or whether their rankings are better or worse. It is simply a matter of opinion whether wealth is preferable to comfort, or family is more important than security. In a world where human goals are so diverse, nobody can make choices that are right for everyone.

Instead of trying to impose our views on others, therefore, classical liberals say we must accept that other people are moral beings, who make considered choices that are equally worthy of our respect. We may not always like them but we should respect them, and they in turn should respect the choices we make.

## **The benefits of diversity**

John Stuart Mill argued that the only justification for interfering with others was to prevent harm or the threat of harm; but differences of opinion do no harm to people who tolerate them. In fact, Mill thought there were many positive reasons why we should actually welcome such differences of opinion, rather than trying to censor them. Individuality, originality, innovation and diverse ideas, he thought, fuel the evolution of human progress.

And even if someone expresses an opinion that is plainly wrong in the view of most other people, it might still benefit us. It might, on consideration, turn out to be right, or to contain some element of truth and wisdom that helps advance public understanding. Even if the perspective is completely false, it may still provide a useful challenge to a prevailing opinion that, if taken for granted, would have degenerated into an empty dogma. As Oliver Wendell Holmes observed, the best test of truth is the marketplace of ideas.

## **Diversity and moral development**

A further argument for toleration is the moral development of individuals. The Prussian philosopher and

diplomat Wilhelm von Humboldt (1767–1835), for example, argued that the highest purpose of human beings is self-cultivation: so each must have the greatest possible freedom and variety of experiences from which to draw. The state should have only a night-watchman role, protecting us against trespass, but not interfering in our self-development.

Mill had a comparable moral view. Interference in other people's actions, he argued, curbs their development as moral human beings. They can never learn and develop from taking responsibility for their choices unless they actually make choices of their own. We cannot respect them as praiseworthy or moral human beings if someone else directs all their actions; they would be more like robots than human beings.

## **Perverse results**

Another point is that intolerant policies generally do not work, or have unwelcome consequences, or actually achieve the opposite of what their authors intend.

As an example of the first, we have already seen how difficult it can be to shake people's religious beliefs. Similarly, legislative attempts to clamp down on the use of recreational drugs have been ineffective.

A stark example of the second would be the unwelcome consequences of the Prohibition era in the United States (1920–33). Motivated in large part by moral disapproval of alcohol and the saloon culture, Prohibition drove the trade underground, leaving it to those who were willing to break the law. The result was escalating gang violence, corruption among police and public officials, and a widespread disrespect for a law that could not be properly enforced.

Other prohibitions on lifestyle choices, such as prostitution and drugs, have had similar consequences, with the emergence of drug cartels, turf wars and human trafficking. And it has become harder to tackle the real problems created by these activities (such as sexually transmitted infections and addiction), precisely because they have been driven underground, out of reach of the authorities. Ordinarily law-abiding people are turned into criminals, have to deal with criminals, and are put in danger because there is none of the quality control or customer protection that they would get in a legal market. Meanwhile, enforcement resources are diverted from activities that actually do real harm to others.

Third, there are many examples of illiberal policy producing the opposite effects of those intended. For example, attempts to prevent discrimination in the workplace and ensure that merit is properly recognised have led to 'positive discrimination', with people being employed because they fill the quotas, rather than on merit. State education, designed to prevent religious or political groups capturing the minds of young people, has become a monopoly in which there is little or no escape from the prevailing orthodoxy at all. Similarly, religious or political repression has simply stoked up resentments that eventually burst out in violence against the repressors. And at worst, the ideological dogmas of an over-powerful state such as the former Soviet Union can hold up personal, social and scientific progress for decades.

## **The slippery slope**

When we do use the coercive power of the state to suppress ideas, attitudes and behaviours that we disapprove of, there is no obvious stopping point. Mill warns against the 'tyranny of prevailing opinion', explaining that even if everyone thinks that certain views or actions should be suppressed, that is no justification for doing so. There should remain a 'personal sphere' of action and opinion that the state cannot interfere in.

That is only partly because people tend to make better decisions for themselves than distant lawmakers and officials can do – after all, they are more aware of their exact circumstances. Another reason is that it becomes too easy for the majority to presume that they have the right to interfere in people's lives, simply because they have numbers on their side. But such easy confidence allows the majority, armed with the instruments of state coercion, far too much latitude to extend their interference and to usurp people's fundamental freedoms.

It is a slippery slope. Interference in one part of people's lives is used to justify parallel interference in others. Often, state intervention will fail or have perverse results, which are then seen as an argument for yet further intervention. The ineffectiveness and unintended consequences of drugs policy, for example, are used as reasons to clamp down even harder, which raises the risks of supplying and using drugs even higher, and makes the resulting problems even worse.

## **Drawing the line**

So where do we draw the line? What are the limits of state intervention? Which activities are tolerable, and which intolerable? What rights should parents have over their own children, for example? Have they the right to smack them, to practice circumcision on them, or even to drink alcohol and take drugs while they are in the womb? Or more generally, should comedians and cartoonists have the free-speech right to mock a religion, if such acts might well provoke violence in which innocent people could be harmed?

There are no clear answers to such questions; different people have different opinions. Narrowing down the answers is the most critical task for classical liberals. They want the coercive power of the state to be focused as precisely as possible, so that it deters and punishes action that is genuinely harmful. Quite where that limit is must be a matter of public discussion and debate: we are unwise to allow our political leaders to decide it for us. But the large mass of action that might cause only minor distress to others should be a matter for argument and persuasion rather than for the iron fist of the state.

## **Toleration and the state**

The ancient Greeks had no such qualms. Plato (c. 427– 347 BC) and Aristotle (384–322 BC), for example, believed that if something is good, the authorities should enforce it. And still today, many people believe that the law should prohibit things that we consider immoral.

Mill accepted that much immoral conduct is potentially damaging, which is precisely why we consider it immoral. But other acts that might be called immoral may cause no harm to others: the supposed victim might even regard it as beneficial, as with assisted suicide, for example. Using the coercive power of the state against such benign conduct would only reduce human welfare.

All classical liberals are sceptical of state power, and those at the more libertarian end of the spectrum believe the state is more likely to damage our freedom than to promote it. Hence Mill's no-harm rule: if we start banning things that neither cause nor threaten demonstrable harm, we could end up banning everything. For Locke or Jefferson, the state existed solely to protect citizens and expand their freedoms: dictating someone's lifestyle, or promoting a particular religion or ethical code, was no part of its business. That is why America's First Amendment insists on not merely religious toleration, but religious freedom.

## **Risk and the use of force**

But interventionists argue that every action has at least some potentially harmful consequences for other people, so each case must be decided on its merits. In many countries, for example, smoking is banned in enclosed spaces such as restaurants and cinemas. The usual justification for this is not that it harms the smoker, but that others may suffer ill effects due to inhaling second-hand smoke. More recently, smoking has been banned in public parks, where the risk of inhaling second-hand smoke is negligible; but now the argument is that in parks, children may see people smoking and may try to emulate them, suffering health problems as a result. There may well be some such risk; but classical liberals question whether risks like this are serious enough to warrant using coercive force to prevent them – or whether they are so infinitesimal that forcible restraint (or fines and other punishments) cannot possibly be justified. For if even infinitesimal risks to others are seen as good reasons for the state to intervene, no human action at all would be protected from the arbitrary

intervention of the authorities. There would be no 'private sphere'; and individual freedom and the rule of law would cease to exist.

Toleration has to be conscious. It exists for a reason: namely, that respect for others as moral beings, and respect for their freedoms, is the foundation of peaceful cooperation in a free society. yet so often our politicians and officials are not conscious of when they are crossing that crucial line. The public also, when problems occur, frequently call for the government to 'do something', even where state intervention would be an unjustifiable assault on individual freedom. And we are also too ready to coerce people 'for their own good' – when in reality we are forcing them only to conform to our own values and prejudices.

'Though we no longer presume to coerce men for their spiritual good', wrote the English philosopher and anthropologist Herbert Spencer (1820–1903), 'we still think ourselves called upon to coerce them for their material good: not seeing that the one is as useless and as unwarrantable as the other'. That is just one reason why classical liberals call for limits on government.

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## Toleration

*“All men are liable to error.”*

John Locke

### What is toleration?

Toleration is the belief that one should not interfere with behaviour or actions of which one disapproves. It has two essential characteristics: disapproval of particular behaviour and a refusal to impose one's views on others. Someone cannot be described as tolerant of something of which he approves. It must be distinguished from moral indifference, when one has no interest in the moral consequences of the actions of others, or moral relativism, a belief that one morality is as good as any other. Parents who ignore the misbehaviour of their children would not be displaying tolerance. Neither is someone refusing to condemn the mistreatment of women, such as the forced binding of feet to make them smaller, on the grounds that to do so would be 'western cultural imperialism.' Toleration requires some moral principles, in order both to disapprove of actions and to justify forbearance from interfering.

Because toleration still involves disapproval, minority groups, such as gays, often feel that toleration is not enough, but seek acceptance that there is nothing wrong with their actions. Some forms of interference may be legitimate, such as moral persuasion and the use of reason and argument, but not coercion or force. For example, one may try to encourage a friend to stop smoking, but one would not call for a ban on smoking or steal his cigarettes. Toleration may take a passive form, a reluctant necessity in order to enable people to live in harmony with each other, while a more positive toleration may revel in the benefits of diversity. It is one of the foundations of a civilised society; that one can live with others of very different values and beliefs.

Threats to toleration come in two forms. From totalitarians of the extreme left and right, who are fundamentalists in their beliefs. They entertain no doubts about the truth of their convictions and therefore feel no compunction in using power to suppress immorality. The second threat comes from political correctness, which believes that many views, whether true or not, cause offence and pain to others, such as racial, religious and sexual minorities, and therefore should be banned.

### Philosophers on toleration

The concept of toleration is relatively new as a guiding principle for society. Most societies in the ancient world and the middle ages believed that a society in order to function and maintain order required a high degree of homogeneity. Heretics and minorities had either to be converted or expelled. The history of Europe was one of religious wars where it was thought necessary that all should worship God in the same way. Even when the authority of the Catholic church was challenged by Protestantism, it was often done by religious dissenters who wished to replace the church's authority with a new one arising from their own beliefs.

### Freedom to write

One of the earliest philosophical calls for tolerance was by the English poet John Milton, who protested against censorship in his pamphlet *Areopagatica* in 1644. He was opposed to a parliamentary bill to require every printing press to be licensed by the government. Censors could refuse to licence a press which published unorthodox or subversive material. They had the power to ban "false, forged, scandalous, seditious, libelous

and unlicensed papers, pamphlets and books to the great defamation of religion and government.” Milton was one of the first thinkers to provide a principled defence of the freedom to write and publish.

Milton argued against print censorship on a series of grounds. Firstly, in order to be virtuous, one must know vice. Secondly, one cannot trust censors to make such decisions unless they are incapable of error, and no person is. Thirdly, truth is stagnant if belief is justified solely by claims to authority. Fourthly, one should refute and not silence wrong opinion. Fifthly, the government may censor the truth by mistake.

## **Religious toleration**

Freedom from persecution in the area of religion was the theme of John Locke in his Letter Concerning Toleration (1689). His argument was essentially that if the role of the state was to protect life, liberty and property, then it had no right to meddle in the area of men’s souls. “The toleration of those that differ from others in matter religion” is both consistent with, and required by, Christian teaching based on love and charity. Religious beliefs cannot be secured by coercive means. Coercion operates on a person’s will through penalties, but belief and understanding are not subject to a person’s will and therefore one cannot acquire it by pretending to believe. “What is gained in enjoining by law what a man cannot do, however much he may wish to do it? To believe this or that to be true is not within the scope of our will.” He made it clear that his call for toleration was not based on skepticism or doubts about the existence of God or the true method of worship. He held no subjective view of morality.

He had three main arguments. Firstly, intolerance is unchristian. No one can be a true Christian who does not practice charity. To persecute others because of their heretical beliefs is necessarily uncharitable, so such persecution is unchristian. Secondly, he accused them of inconsistency. The persecutors proclaim their goal is to save souls, but there are many worse sins—Locke identified “whoredom, fraud and malice”—which are not prosecuted with the same zeal. In a contemporary example, gays note that their opponents frequently portray them as a threat to the family, but the threat comes from young single parents and divorce. Yet much less effort is directed towards these issues, which may lead one to doubt that ‘pro-family’ campaigners are indeed motivated by concern about the family. Thirdly, he saw it as based on irrationality. Beliefs cannot be changed at will as they are based on one’s conception of what is true of reality, which cannot be changed by force, as the Catholic Inquisition sought to do.

## **Experiments in living**

John Stuart Mill in On Liberty sought to obtain toleration for a greater range of speech and lifestyles than religion, as part of his wider defence of freedom. He defended what he called “experiments in living” which would allow competing ideas of the good life to be lived and compared. In particular he provided a famous defence of free speech. Like Locke, as it was beyond the ability of force to change people’s genuine convictions, he doubted the rationality of those who would even seek to try.

## **The case for toleration**

First, toleration is one important expression of a commitment to individual freedom, where one follows one’s own vision of the good life, which may be very different from that of most other people. Individuals should be autonomous, exercising control over their own lives and circumstances. Second, truth can only be discovered through the free competition of ideas. The individual can determine truth only by listening and considering a range of different arguments and opinions. Personal truth cannot be imposed. This is still based on the idea that there is such a thing as truth, but knowledge of it can only be imperfectly grasped, and continually needs to be improved. Third, there is a vital distinction between public and private life. Individuals should be allowed to

believe in the most absurd ideas- that they were kidnapped by aliens- provided it does not interfere with others. Fourth, personal and moral development requires individuals to make choices, both in order to have a better understanding of themselves and to recognise the consequences of their actions. Mill in particular feared the dangers of conformity in which conventional opinion would dissuade people from experimenting with new ideas. Fifth, economic and social progress is dependent on individuals presenting unconventional ideas and new ways of thinking, most of which will turn out to be foolish or mistaken, but some of which will provide the dynamism for society. Alexander Graham Bell would have been dismissed as totally eccentric or even mad when he first suggested that one could talk with others through what became the telephone.

## Freedom of speech

Freedom of speech demands the right to print, publish, and broadcast anything, provided it did not directly harm anyone, however offensive it might be. Racist, sexist, revolutionary, pornographic, homophobic language and ideas should be allowed and, if necessary, criticised. Muslims were deeply offended by *The Satanic Verses* by Salman Rushdie but were wrong to seek to ban the book and execute the author. John Stuart Mill wrote the most famous defence of free speech in *On Liberty*. "If all mankind minus one were of one opinion, mankind would be no more justified in silencing that one person than he, if he had the power, would be justified in silencing mankind.... If the opinion is right, they are deprived of the opportunity of exchanging error for truth; if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth produced by its collision with error."

The right to freedom of speech is based on four arguments. Firstly, the fallibility argument accepts that we might be wrong. As humans we are all fallible in our reason and instinct. If we suppress a view it might emerge later that the view we suppressed was true. We could only be sure that it is not true only if we assume we can never make a mistake. Even the fact that a view is held by the overwhelming majority of people, or the most educated, is not sufficient to justify suppression. Views that were held to be firmly true by almost everyone have later been found to be incorrect. Galileo was persecuted by the church for his claim that the earth revolved around the sun, and not the sun around the earth as was the common belief at the time. Only later was it demonstrated that Galileo was correct, and the Copernican theory accepted. Secondly, even ideas that are largely false may embody partial truths. Since opinions are rarely, if ever, completely true, the only way we can discover what is missing is to allow largely false opinions to be presented, from which a fuller truth may emerge.

Thirdly, even if current opinion is the truth, if it is not challenged and criticised, the understanding of the truth will wither and die. The reasons for its truth will be forgotten, and its acceptance based on prejudice rather than thought. Unless ideas have to be vigorously defended they will fall into disuse and misunderstanding. "However unwilling a person who has a strong opinion may admit the possibility that his opinion may be false, he ought to be moved by the consideration that, however true it may be, if it is not fully, frequently, and fearlessly discussed, it will be held as a dead dogma and not a living truth," wrote Mill. "Both teachers and learners go to sleep at their post as soon as there is no enemy in the field." Fourthly, truth will not lead to action if it not challenged. People may accept the established opinion but it will not be a deeply held conviction and therefore will have little influence on their actions.

## Limits of toleration

However toleration should not apply to every action. When someone else is directly harmed by another's action that should be condemned and perhaps punished. A demagogue calling for foreign immigrants to be killed and their homes burned should be prosecuted for encouraging violence. Coercive acts such as rape should be punished. Sexual acts between adults and children, even if voluntary, should be forbidden because young children are incapable of understanding the consequences of their actions. There are also limits to how much forbearance is justified. There is a considerable difference between the use of government force and power and

the personal expression of disgust and offence. It may be appropriate to criticise someone who has failed to be faithful to their spouse but it would be wrong to fine or imprison the faithless spouse.

One may wish to condemn boxing as a violent and inhumane sport but as long as those who participate do that voluntarily and in knowledge of the potential dangers, boxing should not be banned. A Roman legal principle is particularly apposite here: "to one who consents, no injury is done." The same principle applies to sado-masochism.

## **The fundamentalist threat**

One source of intolerance is fundamentalism, the assumption that one cannot be wrong. This is at the core of the belief system of totalitarians of the left and right, communists or fascists. This need to be intolerant of intolerance is used to justify a ban on extremist parties in Germany. There is a ban in both Germany and France on anyone claiming that the Jewish Holocaust - in which 6 million Jews as well as homosexuals, gypsies and Jehovah's witnesses, were killed - never happened. The historical evidence is overwhelming that it did and those who make such claims appear to be driven by anti-Semitism. However the principle of free speech would defend the right of anti-Semites to express such opinions and then demonstrate that these claims are false.

## **Political correctness**

Political Correctness (PC) is the use of language about socially sensitive matters, such as race and gender, in a way designed not to offend and would seek to ban the expression of ideas that would give offence. As a matter of politeness, one should always try to avoid causing unnecessary offence. But PC language manages to create offence to others by restricting their freedom of speech, so it is self-defeating. It seeks to censor thought and expression either through the law or through a high degree of social pressures, delegitimising as unspeakable certain ideas.

However, offending others is sometimes necessary and desirable. Jonathan Rauch shows how political correctness is usually driven by humanitarian considerations, but the consequence is to protect only certain sorts of speech and actions. It can be as authoritarian in its own ways as totalitarianism. In the search for increased respect for minorities it creates a new group of the oppressed, the silenced. The search for truth is largely conducted through criticism, which the philosopher of scientific knowledge, Sir Karl Popper, called falsificationism. As Rauch claimed, we have a right to offend and a responsibility to check and be checked.

## **Toleration as civilisation**

In order to live with others in a diverse and pluralistic society, respect for the rights and liberties for all to lead their own lives is a necessity. One of the central features of civilised behaviour is that one should not use violence to solve conflicts. However that does not absolve one of the responsibility of criticising the immoral behaviour of those with whom one disapproves. It only limits the methods that one can use. Humility and an acceptance of human fallibility must be combined with a search for the truth and disdain for those who refuse to allow their ideas and behaviour to be open to criticism.

## ***Reading***

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## Whether tolerance is dangerous. The peoples that practise it

Some have said that if we treated with paternal indulgence those erring brethren who pray to God in bad French, we would be putting weapons in their hands, and would once more witness the battles of Jarnac, Moncontour, Coutras, Dreux, and St. Denis. I don't know, because I am not a prophet; but it seems to me an illogical piece of reasoning to say: 'These men rebelled when I treated them badly, therefore they will rebel when I treat them well.'

I would venture to take the liberty of inviting those who are at the head of the government, and those who are destined for high office, to reflect maturely on whether there is a risk of kindness leading to the same revolts that cruelty gave rise to; whether what happened in certain circumstances are bound to happen in other circumstances; whether times, public opinion and moeurs never change.

The Huguenots have indeed been drunk with fanaticism and stained with blood, as we have; but is their present generation as barbaric as their fathers? Haven't the intellectual leaders of these people been affected by time, the progress of reason, good books and the humanising influence of society? And aren't we aware that within the last fifty years or so most of Europe has come to look quite different?

Government is stronger everywhere, and moeurs have become gentler. The ordinary machinery of public safety, supported by numerous standing armies, saves us from having to fear a return to those anarchic times when Calvinist peasants fought Catholic peasants, hastily enrolled between the sowing and the harvest.

Other times, other concerns. It would be absurd to decimate the Sorbonne today because at earlier times it presented a demand for the burning of the Maid of Orleans, declared that Henry III had forfeited his right to reign, excommunicated him, and proscribed the great Henry IV. We shan't, of course, inquire into the other bodies in the kingdom that committed the same excesses in those frenzied days. It would not only be unjust, but would be as stupid as to purge all the inhabitants of Marseilles because they had the plague in 1720.

Shall we set about sacking Rome (as did Charles V's troops) because in 1585 Pope Sixtus V granted a nine-year indulgence [see Glossary] to any Frenchman who would take up arms against his sovereign? Is it not enough to prevent Rome for ever from reverting to such excesses?

The rage inspired by the dogmatic spirit and the abuse of the Christian religion when it is wrongly conceived has shed as much blood and led to as many disasters in Germany, England and even Holland as in France; yet religious differences cause no trouble today in those States. The Jew, the Catholic, the Greek, the Lutheran, the Calvinist, the Anabaptist, the Socinian, the Memnonist, the Moravian, and ever so many others live as brothers in these regions and contribute alike to the good of the society.

In Holland they no longer fear that disputes of a Gomar<sup>1</sup> about predestination will lead to the death of the chief of government. In London they no longer fear that quarrels of Presbyterians and Episcopalians about liturgies and surplices will spread a king's blood on the scaffold.

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1 François Gomar was a Protestant Theologian; he maintained—against his colleague Arminius—that God has from all eternity destined most men to burn eternally; this hellish doctrine was upheld, as it had to be, by persecution. The Grand Pensionary of Holland, Barneveldt, who disagreed with Gomar about this, was decapitated at the age of 72 in 1619 for having 'done his best to sadden the Church of God'.

## START OF END-NOTE

An orator in Apology [see Glossary] for the Revocation of the Edict of Nantes said, of England: 'A false religion was bound to produce such fruits. There was only one still to ripen: these islanders gathered it; it is the contempt of the nations.' This author picks a bad time at which to say that the English are despicable and despised by all the earth. When a nation shows its courage and generosity, when it is victorious all over the world—what a fine time to say that it is despicable and despised! This remarkable passage is found in a chapter on intolerance; it is what would be expected from someone preaching intolerance. That abominable book, is the work of a man without a mission; for what priest would write like that? Its frenzy goes so far as to justify the St. Bartholomew's Day massacre [see Glossary]. One might have expected a book full of such frightful paradoxes to be on everyone's bookshelves, if only because of its singularity; but in fact it is hardly known.

## END OF END-NOTE

A populous and wealthy Ireland will no longer see its Catholic citizens spending two months sacrificing its Protestant citizens to God. [He goes into gruesome details of how this was done, concluding:] Such is the account given by Rapin Thoyras, an officer in Ireland and almost a contemporary; it's what is reported in all the annals and histories of England, and will surely never be repeated. Philosophy—mere philosophy, that sister of religion—has taken the weapons from the hands so long drenched in blood by superstition; and the human mind, awakening from its intoxication, is amazed at the excesses fanaticism had led it into.

We have in France a rich province where the Lutherans outnumber the Catholics. The University of Alsace is in the hands of Lutherans; they occupy some of the municipal offices; yet not the least religious quarrel has disturbed this province since it came into the possession of our kings. Why? Because no-one has been persecuted there. Seek not to vex men's hearts and the hearts are all yours.

I do not say that all who are not of the same religion as the prince should share the positions and honours of those who are of the prevailing religion. In England the Catholics, who are regarded as attached to the party of the Pretender, are not admitted to office; they even pay double taxes; but apart from that they have all the rights of citizens.

Some of the French bishops have been suspected of holding that it is neither honourable nor profitable to have Calvinists in their dioceses; and this is said to be one of the greatest obstacles to tolerance. I cannot believe it. The episcopal body in France is composed of well-born gentlemen who think and act with a nobility that befits their birth. They are charitable and generous—we should grant them that much. They must surely reflect that exiled Calvinists will not be converted to Catholicism in foreign countries, and that when they return to their pastors in France they could be enlightened by their instructions and touched by their example. There would be honour in converting them, and it wouldn't cost anything; the more citizens there were, the larger the income from the prelate's estates.

A Polish bishop had an Anabaptist to handle his finances and a Socinian as his steward. He was urged to discharge and prosecute one because he did not believe in consubstantiality—i.e. that the three persons of the Trinity are one substance—and the other because he did not baptise his child until it was 15 years old. He replied that they would be damned for ever in the next world, but that they were necessary to him in this. Let us leave our little corner and study the rest of our globe. The Sultan governs peacefully twenty peoples with different religions; 200,000 Greeks live safely in Constantinople; the Mufti himself nominates the Greek patriarch and presents him to the emperor; and a Latin patriarch is also allowed there. The Sultan nominates Latin bishops for some of the Greek islands, using the following formula: 'I command him to go and reside as bishop in the island of Chios, according to their ancient usage and their vain ceremonies.' That empire is full of Jacobites, Nestorians, and Monothelites; it contains Copts, Christians of St. John, Jews, and Zoroastrians. The Turkish [see Glossary] annals do not record any revolt instigated by any of these religions.

Go to India, Persia, Tartary, and you will find the same tolerance and tranquillity. Peter the Great patronised

all the cults in his vast empire. Commerce and agriculture profited by this, and the body politic never suffered from it.

The government of China has not, during the four thousand years of its known history, had any cult but the simple worship of one God. Nevertheless, it tolerates the superstitions of Buddha and a multitude of Buddhist priests, who would be dangerous if the wisdom of the law-courts hadn't always restrained them.

It is true that the great Emperor Yung-Chin, perhaps the wisest and most magnanimous emperor that China ever had, expelled the Jesuits. But it was not because he was intolerant; it was because they were. They themselves report. . . the words of this good monarch to them: 'I know that your religion is intolerant; I know what you have done in Manila and Japan. You deceived my father; don't think you can deceive me in the same way.' Anyone who reads the whole of the speech he graciously made to them will find him to be the wisest and most clement of men. How could he retain European physicians who, under pretence of showing thermometers and wind-pumps at court, had kidnapped a royal prince? And what would this Emperor have said if he had read our history and was acquainted with the days of our League [see Glossary] and of the gunpowder plot?

It was enough for him to be informed of the indecent quarrels of the Jesuits, Dominicans, Franciscans, and secular priests sent into his domains from the ends of the earth. They came to preach the truth, and fell to cursing one another. So the Emperor had to expel the foreign disturbers. But how kindly he dismissed them! What paternal care he devoted to their journey, and to protecting them from insult on the way! Their very banishment was a lesson in tolerance and humanity.

The Japanese were the most tolerant of all men: twelve peaceful religions were established in their empire. The Jesuits came with a thirteenth, but soon showed that they would not tolerate any of the others, and we know what came of that: the country was desolated by a civil war even more frightful than those of the Catholic League. In the end the Christian religion was drowned in torrents of blood; the Japanese closed their empire off from the rest of the world, and regarded us only as wild beasts, like the ones the English have cleared out of their island. The minister Colbert—knowing how we need the Japanese, who have no need of us—tried in vain to reopen trade-links with their empire. He found them inflexible.

Thus the whole of our continent shows us that we must neither preach nor practise intolerance.

Turn your eyes to the other hemisphere. Study Carolina, of which the wise philosopher John Locke was the legislator [through his employer the first Earl of Shaftesbury]. Any father of a family who had seven people in his household could establish there a religion of his choice, provided that those seven agreed with him about it. This liberty gave rise to no disorder. God save us from using this example to encourage having a separate cult for each household! I cite it only to show that the greatest possible excess of tolerance was not followed by the slightest dissension.

What shall we say of the peaceful primitives who have been derisively called 'Quakers,' who—with customs that are perhaps ridiculous—have been so virtuous and have unsuccessfully preached peace to the rest of mankind? There are 100,000 of them in Pennsylvania. Discord and controversy are unknown in the happy homeland they have made for themselves; and the very name of their town Philadelphia, which constantly reminds them that men are brothers, is an example and a shame to nations that have yet to learn tolerance. In short: a tolerance never led to civil war; b intolerance has covered the earth with carnage. Choose, then, between these rivals—between b the mother who would have her son slain and a the mother who yields him provided his life is spared.

I speak here only of the interest of nations. While having a proper respect for theology, I am attending here only to the physical and moral well-being of society. I beg every impartial reader to weigh these truths, sharpen them, and expand to them. Attentive readers who discuss their thoughts among themselves always get further than the author.

## How tolerance may be admitted

I venture to think that some enlightened and magnanimous minister, some humane and wise prelate, some monarch who knows that his interest consists in the number of his subjects and his glory consists in their welfare, may deign to glance at this badly structured and defective paper. He will improve it by his own insights, and say to himself: 'What would I risk in seeing my land cultivated and enriched by a larger number of industrious workers, the revenue increased, the State more flourishing?'

Germany would be a desert strewn with the bones of Catholics, Evangelicals, Calvinists and Anabaptists, slain by each other, if the peace of Westphalia ·in 1648· had not at last brought freedom of conscience.

We have Jews in Bordeaux and Metz and in Alsace; we have Lutherans, Molinists [see Glossary], and Jansenists [see Glossary]; can we not allow and control Calvinists in about the same conditions as Catholics are tolerated at London? The more sects there are, the less dangerous each of them is; multiplicity weakens them; they are all restrained by just laws that forbid disorderly meetings, insults and sedition, and are constantly enforced by the police.

We know that many heads of families who have made large fortunes in foreign lands are ready to return to their homeland. All they ask for is

- the protection of natural law,
- the validity of their marriages,
- security as to the condition of their children,
- the right to inherit from their fathers, and
- their personal freedom.

They do not ask for public chapels, or the right to municipal offices or to dignities, which Catholics do not have in England or in many other countries. It is not a question of giving immense privileges and secure positions to a faction, but of allowing a peaceful people to live, and of moderating the laws that may once have been necessary but are no longer so. It is not for me to tell the ministry what is to be done; I merely plead to it on behalf of the unfortunate.

How many ways there are of making them useful, and of preventing them from ever being dangerous! The prudence of the ministry and the Council, supported by force, will easily discover these ways that are already employed so successfully by other nations.

There are still fanatics among the Calvinist populace, but there are certainly even more among the convulsionaries [see Glossary]. The dregs of the crazed people at the cemetery of St. Medard count as nothing in the nation, whereas the dregs of the Calvinist prophets are annihilated. The great means to reduce the number of maniacs, if any remain, is to submit their mental disease to the treatment of reason, which slowly but surely enlightens men. Reason

- is gentle,
- is humane,
- inspires leniency,
- eliminates discord,
- strengthens virtue, and
- has more power to make obedience to the laws attractive than force has to compel it.

And shall we take no account of the ridicule that attaches today to the enthusiasm [see Glossary] of these good folk? This ridicule is a strong barrier to the extravagance of all sectarians. The past is as if it had never been. We must always start from the present—from the point nations have already reached.

There was a time when it was thought necessary to issue decrees against those who taught a doctrine at variance with the categories of Aristotle, •the abhorrence of a vacuum, •the quiddities, •the universal apart from the object. We have in Europe more than a hundred volumes of jurisprudence on sorcery and how to distinguish false sorcerers from real ones. The excommunication of grasshoppers and insects harmful to crops has been much practised, and still survives in certain rituals. But the practice is over; Aristotle and the sorcerers and grasshoppers are left in peace. There are countless instances of these follies, once thought so important; others arise from time to time; but once they have made themselves felt and people have had their fill, they vanish. If today a man called himself a Carpocratian, a Eutychean, a Monothelite, a Monophysite, a Nestorian or a Manichean or the like, what would happen? He would be laughed at, like a man dressed in the doublet-and-high-collar style of a century ago.

The ·French· nation was beginning to open its eyes when the Jesuits Le Tellier and Doucin put together the bull [= ‘papal edict’] Unigenitus and sent it to Rome ·for adoption by the Pope·. They thought that they still lived in those ignorant times when the most absurd statements were accepted without inquiry. They went so far as to condemn the proposition, a truth of all times and all places:

The fear of unjust excommunication should not prevent anyone from doing his duty.

They were proscribing reason, the liberties of the Gallican Church [see Glossary], and the foundations of morality. They were saying to men:

God commands you never to do your duty if you fear being treated unjustly for doing so.

Never was common sense more outrageously challenged! The counsellors of Rome were not on their guard. The papal court was persuaded that the bull was necessary, and that the nation desired it; it was signed, sealed, and dispatched. You know the results; if they had been foreseen, the bull would surely have been modified. There were angry quarrels, which the prudence and goodness of the king have settled.

So it is with regard to many of the points that divide the Protestants from us. Some are of no consequence; others are more serious, but even with them the fury of the controversy has abated so far that the Protestants themselves no longer preach about the controversy in any of their churches.

So we can seize on this time of disgust, of satiety, or rather of reason, as an historical benchmark and a guarantee of public tranquillity. Controversy is an epidemic disease that is near its end, and this plague that we are now cured of requires only gentle treatment. It is in the State’s interests that its expatriated sons should return modestly to the home of their father; humanity demands this, reason counsels it, and politicians need not fear it.

## **Whether intolerance a matter of natural law, and of human law**

[In this little chapter, ‘law’ translates droit. But this can also mean ‘right’, and is translated as ‘right’ in the first paragraph. Perhaps ‘right’ would be better elsewhere in the chapter, but probably not.] Natural law is the law indicated to all men by nature. You have reared your child; he owes you respect as his father, gratitude as his benefactor. You have a right to the products of the soil that you have cultivated with your own hands. You have given or received a promise; it ought to be kept.

Human law must in every case be based on this natural law; and all over the earth the great principle—the universal principle of both—is: Do not do ·to others· what you would not want to be done to you. Now, I don’t see how a man guided by this principle could say to another: Believe what I believe—which you cannot believe—or you will perish, which is what men say in Portugal, Spain and Goa. In some other countries they are now content to say: Believe, or I detest you; believe, or I will do you all the harm I can; monster, you don’t share my religion so you have no religion; you should be a thing of horror to your neighbours, your city, your

province. If it were a matter of natural law to behave like that, the Japanese should detest the Chinese, who would abhor the Siamese; the Siamese in turn would persecute the Tibetans, who would fall upon the Indians; a Mogul would tear out the heart of the first Malabarian he met; the Malabarian could slaughter the Persian, who could massacre the Turk; and all together would fling themselves against the Christians, who have so long devoured each other.

So the 'law of intolerance' is absurd and barbaric; it is the law of tigers; except that it is even more horrible, because tigers tear and mangle only so as to have food, whereas we wipe each other out over paragraphs.

## **Whether intolerance was known to the Greeks**

The peoples that history has given us some slight knowledge of all regarded their different religions as links that bound them together; it was an association of the human race. There was a kind of law of hospitality among the gods, as among men. When a stranger reached a town, his first act was to worship the gods of the country; even the gods of enemies were venerated. The Trojans offered prayers to the gods who were fighting for the Greeks. Alexander went to the deserts of Libya to consult the god Ammon, whom the Greeks called 'Zeus' and the Romans 'Jupiter', though each had their own Zeus or Jupiter back at home. When a town was besieged, sacrifices and prayers were offered to the gods of the town to secure their favour. Thus in the very middle of war, religion united men and sometimes moderated their fury, though at times it commanded them to do things that were inhuman and horrible.

I may be wrong, but it appears to me that not one of the ancient civilised nations restricted the freedom of thought. They all had a religion, but it seems to me that they applied it to their gods as they did to men. All of them recognised one supreme god, but they associated with him a prodigious number of lesser divinities. They had only one over-arching cult, but they permitted a host of special systems within it.

The Greeks, for instance, religious though they were, were happy with the Epicureans' denial of Providence and of the existence of the soul. Not to mention other sects which all offended against the idea one ought to have of the creative Being, yet were all tolerated.

Socrates, who came closest to a knowledge of the Creator, is said to have paid for it, and died a martyr to the Deity; he is the only man the Greeks put to death for his opinions. If that was really the cause of his condemnation, however, it is not to the credit of intolerance, since they punished only the man who alone gave glory to God and honoured those who had the most unworthy notions of the Divinity. The enemies of tolerance ought not, I think, to cite in their favour the odious example of the judges of Socrates.

Besides, he was evidently the victim of a furious party, angered against him. He had made irreconcilable enemies of the sophists, orators and poets who taught in the schools, and even of all the private tutors in charge of the children of distinguished men. He himself admits, in his discourse reported by Plato, that he went from house to house proving to the tutors that they were simply ignorant—conduct unworthy of one whom an oracle had declared to be the wisest of men. A priest and a councillor of the Five Hundred were put forward to accuse him. I must confess that I do not know what the precise accusation was; I find only vagueness in his apology [see Glossary]; he is reported as saying in a general way that he was accused of instilling into young men maxims against religion and government. That is how calumniators always go about things, but a court should demand accredited facts and precise, detailed charges, and the trial of Socrates does not provide us with these. We know only that at first there were 220 votes in his favour. So the court of the Five Hundred included 220 philosophers; that is a lot; I doubt if so many could be found anywhere else. The majority at length condemned him to drink the hemlock; but let us remember that when the Athenians returned to their senses they regarded the accusers and the judges with horror; that Melitus, the chief author of the sentence, was condemned to death for this injustice; and that the others were banished, and a temple was erected to Socrates. Never was philosophy so well avenged and so much honoured. The case of Socrates is really the most terrible argument that can be used against tolerance. The Athenians had an altar dedicated to foreign gods, to gods they could not know. Is there a

stronger proof not only of their indulgence to all nations but also of respect for their cults? . . .

## Whether the Romans were tolerant

The ancient Romans, from Romulus until the days when the Christians disputed with the priests of the Empire, you don't see a single man persecuted for his views. Cicero doubted everything; Lucretius denied everything; yet they incurred not the least reproach. Licence even went so far that Pliny, the naturalist, began his book by saying that there is no god, or that if there is one it is the sun. Cicero, speaking of the lower regions, says 'No old woman is so stupid as to believe in them' (Non est anus tam excors quae credat). Juvenal says:

'Children do not believe it' (Nec pueri credunt). They sang in the theatre at Rome 'There is nothing after death, and death itself is nothing' (Post mortem nihil est, ipsaque mors nihil). We should abhor these maxims, or at the most forgive a people whom the light of the gospels had not reached; they are false, they are impious; but we should conclude that the Romans were very tolerant, since the maxims never excited the slightest murmur.

The great principle of the Senate and people of Rome was 'Offences against the gods are the business of the gods' (Deorum injurias diis curae). This sovereign people thought only of conquering, governing and civilising the world. They were our legislators and our conquerors; and Caesar, who gave us roads, laws, and games, never sought to compel us to abandon our Druids for him, though he was the chief priest of the nation that had conquered us.

The Romans did not profess all cults, or publicly endorse them all, but they permitted them all.<sup>1</sup> Under Numa they had no material object of worship, no pictures or statues; though soon after that they erected statues to 'the gods of the great nations', this being something they learned from the Greeks. The law of the Twelve Tables, *Deos peregrinos ne colunto* (Foreign gods shall not be worshipped) means only that public worship shall be given only to the superior or inferior divinities approved by the Senate. Isis had a temple at Rome until Tiberius destroyed it. [He reports Josephus's account of why Tiberius did that, expresses scepticism about it, and continues:] But whether or not that anecdote is true, it is certain that the Egyptian superstition had raised a temple in Rome, with official permission. The Jews engaged in commerce there since the time of the Punic war, and had synagogues there in the days of Augustus. They kept them almost always, as in modern Rome. Is there a clearer proof that tolerance was regarded by the Romans as the most sacred rule in the law of nations? We are told that as soon as the Christians appeared they were persecuted by these same Romans—who didn't persecute anyone. It seems to me that this statement is entirely false, and I need only quote St. Paul himself in disproof of it. In the Acts of the Apostles we read that when St. Paul was accused by the Jews of wanting to destroy the Mosaic Law through JESUS-CHRIST, St. James advised St. Paul to have his head shaved and to go to the temple with four Jews to have himself purified, 'so that all the world will know that everything said about you is false, and that you still keep the Law of Moses'.

Then Paul, a Christian, set out to go through all the Judaic ceremonies over seven days; but before the seven days were over, some Jews from Asia recognised him; and, seeing that he had entered the temple with gentiles as well as with Jews, cried out against this 'profanation'. He was seized and taken before the Roman Governor Felix; and later on taken before the tribunal of Festus. A crowd of Jews demanded his death; Festus replied to them: 'It is not the manner of the Romans to deliver any man to die before the accused man faces his accusers and is free to defend himself.' These words are the more remarkable for a Roman magistrate who seems to have had nothing but contempt for Paul. Deceived by the false light of his own reason, he took Paul for a fool, and told him to his face that he was demented, saying *Multae te litterae ad insaniam convertunt* ('Much learning makes you mad'). Thus, in giving his protection to a stranger for whom he had no esteem, Festus was listening only to the Roman law's idea of fairness.

Thus the Holy Spirit—by inspiring the Acts of the Apostles—testifies that the Romans were not persecutors

and were just. It was not the Romans who rose up against St. Paul, but the Jews. St. James, the brother of Jesus, was stoned by the order of a Jewish Sadducee, not of a Roman. The Jews alone stoned St. Stephen; and when St. Paul held the cloaks of the executioners, he was certainly not acting as a Roman citizen would.

The first Christians had no reason to quarrel with the Romans; their only enemies were the Jews, from whom they were beginning to separate. We know the implacable hatred that sectarians always have for those who leave their sect. No doubt there was tumult in the synagogues of Rome. Suetonius says in his life of Claudius: *Iudaeos impulsore Christo assidue tumultuantis Roma expulit* (As the Jews were making constant disturbances at the instigation of Christ, he expelled them from Rome). He was wrong in saying that they were instigated by Christ—he couldn't know the details about a people so much despised at Rome as the Jews were—but he was not wrong about what prompted the quarrels. Suetonius wrote in the reign of Hadrian, in the second century; at that time the Christians were not distinct from the Jews in Roman eyes. That passage from Suetonius shows that the Romans, far from oppressing the first Christians, were controlling the Jews who persecuted them. They wanted the synagogue of Rome to be as accepting of its separated brethren as the Senate was of the synagogue itself. The banished Jews returned soon afterwards, and even attained high honours in spite of the laws that excluded them from any such, as Dion Cassius and Ulpian tell us. Is it possible that after the ruin of Jerusalem the emperors should lavish honours on the Jews, and persecute Christians, who were regarded as a Jewish sect, hand them over to the executioner or to wild animals?

It is said that Nero persecuted them. Tacitus tells us that they were accused of setting fire to Rome, and were abandoned to the fury of the people. Was that on account of their religious belief? Certainly not. Shall we say that the Chinese who were slain by the Dutch a few years ago in the suburbs of Batavia were sacrificed on account of religion? However much a man may wish to deceive himself, it is impossible to ascribe to intolerance the disaster that befell a few half-Jewish, half-Christian people in Rome under Nero.

## START OF AN END-NOTE ON ROMAN HISTORIANS

Tacitus says: '... whose dreadful crimes led to their being commonly called "Christians"'. It is hard to believe that the label 'Christian' was already known in Rome; Tacitus wrote during the reigns of Vespasian and Domitian; he referred to Christians in the way they were referred to at his time. I would venture to say that the words *odio humani generis convicti* could in Tacitus's style as well mean 'convicted of being hated by mankind' as '... of hating all mankind'.

What did these first missionaries do in Rome? They tried to win a few souls, teaching them the purest morality; they did not rebel against any power; their hearts were humble, like their social status and their situation; they were hardly known, hardly separated from the other Jews. How could mankind, knowing nothing of them, hate them? and how could they be convicted of hating mankind?

When London burned, the Catholics were blamed for it; but this was after the wars of religion, and after the gunpowder plot of which a number of Catholics—unworthy of being Catholics—had been convicted.

The first Christians at the time of Nero were certainly not in that situation. It is very difficult to penetrate the darkness of history. Tacitus gives no reason for the suspicion that Nero himself had arranged to set Rome on fire; there would have been better reason to suspect that Charles II had burned London: he would at least have had an excuse—the blood of his royal father, executed on a scaffold in the sight of a populace demanding his death. But Nero had no excuse or pretext for burning Rome, and had nothing to gain from it. These crazy rumours can be the inheritance of the populace in any country; in our own time we have heard some that are just as stupid and just as unfair.

Tacitus, who was so well acquainted with the nature of princes, must also have known the nature of the people—always vain, always excessive in their fleeting but violent opinions, unable to see anything, and able to say anything, believe anything, forget anything.

Philo says that Sejanus persecuted them [i.e. the Jews] under Tiberius, but that after Sejanus's death the Emperor restored all their rights to them. They had the rights of Roman citizens, despised though they were by the Roman citizens; they shared in the distributions of grain, and once when the distribution was on the Sabbath their part in it was postponed to another day. All this was probably because of the sums of money they had paid to the State; for in every country they have purchased tolerance, and have very quickly arranged to get reimbursed for what it has cost them. . . .

I will add that Philo regards Tiberius as a wise and just monarch. I am sure that he was just only to the extent that justice served his interests; but the good things Philo says about him make me a little sceptical about the horrors that Tacitus and Suetonius accuse him of. It does not seem to me likely that an infirm 70-year-old would retire to the island of Capri to indulge in elaborate and barely natural debauches that even the most debauched of the Roman youth had not encountered. Neither Tacitus nor Suetonius knew this Emperor; they enjoyed gathering rumours that were running through the people; Octavius, Tiberius, and their successors had been odious because they ruled over a people who should have been free: the historians enjoyed defaming them, and these historians were taken at their word because back then there were no memoirs, diaries, documents. Also, the historians did not cite anyone; they could not be contradicted; they chose whom to defame; they decided what the judgment of posterity would be.

It is up to the wise reader to see •the point at which one should distrust the truthfulness of historians; what credit one should give to what solemn authors, born in an enlightened nation, affirm about public events; and what limits to one's credulity should be set regarding anecdotes that these same authors pass on without any evidence.





Chapter 12  
Civil Societies

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## **Civil society and social media: a powerful relationship** - *Claudia Astarita*

*A thriving civil society has always been dependent on free, strong and critical media.  
They enable us to know, to imagine and to organize to make the world better.  
(Mulgan 2010: 9)*

When new media began to reveal its potential for global outreach and accessibility, the Internet was promoted as a powerful defender of civil societies and their values. However, after confirming the difficulty of measuring the media's role in engaging the civil society, this chapter evaluates the benefits and the risks that the widespread use of social media carries for contemporary societies. It is argued that when media are too free, they can become a double-edged sword for civil societies. The limited number of studies testing the relationship between new media and civil society has influenced this chapter to focus on social media platforms rather than on the Internet in general. The diversity of the new media spectrum has forced this research to narrow its scope in order to provide relevant insights and interpretations on how new media can (or cannot) effectively promote citizen engagement and participation. This analysis is a first attempt at untangling the dynamics of a powerful yet problematic relationship between social media and civil society.

The chapter begins with a review of the limited existing literature in the field, followed by a section on the importance of studying the dynamics of people-to-people and organization-to-people interactions on social media, in order to understand the power and perils social media use poses for civil society actors. Case studies on China and India are introduced to explain the role social media play in these two countries and why it is crucial to regulate media and the massive flow of information spread through them, in order to improve their relationship with civil society.

### **Civic engagement in a digital era**

Although it is a known fact that digital technologies have facilitated new forms of civic engagement, it remains difficult to quantify what kind of impact these new forms have on civil society. Research on the Internet, social networks, and political activism and participation has developed substantially during the last few decades, as has the recognition that: "citizen engagement can have a range of differing impacts, in multifaced forms" (Koc-Michalska, Lilleker, and Vedel 2016: 1807). Further, more recent research on social networks has found that these impacts may not always be positive for the broader society (Koc-Michalska et al. 2016). The importance of evaluating the impact of new media on civil society comes from three different research perspectives. First, digital media have significantly broadened the spectrum of participation, offering more and more people the ability to access information and actively participate in public debates. Second, it is much harder to weight the influence of the so-called "Internet-mediated issue generalists" within societies than it was to evaluate and monitor that of traditional forms (Karpf 2012). These figures, who regularly populate forums, comment on social networks accounts, have blogs, initiate petitions, and often post their views in different online platforms, cannot necessarily be identified as activists in the traditional sense (Koc-Michalska et al. 2016). On the contrary, data suggest that the majority of them are simply "extremely active online users," whose opinions may become more relevant thanks to the amount of time that the users themselves spend in disseminating their opinions (Karpf 2012).

Third, other sets of data also suggest that: "the mechanisms for facilitating political participation are evolving alongside technological innovation," making it extremely hard to keep research findings in the field updated and relevant for future studies (Koc-Michalska et al. 2016: 1807).

New Media and social media have taken on such a powerful and widespread role in contemporary society that it would be short-sighted, if not dangerous, not to support further studies in this field. This chapter argues that future research efforts should focus on three different areas.

First, on social networks themselves, considering both their empowering impact on engagement and the way in which civil society movements could or should rely on them to support campaigns. Second, identifying and defining the new roles and figures that have emerged on the Internet and investigating how these roles and figures favor (or limit) engagement. Third, given how rapidly new technologies are spreading in Asia as well as the lack of quantitative and qualitative studies covering this region, it is recommended that researchers concentrate new studies on Asian nations.

## **The importance of studying social networks**

Everywhere in the world, social networks have emerged as people's favorite platforms for staying in touch with relatives and friends. The extreme popularity that some of these platforms have gained through years has transformed them into powerful tools for achieving other aims, from reconnecting with colleagues to engaging with citizens users would not otherwise be able to approach. Following this evolution, already-existing networks have started being used for an increasingly broader range of activities, and new platforms have been launched to offer online users new experiences of virtual interactions.

Social networks are usually defined as online platforms supporting three different kinds of activities: gathering information, networking, and active interaction amongst users. All these activities can be considered to be expressions of online civic engagement, which usually materialize outside traditional political institutions and channels but can still have an impact on them. Marina Svensson defines civic engagement as a: range of increasingly diverse ways of expressing concern on social issues. This includes personal engagement with peer networks on social media, that is, clicking, liking, and sharing views and offering support. It also includes involvement in civic activities both online and offline, ranging from online petitions to participation in loose networks and communities to joining social and issue-based campaigns, to donating money, to volunteering and working for NGOs [non-governmental organizations]. (Svensson 2016: 51–52)

Although scholars agree on the fact that civic engagement can be facilitated and expanded online, they offer different interpretations about how social media can support and stimulate connectivity, civic engagement, social change, and political mobilization. Some scholars have welcomed new technologies, online media, and social media for their empowering potential, which offers both ordinary and marginalized people a platform from which to express their own views of and challenges to entrenched visions and institutions (Dahlgren 2013; Diamond 2010).

Augusto Valeriani and Cristian Vaccari, after recognizing that: “the Internet has enhanced choice opportunities in individualized media diets” (2016: 1858), note that new technologies have made it easier for citizens to select the information they want, and also decide whether they want to be informed or not. Valeriani and Vaccari's findings, taken in conjunction with those of other authors (see Bimber and Davis 2003; Brundidge and Rice 2009; Prior 2007), implies that the Internet is not necessarily spreading new information to everybody, but rather it can easily leave “the politically uninterested or uninformed trapped in such condition” (Valeriani and Vaccari 2016: 1858).

Other researchers have emphasized the difficulty of calculating the effects of the exposure to information Internet users gain not through autonomous searches, but rather through content shared by other users (Tewksbury, Weaver, and Maddex 2001). Traditional media offer a specific set of information that is pre-arranged by media editors. People watching television news or reading newspapers have the option of skipping an article or not following a piece of news they are not interested in, but their relationship with media is passive, as they are not playing any role in selecting the topics and the news that are offered to them. New media has partially changed this approach, allowing users to be exposed to “an array of information choices that extend far beyond what

he or she intentionally seeks” (Tewksbury et al. 2001: 534). This happens for two main reasons: many more sources are accessible online than are in offline platforms.

By browsing the web pages of several newspapers, Internet users can be confronted with a broader and more diverse set of information than they might otherwise be able to. In this way, the chances that users will be accidentally exposed to news they were not looking for increase as well. “This may in turn enhance political learning and participation, perhaps especially among those who, being less politically interested and involved, are more likely to stumble on political news online than to actually seek it” (Valeriani and Vaccari 2016: 1858). If the development of online media has made the relationship amongst media editors and consumers slightly less passive, the success of social media has transformed this connection into an active one, by both increasing the number of sources regular users can be exposed to and by giving users the chance to play a powerful role in contributing to the further spread of the content that is relevant to them.

Although the Internet has been broadly recognized as a new platform with the potential to increase users’ knowledge of current and political affairs, it remains debated whether the Internet has increased the likelihood that most individuals will be confronted with alternative sets of news, or if broad access will be limited to a cohort of educated users that are by definition more informed than average Internet users, confirming the “rich get richer” paradigm (Norris 2003; Scheufele and Nisbet 2002; Xenos and Moy 2007; Yoo and Gil de Zúñiga 2014).

Unfortunately, few studies so far have explored these dynamics. Researchers such as Andrew Chadwick (2009), Shelley Boulianne (2009), David Tewksbury et al. (2001), and Homero Gil de Zúñiga and Sebastián Valenzuela (2011) have become more optimistic about the positive impacts of the current “information exuberance” (Chadwick 2009). “Web 2.0 platforms have lowered the threshold for producing, distributing, and engaging with political information on the web, [increasing] the likelihood that citizens are accidentally exposed to news online, which in turn may affect patterns of political engagement” (Valeriani and Vaccari 2016: 1858).

Research seems to suggest that web portals, defined as online platforms where news is offered together with specific online services (email, search engines, stock quotes, etc.) as well as entertainment content (Tewksbury et al. 2001; Tewksbury and Rittenberg 2012) have significantly increased the possibility that citizens are inadvertently exposed to political content they were not necessarily seeking (Valeriani and Vaccari 2016), and that the emergence of social networking platforms has further increased the outreach of this phenomenon by creating new platforms that allow users to take a more active role in them by deciding what kind of information to access and share with other users. Last but not least, the continual presence of social media in people’s lives has progressively transformed them into extremely powerful tools for spreading and sharing ideas and information (Chadwick 2009; Wright 2012).

The sense of empowerment associated with social media is linked to two main factors. First, they have shaped new hybrid spaces where public discourses (either political or non-political) can coexist with private information and entertainment news. Second, they have created new forms of participation amongst online users, allowing them to get in touch with their peers and to mobilize consensus on a particular cause. These new patterns of direct participation tend to be considered by some scholars as more effective than traditional ones, due to their ability to bypass more institutionalized organizations and traditional media. However, although social media have already proved to be an effective platform for rapidly mobilizing consensus and support for a specific event (from a street protest to a pro-democracy mass-mobilization), how useful social media can be in strengthening a civil society movement remains a contentious issue.

Similar doubts are held by numerous groups of scholars that paint a more negative picture of the impact that social media can have on civil society and civic engagement. Christian Fuchs (2014) describes the broad fragmentation of the virtual sphere in which online users interact with each other as a disruptive environment where no proper engagement can ever materialize.

Additionally, a series of studies conducted in Western countries have confirmed the existence of a digital divide

in modern societies that is perpetrating the dominance of so-called privileged actors on social media (Sloam 2014; Sloan 2014).

Another major concern with online civic engagement is related to the fact that, despite their effectiveness in spreading information and mobilizing consensus, it is hard to affirm that social media can “lead to sustained commitment and real social and political changes” (Svensson 2016: 52). On the contrary, online support for real causes appears to be volatile and keen to embrace extreme tones. Some critics describe engagement on social media as clicktivism or slacktivism because people’s engagement is limited to clicking, sharing, and liking on Twitter and Facebook.

Evgeny Morozov is often quoted as one of the strongest critics of techno-optimism and clicktivism (Morozov 2011, 2013). According to Morozov, the problem with online activism is that it seldom, if ever, goes beyond virtual reality. More and more people have become interested in signing online petitions, donating money, condemning new laws and political initiatives, giving voice to people experiencing discrimination, violence or other forms of abuses, but their engagement is limited to clicking, sharing, and liking “illusionary quick fixes and easy to-do activities that do not involve any sustained efforts or offline activities” (Svensson 2016: 53). As long as online and offline realities remain separate, virtual activists can claim to be engaged even while their contribution to the cause they are trying to support fails to move beyond a mere forwarding of information. “They make people feel good about themselves but prevent in-depth analysis of more complex social and political problems and political organizing” (Svensson 2016: 53). Finally, activities labeled as “clicktivism” or “slacktivism” are seen with increased skepticism by a growing number of scholars, who criticize them as a “lazy, lighthearted, low-cost, and low-risk, maybe even selfish, form of commitment that builds on the false belief that posting, liking, and sharing will change the world” (Svensson 2016: 53). At the same time, it is important to remember that “clicktivism” is perceived by some Internet users as an “ad hoc and reflexive act that does not aim to further any ideological or political cause” (Svensson 2016: 53). With social media platforms as hybrid zones where the borders between the private and the public spheres are blurred, the idea that a click may imply active political engagement might be far beyond the original intention of the Internet user. At the same time, there are studies proving that a click can be classified as one of the possible actions leading to more sustained activism. Finally, in a set of specific social contexts, such as authoritarian societies, a click could be the only strategy to raise “awareness on hidden or suppressed issues” (Svensson 2016: 53).

Such skeptical, imbalanced and insufficiently nuanced attitudes are not shared by all studies focusing on social media. There are researchers emphasizing that: “in the past ten years, the proliferation of affordable Internet devices and the rise of social media platforms has enabled highly decentralized (co)production and dissemination of ideas, public discussion and deliberation, and allowed new forms of network organization” (Skoric et al. 2016: 1819; see also Bennett 2008). Research does seem to confirm the pivotal role that social media have played in transforming the nature of online interaction, “enabling new forms of personalized public engagement that no longer require significant organizational resources nor common identity or ideology” (Skoric et al. 2016: 1819; see also Bennett and Segerberg 2012). Some scholars argue that the new opportunities for discussion, debate, and deliberation created by social media can lead to specific and unexpected behavioral outcomes (Skoric et al. 2016). However, there is no consolidated research proving that activism on social networks can strengthen civil society movements. Skoric et al.’s review is one of the few studies that have tried to fill this research gap and have examined all the empirical research studies published from 2007 to 2013, with an aim of evaluating the relationship between social media use and citizen engagement. The review includes twenty-two studies that used self-reported measures of social media use and participation, with a total of 116 relationships and effects explored. The findings seem to suggest a positive relationship between social media use and citizen engagement. In particular, more support was provided to previous studies’ findings that: “easy and expanded access to diverse political information might reinvigorate citizen participation by improving political knowledge and stimulating political discussion” (Skoric et al. 2016: 1833; see also Boulianne 2009).

The Internet appears as a powerful platform offering “new opportunities for citizen networking and open[ing] up new venues for political expression, potentially activating those previously disengaged citizens” (Skoric et al. 2016: 1833). As opposed to what used to happen in the pre-social network era, when the Internet was

mainly used for social and recreational purposes that were not positively correlated with social participation, the growth of interactions on identity- centric networks with non- anonymous or pseudonymous settings represents an intrinsic change in the nature of online interaction. Recent studies (Gil de Zúñiga, Molyneux, and Zheng 2014) seem to suggest that:

the exposure to political information and social interactions on social media steers citizens on a path of political expression which may lead to political participation. The acts of political expression on social media are personalized and identity- focused and may be aimed at different audiences depending on a specific context. Given the number of potential social settings and overlapping audiences on egocentric networks, citizens engaging in political expression need to develop a broader repertoire of political selves which trigger a process of inadvertent civic learning and may lead to spillover effects on real- world political action. (Skoric et al. 2016: 1834)

More research on the nature of the connection between social media use and civil society engagement is needed to understand other powerful dynamics that appear to be emerging on online platforms. First, the role of “senders”— users who are either posting or sharing messages online—should be better explored. Empirical studies have already confirmed that senders can have both a direct and mediating role in stimulating and predicting users’ engagements on social media; however, not enough research has been conducted to measure and rationalize their role, or to understand how and under which circumstances “senders” becomes “influencers” (Gil de Zúñiga et al. 2014; Pingree 2007; Rojas and Puig- i-Abril 2009).

Second, new theoretical models are needed to clarify how to measure the expressive uses of social media, including their discussion- and deliberation- inducing properties, as well as, “the conditions and social context under which political expression is most likely to be followed by political action (e.g. non- anonymous vs. pseudonymous platforms; voting vs. protest participation)” (Skoric et al. 2016: 1834).

The urgency of filling this gap in social media research is further confirmed by numbers. Shelley Boulianne has recently published an interesting study on social networks, civic awareness, and engagement in which she discovered that: “approximately half of Facebook users follow traditional news sources through Facebook, [and] 78 percent [of them] report being exposed to the news incidentally through social network ties” (Boulianne 2016: 1841).

Engagement growth on social media comes from at least three different dynamics: first, sharing news amongst network members is a very easy process (Boulianne 2016). Second, thanks to incidental learning, news sharing from well- informed users can easily reach less- informed ones (Tang and Lee 2013). Third, “senders” tend to be more influential within their network than they are outside it because they are perceived as a “trusted” source from their family and friends (Bode et al. 2014). Fourth, once “senders” become “influencers,” their messages remain strong and valid even outside their networks.

If research should be oriented at understanding the mechanisms through which social media affects engagement, rather than limiting its focus to the direct link between the two variables, more effort should be devoted to disclose how social media affects engagement. Boulianne’s work hypothesizes that online news can increase civic awareness, which, in turn, can increase engagement in civic and political life (Boulianne 2016). She argues that: “the more a citizen knows about the world, the more likely the citizen will find something that interests them enough to become engaged in the political process” (Boulianne 2016: 1843). At the same time, the understanding of engagement cannot be reduced to “campaign participation,” as several other forms of engagement can take place in civil society. Unfortunately, much of the existing studies investigating social media and engagement are campaign- focused, and this approach is misleading as both trends and results may be campaign- specific (Boulianne 2016).

This literature review confirms that no clear or univocal relationship can be identified between the broader media accessibility the Internet can guarantee and engagement in civil society movements. This lack of consensus does not imply a negative correlation between the two variables, but rather that more studies have

to be conducted to untangle the dynamics of their interactions as well as the factors that influence them. This need is perceived as even more urgent considering that not only have the Internet and social media already changed the nature of everyday interactions and thereby enabled personalized public engagement, but also that their outreach is expected to expand, as new technologies develop, Internet-accessible devices become more affordable, and social media platforms continue to spread.

More studies are also recommended to promote the responsible use of social media, by bolstering their assets and controlling the risks embedded in the currently unrestrained use of these platforms. By proposing a review of how social media are used in Asia, this chapter attempts to further elucidate three concepts: First, that social media are a powerful tool for spreading awareness about social and political events, and that this awareness can lead to engagement.

Second, the power of accidental exposures to information and the persuasiveness of discussion disagreement (by making users' social context more heterogeneous, social media can boost flexibility, tolerance, and intellectual stimulation). Third, the conditions under which virtual communities can stimulate civic engagement. The following sections of this chapter will also emphasize the risks connected with the easy creation and dissemination of individual political content, which may create a dangerous sense of empowerment linked to a more and more popular and firmly held belief that everybody can "do" politics in some form. These dynamics are creating confusion, facilitating the spread of fake news, and nurturing a dangerous wave of cynicism, and protests, as well as aggressiveness from the so-called social networks' "trolls," all of which demands a prompt response. It is suggested that an effort to re-emphasize integrity—defined as the promotion of values such as truthfulness and accuracy—is key to facing this threat.

## **Social networks in Asia: a preliminary case study on the Chinese and Indian experiences**

The urgency of reducing the current absence of studies exploring the impact of digital technologies and social media in Asia becomes even more pressing after recognizing the popularity of online platforms in this region. According to data published by Miniwatts Marketing Group, an American organization famous for collecting and analyzing Internet-related data, Asia already hosts 50.2 percent of global Internet users. The significance of this quota becomes even more relevant when compared to the online populations of other world regions: 8.7 percent of virtual users are in North America, 10.5 percent in Latin America, and 16.7 percent in Europe (Miniwatts Marketing Group n.d.b).

To fully understand the potential outreach of digital technologies and new media in Asia, it is important to link these numbers to the ones emerging from another dataset, the one ranking connection rates, or "Internet penetration," defined as the portion of the population that has access to the Internet. From this perspective, North America stands out, with 89 percent Internet penetration, followed by Europe (73.5 percent), Latin America (59.4 percent), and Asia (45.6 percent) (Miniwatts Marketing Group n.d.b). The huge digital divide that currently characterizes Asian societies, together with a generalized preference in the region for accessing news and any other information through mobile technologies, further speaks to the necessity for better analyzing the dynamics of online interactions. In societies in which online access is guaranteed by the use of smartphones, their increased affordability offers the chance to significantly expand the outreach of messages distributed online.

Unfortunately, the most relevant studies on digital media and political engagement (of which there are still very few), have been conducted in the United States (Kim, Hsu, and Gil de Zúñiga 2013; Tewksbury et al. 2001; Tewksbury and Rittenberg 2012). Although the number of studies investigating the impact and power of social media in Europe is increasing (Boulianne 2016; Valeriani and Vaccari 2016), there are still few concentrating on Asia. The Internet already plays a major role in a region in which the number of Internet users is expected to register an exponential growth in the near future. It is all the more urgent to study these areas because of the difficulty of generalizing the findings of social media studies focusing on other regions with specific political, economic, and social features.

## Online media in China

Analyzing the impact of new media in China is a difficult task. With nearly half of the population accessing the Internet, particularly through portable technologies, the enormous influence of these media is undeniable, and new media are emerging as useful and friendly platforms for ordinary people “to express and share opinions and information” (DeLisle, Goldstein, and Yang 2016: 1).

Moreover, they have changed the way the Chinese authorities communicate with the people they rule. China’s party state now invests heavily in speaking to Chinese citizens through the Internet and social media, as well as controlling the speech that occurs in that space. (DeLisle et al. 2016: 1)

This double use of online media is common in liberal and democratic societies as well, although at a lower scale. What makes China a unique case is the power of censorship, which significantly impedes the reliability of any attempt to critically analyze the impact of new media and social platforms in the country. This awareness, together with the limited transparency of information collection and dissemination in China and the poverty of existing studies conducted in this field, is de facto reducing the ability of existing studies to be accurately applied to the situation in China. At the same time, the latter remain a useful starting point for understanding the impact of new technologies and media in China, as well as a warning sign about the urgency of deepening research in this area.

Consolidated studies have proved that: “expectations that the Internet would quickly become an overwhelmingly positive and transformative force in China” are misplaced, as the Chinese government has rapidly “adapted and developed new means of limiting and controlling speech in cyberspace, including mechanisms of participation, monitoring, regulating, censoring and sanctioning” (DeLisle et al. 2016: 4).

In China, “the coevolution of digital activism and authoritarianism does not pronounce immediate winners and losers. However, it has become increasingly clear that the Internet is not necessarily an insurmountable threat to capable illiberal regimes” (Jiang 2016: 30). The case in China then, confirms the idea that the Internet is a powerful tool to spread the awareness on specific events leading to engagement. However, what is unique in China is that this awareness is strongly mediated by the Communist Government. In a cat- and-mouse game, the Communist Party of China (CPC) has succeeded in promoting a select use of the Internet, allowing people to use it as a “means for socioeconomic development while successfully minimizing its political impact” (Jiang 2016: 30). According to Min Jiang, to understand the role of the Internet in China, it is important to accept the existence of an implicit state–society pact that includes “the political status- quo, a one- party system monopolized by a small group of élites with the assurance of reasonable performance social stability, and continued economic growth, shall remain unchallenged” (Jiang 2016: 30).

If this is the case, it is impossible to argue that grass- roots empowerment is either wholly manipulated by the CPC or that it is not happening. Rather, social activism is spreading online, but following rules and dynamics decided by the government.

During the last few decades, and thanks to the Internet, civil society organizations in China have registered a dramatic growth (Yang 2009). However, the major limitation of any attempt to evaluate the impact of the Internet on civic engagement is the reliability of studies’ collected data. Some studies argue that many Chinese citizens exhibit low levels of trust and interest in official organizations, implying they might prefer to be in touch with informal online communities (Svensson 2016). There are other studies claiming that certain groups are more active than others online. Amongst the more active groups are the youth (for being digital natives and individualistic), the growing middle class (as more interested in safeguarding its interests without opposing the party- state), and professional groups such as lawyers and journalists (as more inclined to spread and support sensitive and highly politicized campaigns) (Svensson 2016).

Other researchers argue that the reliability of collected data in China can be compromised by the active role the government plays, as it employs intimidating measures ranging from information filtering and hiring

pro- state commentators to supporting official views, to more contemporary initiatives such as the Real Name Registration Policy and anti- rumor campaigns (Creemers 2012). Finally, there are studies claiming that China has a problem with “uncivil society virtual groups” (Simon 2013; Zheng 2007), a term used to “capture the extreme incivility of online exchanges between individuals and groups over public issues, which not only fail to produce solutions to problems, but also accentuate group identities and widen the ideological chasms between them” (Jiang 2016: 46). Although this disruptive phenomenon is a problem for many countries, in a nation like China, the non- existence of adequate mechanisms to channel online exchanges to build constructive dialogue can further limit the positive and powerful role the Internet and social networks can play in promoting engagement.

That being said, it is important to keep in mind that, in China, individuals, networks, and organizations that are critical of the government continue to be prosecuted by it. However, any campaign able to successfully deal with censorship and repression is de facto spreading the positive effects of accidental exposure to information and creating conditions for the empowerment of online discourse. If, in the authoritarian context, a click is the only strategy to raise awareness on hidden or suppressed issues, all new forms of social activism, either censored or self- censored, may favor the opening of new spaces for the emergence of civil society movements, even in non- democratic countries like China. At the same time, promoting social activism in areas that are not discouraged by the government may indeed consolidate the idea that activism is not always dangerous, but rather can achieve limited successes. Only time will tell whether, in the long run, civil society or the party will win this still unbalanced game of cat- and- mouse.

## **The power of social media in India**

India is another relevant case study emphasizing the urgency of deepening research on the impact of social media for information dissemination and civic engagement. According to a recent report published by the marketing agency We Are Social (Kemp 2015), India has 462 million active Internet users (out of a global total of 3.63 billion), and this number is growing at a rate of 90 percent per year (the global average is 19 percent). India also counts 153 million active social media users, of which 130 million operate on mobile devices. Considering that the country has 1,012 million mobile connections registered, their actual penetration rate is limited to a mere 10 percent, but this value is growing at a rate of 20 percent per year (Kemp 2015).

These numbers can confirm two trends: First, 65 percent of India is still far from having access to the Internet, but the country is catching up increasingly quickly. Second, the Internet is the only platform in the county available for engaging and mobilizing people, and both politicians and civil society activists have started regularly using it to expand their outreach in the country.

As was the case in China, the lack of quantitative studies on how social media are used in India makes it impossible to evaluate their impact on local civil society. However, the exponential growth in the use of social media confirms the urgency of gaining better understanding of what kind of roles these new platforms play in society.

The number of mobile Internet users has been growing hand in hand with politicians’ online activism. In particular, it is claimed that: “the incorporation of politics into social networking sites has made it impossible for political parties to ignore social media” (Neyazi 2013). Although some scholars have argued that voters’ changing expectations toward their elected representatives have given social media disproportionate power compared to their real coverage and representation of countries’ preferences, when a group of researchers attempted to measure the impact of social networks on political engagement in India, mixed findings were collected. It has been confirmed that social networks are part of the daily routine amongst urban Indian youth, but their use is seldom associated with political engagement. Youth feel that politics can be discussed in social media. However, they limit their political participation to giving likes to others’ posts/tweets/videos and so on. If and when they post political content, it is mostly in the form of status updates/tweets and memes. Youth, by and large, do not use social networks to propagate political ideologies or support/criticize political parties and

movements. They also feel that social networks do not really connect them with political leaders. Very few of the youth feel that social networks are an effective tool for political engagement. (Rupa and Karnamaharajan 2015: 220)

If we think about how people usually form their ideas, although we tend to assume that no external influence will interfere with the way in which we see things, it has been proved that: “citizens are often influenced by messages filtered through the news media, the social context of their peer group, or both” (Diehl, Weeks, and Gil de Zúñiga 2016: 1875). The reason why social media have emerged as the best social environment for shaping ideas is linked to the fact that these platforms offer a unique environment in which users can be simultaneously exposed to news and to the views of the people that are part of their social network (Diehl et al. 2016: 1875). The case of India is useful for validating the idea that social media can facilitate political persuasion.

Literature has already confirmed that political persuasion can occur through conversation and constant exposure to diverse opinions (Gastil 1993; Ryfe 2005). According to Trevor Diehl, Brian E. Weeks, and Homero Gil de Zúñiga, “both basic social interaction and use of news within social media are directly related to persuasion on social media.” In particular, they claim that: “news and social interaction behaviors indirectly facilitate political persuasion, by increasing the diversity of individuals’ networks, which subsequently increases their exposure to political views that differ from their own” (Diehl et al. 2016: 1876–1877), and that this can lead to political persuasion.

Although Diehl et al. do not refer directly to “influencers,” their analysis confirms research findings that people that are used to interacting in large and diverse cohorts are more likely to be exposed to alternative views (Huckfeldt, Johnson, and Sprague 2004; Mutz 2002), and can become more tolerant of those views (Mutz 2002) and even more likely to change their own perspectives over time (Levitan and Visser 2009).

At the heart of this literature is a fairly simple idea: individuals’ opinions and attitudes are contingent upon characteristics imbedded in their social connections. Since the Internet and social media make it much easier to access and build diverse networks, it stands to reason that persuasion on social media happens through connections in heterogeneous networks. (Diehl et al. 2016: 1877)

There are three major dynamics that can transform social media into extremely persuasive tools. The first is accidental exposure to news, a phenomenon that is broadening the number and type of sources that online users are confronted with. Second is the “discussion disagreement” process, which, by exposing individuals to dissenting views, can force them to seek more information, reflect on their own opinions, and ultimately even increase their willingness to reconsider their views (Mutz 2002; Mutz and Martin 2001). Third, the informal setting constituted by social media has increased the opportunities for traditional users to get in touch with “influencers.”

Traditionally understood as people who are highly active on social media and blogs and who can influence consumers through recommendations or stories about their direct experiences, influencers are becoming more and more popular and powerful in political arenas as well.

With Internet users looking for direct and authentic rather than media-mediated connections with their favorite opinion leaders, the latter have realized the potential of the Internet to raise consensus on specific causes. In particular, it has been argued that, as individuals encounter messages on social media from other users that they know or trust (at least to some extent, which makes this condition applicable to public figures as well), they are likely to process what they are saying in a more positive and unbiased way compared to their interpretation of messages from impersonal sources such as the mass media (Valeriani and Vaccari 2016: 1861).

The Indian anti-corruption leader Anna Hazare effectively used social media to mobilize Indian people over the issue of the Jan Lokpal Bill in 2011. “The effective use of social media not only brought the issue into cyber space and made it more global, but also garnered huge support for the anti-corruption campaign” (Neyazi 2013), a statement reinforced by the fact that Anna Hazare and the Jan Lokpal Bill were the most popular topic

of Facebook status updates in India throughout 2011.

The role of political influencers can become particularly strong in countries where the government is delegitimized. While looking for reliable leaders, data, and opinions, Internet users may end up trusting their online networks more than traditional media, and start regularly approaching influencers to follow their perspectives and insights on specific issues.

This practice gives political influencers more and more power, but it also favors the proliferation of less qualified figures interested in spreading negative, cynical, and biased views online. In India, social media again became a prominent political platform when the current Premier Narendra Modi decided to use it to connect with the national population. The way in which the Indian leader has been able to build a better image for himself, gain people's trust and support, and create a special relationship with his supporters has no precedent in India, or anywhere else in the world, and is the result of a successful campaign conducted on social media (Ramalingegowda 2014). On September 2014, Twitter decided to release a special blog on the 100 days of Twitter diplomacy by Narendra Modi. In particular, it was highlighted that the Indian premier was using both his personal handle (@NarendraModi) and his official handle (@PMOIndia) to give live updates to his cohort of 8.5 million followers, which has since expanded to 44.6 million people. His election victory Tweet from @NarendraModi was the most- retweeted Tweet of all time from India. A look at the geo- tagged Tweets of the first 100 days of Government about @NarendraModi suggests that he was and likely continues to engage with users all over the world who are interested in Indian politics and his administration (Khurshed 2014).

Narendra Modi is not the only politician who has decided to use social media to engage his supporters. However, no matter how much online users enjoy this idea of feeling directly in touch with their leaders, more research is needed to verify whether political leaders can be classified as influencers. The role of influencers should be to mediate harsh and biased political views that circulate online, and to offer users a more solid and accurate perspective on specific topics under discussion. Considering that political leaders' views are not always moderate and well-articulated, they will not all fall into the category of "influencers." Rather than trying to become influencers themselves, using social networks to be perceived as being closer to people, it is suggested that politicians may become more powerful on social media by relying on influencers' support.

## Conclusion

It is clear from this review on how new media and social media work in Asia and elsewhere that more empirical studies are needed to understand the role these new platforms are playing in contemporary societies and the way in which civil society movements may use them to promote engagement. That said, social media seems to be emerging as a double- edged sword, able, on the one hand, to create and consolidate a dangerous trade- off between the freedom to access news, valuable opinions, public officers and influencers, and on the other, to spread cynicism, fake news, biased perspectives, and aggressive messages.

At the same time, consolidated research has proven that online activism can not only promote engagement, but also have a "real- world" impact when a critical mass of users is involved in a concerted action. This finding is enough to suggest that social media may be used to promote support for civil society campaigns.

However, to foster a mutually supportive relationship between civil society actors and social media, new rules should be created to avoid having the Internet become an uncontrollable "Far West." An effort to re- emphasize integrity—the promotion of values such as truthfulness and accuracy—which can be made by strengthening the synergy between social networks and traditional media and by promoting the role of influencers, is a key element in reshaping the Internet as a more trustable, safer, and less aggressive space. However, more research is needed to understand who is expected to discuss, define, and implement these new rules for our virtual reality. In particular, it is important that future studies concentrate on identifying legislators whose decisions can be easily accepted by Internet users. Valid and reliable influencers could play an important role in this process as well.

Finally, it is important to always keep in mind that rapid and unexpected changes in technologies will continue to reshape the relationship between Internet use and civil and political engagement, creating more pressure on scholars researching in this field to keep their findings up to date.

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## **Two Arguments for Limited Government and Civil Societies** **- Lauren Hall**

Generally speaking, when we talk about civil society, we're talking about all the ways that people associate with each other when they're not interacting directly with the state or the political process, and they're not buying and selling things on the market. So in the sort of theory of civil society we generally talk about three different types or sort of subsets of civil society. There are the primary associations, and some people don't put this in civil society at all. And those are sort of friends and family. So the kin relations that we have, the really close friendships that we have. And those are the primary associations that again are sort of quasi voluntary and our families are not always totally voluntary. But those are the really close intimate relationships. What matters more for most civil society scholars are the secondary and to a certain extent tertiary associations.

And the tertiary associations are the kinds of associations that you're a member of but you don't really interact with people in those associations. So if you are a member of, or if you donate to NPR, for example, or the various environmental groups you might send a check once a year, so you're a member in a sort of nominal sense and you give them financial support but you're not really interacting with anybody. It's not what we call a thick relationship.

But when people think about civil society broadly very often what they're thinking about are these secondary associations. And so the secondary associations are all of the situations in which people organize and associate with each other that are not based off of kin and that are not based off of selling or sort of swapping services. So you can think about these as everything from religious associations so the church that you go to, the synagogue that you go to, to the roller derby team that you're on to the group that you meet up with at the library to do puzzles or whatever with on Sunday afternoons. So all of those different ways that you associate with people to fulfill some kind of end.

The major argument for limiting the power of government broadly and expanding what we call civil society, which again we're primarily talking about these secondary associations, but depending on who you talk to there's arguments about really expanding the role of the family, for example, also. But the major argument is, well there's two arguments I'll say. One is a basic efficiency argument and the efficiency argument simply says the government, especially in large nation states is simply too big to know what people actually need and is too big to actually help them in the way that they need to be helped. So this is related to Smith's argument about sort of universal benevolence. It would be really nice if we could take care of everyone, even people that we've never met. But we just can't. We don't have the systems in place to do that. And moreover we're actually more likely to harm them because we don't know what they really need. So imagine that there's some sort of hurricane and you show up with a huge truckload of water and everyone says well, we have wells. What we really need are generators.

Well now you've wasted a bunch of resources bringing them something that they don't need and they're no better off. And so the efficiency argument says we need to try to devolve a lot of services onto the people who know those people the most and again those secondary associations where people have face to face knowledge of what everyone needs. So that's the efficiency piece. The moral piece though is one that I think is even deeper than the efficiency piece and that's a question of coercion, which means that even if you don't like the government's response to your specific problem you will be forced to accept it. So what a lot of classical liberals and libertarians get concerned about is the moral problem of government intervention which is that the government is a coercive organization.

And when we talk about the state generally very often what we talk about is it's any kind of institution that has

a monopoly on the use, of course, of force. A legitimate monopoly, a monopoly on the use of force. So, what that means is government can say I want to help these people and I'm going to raise your taxes to do it. And so, while we might agree that those people need to be helped, I might not agree about the way that the government is helping. And I might also not agree with a variety of things that the government does with my tax dollars.

So, for example, the government might say I want to use your taxes, I'm going to take money from you and I'm going to force you to give me that money and I'm going to use that money to create a single payer health care system. And I say okay, I'm in favor of single payer healthcare, but the government is also going to use that money to say go to war with a bunch of people that I think are innocent in Afghanistan or Iraq. So all of a sudden I don't have a choice in how my money is being used. I might appreciate one use that the government is putting it to, but I might have real problems with other uses. And I don't have any option or way of exiting that relationship.

So what happens in civil society, at least ideally, is that the secondary associations give you more freedom to move between associations that do meet your needs in various ways. They also give you just more freedom to dissent without the coercive piece. So if I'm a member, for example, of a conservative religious organization I may say there's all these things that I agree with about this community, but there's a couple of things that I don't agree with. So I recognize that in order to be a member, a full member of this community I might have to have very similar kinds of beliefs about certain things. But there's areas that I can disagree and so maybe when the tithing, the basket goes around and there's a specific organization that they're supporting that I don't believe in or trust I say well, I'll put my money into something else for this week or something like that. So there's a freedom of exit with secondary associations and that's true broadly speaking. So if I'm a member of a very, again to use the religious example, if I'm a member of a very conservative religious organization and I, for example, don't like their attitudes toward say women or LGBTQ folks I can say you know what, I'm going to find a different religious association that I want to be a part of that, in fact, has what I think are better values in this area. And so I can move.

So when we talk about freedom of exit that's what we mean is the ability to exit relationships that are no longer serving our purposes. The problem with government broadly is that there's no exit.

So I can look at the government and say well, I've got all these problems with say, for example, wars and the criminal justice system or I'm really upset about something else. But I can't withdraw my tax dollars and say I want to put them somewhere else. I'm stuck. I'm stuck with that government. And, in fact, because of restrictive immigration policies it's almost impossible nowadays to move to another country unless you're extraordinarily privileged and have a job in that country and all sorts of other things. So for a lot of libertarians the problem of government is both that it tends to solve problems in inefficient ways, but it also relies on coercion when if you rely on these civil societies, these secondary associations, you create more wiggle room for people to find systems that meet their needs.

## के हो नागरिक समाज ? के हुन यसका शक्ति र सीमा ?

- लोकसंजग पराजुली, हर्षमान महर्जन, देवराज हुमागाई र प्रत्यूष वन्त

अंग्रेजीमा 'सिभिल सोसाइटी' भनिने नागरिक समाजको अवधारणा र यसको औचित्य सम्बन्धी बहसको पश्चिममा लामो इतिहास छ । यो अवधारणा नेपाली प्राज्ञिक र गैरप्राज्ञिक प्रयोगमा छिरेको खासै धेरै समय भएको छैन (थप जानकारी तल उल्लेख छ) ।

उदाहरणका लागि सन् १९९० को जनआन्दोलनमा अहिले हामी जेलाई नागरिक समाज भनेर बुझ्छौं, त्यसको एउटा हिस्साको संलग्नता थियो । सोही संलग्नतालाई कदर गर्दै जनआन्दोलनपछि बनेको अन्तरिम सरकारको मन्त्रिमण्डलमा दुई सदस्य-देवेन्द्रराज पाण्डे र मथुराप्रसाद श्रेष्ठ-लाई मनोनयन गरिएको थियो । त्यस बखत पाण्डे र श्रेष्ठलाई 'स्वतन्त्र' भनिए तापनि मानवअधिकार संगठन/व्यावसायिक संगठन मार्फत जनआन्दोलनमा उनीहरूले खेलेको भूमिकालाई कदर गर्दै मन्त्रपरिषद्मा स्थान दिइएको थियो ।

सन् २००५-२००६ को दोस्रो जनआन्दोलनमा पनि पाण्डे र श्रेष्ठ दुवै जना संलग्न भए, भलै सक्रियता कमोबेसी होओस् । वास्तवमा भन्ने हो भने दोस्रो जनआन्दोलनको मियो नागरिक आन्दोलन थियो । छोटकरीमा नागरिक आन्दोलन भनिए पनि यो 'लुज नेटवर्क' को औपचारिक नाउँ "लोकतन्त्र र शान्तिका लागि नागरिक आन्दोलन" थियो, यद्यपि यो कतै विधिवत दर्ता भने थिएन ।

देवेन्द्रराज पाण्डे, कृष्ण पहाडी, खगेन्द्र संग्रौला लगायतका व्यक्तिहरूको नेतृत्वदायी भूमिका रहेको यो समूहलाई कतिपय मिडियाले 'नागरिक समाज' भनेर लेख्थे भने समूहका हर्ताकर्तालाई पत्रपत्रिका र सामान्य बोलीचालीमा "नागरिक समाजका अगुवा" भन्ने गरिन्थ्यो ।

यद्यपि, उनीहरूले समूह (संस्थागत) को रूपमा आफूलाई 'नागरिक आन्दोलन' र सदस्यहरूलाई "नागरिक" को रूपमा चिनाइरहेका हुन्थे । यो समूहले आफूलाई 'नागरिक समाज' नभई नागरिक आन्दोलन भनी सचेत रूपमै प्रस्तुत गर्न चाहनुको कारण "नागरिक समाज" भन्ने अवधारणा अलि 'फजी' (अस्पष्ट) भएको, अनि यसको एकखाले परिभाषा-जसमा सबैखाले संस्था अटाउँथे-अलि व्याप्त भएकोले त्यो भेलमा आफूहरू नहराऔं र आफ्नो भिन्नता (डिस्टिन्क्सन) कायमै रहोस् भन्ने थियो ।

अर्को, यो अवधारणाको परिभाषा र बुझाइमा मतैक्य छैन। अन्यत्र भैं नेपालमा पनि अहिले 'नागरिक समाज' पदावली सर्वव्यापी जस्तै छ । र, नेपालमा भैं अन्यत्र पनि यसको परिभाषा र व्याख्यामा एकमत देखिन्न । बेलायतको लण्डन स्कूल अफ इकोनोमिक्सको सेन्टर फर सिभिल सोसाइटीले नागरिक समाजलाई गरेको परिभाषा तल दिइएको छ, जसलाई हामी धेरै खाले परिभाषाको न्यूनतम साझा परिभाषा भन्न सक्छौं ।

अरु कसैको दबावमा नआई साझा स्वार्थ, उद्देश्य र मान्यता बोकेका व्यक्तिहरूको निश्चित सामूहिक प्रयत्नलाई नागरिक समाज भन्न सकिन्छ । सिद्धान्ततः यसका संरचनात्मक स्वरूप राज्य, परिवार र बजारभन्दा पृथक हुन्छन्, यद्यपि व्यवहारमा राज्य, परिवार र बजारका आपसी सीमाहरू प्रायः जटिल, धूमिल र 'नेगोसिएटेड' हुन्छन् ।

नागरिक समाजको सामान्यतः स्थान, अभियन्ता र संस्थागत संरचनामा विविधता देख्न पाइन्छ, र सँगसँगै तिनको औपचारिकता, स्वायत्तता र शक्तिमा समेत भिन्नता पाइन्छ । परोपकारी संस्था, विकासे गैरसरकारी संघ-संस्था, सामुदायिक संगठन, महिला संगठन, धार्मिक संगठन, व्यावसायिक संगठन, धार्मिक संस्था, सामाजिक आन्दोलन, व्यापारिक संगठन, सहयोगी समूह र तिनका सञ्जाल, पैरवी समूह आदिलाई नागरिक समाजका संगठन भन्न सकिन्छ ।

यो परिभाषाले अभिव्यक्ति स्वतन्त्रता र संगठित हुने स्वतन्त्रता भएको एउटा लोकतान्त्रिक राज्यको परिकल्पना गर्दछ, जहाँ सामाजिक संगठनहरू आफ्ना 'साझा स्वार्थ, उद्देश्य र मान्यता' अधि बढाउन स्वतन्त्र छन्/हुन्छन् । हुन पनि नागरिक समाजलाई लोकतन्त्रसँग गाँसेर हेरिएको पाइन्छ (कीन सन् १९८८) । नीरा चन्दोकका अनुसार "एउटा मौन र आज्ञापालक नागरिक समाजले तानाशाही राज्यलाई जन्म दिन्छ भने ज्वलन्त र सक्रिय नागरिक समाजले लोकतान्त्रिक र संवेदनशील राज्य सुनिश्चित गर्छ" (सन् १९९५ : ७२) । यसरी एक हिसाबले राज्यको प्रकृतिसँग नागरिक समाजको नजिकको सम्बन्ध भएको बुझ्न सकिन्छ ।

तर यसले थप प्रश्न जन्माउँछ : पहिलो, त्यसो भए तानाशाही व्यवस्था भएका मुलुकहरूमा नागरिक समाजको अस्तित्व रहन सक्छ कि सक्दैन ? चन्दोकको माथिको उद्धरण अनुसार राज्य अधिनायकवादी हुँदैजाँदा नागरिक समाजको अस्तित्व विलुप्तप्रायः हुन्छ । दोस्रो, ती नागरिक संगठन

जो सक्रिय, जीवन्त छैनन्, तिनलाई नागरिक समाज भन्न मिल्छ कि मिल्दैन ? के सबैखाले सक्रियता नागरिक समाजको द्योतक हो ? नागरिक समाजबारे चर्चा गर्ने क्रममा यी प्रश्न महत्त्वपूर्ण बन्न जान्छन् ।

यी प्रश्नबारे घोट्लिनुअघि पहिले अवधारणाको रूपमा नागरिक समाजको अभ्युदय कसरी भयो त्यसबारे चर्चा गरौं । त्यसपछि हामी यसको राज्यको प्रकृति सँगको सम्बन्ध र चौघेरा विवादबारे चर्चा गर्नेछौं । लगत्तै, हामी नेपालको नागरिक समाजको क्रमिक विकासको चर्चा एवं नेपालमा नागरिक समाजबारे भएका अध्ययनलाई पस्कने छौं । परिचयको अन्तिम खण्ड यो पुस्तकमा संगृहीत लेखबारे हुनेछ ।

## नागरिक समाजको पुनरोदय

उदारवादी र 'न्याडिकल' दुवै चिन्तकले नागरिक समाजको कुरा गरे पनि यो अवधारणा लामो समय गुमनाम समेत रह्यो । तर सन् १९७० र १९८० का दशकमा पूर्वी युरोप, दक्षिण अमेरिका र अन्यत्रको राजनीतिक परिवर्तनपछि यो अवधारणा पुनः प्रचलित भयो ।

कोहेन र अरतो (सन् १९९२) का अनुसार त्यहाँका अभियन्ताहरूले नै नागरिक समाजको अवधारणालाई अगाडि सारेका हुन् । राज्य र अर्थव्यवस्थालाई पूर्ण रूपमा ध्वंश नगर्ने सीमित-क्रान्तिको खोजी गर्ने क्रममा नागरिक समाजको अवधारणा अघि आयो र नागरिक समाजको उदारवादी धारलाई पुर्णता दियो । अधिनायकवादी शासन व्यवस्था ढाल्नमा सुषुप्त रहेका ती नागरिक समाजले भूमिका निर्वाह गरेकाले अधिनायकवादी शासन व्यवस्थामा नागरिक समाजलाई राज्यले सहवरण पनि गर्नसक्ने र सँगै सुशुप्तावस्थामा रहेर भिन्न हिसाबले समेत सक्रिय हुनसक्ने यसले देखाउँछ (हेर्नुहोस्, पराजुली सन् २००९) । पहिले नागरिक समाज भन्नाले जे बुझिन्थ्यो र अहिले जे बुझिन्छ त्यसमा ठूलो भिन्नता छ । हाम्रो विचारमा आज नागरिक समाज भनेको कानून पालना गर्ने, कर तिर्ने, धर्मभिरू नागरिक बनाउने अथवा कथित “बहकिएका र अराजक” भनिने जनसंख्यालाई सुमर्ने कुरा होइन, बरु खासमा राज्यलाई सुमर्ने कुरा हो; उसलाई नागरिकपक्षीय तुल्याउनु, मानवीय बनाउनु हो ।

फ्रान्स, जर्मनी जस्ता लोककल्याणकारी राज्यमा पनि सोही समयमा समानान्तर रूपमा नागरिक समाजको बहस बाहिर आयो । मुख्यतः सामाजिक लोकतन्त्र वा लोककल्याणकारी राज्यले नागरिकहरूको स्वतःस्फूर्त सक्रियतालाई समाप्त पारी परजीवी तुल्याएको भन्दै आलोचना गरिएको हो । नागरिक समाजको दोस्रो लहर खास गरी दायँ र बायाँ दुवै थरीका सरकारले अगाडि बढाएका आधुनिकतावादी वा विकासवादी दर्शनको असफलता-सामाजिक न्याय र कम-विषम समाज निर्माण गर्ने सम्बन्धमा-को कारण थियो ।

हामीले पुँजीवादीहरूको बजार अर्थशास्त्र, उदारवादीहरूको बहुदलीय व्यवस्था र समाजवादी भन्नेहरूको एक दलीय कम्युन प्रणालीका दुर्दान्त कथा देखेका र भोगेका छौं । त्यही भएर नागरिक समाजको पुनरोदय भनेको शताब्दीऔँ पुरानो अवधारणाको उही अर्थको उदय होइना पहिले नागरिक समाज भन्नाले जे बुझिन्थ्यो र अहिले जे बुझिन्छ त्यसमा ठूलो भिन्नता छ । हाम्रो विचारमा आज नागरिक समाज भनेको कानून पालना गर्ने, कर तिर्ने, धर्मभिरू नागरिक बनाउने अथवा कथित “बहकिएका र अराजक” भनिने जनसंख्यालाई सुमर्ने कुरा होइन, बरु खासमा राज्यलाई सुमर्ने कुरा हो; उसलाई नागरिकपक्षीय तुल्याउनु, मानवीय बनाउनु हो ।

यति भन्दाभन्दै पनि के कुरा दोहोर्‍याउनै पर्छ भने नागरिक समाज भन्ने अवधारणाको बुझाइमा एकरूपता छैन, जसले गर्दा नागरिक समाजलाई धेरैले धेरै तरिकाले बुझ्ने र व्याख्या गर्ने गर्छन् । न त वैश्विक न मुलुक भित्रकै प्राज्ञिकहरू एउटा साभा परिभाषामा मतैक्य जनाउँछन् ।

यो भिन्नताको एउटा कारण उनीहरू उभिएको वैचारिक धरातल वा उनीहरूले पहिरेको वैचारिक चश्मामा भएको पृथकता हो । कसैका लागि नागरिक समाजको प्रभावकारी शक्ति अर्थव्यवस्थामा, सम्पत्ति अधिकारमा र बजारमा अन्तर्निहित हुन्छ । अरूका लागि भने नागरिक समाज आर्थिक क्षेत्र र राज्यको परिधिभन्दा बाहिर हुन जरूरी हुन्छ । रोचक त के भने यी दुई मुख्य धारभित्रै पनि आपसी मतैक्य छैन ।

नागरिक समाजको उदारवादी परिभाषा, जुन सामाजिक पुँजीसँग जोडिएर हेरिन्छ, नेपालमा पनि ज्यादा प्रचलित छ । यो वैचारिक धारबाट हेर्नेहरूले नागरिक समाजलाई आर्थिक विकाससँग जोडेर हेर्छन् (हेर्नुहोस्, पुट्टनम सन् १९९३) । अन्य राजनीतिक र धार्मिक हिंसा घटाउन वा हुन नदिन पनि नागरिक समाजका संगठनका सञ्जालले भूमिका खेल्ने ठानिन्छ (भार्श्ने सन् २००१, सन् २००२) ।

त्यसै हुनाले अन्तर्राष्ट्रिय वित्तीय तथा विकास संस्थादेखि स्थानीय विकास संस्थाहरूको पनि ध्यान नागरिक समाजमा छ । यी सबै खाले संस्थाहरूले नागरिक समाजमा लगानी गरिरहेका छन्-उनीहरू कथित अविकसित मुलुकहरूमा नागरिक समाज 'बनाउने' र 'सशक्तीकरण गर्ने' काममा लगानी गरिरहेका छन् । उनीहरूको ध्येय देश विकास गर्नुका साथै कमजोर, भ्रष्ट र अप्रभावी राज्यलाई सुधार गर्ने भएको दावी गरिन्छ । संयुक्त राष्ट्र संघ र सयौँ अरू अन्तर्राष्ट्रिय संघ-संस्थाहरू यस्ता कार्यमा संलग्न देखिन्छन्, जसले गर्दा नागरिक समाज भन्ने पदावली व्यापक र आम रूपमा प्रयोग हुन थालेको छ (कीन सन् २००३) । यसरी “दाता” हरूले विकास सम्बन्धी खास संकथनहरूले नागरिक समाजको एक थरी (उदारवादी) अवधारणालाई ख्यात बनाउन सघाएका छन् (तामाड सन् २००२) ।

खास गरी दक्षिणका देशहरूमा नागरिक समाजले पैरवी/प्रतिरोधभन्दा ज्यादा सेवा प्रदायकको भूमिका निर्वाह गरोस् भन्ने छ । नागरिक समाजका अवयवहरू-बोलीचालीको भाषामा गैरसरकारी संस्था वा एनजीओ/सीएसओ/सीवीओ भनिने संस्था-लाई विकासको काम गर्न भनिएको छ ।

पहिले राज्यको दायित्व भनेर मानिएका विभिन्न सेवाहरू अहिले नागरिक समाजका अवयवलाई प्रभावकारी र चुस्त रूपमा प्रदान गर्न भनिएको छ । त्यसैले, अहिले नागरिक समाजलाई दोहोरो भार छ : एउटा चाहिँ राज्यको जस्तो (अथवा बजारको पनि) भूमिका प्रदर्शन गर्दै प्रभावकारी र चुस्त सेवा प्रदायक हुने र अर्को चाहिँ बजार र राज्यको 'अति' लाई रोक्ने, प्रतिरोध गर्ने, पैरवी गर्ने ।

उदारवादी खेमाले नागरिक समाजलाई राज्य र बजारको दुरुपयोग र असफलतालाई केही हदसम्म रोक्नसक्ने ठाने पनि उनीहरू नागरिक समाजलाई राजनीतिक मुद्दामा या सामाजिक न्यायका विषयमा बहस-पैरवी नगरोस् या गर्न हुन्न भन्ने ठान्छन् ।

अर्कोतर्फ, 'व्याडिकल' हरूले चाहिँ उदारवादीले भैँ निजी व्यवसाय या गतिविधिमा नागरिकको भूमिकालाई स्वीकार गरे पनि नागरिक समाजलाई व्यापारिक र राज्यको शक्तिलाई, दबदबालाई प्रतिरोध गर्ने 'एन्टिटी' का रूपमा हेर्छन् । उनीहरूले नागरिक समाजको राजनीतिक वा प्रतिनिधिमूलक कर्मलाई जोड दिँदै सामाजिक पहिचानहरूलाई अधि बढाउने, समाजका बृहत्तर स्वार्थ र विचारलाई आवाज दिने गर्छन् । उनीहरूको अवधारणालाई हेर्ने हो भने राजनीतिक रूपमा सक्रिय वा परिचालित र जुभारु खालको नागरिक समाजको परिकल्पना त्यहाँ देखिन्छ ।

## नागरिक समाजको नटुंगिने चौधेरा-विवाद

राज्य वा सुरक्षा निकाय र निजी वृत्त वा परिवारलाई सायदै कसैले अहिले नागरिक समाजको चौधेराभित्र राख्छन् । तर नागरिक समाजमा को-को पर्छन् भन्ने विषयमा प्राज्ञिकहरूमाभ मतैक्य पाइँदैन । उनीहरूमाभ नागरिक समाजको “सीमा वा चौधेरी” बारे ठुलै मतभेद छ ।

कतिपयलाई संकीर्ण भएको आरोप लाग्छ भने कसैलाई सीमा नखिची जो-सुकैलाई पनि नागरिक समाजको घेरोभित्र ल्याएकोमा आलोचना गरिन्छ । तथापि, आम रूपमा नागरिक समाजलाई स्वयंसेवी वा गैरसरकारी संस्था (एनजीओ/सीवीओ), पैरवी समूहहरू, सामाजिक आन्दोलनहरू र मानवअधिकार संगठनहरूको पर्यायवाची सरह हेरिन्छ ।

व्यापारिक संगठन, राजनीतिक शक्ति आर्जन गर्न सक्रिय समूह (जस्तो राजनीतिक दल) आदिलाई केहीले नागरिक समाजको घेरा बाहिर राख्छन् भने केहीले भित्रा तर यस्तो प्रवर्गमा बाँड्ने काम सहज छैन र प्रवर्गमा बाँड्न गरिएको तर्कलाई पुष्टि गर्न कठिन छ ।

त्यस बाहेक, स्वयंसेवी वा गैरसरकारी संस्थाको आवरणमा यति धेरै संस्था अटाएका छन्, जसको सञ्चालन प्रक्रिया, सांगठनिक स्वरूप, संस्थागत संरचनामा ठुलै भिन्नता र जटिलता छन् (चन्द्रोक सन् २००३) । नागरिक समाजका संस्थामा देखिने यस्ता विविधता र असमानतालाई पत्रपत्रिकामा तथा प्राज्ञिक अनुसन्धानमा समेत खासै ध्यान दिइएको पाइँदैन (फाफ-चार्नेच्का सन् २००७) । सहजैसाँग नागरिक समाजको अवयव मानिने वा नागरिक समाजको घेरोभित्र राखिने कतिपय संस्थाहरू धेरै नै श्रेणी-संरचना (हायरार्कीकल) मा बाँधिएका र अलोकतान्त्रिक देखिन्छन् र केही निश्चित स्वार्थ र समूहगत लोभवाट बाँधिएका पनि हुन्छन् (आहर्ने सन् १९९८; अलेक्ज्याण्डर सन् १९९७, सन् १९९८) ।

नागरिक समाजमा “प्रतिक्रियावादी” वा “दक्षिणपन्थी” भनेर प्रस्टै चिनिएका संस्थाहरू पर्छन् कि पर्दैनन् ? यदि पर्दैनन् भने हामीले तिनलाई कुन प्रवर्गमा राख्ने ? कतिपय धार्मिक र जातीय संस्थाहरू स्वयंसेवी पनि नहोलान्, तिनले लोकतान्त्रिक विधि नै न अपनाउलान्, तर तिनीहरूले पनि अरू सामाजिक संस्थाहरूले जस्तै गतिविधि गर्छन् : ती सदस्यहरू मिलेर बनेका हुन्छन्, तिनले सामूहिक हित प्रवर्द्धन गर्छन् र सामूहिक-गतिविधि सञ्चालन समेत गर्छन् । यस्ता संस्थालाई नागरिक समाज भन्ने कि नभन्ने ? राजनीतिक दलहरूलाई के भन्ने ?

सामान्य तवरमा केलाउने हो भने राजनीतिक दल पनि अन्य संस्थाभन्दा उति धेरै भिन्न हुन्छन् । सत्तासीन वा निकट भविष्यमा सत्तामा पुग्नसक्ने सम्भावना बोकेका बाहेक अन्य धेरै साना राजनीतिक दलहरूको प्रकृति अरू सामाजिक संस्थाभन्दा खासै भिन्न हुँदैन । त्यसै गरी व्यापारिक संघ-संगठनहरूकै कुरा गर्दा पनि तिनलाई बाहिर वा भित्र राख्न पर्ने खासै कारण देखिँदैन । त्यसैले राजनीतिक दल, व्यापारिक/व्यावसायिक संगठन, मजदुर संगठन, धार्मिक संगठन र एनजीओ/सीवीओहरूको समेत स्थान (लोकेशन) को विवाद अद्यापि निरुपण भइसकेको छैन (भार्शुने सन् २००२) ।

राज्य, बजार र नागरिक समाज भनेर तीन भागमा बाँडेर व्याख्या गरिने त्रिखुट्टी मोडललाई पार्थ चटर्जी (सन् १९९०) ले चार भागमा बाँडे । चौथो खुट्टाको रूपमा उनले “राजनीतिक समाज” लाई लिए र त्यसलाई नागरिक समाज र राज्यबीच वार्ता/समन्वय गर्ने एकाइको रूपमा व्याख्या गरे (चटर्जी सन् २००१) । पश्चिमा जगतका आधुनिक सामाजिक (स्वयंसेवी) संस्था-जहाँ समानता, स्वायत्तता, भित्रिने र बाहिरिने स्वतन्त्रता, करार, निर्णय प्रक्रियामा व्यापक सहभागिता, सदस्यहरूको स्पष्ट दायित्व र अधिकार जस्ता आधारभूत मान्यता आत्मसात गरिएको हुन्छ-लाई नै नागरिक समाज भन्न उपयुक्त हुने उनको तर्क छ ।

हामीकहाँ जस्ता आन्दोलन छन्, जस्ता खाले पैरवी गर्ने संस्था छन् तिनलाई चटर्जी राजनीतिक समाजको दर्जामा राख्न चाहन्छन् । तर यस्तो कित्ताकाट वा वर्गीकरण गर्ने क्रममा उनले पश्चिमा दर्शनमै भएका पनि विभिन्न धारहरूलाई बेवास्ता गरेका छन् र एउटा यस्तो आदर्श संस्थाको परिकल्पना गरेका छन् जुन व्यवहारमा पाइदैनन् (विक्रमसिंघे सन् २००५) ।

चटर्जीको सिभिल वा सभ्य शब्दसँग अलि मोह भएको जस्तो देखिन्छ त्यसैले उनी सिभिल सोसाइटीलाई कुनै 'अनसिभिल' (अभद्र/असभ्य) काम गराउन चाहँदैनन् । उनी त्यस्तो असभ्य वा अवैध काम राजनीतिक समाजको टाउकोमा हाल्न चाहन्छन् । तर चटर्जीले भनेजस्तो नागरिक/राजनीतिक समाज भनेर कित्ता काट्न त्यति सजिलो छैन । कहाँनेर गएर नागरिक समाज राजनीतिक समाज हुन्छ र कहाँ गएर राजनीतिक समाज नागरिक समाज बन्छ भन्न सकिँदैन । त्यसैले नयाँ प्रवर्ग थप्दैमा नागरिक समाजको परिभाषा गर्ने र विश्लेषण गर्ने काम सहज हुने देखिन्छ ।

नागरिक समाजका अवयव मानिएका संस्थाहरूले 'अनसिभिल' गतिविधिमा संलग्न भएका यथेष्ट उदाहरण हामीसँग छन् (आर्हने सन् १९९८) । उदाहरणका लागि डाक्टरहरूको व्यावसायिक संगठनलाई लिन सकिन्छ। धेरैले यो संगठनलाई सहजै नागरिक समाजभित्र गणना गर्छन् । नेपालमा डाक्टरहरूको संगठनको इतिहास केलाउने हो भने यसले बेला-मौकामा नेपालको लोकतान्त्रिक आन्दोलनमा सघाएको छ र त्यसका लागि उसलाई सहाइएको पनि छ (हेर्नहोस्, एडम्स सन् १९९८) ।

तर अरू धेरै बेलामा यसको गतिविधि हेर्ने हो भने आफ्नो समूहको साँघुरो स्वार्थ अघि बढाउने र भन्नु कतिपय अवस्थामा आफ्ना सदस्यले गरेका गलत कामलाई बचाउन लागेको समेत पाइन्छ । त्यसै गरी, मिडियालाई पनि केहीले नागरिक समाजभित्र पारेको देखिन्छ तर यसलाई पनि राज्य र बजारको प्यादा भएको तथा “कन्सेन्ट” उत्पादनमा सक्रिय भएको भनेर आलोचना गरिएको छ (हर्मन र चोम्स्की सन् १९८८) ।

अर्कोतर्फ, हामीसँग उल्लेख्य संख्यामा धार्मिक र जातीय संस्था पनि छन्, जसलाई कतिपयले नागरिक समाजभन्दा बाहिर राख्नुपर्छ भन्छन् (हेर्नुहोस्, गेल्लर सन् १९९४; चन्डोक सन् १९९५), तर तिनले कतिपय अवस्थामा नागरिक समाजले जस्तै भूमिका निर्वाह गरेको वा त्यस्तै गतिविधि गरेको पाइन्छ । केही यस्ता संस्था छन् जसलाई जातीय र साम्प्रदायिक द्वन्द्व फैलाउन उद्यत रहेको आरोप लाग्छ, तर तिनै संस्था कहिलेकाहीं 'सिभिल' कामहरू गरिरहेका हुन्छन् । कतिपय नागरिक समाजका संस्थाको इतिहास/जीवनवृत्त केलाउने हो भने उनीहरू कहिले काहीं 'सिभिल' भन्न लायक हुँदैनन् पनि । त्यसैले, कुनै संस्था सधैंभरि नागरिक समाजकै अवयव रहिरहन्छ कि रहँदैन भन्ने पनि अर्को महत्वपूर्ण प्रश्न हो ।

कुनै पनि संस्था नागरिक समाज हो-होइन भन्ने विवाद वा यसको चौधेरावारे लामो र निरुपण गर्न कठिन विषयमा धेरै समय खेर फाल्नुभन्दा ती संस्थाहरूलाई मसिनो गरी अध्ययन गर्न लाभदायक हुन्छ । यस्तो अध्ययन गर्दा ती संस्था कसरी स्थापना हुन पुगे, तिनले के-के गतिविधि गरे/गर्छन्, तिनले के-कस्ता भूमिका निर्वाह गरे, तिनको संस्थागत संरचना कस्तो छ, भन्ने कुरालाई मिहिन विश्लेषण गर्ने हो भने सो संस्थालाई नागरिक समाज वा त्यसको अंग भन्न मिल्ने-नमिल्ने निरुपण गर्न अध्येतालाई सहज हुन्छ (पराजुली सन् २००९) ।

त्यसो हो भने नागरिक समाजका के-कस्ता गतिविधि ग्राह्य हुन् भन्ने प्रश्न पनि सँगै आउन सक्छ । यसको ठम्याइका लागि मूलतः विश्लेषकको आफ्नो वैचारिक आग्रहको पनि भूमिका रहन्छ । तथापि, हाम्रो विचारमा नागरिक समाज भन्ने अवधारणाको आफ्नै अभ्युदयको इतिहास र अझ त्यसमा पनि यसको पुनरोदयलाई केलाएर मात्र नागरिक समाजबारे धारणा बनाउन सम्भवतः बढी उपयुक्त हुन्छ ।

माथि चर्चा गरिए भन्ने नागरिक समाजको क्रमिक विकासलाई केलाउने हो भने कुन समयमा किन वा के प्रयोजनका लागि यो अवधारणा प्रयोगमा ल्याइयो भन्ने कुराको ख्याल राख्नु उपयोगी हुन्छ । नागरिक समाज भन्ने अवधारणा जतिखेर प्रयोगमा ल्याइयो त्यतिखेर यसका व्याख्याताहरूले जनता र राज्य दुवैलाई 'सभ्य' तुल्याउने चुनौती देखे ।

'प्राकृतिक' वा जंगली चरणबाट राज्य र रैतीलाई “सभ्य” बनाउन पर्ने भएकाले राज्य र नागरिक समाजलाई एकै कित्तामा राखियो । तर नागरिक समाजको पछिल्लो व्याख्याको विस्तारलाई केलाउने हो भने के देखिन्छ भने नागरिकलाई सबैभन्दा बढी जोखिम र खतरा भएको भनेको राज्यबाट नै हो । सन् १९८० को दशकमा राज्य र उसको प्रमुख सहयोगी बजारका 'अति' लाई रोक्न, प्रतिरोध गर्नेका लागि नागरिक समाजको मृतप्रायः अवधारणालाई पुनर्जीवित गरियो । त्यसैले, समाजका विभिन्न पेसा र समूहका व्यक्तिहरू एकापसमा जोडिएर अन्यायका विरुद्ध लड्न, राज्य विरुद्ध लड्न र समान नागरिक हुन एकगठ भएका थिए । तसर्थ, हाम्रो विचारमा नागरिक समाजको जुभार भूमिका अपेक्षित छ ।

स्वयंसेवी वा स्वतःस्फूर्त सहभागिता, सहजै (समूहमा) जोडिने-छुटिने स्वतन्त्रता, आदि विशेषतालाई नागरिक समाज हो होइन भनेर चिनाउन प्रयोग गरिन्छ, खासमा ती न्यूनतम अत्यावश्यक गुण मात्र हुन् । उनीहरूलाई नागरिक समाज भन्न उनीहरूले खास भूमिका निर्वाह गरेको पनि हुनुपर्छ । अर्थात् नागरिकहरूको त्यो समूह (अथवा नागरिक भन्न खोजेहरूको समूह) जसले राज्य र समाजको काम-कारबाहीलाई प्रभावित तुल्याउन खोज्छ अथवा अर्को अर्थमा अन्यायका विरुद्ध लड्न एक जुट हुन्छ-चाहे त्यो राज्यको होस्, बजारको होस् वा अरू कसैको-त्यो नै हाम्रो विचारमा नागरिक समाज हो-होइन भनेर छुट्टयाउने आधारभूत विशेषता हुन सक्छ । यद्यपि, उदारवादी धारकाहरू जुभारुपनालाई भन्दा “सर्भिस

डलिभरी” मा बढ्ता जोड दिन्छन् ।

कतिपयले नागरिक समाजलाई 'बुर्जा डोमेन' भनेर घृणा भावले हेर्छन् । उनीहरू सायद गलत छैनन् । नागरिक समाज मध्यम तथा उच्च वर्गीय पुरुषहरूकै कब्जामा रहँदैआएको हो । तर पछिल्ला समयमा नागरिक समाजको बनावटमा पनि केही परिवर्तन आएको छ र पहिले घेरो बाहिर पारिने लिंग, वर्ग, जात-जाति वा क्षेत्रको पनि थोरै उपस्थिति बढ्न थालेको देखिन्छ । नागरिक समाजको बनोट वारेको यस्तो हेराइले यो अवधारणाका सीमाहरू पनि प्रस्ट बाहिर ल्याइदिन्छ । त्यसैले, नागरिक समाजवारे हामीले विश्लेषण गरिरहँदा अथवा किन उसले कुनै मुद्दा उठाउँछ र कुनै किन छाडिदिन्छ भन्ने बुझ्न नागरिक समाजको सामाजिक बनोट महत्त्वपूर्ण हुन्छ । र, हाम्रो विश्लेषणमा त्यो पनि एउटा प्रमुख अंग रहन सक्छ ।

नागरिक समाज र राज्यको प्रकृति सम्बन्धमा ध्यान दिनुपर्ने अर्को एउटा पक्ष पनि छ । दोस्रो जनआन्दोलनको मियो बनेको “नागरिक समाज” ले आन्दोलनको समाप्तिपछि किन अरू सामाजिक मुद्दाहरूमा त्यस्तै सशक्त भूमिका निर्वाह गर्न नसकेको होला भन्ने प्रश्न धेरैको मनमा उठ्छ । यहाँनेर राज्यको प्रकृतिलाई केलाउनुपर्ने हुन्छ ।

धेरै जसो अधिनायकवादी शासन व्यवस्थामा 'नागरिक समाज' का अवयवहरू जीवन्त/जुभारु हुँदैनन्, उनीहरू धेरै जसो आज्ञापालक हुन्छन् र एउटा सानो हिस्सा सुषुप्त रहन्छ । अथवा अर्को शब्दमा, नागरिक समाजले जुभारुपन त्याग्ने हो भने त्यसले राज्य/शासकलाई अधिनायकवादी बन्न निम्त्याउँदो रहेछ । लोकतान्त्रिक शासन व्यवस्थामा नागरिक समाजले आफ्नो जुभारुपना छाड्ने र समूहगत स्वार्थ तथा अन्य सेवा-सुविधा उपलब्ध गराई राज्यको सहयोगीको भूमिकामा उनीहरू रूपान्तरण हुने देखिन्छ ।

पछिल्लो समय त भन् अन्तर्राष्ट्रिय विकासे संस्था लगायत व्यापारिक समूह र राज्यको पनि यस्ता राज्य-सहयोगी संस्था प्रवर्द्धनमा रुचि देखिएको छ । यसले गर्दा नागरिक समाजले, यसका अवयवहरूले आफ्नो जुभारुपना छाडेर फगत राज्य-सहयोगीको भूमिकामा मात्र आफूलाई सीमित गर्ने देखिन्छ, र त्यसले राज्यलाई अधिनायकवादतिर ढल्कन पुट दिन्छ । यद्यपि, लोकतान्त्रिक शासन व्यवस्थामा नागरिक समाजले गर्ने यी सेवा-प्रदायकको भूमिकाको पनि आफ्नै महत्ता छ ।

हामीले जेलाई नागरिक समाज भनेर बुझ्दै आएका छौं नेपालमा त्यस्ता संस्थाहरूको उपस्थिति राणाकालको उत्तरार्धदेखि नै देखिन थालेको हो, यद्यपि पदावलीको रूपमा नेपालमा नागरिक समाजको व्यापक प्रयोग भएको २०४६ सालपछि हो । त्यसअघि नै हामीकहाँ भएका गुठी आदि संस्थालाई नागरिक समाजका प्रारम्भिक स्वरूपको रूपमा हेर्न नसकिने होइन । तर, कतिपय ती संस्थाका केही सीमितता थिए-जस्तो तिनको सदस्यताका सीमा थिए; तिनको निश्चित साँघुरा उद्देश्य थिए र त्यसभन्दा बाहेकका काममा तिनको सक्रियता प्रायः हुँदैनथ्यो ।

वीसौं शताब्दीको पहिलो पाउतिर जब अन्यत्र विश्वमा र अझ छिमेकी भारतमा स्वतन्त्रता आन्दोलनका साथै धार्मिक सुधारका मुद्दाले गति लिन थाले, ती आन्दोलनका बाछिटा नेपालमा पनि पर्न थाले ।

मोहनदास करमचन्द्र गान्धी, बिनोबा भावे, गंगाधर तिलक जस्ता राजनीतिक सामाजिक आन्दोलनकारीहरूबाट प्रभावित हुँदै भारतमा रहेका नेपाली र नेपालभित्रै रहेकाहरू पनि विस्तारै आफ्ना कूल/पारिवारिक संगठनभन्दा बाहिर निस्केर निश्चित उद्देश्य बोकेका सामाजिक संगठनहरूमा संगठित हुन लागे । नेपालभित्र पनि सामाजिक सुधार गर्ने समूहहरू-आर्य समाज, परोपकार, नागरिक अधिकार समिति, आदि-संगठित भए (उप्रेती सन् १९९२) । र, भारतमा जस्तै नेपालमा पनि राजनीतिक परिवर्तनको उद्देश्य बोकेका समूहहरू भूमिगत हिसाबले गठित हुन थाले । प्रचण्ड गोर्खा, प्रजापरिषद् जस्ता संगठन र पछि नेपाली कांग्रेस, नेपाल कम्युनिस्ट पार्टी जस्ता संगठन यसै क्रममा गठन भएका हुन् ।

तर नेपालका तात्कालिक शासकले यस्ता गैरपारिवारिक सामाजिक संगठनहरूलाई आफ्नो शासन उपरको खतराको रूपमा ग्रहण गर्ने हुनाले तिनले प्रश्रय नपाउने मात्र होइन कि ती वक्रदृष्टिमा समेत परे ।

दोस्रो विश्व युद्धपछि जताततै चाँडोचाँडो परिवर्तन भए । नेपालमा पनि त्यसको गतिलै प्रभाव पऱ्यो । युद्धबाट फर्केका लाहुरेहरू, पढ्न गएका विद्यार्थीहरू, राजनीतिक कारणले भागेका शरणार्थीहरू, तीर्थयात्रीहरू, आदि सामाजिक-राजनीतिक विचार बोकेर आए । आ-आफ्ना हिसाबले संगठित हुँदै विभिन्न गतिविधिमा संलग्न भए ।

राजनीतिक उद्देश्यमूलक गतिविधिहरू गर्न धेरै ठूलो जोखिम थियो-राणा सरकारले राजनीतिक गतिविधि गरेको निहुँमा थुप्रै सामाजिक अभियन्ताहरूलाई कालकोठीमा राखेको थियो भने चार जनालाई त मृत्युदण्ड नै दिएको थियो । तसर्थ, सामाजिक अभियन्ताहरू विभिन्न आवरणमा संगठित हुन थालेका थिए । यस क्रममा स्कूल खोल्ने तथा पुस्तकालयहरू सञ्चालन गर्ने जस्ता गतिविधिमा संगठित रूपमा संलग्न भई बृहत्तर समाजको भलाइमा लागे (पराजुली सन् २०१९) । यिनै संस्थागत संरचनाहरूलाई नेपालको नागरिक समाजको शैशवकालीन अवयव मान्न सकिन्छ ।

वि.सं. २००७ मा एक शताब्दीभन्दा लामो (वि.सं. १९०३-२००७) राणा शासन विरुद्ध सशस्त्र युद्ध भयो, जसले नेपालबाट जहानियाँ राणा शासन उन्मूलन गर्‍यो। राणाशाही समाप्तिसँगै नेपालमा बहुदलीय प्रजातान्त्रिक व्यवस्था शुरू भयो। 'रैती' बाट 'जनता' मा रूपान्तरितहरूले आ-आफ्ना रुचि र विचारलाई प्रवर्द्धन गर्ने क्रममा समान विचार राख्ने अरू व्यक्तिहरूसँग मिलेर थुप्रै खाले संस्था खोले। वि.सं. २००७-२०१७ को दशकमा तुलनात्मक रूपमा ठूलो संख्यामा संस्था खुलेका देखिन्छ। राणाकालमा प्रतिबन्धित रहेका निजी पत्रपत्रिकाको संख्या पनि यो कालखण्डमा उल्लेखनीय रूपमा वृद्धि भयो। राज्यले केही नियन्त्रण गर्न पनि सामान्यतया खुला खालको समय थियो (पराजुली सन् २०१२)।

कमलप्रकाश मल्लले यो दशकलाई 'डिकेड अफ एक्स्ट्रोभर्सन' भनेका छन् (मल्ल सन् १९७९)। विभिन्न खालका जर्नल, पत्रपत्रिका निकाल्ने काम र सार्वजनिक पुस्तकालय खोल्ने काम पनि त्यति बेलै शुरू भएको थियो। ठूलो संख्यामा मुलुकभर स्कूल र केही कलेज खोलिए। विभिन्न क्लब, वादविवाद समूहदेखि अन्य सामाजिक संघ-संस्था, राजनीतिक दल, साहित्यिक संस्था खुल्ने काम पनि त्यतिखेरै भएको थियो। त्यो एउटा गतिशील र जीवन्त समय थियो (पराजुली सन् २०१९)।

लामो समय विदेशीहरूलाई छिर्न नदिएको नेपालले २००७ सालपछि आफूलाई खुला गर्‍यो। सोही क्रममा विदेशीहरूको प्रवेश सहज हुन थाल्यो र विदेशी सहयोग नियोग तथा अन्य अन्तर्राष्ट्रिय संस्थाहरूको उपस्थिति पनि बढ्न थाल्यो। त्यसपछि नेपालमा विकास तथा सामाजिक कार्यमा वैदेशिक सहयोगमात्र भित्रिएन, सामाजिक संस्थाहरूको दायरा पनि फराकिलो भयो।

परोपकारी काम बाहेक स्वास्थ्य, शिक्षा तथा तालिम, चेतना जगाउने, सामुदायिक विकास, प्रजनन स्वास्थ्य तथा जनसंख्या नियन्त्रण, आदि उद्देश्य लिएर संस्था खुल्न थाले (पाण्डे सन् १९९८ : ६१, ढकाल सन् २००६)। सँगसँगै, संस्था स्थापना र तिनको नियमन गर्ने कानून पनि यही अवधिमा निर्माण हुन थाल्यो। अहिले हामीले भन्ने गरेको नागरिक समाजको एक हिसाबले विस्तारको दशक हामी त्यसलाई भन्न सक्छौं।

तर यो विस्तार धेरै बेर रहेन। बहुदलीय प्रजातान्त्रिक शासन व्यवस्था अन्तर्गत पहिलो पटक जननिर्वाचित सरकार स्थापना भएको डेढ वर्षमै, २०१७ सालमा, शाही हमला भयो। सबै प्रजातान्त्रिक संस्था भंग गरिए। नागरिक अधिकार संकुचित गरियो। राजनीतिक संस्थाहरू उपर प्रतिबन्ध लाग्यो। राजनीतिक दल र गतिविधिमा रोकबाट लागेसँगै अन्य सामाजिक संस्था पनि राज्यले प्रत्यक्ष-अप्रत्यक्ष बन्द गरायो। अरू त अरू, सार्वजनिक पुस्तकालयहरू समेत यस्तो आक्रमणबाट अछुतो रहेनन् (पराजुली सन् २०१९)।

यी नागरिक संस्थामाथि आक्रमणको कारण ती संस्थासँग सम्बन्धित कतिपय व्यक्ति राजनीतिक चेतयुक्त भएका र कुनै हिसाबले राजनीतिक दलसँग सम्बन्धित हुनु पनि थियो। त्यस बाहेक, ती संस्थाले गर्ने गतिविधिलाई राज्यले आफू उपर चुनौतीको रूपमा लियो र ती संस्था बन्द गरि दियो। यसले गर्दा भर्खर जन्मिँदै र फैलने क्रममा रहेको नेपालको नागरिक समाज खुम्चियो। जति संस्था बाँचे, तीमध्ये धेरैले राज्यसँग सम्झौता गरेर बाँचे अथवा राज्य-पक्षीय विचार प्रवर्द्धन गरेर बाँचे। तिनले नागरिकको पक्षमा राज्यको निगरानी गर्नेभन्दा पनि निरंकुश पञ्चायती शासनलाई नै बलियो बनाउने र सत्ता सञ्चालकहरूको स्वार्थलाई पोस्ने काम गरे।

पञ्चायती शासन व्यवस्थाको पूर्वार्ध उत्तरार्धभन्दा पृथक रह्यो। सरकारले चाहेर-नचाहेर स-साना क्लबहरू, कोठे पुस्तकालय, साहित्यिक संस्थाहरू खुले। त्यस बाहेक, विदेशी सहयोगमा सरकार टिक्नुपर्ने भएकाले अन्तर्राष्ट्रिय संस्थाहरूले पनि बिस्तारै आफ्नो प्रभाव बढाउँदै लगे। पहिले जस्तो यस्ता सामाजिक संस्थालाई एक त पूरै बन्द गर्न नसकिने र दोस्रो तिनलाई आफ्नो स्वार्थमा उपयोग गर्न सकिने देखेर तात्कालिक रानी ऐश्वर्य शाहको नेतृत्वमा "सामाजिक सेवा राष्ट्रिय समन्वय परिषद्" नामक संरचना बनाइयो।

सामाजिक संस्थाहरूलाई परिषद् मातहत आउने व्यवस्था गरियो। सामाजिक संस्थाहरूका कामलाई समन्वय वा सहजीकरण गर्ने नाउँमा परिषद्लाई विदेशी सहयोगलाई एकीकृत गरी पञ्चायती शासकका समर्थकलाई कार्यक्रम वा परियोजना सञ्चालनमा सहयोग पुऱ्याउने र समर्थन नगर्नेलाई विभिन्न बहानामा निषेध गर्ने अस्त्रका रूपमा प्रयोग गरियो (हेर्नहोस्, पाण्डे सन् १९९८; राडमेकर र तामाङ सन् १९९३; मार्टिन चौतारी २०७४)।

पश्चिममा राष्ट्रका गैसहरूले लोकतन्त्र र विकासको नाममा अवलम्बन गरिरहेको बहुमुखी एजेण्डाको विश्वव्यापी प्रभावबाट त्रसित नेपाली शासकले उक्त संस्था मार्फत पञ्चायती विचारधारालाई समर्थन नगर्ने संस्थाको नियन्त्रण गर्न थाले (भट्ट सन् २०१६)। उक्त परिषद्मा विरोधी विचारधारा बोक्ने व्यक्ति वा समूह सम्बद्ध संस्था दर्ता नै नहुने र लामो छानबिन पश्चात् दर्ता नै भए पनि शंका लागेमा नवीकरण गर्नु नसक्ने अवस्था सिर्जना गरिन्थ्यो। एक प्रकारले परिषद्लाई संस्था खोल्ने नाउँमा सरकार विरोधी पक्षको संलग्नता भए-नभएको जाँच गरी सम्भावित राजनीतिक जोखिम रोक्ने हतियार बनाइन्थ्यो (राडमेकर र तामाङ सन् १९९३ : १५)।

तसर्थ, पञ्चायतकालभरि दर्ता भई सञ्चालनमा आएका सामाजिक संस्थाहरूले पाइलापाइलामा राज्यको कठोर नियन्त्रणको सामना गर्नुपर्दथ्यो भने राज्यको त्यही नियन्त्रणकारी व्यवहार देखेर नयाँ समूह संस्था दर्ता गर्न हिचकिचाउँथे। यसले गर्दा नेपाल खुला युगमा प्रवेश गरेको भनिएको चार दशकको अवधिमा निकै थोरै मात्र सामाजिक संस्था अस्तित्वमा आए। तर, संख्यात्मक रूपमा थोरै भए पनि २०४६ सालमा भएको जनआन्दोलनमा

प्राध्यापक, डाक्टर, इन्जिनियर, वकिलहरूका व्यावसायिक संस्था र मानवाधिकार संगठन तथा साहित्यिक संगठनहरूले समेत सक्रिय सहभागिता देखाए ।

वि.सं. २०४६ को पहिलो जनआन्दोलनले ३० वर्ष लामो पञ्चायती शासन व्यवस्थालाई बढारेपछि, नेपालमा बहुदलीय प्रजातान्त्रिक व्यवस्था स्थापना भयो । वाक स्वतन्त्रता, प्रकाशन स्वतन्त्रता तथा संगठन स्वतन्त्रता जस्ता नागरिक अधिकारहरू संवैधानिक रूपमै प्रत्याभूत गरिएकाले नागरिकले चाहेका संघ-संस्था खुल्नसक्ने भए । र, संस्था खुल्ने क्रम विस्तारै शुरू पनि गरिए । समाज कल्याण परिषद्को वेबसाइटमा उपलब्ध तथ्यांकले नेपालमा सामाजिक संघ-संस्था गठनको एउटा तस्वीर दिन्छ (हेर्नहोस्, चित्र १) ।

परिषद्ले अद्यावधिक गरेको पछिल्लो तथ्यांक अनुसार असार मसान्त २०७६ सम्ममा उक्त संख्या ५०,३५८ पुगेको छ । यसबाट प्रजातन्त्र आए पश्चात् नेपालमा तीव्र गतिमा विस्तार भएको एउटा क्षेत्र गैसस हो भन्ने तर्क (ढकाल सन् २००६ : ११८) लाई पुष्टि गर्छ । तथापि, ध्यान दिनुपर्ने कुरा के छ भने यी संस्था परिषद्मा दर्ता गरिएका खास गरी एनजीओ भनिने सामाजिक संस्थाहरू हुन् । सबै यस्ता संस्था परिषद्मा दर्ता हुन जरुरी नभएको र नगरिने हुनाले समग्र तस्वीर चाहिँ यसले दिँदैन ।

वि.सं. २०४६ पछि नेपालमा संविधान प्रदत्त हक भएकाले आपसमा संगठित भएर निश्चित उद्देश्य पूर्तिको लागि अधि बढ्न केहीले रोक्ने भएन । यदि कुनै औपचारिक आर्थिक कारोबार नगर्ने हो भने तिनलाई कुनै विधि विधानले बाँधिएर सरकारी निकायमा दर्ता हुनुपर्ने बाध्यता छैन ।

तर औपचारिक वा कानूनी रूपमै आफ्नो रुचिको संस्था विधिवत सञ्चालन गर्ने हो भने विद्यमान कानून अनुसार नेपालमा संघ-संस्था खोल्न पहिले त संघ-संस्था दर्ता ऐन अन्तर्गत सम्बन्धित जिल्ला प्रशासन कार्यालयमा दर्ता गर्नुपर्छ । त्यहाँ दर्ता गरेपछि मात्र समाज कल्याण परिषद्मा आवद्ध हुन चाहेमा हुनसक्ने कानूनी प्रावधान छ । यो बाध्यकारी प्रावधान होइन । यद्यपि, विदेशी सहयोग वा सरकारी अनुदान प्राप्त गरी कुनै परियोजना सञ्चालन गर्ने उद्देश्य राखेका संस्थाहरू भने परिषद्मा आवद्ध हुनै पर्छ । समुदाय स्तरमा सानातिना चन्दा-दानबाट वा स्वयंसेवी रूपमा चल्ने संस्थाहरू पनि कानूनी बाध्यता नभए तापनि परिषद्मा आवद्ध हुनुपर्ने व्यावहारिक बाध्यता छ ।

त्यस बाहेक, सामाजिक सेवाको उद्देश्यले मुनाफा वितरण नगर्ने कम्पनीका रूपमा कम्पनी रजिस्ट्रारको कार्यालयमा दर्ता भएका संस्थाहरू पनि परिषद्मा आवद्ध हुन सक्छन् र भएका पनि छन् । माथिको संख्या/चित्र निश्चित समयमा परिषद्मा आवद्ध हुन आएका संस्थाहरूको कुल योग हो । यसले केही तथ्य बताए पनि धेरै कुरा बताउँदैन । यसले आर्थिक वर्ष २०७५/७६ सम्म खुलेका नेपाली गैरसरकारी संघ-संस्थाहरू (एनजीओ/सीवीओ) को ठ्याक्कै संख्या बताउँदैन । न अहिले वा कुनै अघिल्ला समयमा सक्रिय संस्थाहरू नेपालमा कति छन् वा थिए भन्ने नै बताउँछ ।

तर, के चाहिँ बताउँछ भने समाज कल्याण परिषद्मा बसेरि दर्ता हुने सामाजिक संस्थाको संख्या बढ्दो छ । यो वृद्धि शहर केन्द्रित र अझ विशेष गरी काठमाडौँ केन्द्रित छ (भण्डारी र वन्त सन् २०१७; केसी र लोसवन्तरत सन् २०१९) ।

अख्तियार दुरुपयोग अनुसन्धान आयोगका तत्कालिन प्रमुख आयुक्त लोकमानसिंह कार्की विरुद्धको महाभियोग प्रस्ताव पारित गराउन दबावस्वरूप आज काठमाडौँमा जुलुस प्रदर्शन गर्ने क्रममा । तस्वीर: हिमाल आर्काइभ माथि भनिए भैं, संघ-संस्था दर्ता हुने मूल थलो जिल्ला प्रशासन कार्यालय हुन् । ती कार्यालयहरूमा के-कति संस्था दर्ता भएका छन् भन्ने एकीकृत तथ्यांक उपलब्ध छैन, न त के-कति संख्यामा संस्थाहरू नवीकरण भइरहे का छन् वा सक्रिय छन् भन्ने थाहा पाउन नै सजिलो छ (भण्डारी र वन्त सन् २०१७) । गैरसरकारी संस्थाहरूको छाता संगठन भनिने गैरसरकारी संस्था महासंघले आफ्ना सदस्यहरूको संख्या देशभर ६ हजार ३४५ रहेको जनाएको छ ।

समाज कल्याण परिषद्लाई उद्धृत गर्दै एउटा समाचारमा नेपालमा पाँच हजार र अर्को समाचारमा २० हजार गैरसरकारी संस्था सक्रिय रूपले गतिविधि गरिरहेको बताइएको छ (तिमल्सिना २०७६; ज्ञानु सापकोटा सन् २०१६) ।

नागरिक समाजको अवयव मानिने यी संघ-संस्था (बोलीचालीको भाषामा गैरसरकारी संस्था वा नागरिक समाजका संगठन-सीएसओ) को यस्तो विस्तारको अर्थराजनीति महत्त्वपूर्ण छ ।

मूलतः अभिव्यक्ति तथा प्रकाशन र सांगठनिक स्वतन्त्रताको संवैधानिक प्रत्याभूतिले गर्दा नागरिकहरूले आफूले चाहेका खालका संगठन निर्माण गर्न सके । तर राज्यले तय गरेका कानूनी (ऐन नियम) संरचनाले ती संगठनहरूलाई निश्चित ढाँचामा ढालेको छ । सबै खाले उद्देश्य बोकेका संगठनहरूको उस्तै खाले 'विधान' छन्, उस्तै खाले सांगठनिक (हायरार्किकल) संरचना निर्माण गरिएका छन् । अनि ती संस्थाको जवाफदेही वा उत्तरदायित्वबारे पनि निश्चित सोचहरू बलवान छन् ।

अझ यस्ता संस्थामा भएको दलीय पकड (खास गरी नेपाल कम्युनिस्ट पार्टी/नेकपो) को पाटो भन्ने महत्त्वपूर्ण छ । त्यस बाहेक, यस्ता सामाजिक

संगठनहरूलाई राज्य-सहयोगी र सेवा-प्रदायक संस्थाको रूपमा हेर्ने उदारवादी संकथन प्रभावशाली भएकाले र त्यसलाई प्रवर्द्धन गर्ने अन्तर्राष्ट्रिय सामाजिक, विकासे र आर्थिक संस्थाको प्राथमिकताका कारण संस्थाहरू जुभारु र प्रतिरोधीभन्दा ज्यादा राज्य-सहयोगीका रूपमा देखिएका छन् । यस क्रममा यी संस्थाले विभिन्न सकारात्मक परिवर्तन ल्याएका वा त्यसका लागि महत्त्वपूर्ण भूमिका निर्वाह गरेका उदाहरण पनि थुप्रै छन्, जसलाई नजरअन्दाज गर्न मिल्दैन । यो पुस्तकमा संगृहीत बहुसंख्यक लेखले सेवा-प्रदायक संस्थाहरूबारे अध्ययन गरेका छन् । सकारात्मक भूमिका हुँदाहुँदै पनि तिनका आफ्ना जटिलता र सीमा पनि टन्ने छन्, जुन कुरा यो पुस्तकका लेखहरूले पनि पुष्टि गर्छन् ।

