



ANTHONY DE JASAY AND THE POLITICAL ECONOMY OF THE STATE

*The Anglo-Hungarian economist [Anthony de Jasay](#) turns 90 in 2015. To celebrate this event we have organized a Liberty Matters discussion of his work as an economic and political theorist which came to public attention with the publication of the seminal work *The State* in 1985. Since then he has written several other books and has had a monthly column for the [Econlib](#) website since 2002. We have invited the editor of his collected works, Hartmut Kliemt, who is a professor of philosophy and economics at the Frankfurt School of Finance and Management to lead the discussion. He will be joined by Christopher Coyne who is an Associate Professor of Economics at George Mason University, Michael C. Munger who is a professor of political science, and economics and public policy at Duke University, and Edward Stringham who is a professor of Economic Organizations and Innovation at Trinity College, Hartford.*

TRICKS OR TREATS: JASAY'S CRITICISMS AND CONSTRUCTIONS

by Hartmut Kliemt

1. Introduction and Overview

For Anthony de Jasay, neither what the rules of the social game are nor what they should be can be known through a priori reasoning. There are no “natural obligations” that can be legitimately binding and known a priori or “before” the emergence of social conventions. “Before conventions” individuals have full *liberty to act*. As in Hobbes’s state of nature, there are not yet conventional obligations to omit acts.^[1] Yet Jasay does not believe in “statecraft” as a source of legitimate change. For him rules that are imposed by collective – autocratic or democratic – rule enactment may command acquiescence but – violating the presumption of individual liberty – *cannot legitimately expect voluntary recognition*.

Jasay manages to show how conventions that emerge under conditions of individual liberty to act can plausibly acquire the status of ethically privileged normative standards.^[2] The real “treat” of Jasay’s approach is that

he accomplishes this on the basis of the “presumption of individual liberty” alone without relying on “contractarian” (Buchanan), “evolutionary” (Hayek), or “natural rights” (Nozick) “tricks.”

As I will interpret him subsequently,^[3] Jasay starts from the premise that only individuals can act in the proper sense of physically exerting a causal influence on their environment.^[4] “Freedom to act as seems fit” means to have no obligation to act otherwise. Exerting “negative externalities” (including aggression) cannot “a priori” wrong anybody since before conventions there are no wrongs, no duties to omit acts. Individual liberty to act is *not* hedged in by entitlements to act. It exists *without being licensed* by a priori rights (and the corresponding duties). Other than collectively enacted impositions of entitlements and duties, conventions form constraints on individual action whose creation is fully in line with the presumption of individual liberty. Since they can emerge from unrestrained individual freedom to act, conventions deserve to be respected by “friends of liberty,” whereas collective impositions (including those of alleged natural law) may command individuals’ acquiescence but – as mentioned already – do not merit their voluntary recognition.

To explore the scope and limits of Jasay's basic framework of a "conventional political ethics based on individual liberty," it is useful to commence with directly self-enforcing conventions like the rules of the road (Section 2). After this and taking sides with Jasay's pertinent criticism of contractarianism (Section 3), I will turn to directly non-self-enforcing conventions. I will sketch why the latter may require Jasay to acknowledge Hartian "rules of recognition" for *conventions* even though he explicitly rejects them as "rules of submission" in their incarnation of state-enacted rules (Section 4). After endorsing Jasay's criticism of abuses of language (Section 5) as express themselves in the confusions around "social contract" and "freedom and entitlements" (Section 6), the final section wraps things up (Section 7).



Anthony de Jasay

2. Directly Self-enforcing Conventions

The familiar example of the two polar conventions that dictate either driving on the left or driving on the right may serve to illustrate a central aspect of Jasay's views. A priori nothing privileges the "left-" over the "right-convention." Either convention will do as well as the other – once and as long as it is commonly known to be in place. Moreover, there is no need that everywhere the same convention prevails. For instance, in pre-Napoleonic times different conventions of either driving on the left or driving on the right side of the street emerged in different regions of Europe. Upon entering a

region travellers had to find out which driving convention prevailed in that region. Then they had to acquiesce with that local convention, and traffic went smoothly.

In the case of directly self-enforcing conventions, acquiescence is rationally forthcoming *independently* of whether the rules emerged spontaneously – as originally in Europe – or were imposed in ways relying on the fundamental coercive power of the state – as done when Napoleon overruled all former local conventions of driving on the left in central Europe.^[5]

Both the spontaneously emergent as well as the imperially imposed rules of the road are in a basic sense directly self-enforcing: Those who drive in violation of the rules will, so to say, shoot themselves in the foot. Yet, in Jasay's system of thought the spontaneously emergent conventions and rules command a privileged status as compared to enacted rules of the road. They deserve to be respected in a way that collectively imposed rules do not, even though both are directly self-enforcing.

The adherent of statist views may with some justification argue that trans-local rules of the road require less setup and transition costs for users. "Harmonization" can generate higher "network gains." Despite the many abuses of harmonization arguments for rent-seeking purposes in Europe, such arguments may be true in certain cases. From the point of view of individual liberty the paramount concern is, however, not utility but rather that acts of acquiescence with spontaneously emergent self-enforcing rules do not require any submission to a rule-enacting collective authority.

As opposed to the emergence of conventions, the original founding of the state is always an act of imposition. Hobbes was one of the first to conceal that imposition is always involved by invoking the camouflage of a fictitious "social contract."

3. The Social Contract Is Neither Self-enforcing nor a Convention

Jasay rejects the contractarianism that again dominates normative political philosophy and political economy for at least the following reasons.^[6] First, if contractarians

would try to base the original contract institution itself on a contract, this would either lead to an infinite series of prior contracts or be flagrantly circular. Second, if there were some a priori knowledge of the entitlements and obligations *preceding* contractual consent, the ultimate arbiter of right and wrong would not be contractual consent but knowledge of something non-contractual.^[7] Third, if the most fundamental political obligations exist and can be known without relying on a social contract, why fictitiously present them as if they were contractual even though they are in fact not?

As I read Jasay, prior consent of the bearer of a duty can *not* be a necessary condition for creating duties. Duties not to act in certain ways, including prohibitions on coordinating with others in certain (including possibly aggressive) ways, do not exist before brought into existence by human acts (preferably inter-individual agreements). Individuals are free to act in ways that impose externalities on others.

Taking this argument to its logical conclusion, even the foundation of the state could be within the scope of free acts. A moral skeptic who like Jasay is starting from the presumption of unrestrained individual liberty to act seems bound to accept that those who act such as to impose a state are a priori free to do so. It seems that the presumption of freedom does not rule out the state.

Yet at closer inspection this kind of objection does not undermine Jasay's criticism of the state. Due to the presumption of individual liberty, the subjects of the state are ethically free to resist. They are under no obligation a priori to submit to the state. Quite to the contrary, being free to do what seems fit suggests nonsubmission.

It is useful to relate the observations concerning freedom to act and to resist to the previous example of rules of the road. Those who are born into a region with prevailing rules of the road face rules that are not their choice. This applies to all rules, including those that emerged without collective coercion from individually free acts. Once a self-enforcing rule is established, those who live under it are no more free to agree to it than individuals faced with enacted rules of a state. Acquiescence is their dominant strategy. This is true also if a self-enforcing rule is

imposed by (e.g., Napoleonic) state power. However, then, though they have the same reason to acquiesce, individuals may resent the collective imposition.

The *creation* of conventions requires only the exercise of individual freedom. They do not rely on collective rules of creation. Submission to the rules of creating rules of the road is required in case of enactment. This is a relevant difference even though, once in place, directly self-enforcing rules of the road as well as directly self-enforcing collectively enacted rules of the road operate the same way. A further complication arises from the fact that other than the directly self-enforcing conventions,^[8] many rules that are regarded as "conventions" in political philosophy are not directly self-enforcing.

4. Directly Non-self-enforcing Conventions

Jasay emphasizes that not all rules are self-enforcing in the strong sense of the directly self-enforcing rules of the road. He acknowledges that conventions like that of "promising" need extra or specialized enforcement by what he aptly calls *satellite conventions or satellite rules*.^[9] In case of the moral institution of promise-keeping, satellite rules specify how individuals have to act when there was a breach of the obligations of promise-keeping. For the sake of clarity and brevity, let us refer as "rules-1" to the first-order rules (keep your promises) and refer as "rules-2" to those rules that, like satellites, govern the sanctioning of violations of rules-1. (If you are faced with a breach of promises, sanction that breach in the following way...!)

Note first that rules-2 and Hart's secondary rules that govern the process of rule-enforcement in a statist legal order are rather similar. It seems that those who act on behalf of the state are guided by rules of sanctioning that work exactly parallel to rules-2. But, then, why is it better to follow rules-2 that are satellites to non-statist rules-1 than to follow secondary rules that serve the purpose of enforcing enacted statist rules?

As mentioned already, for Jasay the superior dignity of spontaneously grown conventions does not rest on their collective utility.^[10] It must be based on the freedom to

act that was exercised in their creation. To avoid second-order free-riding problems in the enforcement of not-directly self-enforcing rules, Jasay needs – I believe – to acknowledge the presence of some intrinsic motivation to apply satellite rules.^[11] He should not – as he sometimes seems to – turn against intrinsic motivation *per se* but rather – and quite in the spirit of his own work – against the dangers of intrinsic motivation to submit to *collective* rule(s).

Since “government is based on opinion only,”^[12] Jasay rightly turns increasingly against the abuses of language. They induce individuals to voluntarily submit to, rather than to merely acquiesce in, the powers of government. This furthers governments’ more or less unhampered growth in particular in participatory democracies. Yet participation is not individual freedom to act, and conceivable consent to collective measures is no substitute for real liberty to act.

5. Misleading Language and False Conscience

A major case in point is the aforementioned contractarian ideology. Due to it, the view that there is an a priori moral obligation to submit to collective decisions – in particular majoritarian democratic ones – will spread. Even though its stronghold is in academia, it will support in wider circles of so-called “opinion leaders” a culture of submission rather than resistance to the arbitrary powers of the state.

In particular, contractarian ideas support the democratic belief that the results of majority rule do not only require acquiescence but *deserve* voluntary submission and endorsement by their subjects. By contractarian arguments, the ever-present proclivity of collective governance bodies to intrude into spheres that could as well be left to inter-individual agreements without collective – authoritarian or democratic – interference is furthered rather than prevented.

As opposed to contractarian Sunday speeches, a correct account of what is in fact the outgrowth of the free agreements of individual acts (conventions) and what not (state-enacted rules) will protect liberty. A hard-nosed Jasay-type no-nonsense account of collective decision-

making will lead away from voluntary submission towards reluctant acquiescence paired with a self-defensive attitude towards the impositions of the state.

6. Freedom vs. Entitlement to Agree

Hart referred to the introduction of rules of rule-change as an invention comparable with that of the wheel.^[13] Hart was certainly right in his factual diagnosis. However, along with his ability to identify it as crucial, he had a tendency to ignore the downside of the invention. Once the rule of rule-change is paired with a rule of recognition that changes the attitude towards government from “them against us!” towards voluntary participation in governance, individual liberty loses one of its natural defenses in opinion-formation.

Against the backdrop of the presumption of individual liberty, constitutional democracy, like any state, has a legitimacy problem. This is not that of majorities versus minorities but collectivization *per se*. To see why, consider the extreme collective decision rule of unanimity.^[14] The veto power derived from the collective unanimity requirement is representative of the rights systems of modern constitutional democracy. The implicit claim to universal collective authority represents its democratic participatory part.

Vetoing is possible only if it is implicitly assumed that all acts (of the relevant domain) are forbidden unless authorized by unanimous consent. Otherwise individuals would be free to act in Jasay’s proper sense and without others having a say in authorizing their act. Phrases like “a right to be free” etc. are the natural consequence of starting with collective unanimity rather than individual freedom to act. They provoke some of Jasay’s most vitriolic comments. To start from individual freedom and not from entitlements of individuals authorized by collectivities seems much more appealing to him, because then we start from the presumption that “originally” nothing rather than all is forbidden for individuals.

Those who take the presumption of individual liberty seriously should follow Jasay. Letting philosophers get away with speaking of liberty as “entitlement to freedom” or of “equality being intrinsically better than inequality”

and other loose philosophical talk may not seem terribly important. Yet, as academic policy supports, it can become positively dangerous in the eyes of Jasay.^[15]

7. Conclusion: An Anarchist After All?

Though his persistent criticisms of statism have made Jasay popular among many who have anarchist leanings, it is misleading to refer to him as an anarchist. With the anarchists he shares the belief that coercion by collective mechanisms of governance can *not* be legitimized by agreements of individuals. But he does reject the typical anarchist's reliance on a priori knowledge of rights and entitlements. Once the invention of state organization has been made, individuals have to acquiesce in the fundamental coercive power of the state as a fact of life. Yet it makes a difference whether subjects of the state voluntarily endorse its claim to legitimacy or not. They can either regard the state as authorized by their own consent – as the contractarian ideology suggests – or treat the coercive power of the state as imposed and decidedly not as an outgrowth of their free agreement. Acknowledging the latter truth is what Jasay demands.

The implicit rule of submission that facilitates the reign of collective decision bodies over individuals is the main target of Jasay's criticisms. Voicing his dissent with the prevailing well-intentioned statist talk of our times along many channels, including his monthly column at the Liberty Fund website, he has done liberty a great service.

Endnotes

[1.] Hobbes hijacked the concept of a right with his “natural right to everything,” which is no right at all but merely the freedom to act as seems fit without normative restraint. Thomas Hobbes, *Leviathan* (1651) (Harmondsworth: Penguin, 1968). Online version: Thomas Hobbes, *Hobbes's Leviathan reprinted from the edition of 1651 with an Essay by the Late W.G. Pogson Smith* (Oxford: Clarendon Press, 1909). </titles/869>.

[2.] In a way Jasay provides a rationale for Buchanan's claim that there are “relatively absolute absolutes,” see James M. Buchanan, “The Relatively Absolute Absolutes“ in *The Logical Foundations of Constitutional Liberty*, vol. 1 of *The Collected Works of James M.*

Buchanan (Indianapolis, IN: Liberty Fund, 1999), pp. 442-54.

[3.] And I do so deliberately without any authorization of my admired older and wiser friend who will certainly sometimes disagree with these lines.

[4.] Collectivities cannot act in the proper sense and metaphorically only through their “individual agents.”

[5.] Napoleon changed many regional conventions in Europe.

[6.] The basic critical line of argument can be found already in David Hume's seminal “Of the Original Contract,” Part II, Essay XII of *Essays Moral, Political, and Literary* (Indianapolis, IN: Liberty Fund, 1987[1742]). See, “Of the Original Contract” *Essays*, Part II, Essay XII </titles/704#lf0059_label_792>.

[7.] The triage into the categories of circularity, infinite regress, or dogmatism resembles the “Münchhausen trilemma” of Hans Albert, see Hans Albert, *Treatise on Critical Reason* (Princeton: Princeton University Press, 1985). It may be noticed also in passing that many present-day contractarians seem to ignore the fact that John Rawls was aware of the problem. He published such core points of his dissertation early on in his academic career as: John Rawls, “Outline of a Decision Procedure for Ethics.” *Philosophical Review*, vol. 60, 1951, pp. 177–97. Later this developed into the reflective-equilibrium metaphor (or method) underlying John Rawls, *A Theory of Justice*. (Oxford: Oxford University Press, 1971). Rawls's argument is ultimately *not* a contractarian justification.

[8.] In the original sense of David Lewis, *Convention* (Cambridge, Mass.: Harvard, 1969).

[9.] Anthony de Jasay, *Against Politics* (London: Routledge, 2011), essays 1, 9.

[10.] Hayek supports a preference for a spontaneously grown “kosmos” to a planned and intentionally enacted “taxis” for reasons of superior efficiency, see Friedrich August v. Hayek, *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political*

Economy, vols. 1-3, (London and Henley: Routledge & Kegan Paul, 1973-1979).

[11.] This is crucial aspect of rule-following is lumped together with other concerns in the otherwise very interesting altruistic punishment literature. Experiments showing such sanctioning commenced with Werner Güth's ultimatum game, see recently the special issue of *JEBO*, 2014. For multi-person free-rider experiments on "altruistic punishment," see Ernst Fehr, and Simon Gächter, "Altruistic Punishment in Humans," *Nature*, vol. 415, January 2002, pp. 137–40, and for the return of the free-rider if the state gets involved, of course, Anthony de Jasay, *Social Contract, Free Ride: A Study of the Public Goods Problem* (Indianapolis: Liberty Fund, 2008) in *The Collected Papers of Anthony de Jasay*. See <[/titles/2641](#)>.

[12.] See the last paragraph of Hume's "Of the First Principles of Government," in *Essays, Moral, Political, and Literary*. Part I, Essay V <[/titles/704#Hume_0059_145](#)>.

[13.] See Herbert L. A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1969).

[14.] See James M. Buchanan and Gordon Tullock, *The Calculus of Consent* (Ann Arbor: University of Michigan Press, 1962). Online: James M. Buchanan, *The Collected Works of James M. Buchanan, Vol. 3. The Calculus of Consent: Logical Foundations of Constitutional Democracy, with a Foreword by Robert D. Tollison* (Indianapolis: Liberty Fund, 1999). <[/titles/1063](#)>.

[15.] See essays in Jasay's volume *Social Justice and the Indian Rope Trick*, in the *Collected Papers of Anthony de Jasay* (Indianapolis, IN: Liberty Fund, 2014).

THE CONTINUING RELEVANCE OF JASAY

by Christopher J. Coyne

As Hartmut Kliemt makes clear in his essay, Anthony de Jasay has made important contributions to our understanding of the foundations of social order.[16] What I would like to focus on is how these

contributions offer a rich and open-ended research program that has ongoing relevance for a number of contemporary issues.

“Real-World” Anarchy

One of Jasay's main contributions was to point out a key tension in constitutional political economy (1985, 1997). A common argument for the necessity of the state is as follows. Left to their own devices, rational individuals have an incentive to renege on agreements and take advantage of others. Other rational individuals, aware of these incentives, will refrain from engaging in exchange and cooperation. In order to break out of this situation, the logic goes, an external third-party enforcer is necessary. This third party is the state, which has a monopoly on force. In principle the state can resolve the dilemma by enforcing agreements, adjudicating disputes, and punishing defectors. The dilemma posed by anarchy and narrow self-interest seems to have been resolved.

Not so fast, says Jasay. The proponents of this story have stopped their analysis too soon. The state, too, is populated by rational actors. This means that if rational actors will violate their agreements absent the state, those same actors who operate the machinery of the state will also violate their agreement to serve as the neutral enforcer of agreements. This incentive for defection is especially problematic since force has been centralized in the hands of the state. Constraints on state actors are typically proposed as a solution to Jasay's challenge. But, as he notes, constitutional constraints are unlikely to remain fixed precisely because state actors, who control both amendment and enforcement of constitutions, will have an incentive to change the constraints that bind them (see Jasay 1985, ch. 4).

Where does this leave us in terms of understanding how social cooperation can emerge? Jasay argues that the presumption that individuals, absent the state, will always and everywhere defect on their agreements is inaccurate. Given the significant gains associated with peaceful cooperation, the incentive to find ways to cooperate is often quite strong, especially when we move from one-shot interactions to repeated dealings.



James Buchanan

While important purely in terms of political philosophy (see Buchanan 1986), Jasay's work in this area also has important implications for understanding the operation of the world. A common assumption made by social scientists and policymakers is that a strong centralized state is necessary for peaceful cooperation and order. Jasay calls this assumption into question by forcing us to remove the romantic blinders of the constitutionally constrained, productive state. In doing so, it becomes clear that it is very possible that a situation of anarchy is superior to monopolized force in the hands of a dysfunctional state.

Consider the most recent Fragile States Index. Of the 178 countries ranked, the governments of 77 percent fall into the categories of "Very High Alert," "High Alert," "High Warning," "Warning," "Low Warning" or "Less Stable" in terms of their likelihood of failure ([The Fund for Peace 2015](#)). In other words, a large majority of the world's governments today look nothing like the strong yet limited state that enforces contracts while refraining from engaging in predatory actions against citizens. In stark contrast, they look much more like Jasay's (1985) rendering of the state, which uses its power to engage in self-interested and often predatory behaviors against the very citizens it purports to protect and serve.

Jasay's insights and arguments have gained a foothold in the academic discussion. Raghuram Rajan, the former chief economist of the IMF and current governor of the Reserve Bank of India, has argued that too often social scientists, when discussing policy, assume a perfect world with complete institutions. A more appropriate baseline, he argues, would be to "assume anarchy" since all societies have incomplete institutions to varying degrees. In line with Jasay's insights, what Rajan is suggesting is

that we can't simply assume that institutions operate as we want them to operate. Instead, social scientists need to focus on the world as it actually is, with all its flaws and imperfections.

Further, a number of scholars have studied how private individuals have developed mechanisms of cooperation in the absence of a well-functioning government. (See, for example, Benson 1989, Fearon and Laitin 1996, Scott 2009, Leeson 2014, and Stringham 2015.) What these authors find is that, in many cases, private individuals are able to benefit from the gains from exchange not just in the absence of the state, but often in the shadow of a predatory state. In addition, some of these scholars have moved beyond situations of repeated dealings to also study how individuals have developed complex signaling mechanisms to allow individuals to take advantage of one-shot interactions (see Leeson 2014).

Whether they explicitly recognize it or not, these authors are all building off of the insights of Jasay regarding the ability of private individuals to solve coordination problems in order to secure the benefits from peaceful cooperation and exchange. Jasay's insights on this topic provide the foundation for the "progressive research program" in anarchy (see Boettke 2005), which is crucial for understanding issues at the heart of development economics and international relations, among other fields of study.

Social Engineering

Governments do not sit idly by, restricting their activities to producing only productive "public goods." Instead, they actively intervene in economic, social, and political arrangements to engineer outcomes that align with the preferences of those in positions of power. These interventions can take place domestically—e.g., interventions in the domestic economy—or internationally—e.g., conditional aid, military intervention, and occupation. In either case it is assumed that well-intentioned and enlightened "experts" can engage in social engineering to bring about the desired state of affairs. Here, too, Jasay's body of work is relevant on two related margins.

Jasay recognizes that rules guiding social behavior can either emerge spontaneously or through imposition. In both cases the resulting rules will guide the behavior of those who must live under them. However, as Kliemt discusses in his opening essay, Jasay elevates emergent conventions over imposed rules since the former are the result of unrestrained freedom, while the latter fail to appreciate the voluntary recognition of those who must live under the rules. This is relevant to classical liberals and libertarians, who often disagree about the role of foreign policy and state intervention in other societies.^[17]

In addition, Jasay also emphasizes the practical difficulties with social engineering. He notes that “[t]he hard part in political theory is to excogitate, not what we ought to want, but how to get it. It is easy enough to call for institutions ‘designed to’ do this, that and the other. The puzzle and the pain begin when the institutions that will do these things have actually to be ‘designed,’...” (1997: 117). Further, it is not just that efforts at social engineering may fail, but also that they may generate significant harms. “All we could tell the social engineer is that we want the engine to run sweetly and reliably, but we could suggest no way for him to find out how to make it run so.... It will very likely ruin the engine before it does” (1997: 117).

Jasay’s critique of social engineering is grounded in his broader critique of efforts by policymakers and supposed experts to rely on consequentialist reasoning to make interpersonal comparisons across members of society. (See Jasay 1985, 1996, 1997.) According to Jasay, “[b]etween the good and the bad consequences, where neither is either greater or smaller than or equal to the other, no balance can be struck, and consequentialist reasoning is simply out of place” (1996: 9). There is simply no way for the social engineer to know how to design institutions that maximize the wellbeing of people even *if* they are driven by benevolent, other-regarding intentions, a heroic assumption in itself.

Summing Up

I have only scratched the surface of the ongoing relevance of Anthony de Jasay’s body of work. Jasay made significant contributions to political philosophy

and theory. It is important to recognize that these contributions have a variety of “real world” applications to a range of issues that deal with matters of individual freedom and flourishing. If our goal as social scientists is to understand the world as it is, and to understand what, if anything, can be done to improve it, then Jasay’s work deserves careful reading and consideration.

Endnotes

[16.] See also the Summer 2015 issue of *The Independent Review*, which includes a symposium on the contributions of Jasay. <<http://www.independent.org/publications/tir/toc.asp?issueID=82>>. The Independent Institute has kindly offered to supply a complimentary copy of their Summer "Symposium on Anthony de Jasay" to any reader of this online forum. If you would like a free copy, please send your details (name and snail mail address) to <dhart@libertyfund.org>.

[17.] See the January 2015 issue of *Reason* for a symposium on the theme of “In Search of Libertarian Realism.” <<http://reason.com/archives/2014/12/08/in-search-of-libertarian-reali>>.

References

- Benson, Bruce. 1989. “The Spontaneous Evolution of Commercial Law,” *Southern Economic Journal* 55(3): 644-61.
- Boettke, Peter J. 2005. “Anarchism as Progressive Research Program in Political Economy,” In Edward Stringham (ed.), *Anarchy, State, and Public Choice*, Cheltenham, UK: Edward Elgar Publishing, Ltd., pp. 206-19.
- Buchanan, James M. 1986. “Review of *The State*,” *Public Choice* 51(2): 241-43.
- Fearon, James D. and David D. Laitin 1996. “Explaining Interethnic Cooperation,” *American Political Science Review* 90(4): 715-35.
- Jasay, Anthony de. 1985. *The State*. Indianapolis, Ind.: Liberty Fund. OLL online edition: <[/titles/319](#)>.

_____. 1996. *Before Resorting to Politics*. Northampton, MA: Edward Elgar Publishing, Ltd.

_____. 1997. *Against Politics: On Government, Anarchy, and Order*. New York: Routledge.

Leeson, Peter T. 2014. *Anarchy Unbound: Why Self-Governance Works Better than You Might Think*. Cambridge, MA: Cambridge University Press.

Rajan, Raghuram. 2004. "Assume Anarchy? Why an Orthodox Economic Model May Not Be the Best Guide for Policy," *Finance & Development*, September: 56-57. Available online: <<https://www.imf.org/external/pubs/ft/fandd/2004/09/pdf/straight.pdf>>.

Scott, James C. 2009. *The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia*. New Haven, CT: Yale University Press.

Stringham, Edward P. 2015. *Private Governance: Creating Order in Economic and Social Life*. New York: Oxford University Press.

The Fund for Peace. 2015. "Fragile States Index 2015," Available online: <<http://fsi.fundforpeace.org/>>.

A REPLY TO KLIEMT'S "TRICKS OR TREATS"

by Michael Munger

Like many people, I first encountered Tony de Jasay's work in his [monthly columns](#) on Econlib. The series have been titled "Reflections from Europe" and "Thinking Straight." Given Jasay's prodigious body of work in print, and its larger impact in the world of ideas, it is strange that so many of us first heard of him in an online forum. Still, I suspect that more than a few readers of Hartmut Kliemt's fine online essay on Jasay, "Tricks or Treats," will be encountering Tony's work for the first time. So, welcome! Better late than never.

Jasay's first "online" essay for Liberty Fund was "[Your Dog Owns Your House](#)" (April 22, 2002), and it was

brilliant. More important, it connects to my reaction to Kliemt's piece, so let me explain.

Voluntary Transactions Require Coercion for Liberty

If Albert needs a new roof on his house, and Beatrice is a competent roofer offering this service for sale at competitive prices, there is likely a range of mutually beneficial exchanges that might in principle be arranged. Perhaps Albert values the new roof at \$10,000 and Beatrice knows that her burly crew of roofers can install a new roof, including Beatrice's reservation profit, the price of shingles, and all labor, at \$5,000. The price they agree on may depend on local conditions, but if there are several roofing companies and the cost of labor and shingles is common to all agreements, the price will be something close to \$5,000. Competition drives prices to the cost of production.

However, this "cost of production" notion is facile. How will the agreement be enforced? It is possible that Beatrice is simply honest by nature, and that Albert is, also. Thus after their handshake Albert *might* advance \$2,000 to buy shingles, and Beatrice *might* show up with shingles rather than running off with the money. And Beatrice *might* complete the job to the precise specifications of the agreement. And then Albert *might* pay the remaining amount he agreed to pay at the time of the handshake.



Or, they *might* not. Anticipating these problems reduces the expected value of the handshake agreement for both parties. What they would like to do is specify additional terms for the arrangement; these terms are often gathered together under the dismissive title "transactions costs,"

but they are costs of agreement no less than the labor or the shingles. In a repeated interaction cooperation might emerge, but no homeowner needs a roof more often than once every 20 years or so, if the roof is competently installed.

Which means that both parties would be better off, and would seek to contract for, coercive punishment of the other party in the event of breach of contract. Albert would be willing to pay, and Beatrice would be willing to pay, something extra for a third party to extract some painful or expensive bond, even if that agreement in effect coerces Albert himself and Beatrice herself. In Oliver Williamson's terms, the "Fundamental Transformation" is a problem: before we sign the contract, both of us recognize that breach is a problem and we seek a strategy that commits us to comply. After the contract is signed both of us expect the other party—and may ourselves try—to find a hole in the arrangement and exploit it. My present self seeks to bind my future self to comply, *because if I can do that I can get a better net price in the contract.*

Albert and Beatrice might hit on a clever solution: buy a big smelly dog, and train it. This seems expensive, but someone may well have foreseen the value of such a commodity and be willing to provide just this sort of dog. So Zed the dog is purchased. Zed's job is simple: bite the legs of anyone who breaches an otherwise valid contract.

The whole point of renting Zed—large and loyal and sharp-toothed—is that the costs of obeying contracts are cheaper than breaching. In equilibrium, if Zed is well-trained (he cannot be bribed with doggy treats), there will be no biting and contracts always bind. This means that Zed can be rented out to many pairs of potential transactors, because Zed has very little to do. Everyone is happy, and contracts are easily negotiated because enforcement is cheap and sure.

Voluntary Coercion for Private Contracts Does Not Justify a Social Contract

Jasay would not dispute the value of credible commitments for contracts. His quarrel comes when

contractarians, particularly of the Rousseau-style Social Contract type, use a mythical form of this argument to justify *actual states*. He reserves special scorn for those who argue that contracts would be unenforceable without a state, and then simply (as he puts it) "jump over their own shadows" to say that a larger, "social" contract is the answer. Who, pray, could be expected to enforce that contract, the one from which all other contract enforcement is derived?

Thus, there are two problems to be solved, one practical and the other ontological. The practical problem is illustrated by Jasay's "My Dog Owns My House" essay. If people such as Albert and Beatrice decided, perhaps rationally (in the sense described above), to hire Zed as third party enforcer, it will be difficult to restrict Zed to limited role. One might imagine that Albert returns home from work one day and finds Zed sitting on the couch, drinking Albert's best scotch and cleaning his Kalashnikov. "Get off the couch! Put down my gun, and stop drinking my scotch!" demands Albert.

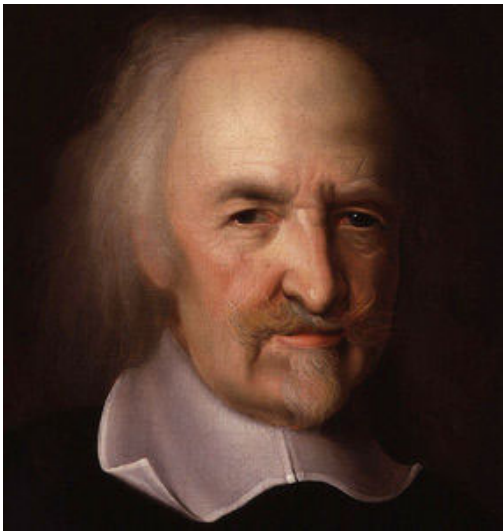
Zed looks up coolly. "This isn't your scotch, or your gun. In fact, this isn't even your house. You wouldn't have this house without my protection. I think there need to be some changes around here." Now, from Albert's perspective, and from all of those who contracted for enforcement, that arrangement was straightforward: Zed was paid for his services, and there is no further obligation. But Zed is fully capable of violating *that* contract, because there is no Zed-Zed dog that has agreed to bite dogs that fail to carry out their agreement to enforce agreements. Thus any notion of a "limited state" is nonsense, in Jasay's view. If you create a state, the state will think it owns your house. As President Obama put it, "You didn't build that."

The second problem is ontological. Jasay illustrated it in his 1999 review of Buchanan and Congleton's *Politics by Principle Not Interest*.

If man can no more bind himself by contract than he can jump over his own shadow, how can he jump over his own shadow and bind himself in a social contract? He cannot be both incapable of collective action *and* capable of it when

creating the coercive agency needed to enforce his commitment. One can, without resorting to a bootstrap theory, accept the idea of an exogenous coercive agent, a conqueror whose regime is better than anything the conquered people could organize for themselves. Consenting to such an accomplished fact, however, can hardly be represented as entering into a contract, complete with a contract's ethical implications of an act of free will. [Jasay 1999: 107; emphasis in original.]

That is, while it may be true that consenting to be coerced in private contracts is possible, because it is implied by the nature of the contract itself, the notion of coercion in a social contract is quite different. One might accept, in Jasay's paraphrase, the Hobbesian logic that some "coercive agent" is useful. But there is no contract or consent, and in fact we cannot even act "as if" there had been contract or consent, because it was the very impossibility of those things that gave rise to the (ostensible) case for a state in the first place.



Thomas Hobbes

Kliemt's Alternative Formulation

As Kliemt notes in the main essay for this forum, Jasay's project is to argue that conventions—including, centrally, private property and keeping promises—can acquire moral force even in the absence of ratification by legislation or state endorsement. But I'm not sure that

Kliemt accurately portrays certain important background facts. He claims, "The original founding of the state is always an act of imposition." I might agree that it always has been an act of imposition, but Buchananites (such as I) might argue that state-like social structures, such as clubs or neighborhood associations or small units in federal systems, could at least in principle be the product of voluntary associations. I would agree, however, that the key point in founding obligation on consent requires actual consent, and even rules that people now obey and find useful do not, in the absence of actual consent, obtain moral force through any bootstrap or "as if" contractarian hocus pocus.

Most importantly, Kliemt makes a compelling argument about the need for some other form of motivation to justify the moral force of conventions that emerge spontaneously, but are not directly self-enforcing. Here, as Kliemt gently but firmly suggests, Jasay might avail himself of the now increasingly well-documented human tendency to value rules and rule-following for their own sake, once they are established as conventions. This "intrinsic" value of rules could solve, or at least mitigate, the difficulties in (otherwise) enforcing satellite agreements such as promise-keeping. One could use an "evolved brain architecture" argument (Barkow, Cosmides, and Tooby 1992) or a "social norms" argument (Gaus 2015; 2013) in ways that would make Jasay's project look much less like a "trick" while fully preserving the "treat."

Kliemt's critique and extension of Jasay's model of "anarchism, but..." is both useful and fundamentally faithful to the original intentions of that model. Jasay does not just claim that existing states are not legitimated by tacit consent; he goes on to conclude that no state *could* be legitimated, even by actual consent. This is, indeed, the fundamental anarchist conclusion. The reason that Jasay is not an anarchist is that he concedes that, despite the failure of contractarian justifications, rational individuals would certainly acquiesce, and might even want to acquiesce—something close to voluntary endorsement—to the empirical fact of the existence of the state. Just don't call it voluntary.

References

- Barkow, J., Cosmides, L. and Tooby, J. 1992. *The Adapted Mind: Evolutionary Psychology and the Generation of Culture*. New York: Oxford University Press.
- Gaus, Jerry. 2013. "Why the Conventionalist Needs the Social Contract (and Vice Versa)." *Rationality, Morality, and Markets*. 4: 71–87.
- _____. 2015. "The Egalitarian Species." *Social Philosophy and Policy*. In Press.
- Jasay, Anthony de. 1999. "On Treating Like Cases Alike: Review of *Politics by Principle Not Interest*." *The Independent Review*, IV (1): 107–18.
- Jasay, Anthony de. 2000. "The Intellectual Portrait Series: A Conversation with Anthony de Jasay" (with Hartmut Kliemt). Indianapolis: Liberty Fund, 2000. <[/titles/959](#)>.
- Jasay, Anthony de. 2002. "Your Dog Owns Your House." April 22. Library of Economics and Liberty. Accessed 8/22/2015.

AGAINST POLITICS: ANTHONY DE JASAY'S PIONEERING WORK ON ANALYTICAL ANARCHISM

by Edward Peter Stringham

Introduction

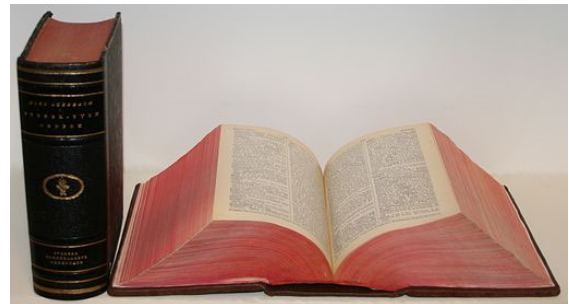
Why was the state created, does it create order, and is there any way it can be constrained? Asking big questions like this, Anthony de Jasay has received praise from economists and philosophers alike. James Buchanan (1986: 241) describes Jasay's *The State* as a "solid, foundational analysis, grounded in an understanding of economic theory, informed by political philosophy, and a deep sense of history," and Gerard Radnitzky (2004:99) describes Jasay as "one of the most significant social philosophers of our age." In his essay in this symposium, Hartmut Kliemt discusses Jasay's critique of contractarianism and Jasay's views on rights and

conventions, and Kliemt concludes by asking whether Jasay is "an anarchist after all?" Kliemt writes:

Though his persistent criticisms of statism have made Jasay popular among many who have anarchist leanings, it is misleading to refer to him as an anarchist. With the anarchists he shares the belief that coercion by collective mechanisms of governance can *not* be legitimized by agreements of individuals. But he does reject the typical anarchist's reliance on a priori knowledge of rights and entitlements.

Although Kliemt is correct to point out that Jasay has a different conception of rights and entitlements than many other anarchists, that does not qualify Jasay as an advocate of the state or disqualify him as an anarchist. In this essay I will argue that regardless of how he labels himself, Jasay is indeed an important contributor to the research field of analytical anarchism.

Toward a Theory of Ordered Anarchy



As *Merriam-Webster* points out, anarchy has two main meanings, 1 "absence of government" and 2: "a state of lawlessness." Where the first definition simply describes the political setup, or lack thereof, without describing how the society would look, the latter describes an endstate, chaos, that almost everyone rightly opposes. Because most people think the two meanings go hand in hand, many advocates of ordered anarchy, perhaps including Jasay, are averse to identifying as anarchists. I am unaware of him referring to himself with that specific term. But Jasay consistently analyzes government as a coercive institution that cannot be constrained, and he discusses how order comes about independent of government. In his book *Against Politics: On Government, Anarchy, and Order* Jasay (1997: 5) writes, "The main

burden of Part II is to show that certain social virtues, achievements, and functionally valuable institutions are, as Hume has suggested, prior to government, and their preservation is not contingent on political arrangements. Some foundation stones are thus laid for a theory of ordered anarchy.” Despite what Kliemt might say, I believe all anarchists should we should welcome Jasay into their club.

Normative versus Positive or Analytical Anarchism

As Boettke (2005, 2012) points out, writing and research on anarchy can be classified as normative or positive (and the two are often intermixed). Normative discussions advocating anarchy often take the form “Is the state justified?”, “Do individuals have a right to ignore the state?”, or “How would this be solved in my ideal world?”, whereas positive discussions of anarchy often take the form “Does the state exist to create order or to extract resources from the public?”, “Are advanced markets possible without government?”, or “How have markets solved this type of problem throughout history?”

Although I believe both types of discussions are useful, as an economist, my research tends to focus on the latter type of questions. For example, were the first stock markets created after government started enforcing complex contracts, or was the enforcement private? Or: was electronic commerce made possible only after government created an international framework to identify and punish fraud, or were the problems solved privately? In my book from, *Private Governance* (2015) [<http://amzn.to/1SKYDxK>] with Oxford University Press I document how in each of the world’s first stock markets government officials viewed complicated contracts in financial markets as forms of gambling and did not enforce them. Nevertheless, brokers relied on various mechanisms including reciprocity, reputation, and more formal private governance to enable sophisticated contracts including forward contracts and options. In the case of electronic commerce, private entities like PayPal figured out how to prevent international and quasi-anonymous fraud ex ante rather than relying on government enforcement ex post.

The research is not “How do I think contracts should be enforced in my ideal world?” but instead, “How did private parties solve problems for hundreds of years?” Someone who observes the history cannot say, “My theory says that markets are only possible when government enforces contracts, so government must have enforced contracts in these markets,” when government didn’t. When studying positive questions, both advocates and opponents of anarchy should be able to agree on many issues, such as whether a particular market actually operated without government enforcing contracts.

As such, the research or arguments along these lines may be more likely to be of interest to others who do not share normative premises about whether or not the state is immoral.

Although Jasay makes many explicitly normative claims, much of Jasay’s work can be classified as positive, or analytical, anarchism, and I believe that is why Buchanan finds Jasay more compelling than other libertarian anarchists whom Buchanan (1979: 282) dismisses as “romantic fools who have read neither Hobbes nor history.”

Moving beyond “Let’s Assume Positive Outcomes”-Style Arguments

Jasay does not dismiss prisoners’ dilemma-type problems (the idea that people would be better off cooperating but individually have incentives to cheat), and he avoids hand-waiving tricks like, “There would be no cheating in my ideal world.” Instead Jasay asks under what conditions might we see cheating and under what conditions might we see cooperation.

Where others posit that government is needed to solve prisoners’ dilemmas, Jasay questions whether shifting the problem to the government eliminates them. Arguments like (1) “Humans are imperfect and are often bad”; (2) “therefore we need a government comprised of *humans* to control their fellow men” assume that bad traits disappear when people become government officials.

Jasay questions the idea that creating a monopoly of law enforcement helps eliminate prisoners’ dilemmas at all.

Jasay (2008: 144) argues “that state monopoly of rule-enforcement leads to soft, sluggish, and ineffective punishment. As a consequence, rules will be poorly enforced, and public order and the security of person and property undermined.”

Positive Discussions about the Possibility of “Ordered Anarchy”

What is the alternative to a monopoly of rule enforcement? To Jasay the choice is not between state and chaos. He discusses how private options existed before the centralized state:

When rule enforcement was a diffuse, decentralized function, non-corporal punishment mainly took the form of fines for the benefit of victims and plaintiffs. Kings saw obvious advantage in diverting this income stream from victims and plaintiffs to themselves. Stripping civil society of rule-enforcing functions also stripped it of much of the justification of possessing arms and maintaining organized forms of exerting force. (2008: 139)

To Jasay law and order existed before government and was subsequently undermined by it. Jasay also argues against the Hobbesian-style contractarianism popular among authors like Buchanan and makes the case that any supposed contract between the people and the state assumes that contracts made in a state of anarchy are possible. If so, what makes that order possible?

Rather than assuming the ubiquity of conflict under anarchy, Jasay points out successful cooperation can have positive payoffs.

Nobody has, to my knowledge, bothered to ask the obvious question: why in a Hobbesian world should coalitions form only for attack and never for defense? What happens if, in any conflict over property, both the attacker and the defender are free to attract allies? Why can't we make the commonsense assumption that the force of the coalition gathered to back a given side in the conflict will be proportional to the

“payoff” (gain or avoided loss) the side would get if it won the conflict (1997: 198)

Jasay discusses various private solutions to prisoners' dilemmas including how repeat interaction eliminates cheating associated with one-shot games. Jasay makes the case that in the real world, repeat interaction among individuals is not the exception but the norm.

Jasay writes:

In the large group, individuals are alleged to lack the incentives that would lead them to choose cooperative solutions in the same kind of repeated, game-like interactions that take place in small groups. This belief is based on a putative analogy between social groups with many members and n-person indefinitely repeated prisoners' dilemmas where n is a large number, or the players are anonymous, or both. This analogy is almost totally false, and based on elementary mistakes.

Jasay argues that the world is instead comprised of many small games or subgroups from which people can be invited or disinvented. Parties seeking repeat interaction have to work to maintain “a reputation that influences his chances of being invited or admitted to other games.” (Jasay 1997: 205). My own research on stock markets in 17th-century Amsterdam (Stringham 2015, chap 4), 18th-century London (Stringham 2015, chap 5), and 19th-century New York (Stringham 2015, chap 6) found that brokers needed to act in a reliable manner or else they would be excluded from the club. The order is not attributable the state, but to private means.

Concluding Thoughts

As a major questioner of the idea that government is contractually created for the benefit of the citizenry or that it can be instructed to work on the citizens' behalf, and as a major questioner of the idea that order is attributable to government, Jasay's work is clearly a contribution to the “economics of ordered anarchy” (Jasay 1997: 185).

Kliemt may be correct that Jasay adopts a different approach to rights than self-identified anarchists like

Murray Rothbard, David Friedman, or Bruce Benson, but in no way does that qualify Jasay as an advocate of government. Similar to how classical liberalism includes different advocates of rights, contractarianism, economic efficiency, or utilitarianism, anarchism can be consistent with various moral frameworks. But much of Jasay's work focuses on means-ends analysis and questions many assumptions or leaps in logic by advocates of the state. These specific arguments, no doubt, have normative implications, but they are strictly positive. Whether or not Jasay self-identifies as an anarchist, he is one of the most important contributors to the research program on analytical anarchism.

References

- Boettke, Peter J. 2005. "Anarchism as a Progressive Research Program in Political Economy." In *Anarchy, State and Public Choice*, ed. E. P. Stringham, 206-19. Cheltenham, UK: Edward Elgar Publishing.
- Boettke, Peter J. 2012. "Anarchism and Austrian Economics." *New Perspectives on Political Economy*, 7(1): 125-40.
- Buchanan, James M. 1986. "From Redistributive Churning to the Plantation State." *Public Choice*, 51: 241-43.
- Jasay, Anthony de. 1997. *Against Politics: On Government, Anarchy, and Order*. New York: Routledge.
- Jasay, Anthony de. 2008.. "On the Monopoly of Rule Enforcement." *Journal of Private Enterprise* 23(2): 135-148.
- Long, Roderick. 2003. "Review of Justice and Its Surroundings by Anthony de Jasay." *Independent Review*, 8(1): 120.
- Radnitzky, Gerard. 2004. "Anthony de Jasay: A Life in the Service of Liberty." *Independent Review*, 9(1): 99-103.
- Stringham, Edward. 2015. *Private Governance: Creating Order in Economic and Social Life*. New York and Oxford: Oxford University Press. <<http://amzn.to/1SKYDxK>>.

ANTHONY DE JASAY ON WHETHER HE IS AN ANARCHIST

by David M. Hart

The following is a transcription of a section of the interview with Anthony de Jasay by Hartmut Kliemt in 2000 as part of Liberty Fund's *Intellectual Portrait Series*:[\[18\]](#)

HK: Now some people might say that you are a kind of anarchist. Would you describe yourself as an anarchist, or reluctant anarchist?

ADJ: No, I don't mind. If I were the only anarchist I would be very happy to bear the title. What embarrasses me about it is that the few other anarchists many of them are crazy and I don't feel like being identified with them. So that embarrasses me. But if I have to tell you the truth, yes I am an anarchist. But that doesn't mean I believe that anarchy here and now is possible. It is desirable but not possible.

HK: Would that be a conceivable possibility at all in a world where somebody might invent the state anyway and use it as a predatory instrument? Don't we need some kind of state then to defend us against this kind of aggression?

ADJ: Well you maybe right, but of course then is the remedy not worse than the disease? I mean, it is rather like saying, let's infect ourselves with some terrible infectious disease because otherwise we might get it.

HK: Well, but if there is a difference between a state like Poland and a state like France even though you don't like either of them, wouldn't it be worth while to go for the one against the other?

ADJ: From a short term perspective, yes. From a long term perspective, I'm not sure.

HK: Tony, you always have insisted government that has an intrinsic proclivity to grow and you

also pointed out that democratic governments will tend to grow very strongly because they have all these redistributive concerns involved. Wouldn't you say that, would you claim this?

Adj: Yes. I think the idea is that, when you have collective choice and individual choice side by side it is within the power of collective choice to preempt individual choice, but never vice-versa. I mean, a collectivity can always decide to include within its competence something that has been individual until then, such as, to give you a very mundane example, a collectivity can always decide that instead of leaving you half of your income to be spent as you wish, it will only leave you 45% of your income to spend as you wish and take, preempt, 55. This is always within the realm of, within the power of collective choice. Now, the question then is, can you limit this power? This is the problem of limited government. There is this intrinsic capacity of collective choice to eat up the scope for individual choice, and how do you limit this appetite? And of course, if I believed that it is a matter of will, a matter of wish, or a matter of conviction to limit government, like I suppose Jim Buchanan believes, then I would not be an anarchist, because I would say, well this is a marvellous, lovely compromise. We will have a bit of government but not too much. Fortunately, I'm led to the conviction that this is wishful thinking and the reason why I believe this is because if you have any democratic choice you have anonymous voices, the decision is taken by voice count, everybody counts for one and nobody for more than one. Now within this group that is competent to make this collective choice, like an electorate, the rule, whatever the rule is, the rule provides for a blocking minority which can prevent the decision. Now under majority rule this is 50% and one vote, 50% and the tie breaker. But of course, you could have a super majority where the blocking minority is much, much smaller. But no matter how small,

provided it is not one person, i.e. which means veto right, which in my language is not collective choice. No matter how small your blocking minority, no matter how careful and cautious and rigorous your supermajority rule, so as to protect society from the tyranny of, so-called tyranny of the majority, there is always a way to split that blocking minority. I mean if it takes two people to block that decision, only 2 people, everybody else may be of one mind, but there are two people who don't want it. Those who do want it can always bribe the poorer of the two with the money of the richer and say "Do come in with us and let's exploit this rich man". This is potentially always a maximising strategy. That's why I believe that in this valley of tears there is no limited government.^[19]

Endnotes

[18.] The interview with Jasay is available online in audio formats: *The Intellectual Portrait Series: A Conversation with Anthony de Jasay* (Indianapolis: Liberty Fund, 2000). Duration 67 mins. Jasay is interviewed by Hartmut Kliemt.

- purchase the DVD from the Liberty Fund <[online catalog](#)>.
- view it [online](#) at Econlib and also at [New Media](#) at Universidad Francisco Marroquin, Guatemala.
- downloadable audio <[/titles/959](#)>. mp4 <<https://oll-resources.s3.amazonaws.com/titles/959/JasayAC.m4a>>

[19.] See discussion at 36:23 (out of 1:07:22) here <<http://www.newmedia.ufm.edu/gsm/index.php/proyectosespeciales:Dejasaykliemtconversation>>.

ABOUT JASAY'S ALLEGED ANARCHISM

by Hartmut Kliemt

Coyne, Munger, Stringham, and Kliemt all concur with Jasay in accepting basic tenets of the Public Choice approach to politics. We accept that the same model of rational choice-making should be applied across the board. We share basic sympathies for anarchist ideals even if out of practical necessity we may be reluctant anarchists.

Jasay against Government

For Jasay reserving certain decisions to a collective choice process in a state may be unavoidable but is inherently morally inferior to individual choice-making.^[20] He accepts acquiescence with state power but strongly opposes arguments that suggest endorsing state activity as being legitimized by positive individual consent. In particular, Jasay regards as subversive for liberty social contractarian constructions that claim that state power can under certain conditions be normatively treated “as if” based on individual voluntary consent. Political theory should not conceal that under collective rule citizens are subjected to the collective will even if they participate in its formation. For him there is no legitimacy in collective choice per se. He would accept Michael Munger’s remark, that *real* individual agreement to pursue some aims, ends, or values collectively by means of clubs (including firms, etc.) bestows legitimacy on such enterprises. Yet since this transfer of legitimacy via *real* individual agreements is ruled out for the state as a whole, the state is normatively deficient as compared to anarchy.

Is Jasay an Anarchist and If So in What Sense?

Edward Stringham states that if “Jasay has a different conception of rights and entitlements than many other anarchists, that does not qualify Jasay as an advocate of the state or disqualify him as an anarchist.” This point is well taken,^[21] but it deserves to be emphasized that somebody who does not endorse, say, “natural rights” or Kantian transcendental arguments in favor of anarchy *need not thereby* become an advocate of the state.

When Stringham says that “anarchists ... should welcome Jasay into their club,” this provokes the “Groucho Marxian” remark that Jasay would not like to be taken in by a club of normative anarchists who – as most anarchists – start from the presumption that some obligations and the rights based upon them exist without being the results of human creation. As Bentham – whom Jasay otherwise regards as an evil force – stated in his Anarchical fallacies:

But reasons for wishing there were such things as rights, are not rights; -- a reason for wishing that a certain right were established, is not that right -- want is not supply -- hunger is not bread.^[22]

If it comes to what Stringham calls analytical anarchism, Jasay would be happy to join the club, though. That “the research or arguments along these lines may be more likely to be of interest to others who do not share normative premises about whether or not the state is immoral” (Stringham) is welcome as well. As far as the amazing self-organizational powers of inter-individual coordination and agreement are concerned, analytical, historical, and empirical studies of such processes – as conducted by Coyne and Stringham themselves and in the literature they draw attention to – will be more persuasive than any theoretical argument. Yet they do not by themselves answer fundamental questions of legitimacy.

Voluntariness and Acquiescence

The final sentences of Michael Munger’s fine comment read:

The reason that Jasay is not an anarchist is that he concedes that, despite the failure of contractarian justifications, rational individuals would certainly acquiesce, and might even want to acquiesce—something close to voluntary endorsement—to the empirical fact of the existence of the state. Just don’t call it voluntary.

In his later work Jasay increasingly started to share the typical philosophers’ preoccupation with the language in which we express our ideas and views. For him, whether

we *call* something “voluntary” matters. He would certainly ask what it means that “rational individuals ... might even want to acquiesce.” If it is in the rational self-interest that individuals acquiesce, then they would in this sense, of course, want to acquiesce. But facing a man with a gun, we would want to comply with his wishes as well. Even though starting from Hobbesian premises, Jasay would not call this voluntary in any normatively relevant sense. For him it matters how the “thing” with which we acquiesce has been created. A comparison of acquiescence with established state rules and acquiescence with established conventions can illustrate what is at issue here.

As far as the necessity of acquiescence is concerned, conventions are normatively *no* other than state-enforced rules. For instance, for an individual who lives in the UK driving on the left-hand side of the street is not any more a free choice than is paying his taxes. Even if “the rules of the road” were not backed by government they would still not be chosen by the individuals subjected to them.

How easily even smart people can fall into traps here becomes obvious from Christopher Coyne’s statement: “Jasay elevates emergent conventions over imposed rules since the former are the result of unrestrained freedom, while the latter fail to appreciate the voluntary recognition of those who must live under the rules.” I fully agree with the “former” part of the sentence while the latter (starting with “while the latter fail”) seems expressive of a latent contractarian assent-based conception. Whatever the merits of such a conception it certainly cannot be Jasay’s.

At the risk of beating this to death, in Jasay’s scheme it must be the way conventions are *created* that makes them superior to rules enacted under a collective choice rule (first part of Coyne’s sentence). But once conventions exist we must acquiesce with them the same way as we must acquiesce with state-enacted rules. There is, contrary to what Coyne assumes, *no* “voluntary recognition of those who must live under the rules” (second part of Coyne’s sentence).

Incentives and Opinions

As one of the last hard-nosed economists standing, Jasay sticks to the fundamental premise that “people would act *economically*; when an opportunity of an advantage was presented to them they would take it.”^[23] Once in place state-sponsored rules and conventions via enforcement influence their opportunity sets and thereby guide individuals no matter how the rules were generated.



I believe that his strong rational-choice focus on incentives – independently of the nature of the source of their enforcement – does not cohere well with Jasay’s view that the liberal immune system can be subverted by mistaken *opinions* concerning the legitimacy of collective choice. Why care so much about the difference between acquiescence and endorsement, which can be relevant only in shaping our intrinsic motivation and beliefs, if in the end only substantive incentives or extrinsic motives matter?^[24]

Anarchy within the State?

It is certainly desirable that within a state there is a sphere in which private dealings among citizens are protected.^[25] Yet Jasay doubts that limited government can be part of a dynamically stable political equilibrium. Not only is anarchy always threatened by states external to it, the *quasi*-anarchy within the state that protects quasi-anarchy against external invading states stands to be subverted by its own protector. Yet, granting that there may be an inherent proclivity of any state to become “total,” no state will succeed totally in this. As Christopher Coyne, referring to some of the relevant literature, states, “In many cases, private individuals are able to benefit from the gains from exchange not just in

the absence of the state, but often in the shadow of a predatory state.”

However, the argument that “residual anarchy” persists has another more philosophical side, too. Taking seriously the old riddle “quis custodiet custodes ipsos,” or “who will guard the guardians,”^[26] we need to be aware that on the top of rule enforcement by the state there must be some kind of nonstate created order – at least within the top group of the “guardians” – otherwise there would have to be a state to create the state order, ad infinitum.^[27] As expressed in my initial essay, I believe that an economic model of case-by-case opportunity-taking behavior cannot explain how power in society is constituted. Genuine rule-following behavior of at least some individuals is necessary to bestow the power on those who are then using the organizational structures based on such voluntary compliance of some to exploit others. In this sense quasi-anarchical order creation is part of the fabric of non-anarchical order.

Will the State Ever Whither Away?

The state will not go away simply because it is normatively flawed. The state is such a potent instrument of exploiting others that once invented it will be used for exploitative purposes. The fact of the state’s existence does not justify its claims to act on behalf of the collectivity. For this view Jasay has merely scorn. Yet he is aware that once the state is invented it will stay around due to its superiority as an instrument of aggression and exploitation of others.^[28]

As far as the withering away of the state is concerned, the situation is hopeless. However, as long as relatively limited Western governments persist, the situation is not too serious yet. Jasay’s work can serve as a reminder to all of us not to take for granted what James Buchanan once stated: “better in the West.” Since “[the power of the mighty hath no foundation but in the opinion and belief of the people](#)”^[29], critical discussions of liberty and responsibility as in the present dialog may contribute to forming opinions that may help to restrain the mighty.

Endnotes

^[20.] See also the transcript of a part of the intellectual portrait series provided by David Hart as a supplement to the present debate. <[/pages/lm-jasay](#)>. The audio is here <[/titles/959](#)>.

^[21.] I have a suspicion, though, that some of my colleagues in this dispute here might – other than Jasay and I – endorse a contractarian justification of collective choice that allegedly makes collective authority a matter of prior consent. I will criticize this kind of romantic ideology – hinted at by Michael Munger – once it will be put forward explicitly rather than implicitly.

^[22.] Jeremy Bentham, *Anarchical Fallacies: Being an Examination of the the Declaration of Rights issued during the French Revolution* (1796) in *The Works of Jeremy Bentham, published under the Superintendence of his Executor, John Bowring* (Edinburgh: William Tait, 1838-1843). Vol. 2. <[/titles/1921#Bentham_0872-02_6148](#)>.

^[23.] John Hicks, *Causality in Economics* (Oxford: Blackwell, 1979), p. 43.

^[24.] I am not saying that Jasay should not care. Quite to the contrary, I believe that he deserves praise for caring. I only say that this is not completely in harmony with his rational choice approach to politics.

^[25.] Interestingly enough, German adherents of the subsidiarity principle do not only cite the papal encyclical “Quadragesimo Anno,” but typically refer to Abraham Lincoln: “The legitimate object of government, is to do for a community of people, whatever they need to have done, but can not do, at all, or can not, so well do, for themselves – in their separate, and individual capacities. In all that people can do individually as well for themselves, government ought not to interfere.” Abraham Lincoln, “Fragment on Government,” circa July 1, 1854, in Roy P. Basler, ed., *The Collected Works of Abraham Lincoln* (8 vols., New Brunswick, NJ: Rutgers University Press, 1953), 2: 220-21. <[http://hd.housedivided.dickinson.edu/node/40487](#)>.

[26.] See more recently also, Jasay, Güth, and Kliemt, in Jasay, *Social Justice and the Indian Rope Trick* (Indianapolis: Liberty Fund, 2014).

[27.] In a way this is Jasay's point that the social-contract institution itself cannot be based on a contract.

[28.] That a workable anarchic order of some legal complexity like Iceland, until about A.D. 1100, was located on an island which was also hiding behind a name signaling bad conditions – “Ice-” rather than “Green-” land – was not accidental.

[29.] (Hobbes 1682/1990: 16) Thomas Hobbes, *Behemoth: The History of the Causes of the Civil Wars in England* (1668) in *The English Works of Thomas Hobbes of Malmesbury; Now First Collected and Edited by Sir William Molesworth, Bart.*, (London: Bohn, 1839-45). 11 vols. Vol. 6. </titles/770#Hobbes_0051-06_540>. See also, Thomas Hobbes, *Behemoth* (Chicago: University of Chicago Press, 1990).

WHAT MAKES AN EXCHANGE VOLUNTARY?

by Michael Munger

My good friend H.D.P. Kliemt has provided some very useful arguments for discussion. He offered distinctions that are sharp and important, highlighted some areas of agreement, and identified some contradictions.

The difficult thing for those of us who have long studied Jasay is that he uses language in a way that is both very precise (and consistent, for he is careful with words), yet idiosyncratic (for he is an independent scholar, in every sense).

I want to consider one concept that is central to Jasay's thought: property. The problem is that what Jasay means by “property,” when he uses the word, is both precise and idiosyncratic.

The best illustration of this is Jasay's objection to the use of the phrase “property right.” Either property is a right, in which case that phrase is redundant, or the “bundle of

sticks” view of rights is correct, in which case there is really no such thing as “property” in the first place.

Jasay would base this argument on Hume—Jasay is no Lockean!—in particular the logic of this passage:

[After property is understood as stability in possessions, there immediately arise the ideas of justice and injustice]; as also those of property, right, and obligation. The latter are altogether unintelligible without first understanding the former. Our property is nothing but those goods, whose constant possession is established by the laws of society; that is, by the laws of justice. Those, therefore, who make use of the words property, or right, or obligation, before they have explained the origin of justice, or even make use of them in that explication, are guilty of a very gross fallacy, and can never reason upon any solid foundation. A man's property is some object related to him. This relation is not natural, but moral, and founded on justice. It is very preposterous, therefore, to imagine, that we can have any idea of property, without fully comprehending the nature of justice, and shewing its origin in the artifice and contrivance of man. The origin of justice explains that of property. The same artifice gives rise to both.[30]

Importantly, then, it is by no means inevitable that human society must rely on property; property is a social convention, and there are myriad other possible conventions on which to found a social order. Jasay happens to believe, as Hume did, that a conception of justice based on the recognition and protection of property is a superior society, but it is not based on any “natural law” that can be divined through either reason or revelation.

Accepting that notion of convention, in which property is not just consistent with justice, but in fact justice requires, by definition, that property be respected as the core human right, has implications. For Jasay, in a society with property, any additional concerns about “social justice” are lexically inferior to respect for and

preservation of property. Property is the core human right, so a society based on property justice requires that property be honored. To try to overlay other conceptions of justice on top of this “justice as recognition of property” convention is to fall into incoherence: A “social justice” that requires violations of property rights as a precondition for forced redistribution is profoundly unjust.

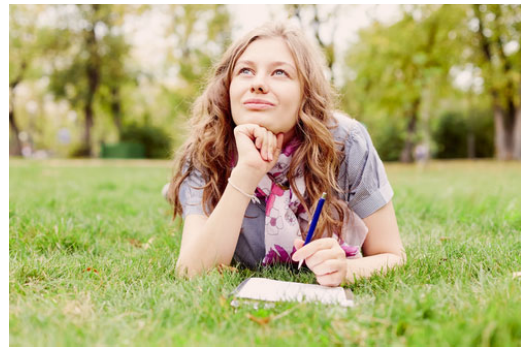
The reason to spend so much space on this consideration is that one must understand Jasay’s notion of the centrality of property before beginning to consider the rest of his thought. And it connects to the core of my own concern, which is voluntary consent. The argument for truly voluntary (in my terms, “euvoluntary”) exchange is that both (all) parties are better off.

Given an initial or status quo distribution of rights, it would be a violation of those rights to modify any of them without the consent of the owner of each particular right. “We” can’t decide anything; each owner would have to consent. The justification for this claim is that this is the only way to ensure that the exchange, transfer, or modification of rights is a Pareto improvement. This may be more complicated than it seems, as an example (suggested by Kliemt) reveals.

Imagine that Stringham has a gun -- okay, no, that’s too scary. Never mind.

Imagine that Coyne has a gun, and Munger has a wallet. Then Coyne has a gun, and a wallet. What happened? Coyne offered Munger a deal: If Munger gives the wallet to Coyne, Coyne will refrain from using the gun to shoot Munger.

Munger thinks over this “offer.” When Coyne demands a decision, perhaps Munger offers the old Jack Benny answer. When told by a gunman, “Your money or your life!” the miserly Benny agonized, “I’m thinking, okay? I’m THINKING!”



But then Munger decides that he would be better off handing over the wallet than he would be getting shot, perhaps fatally, and losing the wallet to Coyne anyway. Munger hands over the wallet.

Was this “exchange” voluntary? I think most people would say “no.” If asked for an explanation, the objection might be that this was theft, and therefore the violation of a property right.

But wait! I never said that “Munger owns the wallet.” I said that *Munger had a wallet*; the assumption that this is *property* is just question-begging. We might as well posit that Coyne is a law-enforcement officer, whose gun is being used in service of the law, and that Munger is a thief who stole the wallet and has no property claim to it.

In that case, the exchange had a “voluntary,” or at least “justified by justice” aspect. If Munger accepts the convention of property, his theft of the wallet is a crime, which everyone (including Munger) who accepts the convention thinks should be punished, by coercive force if necessary. But then Munger consented (by acceptance of the convention of property) to be forced to respect the property of others. Giving up the stolen wallet under threat of force is *consistent* with the convention of property, not a *violation* of it.

That’s why the understanding, and acceptance, of the deep nature of the convention of property is the key to understanding the rest of Jasay. When Kliemt says—rightly—that what is voluntary depends on the preexisting distribution of property, including rights of autonomy and self-determination, he is right. But it is useful to explain the rather deep reasons why that is right. And that is what I have tried to do here.

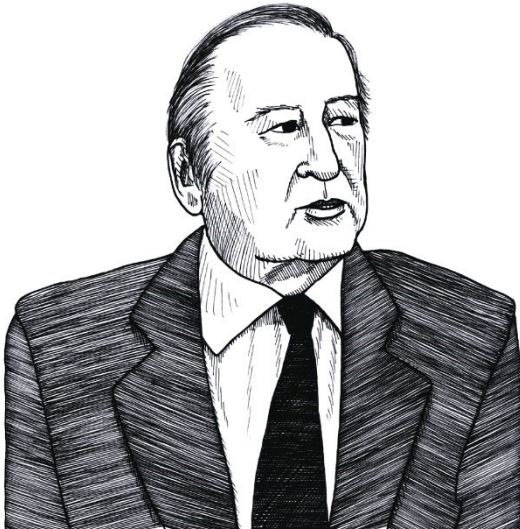
Endnotes

[30.] David Hume, *A Treatise of Human Nature by David Hume, reprinted from the Original Edition in three volumes and edited, with an analytical index, by L.A. Selby-Bigge, M.A.* (Oxford: Clarendon Press, 1896). Book III: Of Morals, PART II.: of justice and injustice, SECTION II.: Of the origin of justice and property. <[/titles/342#Hume_0213_1048](#)>.

DO-IT-YOURSELF ENFORCEMENT

by Hartmut Kliemt and Anthony de Jasay

Preamble: When my “tricks or treats” comments on his work were written, Anthony de Jasay was suffering from a health problem, and I did not dare to disturb him. Eventually I could not resist the temptation to mail a copy of a previous version of my essay to him, and I recently took the opportunity to read the texts published so far in the Liberty Matters column to Jasay, who is practically blind. Here I am now reporting, as my “master’s voice” almost entirely in his own words, his comments on certain aspects of the discussion.



Anthony de Jasay

Under the prevailing constraints Jasay chose to focus on the absolutely crucial topic of enforcing conventions without the state. In making the system of conventions the most important component of his social theory, Jasay originally chose to provide the enforcement of conventions with a satellite convention system. It functioned as a satellite institution taking care of free riding. Jasay now reminded me and the other discussants who are presently participating in the Liberty Matters forum concerning his work that he later found that an enforcement based on satellite conventions is dangerous. In view of the principal-agent problem, it may be both ineffective and unsuitable to serve as a basic institution of ordered anarchy.

The enforcement function should instead be fulfilled by a do-it-yourself arrangement, where the players in the convention add various approaches to repeal free-riding, the cost that they are willing to incur being some function of the danger that the aggressor who is free-riding on the institution of property may succeed in violating the property of the defender. The marginal cost a defender is willing to incur at most corresponds to the potential loss inflicted on him by the free-riding aggressor (after weighting it with the appropriate success probability of aggression and defence).

If marginal costs are prohibitive, the convention cannot survive. Since the property holder is defending his own property, the marginal damage of an aggression is fully borne by him, and the resources he devotes to defense will increase correspondingly. At the same time, the free-rider incentive will correspondingly be reduced. The resources devoted to deter the free-rider will have beneficial effects on the protection of property in general.

IDEAL VOLUNTARINESS

by Hartmut Kliemt

I am not sure whether I fully understand what Mike Munger is driving at. Listening to his interview on Econtalk

[\[http://www.econtalk.org/archives/2011/06/munger_on_excha.html\]](http://www.econtalk.org/archives/2011/06/munger_on_excha.html),^[31] one can learn in a most entertaining way that there is an ideal type of voluntariness in deal-making – euvoluntary exchange. If the conditions of euvoluntariness are fulfilled, this makes it exceedingly difficult to object to an inter-individual agreement for the reason that it was not “really voluntary.” Restricting myself to the bare essentials of the most simple case of bilateral negotiation and exchange, the diagnosis that it is euvoluntary applies to an exchange if, in case that the agreement fails, both negotiators are reduced only to marginally less good alternatives as compared to agreeing and the disparity between the default opportunity sets is not too large.

The concept of euvoluntariness is indeed very helpful to understand what drives common-sense criticisms of markets. But it does not rest well with standard economic views, as Mike Munger would be the first to acknowledge. An economist relying on standard revealed-preference concepts would say that relative to the default, a person who has at least one option other than the default and chooses that option thereby reveals himself to be better off than with the alternative (excluding indifference for the sake of simplicity here). Obviously one can use the concept “better off” that way. But one should note that it then only means “what is chosen in an action.” This is not a substantive conception of being better-off. There is no choice-independent criterion for being better off by the alternative than that the alternative is being chosen from a choice set.^[32]

Now, if a person is frequently confronted with the choice “I will beat you up unless you perform certain sexual services,” then the person who avoids the beating is still acting voluntarily. He or she reveals a preference for rendering the services as compared to being beaten up. The choices are voluntary given the set of alternatives,

and the person must be deemed better off in terms of the definition. The choice is not euvoluntary but it is voluntary.

It is an interesting question whether some legitimation for an emerging state of affairs can be derived from the voluntariness involved. The voluntary acts alluded to in the sexual-services case are acts of acquiescence. Acts of acquiescence, neither in Jasay’s scheme of things nor any other plausible one, do not legitimize or ratify. In particular, acquiescence cannot as such render something just. If we assume that there is no a priori standard of justice independent of what evolved in society, then to have meaning justice must be defined by the rules and practices that as a matter of fact emerged -- whatever they are. There are no a priori standards of justice to criticize society. At the same time, starting from Jasay’s premises, individuals will be more strongly motivated not to acquiesce the less “euvoluntary” the society is. And the likelihood that “voluntary acquiescence” will be forthcoming matters a lot.

Endnotes

^[31] "Munger on Exchange, Exploitation and Euvoluntary Transactions", Econtalk, June 20, 2011. <http://www.econtalk.org/archives/2011/06/munger_on_excha.html>.

^[32] In this spirit Buchanan suggested that there is no other criterion for diagnosing a Pareto improvement than the unanimous agreement of all concerned. And, of course, along the same lines, “modern” utility is not among the reasons for action.

IS THE AMOUNT OF STATE COERCION INEVITABLE AND FIXED?

by Edward Peter Stringham

I think everyone in this symposium agrees with Jasay that the state is an inherently coercive institution. Munger writes, “Jasay does not just claim that existing states are not legitimated by tacit consent; he goes on to conclude that no state *could* be legitimated, even by actual consent. This is, indeed, the fundamental anarchist conclusion.”

But Munger does add this qualifier: “The reason that Jasay is not an anarchist is that he concedes that, despite the failure of contractarian justifications, rational individuals would certainly acquiesce, and might even want to acquiesce—something close to voluntary endorsement—to the empirical fact of the existence of the state.” This perspective suggests that we might be stuck with a coercive state whether we like it or not.

Similarly Kliemt writes, “The state is such a potent instrument of exploiting others that once invented it will be used for exploitative purposes. The fact of the state’s existence does not justify its claims to act on behalf of the collectivity. For this view Jasay has merely scorn. Yet he is aware that once the state is invented it will stay around due to its superiority as an instrument of aggression and exploitation of others. As far as the withering away of the state is concerned, the situation is hopeless.”

Even though a society comprised of only voluntary interaction is the ideal, some amount of coercion may always exist. Munger illustrates that with his example of two people, a wallet, and a gun.

Munger writes, “Imagine that Stringham has a gun -- okay, no, that’s too scary. Never mind.”

Scary indeed! Although I am too much of a pacifist to own a gun, Munger points out that guns can either be used to violate or protect what most people consider legitimate property rights.



This has relevance for limiting coercion from both private criminals and government. Just because the state is an inherently coercive institution, it does not mean the amount of coercion it can commit is fixed.

Coyne’s discussion of the many weak and failed states around the world shows that government’s powers are often very tenuous.

In certain cases, such as with the American Revolution, established governments can be overthrown and many (e.g., Jeffrey Rogers Hummel, Murray Rothbard, and Leonard Liggio) suggest that the revolution had permanent liberty advancing effects on the world. When enough people withdrew their support from or acted in open defiance of the British state, that state’s ability to impose itself on the American public was eliminated.

Governments also can often be evaded in nonviolent ways. James Scott’s study of upland Southeast Asia^[33] describes what is called swidden agriculture, the practice of planting crops that are not easily detected or taxed. When would-be-tax collectors show up with their guns, the stateless people of Southeast Asia simply move up the mountain until the tax collector is gone. Even if a would-be state exists, its ability to extract resources from the public is extremely limited here. Similar factors are at play in the modern economy when businesses choose to move some or all of their operations to less extractive locales. The state is able to extract much more than my ideal (zero), but the productive sector of the economy is always able to carve out and operate in pockets of anarchy, and the important question is how much.

In *Against Politics*, Jasay (Routledge, 1997: 10) writes, “The reasoning, leading from the prevalence of a centralized, sovereign third-party enforcement to its necessity is manifestly a mistake of inference, a non sequitur.” Recognizing that the government is not created or necessary to produce order in markets is one of the most important steps towards for bringing about a free society.

Endnotes

[33.] See at Edward Peter Stringham and Caleb J. Miles, “Repelling States: Evidence from Upland Southeast Asia”, *Review of Austrian Economics*, November 25, 2010; at <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1715223>.

CONSENT, CONTRACT, AND THE BLOOD OF TYRANTS

by Michael Munger

There are three questions I want to take up.

1. Are existing states justified by consent?
2. Could a large state be justified by consent, even in principle?
3. Can any “contract” with more than two parties be justified by consent?

Let me begin by thanking Sheldon Richman, who mentioned this essay by Charles Johnson, which I had not seen: “[Can Anybody Ever Consent to the State?](#)” [34]

I think that Question #1, above, is easily disposed of: No. That doesn’t mean that political authority cannot be justified, of course. But it means that consent theories, including tacit-consent theories, are at best a mythological “creation story” that we tell children.

On Question #2, the Johnson essay is both careful and persuasive. And it goes a long way toward answering the question—No—though I do think the argument could have been strengthened by crediting Anthony de Jasay with making essentially the same argument in *The*

State (Liberty Fund 1985). Nonetheless, the Johnson piece is worth reading, and I commend it to you.

On Question #3: This is the last stand of the Buchananite, and it is where my prepared defenses are dug in. As we have discussed repeatedly in earlier parts of this exchange, the core question is whether a group can bind itself, by consent, to be the subject of coercion by the group. When I offer examples—clubs, homeowners associations, partnerships with written bylaws—the response I get is, “Oh, but those aren’t states.”



Russ Roberts

I think that the distinction being drawn is not useful. And I try to get at it in the table below. The table actually derives from a verbal exchange Russ Robert and I had in this episode of [EconTalk](#): [35]

	<i>Unconsented (involuntary)</i>	<i>Consented (voluntary) Binary Contracts</i>	<i>Consented (voluntary) Group Contracts</i>
<i>State (coercive)</i>	Universal	Undefined Justification, Coercion	Can These Exist?
<i>Private (voluntary)</i>	Hobbesian State of Nature	Usual Market Transactions	Buchanan's Contractarian Organizations

The common distinction is between state (coercive) and private (voluntary) institutions. But this is question-begging, on both sides. It is not true that “our only choice” is between a coercive, imposed state and the state of nature, as the “unconsented” column would suggest. But that is how my colleagues on the Left usually pose the point: without a State, there would be chaos!

On the other hand, “my” side usually insists that the only choice is the second column, where only consent to binary contracts is allowed. Unsurprisingly, no state can withstand this requirement, so all collective institutions are unjustified and therefore coercive. This is likewise question-begging.

The question is whether collective institutions can be combined with consent. That is, a group agrees to constitute itself, and agrees (actually consents, with full information) to a set of rules for deciding (by a voting procedure or some other collective mechanism) and for entry and exit of members. These are not market agreements, which is why the journal *Public Choice* was originally called *Papers in Non-Market Decision-Making*.

Most people readily concede that “private” voluntary organizations exist. But we run close to tautology when we say that those things cannot be “state” organizations. If the reason you believe this is that we all just know that states have to be coercive, then it is hard to have a discussion.

The alternative would be that states can be consensual, voluntary organizations, though no existing state is organized around those principles. Thomas Jefferson, it appears, thought the state could be consensual, and that in fact such consent should be sought, and obtained, with each new generation. In his (in)famous letter to William Stephens Smith (November 1787), Jefferson is reacting—from distant Paris—to seeing for the first time the draft of the “new” Constitution of the United States, the replacement for the Articles of Confederation. And of course he knew of Shay’s Rebellion, which had occurred in Massachusetts from August 1786 through June of 1787. I quote at length:[\[36\]](#)

[I do not know whether it is to yourself or Mr. Adams I am to give my thanks for the copy of the new constitution....](#) There are very good articles in it: & very bad. I do not know which preponderate. What we have lately read in the history of Holland, in the chapter on the Stadtholder, would have sufficed to set me against a chief magistrate eligible for a long duration, if I had ever been disposed towards one: & what we have always read of the elections of Polish kings should have forever excluded the idea of one continuable for life. Wonderful is the effect of impudent & persevering lying. The British ministry have so long hired their gazetteers to repeat and model into every form lies about our being in anarchy, that the world has at length believed them, the English nation has believed them, the ministers themselves have come to believe them, & what is more wonderful, we have believed them ourselves. Yet where does this anarchy exist? Where did it ever exist, except in the single instance of Massachusetts? And can history produce an instance of rebellion so honourably conducted? I say nothing of it’s motives. They were founded in ignorance, not wickedness. God forbid we should ever be 20 years without such a rebellion. The people cannot be all, & always, well informed. The part which is wrong will be discontented in proportion to the importance of the facts they misconceive. If they remain quiet under such misconceptions it is a lethargy, the forerunner of death to the public liberty. We have had 13 states independent 11 years. There has been one rebellion. That comes to one rebellion in a century & a half for each state. What country before ever existed a century & half without a rebellion? & what country can preserve it’s liberties if their rulers are not warned from time to time that their people preserve the spirit of resistance? Let them take arms. The remedy is to set them right as to facts, pardon & pacify them. What signify a few lives lost in a century or two?

The tree of liberty must be refreshed from time to time with the blood of patriots & tyrants. It is its natural manure. Our Convention has been too much impressed by the insurrection of Massachusetts: and in the spur of the moment they are setting up a kite to keep the hen-yard in order. I hope in God this article* will be rectified before the new constitution is accepted.

This is a remarkable passage. The * above refers to Article II, which creates a single Executive, the President. Jefferson's concerns about this "chief magistrate eligible for a long duration" were apparently allayed, because he himself served as president for eight years (1801-1809).

I finish, then, with a question, rather than a conclusion: Is it possible that a state could be consistent with the principles of voluntary contract, without being in a condition of continual violent revolution?

Endnotes

[34.] Charles Johnson, "Can anybody ever consent to the State?," *Rad Geek People's Daily*, 8 January 2009 <http://radgeek.com/gt/2009/01/08/can_anybody/>.

[35.] Michael Munger on Choosing in Groups, *Econlib*, Feb. 23, 2015 <http://www.econtalk.org/archives/2015/02/michael_munger_1.html>.

[36.] Jefferson's letter to William Stephens Smith (Paris, 13 November 1787) in *The Works of Thomas Jefferson, Federal Edition* (New York and London, G.P. Putnam's Sons, 1904-5). Vol. 5. </titles/802#jefferson_0054-05_433>.

BUCHANAN'S COMMUNITARIAN CONTRACTARIANISM – MUNGER AND BEYOND

by Hartmut Kliemt

James Buchanan is seen as a contractarian because he starts from unanimity. Practically nobody ever asks what kind of unanimity is meant, individual – any number that agrees on something may go ahead – or collective unanimity – any legitimate action must be authorized by the collective body politic under a unanimity rule.



James Buchanan

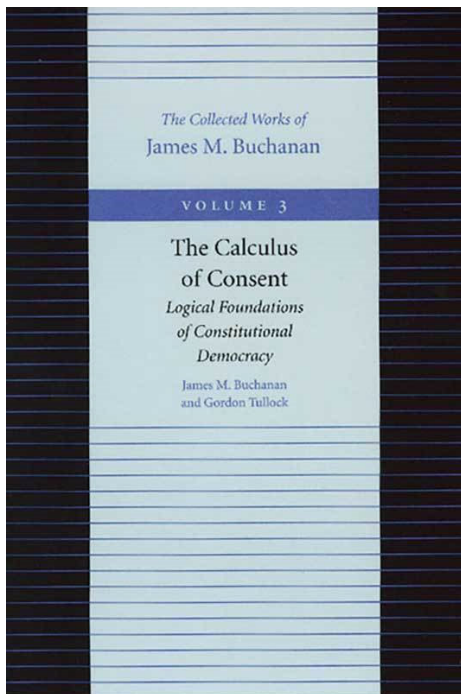
In *The Calculus of Consent* (1962), [37] Buchanan and Gordon Tullock at least implicitly start from *collective* unanimity. They are communitarian contractarians not club contractarians. Their starting point, which I personally regard as mistaken, is not absurd. It rather can lead to a coherent view of how *ideals of interpersonal respect* can be expressed in a statist order despite the fact that there is a collective-choice mechanism.

The price for protecting the individual against collective impositions is, however, that all acts in the relevant realm in which the individual is protected – by the collective body – must be put into the domain of collective decisions in the first place and be forbidden unless allowed by everybody under the unanimous veto rule.

This somewhat drastic conclusion represents in the normative-ethical sphere exactly what Jasay says in the factual sphere about the inherent tendency of a state to pervade all life. In the sphere of normative argument, the invasion has taken place once collective authority over a realm is presupposed.

Not by chance the subtitle of *The Calculus of Consent* refers to “logical foundations of constitutional *democracy*” (italics added). The default must be that nothing may be done unless all are willing to omit to veto a change. If that were not the case, no one could have veto power (as assumed in the *Calculus*).

Starting with unanimity, there must be a collective (democratic) monopoly in the first place. In the next step one might then consider the various voting rules as, for instance in *The Calculus of Consent*, authorized by unanimous prior *voting*. Again, how could we vote on something unless it was put into the realm in which we could legitimately have a vote?



One should keep in mind, too, that *The Calculus of Consent* was written in Charlottesville around 1960, when Buchanan, Tullock, and Coase were there together. Everybody was focusing on the theme of “externalities” then. Polar to Coase, Buchanan and Tullock were starting from the premise that externalities of individual *action* are

trivially absent if no actions are performed. So conceptually they started from the premise that *no actions are permitted initially*. That means that there are no legitimate externalities of action.

As in the modern communitarian liberal conceptions of Amartya Sen – as expressed in his version of the alleged liberal paradox – the collectivity is authorizing all acts, including those of all individuals, since it claims the monopoly of action. Buchanan forcefully criticized Sen’s approach.^[38] However, ironically in his own *Calculus* he started from the same premise of collective authority: Only if all agree or omit to veto it, an *individual’s* action is allowed since all externalities are “internalized” by the *agreement* or omission of veto. If side-payments must be made to get things going, then the monetary transfers see to it that external effects are indeed internalized. (This is like a Wicksell tax seeing to it that Kaldor-Hicks monetary compensations are actually paid under the influence of veto power.)

The crucial normative point is: If initially all acts are forbidden and can be allowed only if all agree unanimously, then by *omitting* to veto or explicitly consenting to the performance of an act (or to the general permission of such acts) the consequences of conducting the act are *internalized* by the consent of all. That is Buchanan-Tullock-type communitarian or Kantian contractarianism.

The Kantian and Knighthian ideals that Buchanan shared with his then-Charlottesville colleague Rutledge Vining^[39] rest somewhat uncomfortably with Buchanan’s metaethical skepticism concerning knowledge a priori of right and wrong. Yet on the whole, veto-unanimity is clearly much more coherent than what many likewise skeptical economists say when they assume that tolerance in practical matters follows “logically” from the fact that there is no a priori knowledge of moral right and wrong.

Jasay is impervious to the latter fallacies. In a way he may be seen as spelling out the social philosophy that Coase never produced: Initially all acts (externalities) are allowed, leaving legitimate internalization of external effects of acts to inter-individual conventions and agreements.

There is no legitimate monopoly on deciding on a certain realm collectively. In fact there is no sphere of morally right acts such that the individual should submit his or her authority to judge. This, in a way, repeats only what ethical skepticism claims anyway.

Endnotes

[37.] James M. Buchanan, *The Collected Works of James M. Buchanan, Vol. 3. The Calculus of Consent: Logical Foundations of Constitutional Democracy, with a Foreword by Robert D. Tollison* (Indianapolis: Liberty Fund, 1999). </titles/1063>.

[38.] James M. Buchanan. “An Ambiguity in Sen’s Alleged Proof of the Impossibility of a Pareto Liberal.” *Analyse & Kritik* 18, Nr. 1 (1996 1975): 118–25.

[39.] Rutledge Vining, *Economics in the United States of America. A Review and Interpretation of Research* (Paris: UNESCO, 1956).

HOW SHOULD THE STATE BE MODELED?

by Christopher J. Coyne

In *The State* (1985), Anthony de Jasay models the state as a maximizing, unitary actor. Specifically, he writes:

Depending on the scale and perspective of the analysis, it is possible to regard the state in several ways. One is to take it as an inanimate tool, a machine. It has no ends and no will; only persons have ends. Explanation and prediction of its movements must, therefore, deal at one remove with the persons who wield the tool and shift the levers of the machine. Another is to merge the machine and the people who run it, and consider the state as a live institution which behaves as it would if it had a will of its own and a single hierarchy of ends; as if it could choose between alternatives and in doing so seemed to conform to the rudiments of rationality. We have throughout adopted the latter view, not because

it is more realistic (neither is), but because it looks the most fertile in plausible deductive consequences.[40]

In a subsequent paper, Jasay (2010) defends this approach indicating that:

the critique [of the unitary actor model] was deserved in the sense that I should have anticipated and met it explicitly rather than take for granted that readers will see the advantage of imagining the state as a unitary actor about whose decisions certain predictions can be made, instead of treating it more realistically as a chaotic and largely unpredictable witches’ cauldron that at best can be described but that defies theory.[41]

However, there is yet another approach to the unitary actor view.

This alternative models government as an intense competition among maximizing *individuals* seeking to control the machinery of the state, which includes the tools of social control and domination over others. The emphasis is on competing interests and arenas of power, and the contest is one of who is going to outcompete—whether violently or nonviolently—their rivals for control of this machinery. There may be rules governing the competition for control of the machinery (e.g., elections), although there does not have to be (e.g., military coup). Further, those competing to secure the control of the machinery may very well share common interests (perhaps none of them would like to see the machinery completely removed) in addition to conflicting interests (each prefers that he controls the machinery). Finally, the number and nature of the rivals are not fixed but, rather, constantly change. That is, new competitors may enter and attempt to seize control of the machinery and the significant rents that are associated with it. The key point is that this alternative appreciates that both securing control over the machinery of violence and using that machinery is not some decision made by an abstract, unitary entity that can be treated as a maximizing actor. Instead, it is the result of an ongoing, intense

competition by rivals who seek the profits associated with the control of that machinery.

Contrary to what Jasay suggests in his 2010 paper, the alternative to the unitary actor model is not one which is “largely unpredictable” or that “defies theory.” Rather, instead of seeing “the state” as the unit of analysis, focus should be on purposive individuals who pursue their goals within a specific institutional environment consisting of informal and formal rules. These institutions create payoffs which influence how those within the system behave regarding the contest for control of the machinery of the state. Comparative institutional analysis allows us to make pattern predictions of how we can expect people to act in different settings and environments.

The approach I am suggesting here offers potential insight into the rivalrous, and often violent, clashes between groups and classes often associated with the state. At the same time, it offers insight into why some governments appear relatively limited compared to others. While all states are backed by the Gun, the means of controlling and using the Gun is a result of the various institutions at work.

Endnotes

[40.] Jasay, Anthony de. 1985. *The State*. Indianapolis, Ind.: Liberty Fund. OLL online edition: <[/titles/319](#)>. Quote <[/titles/319#Jasay_0154_682](#)>.

[41.] _____. 2010. “The Maximizing State,” *The Independent Review: A Journal of Political Economy*. 15 (1): 5-18. Available online: <http://www.independent.org/pdf/tir/tir_15_01_1_jasay.pdf>. Page 6.

ABOUT THE AUTHORS

Hartmut Kliemt is a professor of philosophy and economics (and former vice president for research) at the Frankfurt School of Finance & Management. His main interests are political philosophy, health ethics and economics, and the foundations of game theory. With H.

Geoffrey Brennan and Robert D. Tollison he is one of the co-editors of Liberty Fund’s *The Collected Works of James M. Buchanan* and editor of several Liberty Fund volumes of *The Collected Papers of Anthony de Jasay*.

Christopher Coyne is an Associate Professor of Economics at George Mason University and the Associate Director of the F. A. Hayek Program for Advanced Study in Philosophy, Politics, and Economics at the Mercatus Center. He is also the Co-Editor of *The Review of Austrian Economics*, the Co-Editor of *The Independent Review*, the Co-Editor of *Advances in Austrian Economics*, and the Book Review Editor of *Public Choice*. In 2008, he was named the Hayek Visiting Fellow at the London School of Economics, and in 2010 he was a Visiting Scholar at the Social Philosophy & Policy Center at Bowling Green State University. Coyne is the author of *Doing Bad by Doing Good: Why Humanitarian Action Fails* (Stanford University Press, 2013), *After War: The Political Economy of Exporting Democracy* (Stanford University Press, 2007), *Media, Development and Institutional Change*, co-authored with Peter Leeson (Edward Elgar Publishing, 2009), and the editor (with Rachel Mathers) of *The Handbook on the Political Economy of War* (Edward Elgar Publishing, 2011). In addition, he has authored numerous academic articles, book chapters, and policy studies.

Michael C. Munger is Michael C. Munger is a professor of political science, and economics and public policy at Duke University. He is also director of Duke's interdisciplinary PPE (philosophy, politics, and economics) Program. He received his Ph.D. in economics at Washington University in St. Louis in 1984. Following his graduate training, he worked as a staff economist at the Federal Trade Commission. He moved to Duke in 1997, and was chair of the political science department from 2000 through 2010. He has won three University-wide teaching awards (the Howard Johnson Award, an NAACP "Image" Award for teaching about race, and admission to the Bass Society of Teaching Fellows). His research interests include the morality of exchange and the working of the "sharing economy." His most recent book is *Choosing in Groups* (Cambridge

University Press, 2015), which investigates the problem of consent and voluntary coercion. His next book is tentatively titled *Tomorrow 3.0: The Transactions Costs Economy*. Mike contributed to the Liberty Matters discussion on "Frédéric Bastiat and Political Economy" (July, 2013) <</pages/bastiat-and-political-economy>>.

[Edward Stringham](#) is Kathryn Wasserman Davis Professor of Economic Organizations and Innovation and Deputy Director of the Shelby Cullom Davis Endowment at Trinity College, Hartford, Connecticut. He is president of the Society for the Development of Austrian Economics, former president of the Association of Private Enterprise Education, editor of the *Journal of Private Enterprise*, editor of two books, and author of more than sixty journal articles, book chapters, and policy studies. His latest book, *Private Governance: Creating Order in Economic and Social Life*, is published by Oxford University Press.

COPYRIGHT & FAIR USE STATEMENT

"Liberty Matters" is the copyright of [Liberty Fund, Inc.](#) This material is put online to further the educational goals of Liberty Fund, Inc. These essays and responses may be quoted and otherwise used under "fair use" provisions for educational and academic purposes. To reprint these essays in course booklets requires the prior permission of Liberty Fund, Inc. Please contact submissions@libertyfund.org if you have any questions.