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The Origins of State and Government

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Many people believe that the state is responsible for everything.

According to Cass Sunstein, a professor of law at Harvard University and administrator of the Office of Information and Regulatory Affairs, "Government is 'implicated' in everything people own. . . . If rich people have a great deal of money, it is because the government furnishes a system in which they are entitled to have and keep that money."

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

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

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

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

In fact, it cannot be the case that all wealth is attributable to the state.

> "It cannot be the case that all wealth is attributable to the state. Historically, the existence of a state required a surplus to sustain it in the first place."

Historically, the existence of a state apparatus required a pre-existing surplus to sustain it in the first place. The state, in other words, would not exist without wealth being produced before its emergence. Let's explore that a bit further.

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

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

The economic means must precede the political means. However, not all kinds of work produce surpluses sufficient for sustaining a state. You don't find states among hunter-gatherers, for instance, because they don't generate enough of a surplus to sustain a predatory class. The same is true of primitive agriculturalist societies. What is needed is settled agriculture, which generates a surplus sufficient to attract the attention of predators and sustain them. Such societies are typically conquered by nomads—especially those with horses, who were able to overpower sedentary agriculturalists. We see that happening over and over again after nomadic people erupted out of Central Asia long ago.

There is a memory of that ancient conflict preserved in the Book of Genesis, which tells the fratricidal story of Cain and Abel. It is significant that "Abel was a keeper of sheep, but Cain was a tiller of the ground,"

an echo of the conflict between settled agriculturalists and nomadic herders.

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

"State formation represents a transformation from 'roving bandits' to 'stationary bandits.' The state is, at its core, a predatory institution."

The state is, at its core, a predatory institution. Yet, in some ways, it also represents an advance, even for those being plundered. When the choice is between roving bandits—who rob, fight, burn what they can't take, and then come back the following year—and stationary bandits—who settle down and plunder little by little throughout the year—the choice is clear. Stationary bandits are less likely to kill and destroy as they loot you and they fend off rival bandits. That is a kind of progress—even from the perspective of those being plundered.

States emerged as organizations for extracting surpluses from those who produced wealth. In his book *The Art of Not Being Governed*, the anthropologist and political scientist James C. Scott of Yale University studies regions of the world that have never been successfully subdued by states. A central concept in his work is "the friction of power": power does not easily flow uphill. When waves of conquerors moved through an area, they subjugated the valleys, while those who escaped moved up into the less desirable highlands. Scott points out that those refugees developed social, legal, and religious institutions that make them very difficult to conquer. It's especially true of mountain people and of swamp people. (It's a shame various leaders did not read Scott's book before occupying Afghanistan and promoting "state building" there.)

What are the incentives of the rulers? Overly simplistic models posit that rulers seek to maximize wealth, or gross domestic product. Scott, however, argues that the ruler's incentive is not to maximize the GDP, but to maximize the "SAP," the state-accessible product, understood as that production that is easy to identify, monitor, enumerate, and confiscate through taxation: "The ruler . . . maximizes the state-accessible product, if necessary, at the expense of the overall wealth of the realm and its subjects."

Consider (a ruler might say, "take"), for instance, agriculture. Rulers in Asia suppressed the cultivation of roots and tubers, "which has

been anathema to all state-makers, traditional or modern," in favor of paddy rice cultivation. That is rather puzzling. Why would rulers care so much about what crops are planted? The reason, Scott notes, is that you can't very effectively tax plants that grow under ground. Cultivators harvest them when they want; otherwise they remain in the ground. Paddy rice, on the other hand, has to be harvested at specific times by large concentrations of people, so it's easier for rulers both to monitor and tax the harvest and to draft the laborers into their armies. The incentives of rulers have systemic effects on many practices and permeate our societies.

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

That, of course, is absurd. Passports restrict your freedom. You are not allowed to travel without permission, but we have become so saturated with the ideology of the state—and have internalized it so deeply—that many see the passport as conferring freedom, rather than restricting it. I was once asked after a lecture whether I favored state-issued birth certificates. After a moment, I said I could see no compelling reason for it and since other institutions can do it, the answer was "no." The questioner pounced! "How would you know who you are?" Even personal identity, it seems, is conferred by the state.

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

claims." Private persons making contracts are making law.

In the 16th century, the influential thinker Jean Bodin focused on the idea of sovereignty, which he defined as "the most high, absolute, and perpetual power over the citizens and subjects in a commonwealth." He contrasted that "indivisible power" with another kind of social order, known as customary law, which he dismissed because, he said, "Custom acquires its force little by little and by the common consent of all, or most, over many years, while law appears suddenly, and gets its strength from one person who has the power of commanding all." In other words, Bodin recognized that custom creates social order, but *defined* law as requiring the hierarchical imposition of force, which in turn requires a sovereign—a power that is absolute, unconditioned, and therefore above the law.

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

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

> "When meditating on what it means to live as free people we should never forget that the state doesn't grant to us our identities or our rights."

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

Cato Scholar Profile: SIMON LESTER

SIMON LESTER *is a trade policy analyst with Cato's Herbert A. Stiefel Center for Trade Policy Studies. Before joining Cato, he worked for the trade law practice of a Washington, D.C., law firm, and also as a legal affairs officer at the Appellate Body Secretariat of the World Trade Organization. In 2001 he founded the international trade law website WorldTradeLaw.net. In addition, he has taught courses on international trade law at American University's Washington College of Law and the University of Michigan Law School.*

What drew you to the Cato Institute?

I've considered myself a libertarian since my college days. I think it goes back to reading Robert Heinlein stories when I was a kid. At the time, I thought it was the science fiction that I liked, but re-reading his stories as an adult, I realized it was the message of strong individualism that resonated with me.

I had been following Cato's policy writings for years, just out of personal interest. When I saw they were looking for a trade policy analyst recently, I thought it was worth chatting with them about it to see what they had in mind. After a few conversations, it was clear that we were on the same page in terms of trade policy and that working here would be a great fit.

More generally, I'm very interested in Cato's work across several areas. I'm a strong supporter of smaller budgets, free markets in health care, and a noninterventionist foreign policy. To the extent I can find overlaps with trade and these other fields, I will try to write about them as well.

What trade issues in particular will you be focusing on here?

My specific area of expertise is in disputes at the World Trade Organization. I will try my best to translate these dense legal decisions into something more easily understood.

In addition, I will continue the long effort of free traders over the years to explain why free trade is a better policy than protectionism. In the current climate, this message often gets lost, as the mainstream political parties seem to be trying to outdo each other with talking tough on trade with China. We need to get our message past all of the usual shouting.

I'm also trying to shed some light on the details of international trade rules. To some extent, when you look at the actual contents of so-called "free trade" agreements, the issue of free trade is not as clear as you might think. There are many subjects within these agreements that do not correspond to the usual conception of free trade. They have been included at the request of special interest groups, and may actually undermine the goal of free trade.

You've recently written about "a new kind of trade war." What do you mean by this?

The term "trade war" has negative implications, with good reason. Traditionally it has meant a spiral of dueling protectionism between two countries. One country starts with some form of protection, and then the other responds.

Recently, though, trade conflict has turned into a tit-for-tat litigation process. One country challenges another's protectionist measures, alleging violations of international trade rules. Then the second country responds with a challenge to the first country's trade restrictions. If all goes well, everybody's protectionism is found to violate the rules, and they remove it. This is much better than the traditional "trade war"! ■

Donating Retirement Assets to Charity

Retirement assets—IRAs, employer-sponsored 401(k)s, profit-sharing plans, and 403(b)s to name a few—are an important and often overlooked part of estate planning. Designating a charity as beneficiary of all or part of your retirement assets can be a highly tax-efficient strategy, for reasons that we will discuss.

Sitting down with your financial advisers and doing a thorough review of your situation should always be the first step in estate planning. It may well turn out that it makes sense for your spouse and/or children to be the beneficiaries of your retirement assets. But if you are interested in gift/bequest to charity, consider using your retirement assets to fund that gift.

Why? As you likely know, most retirement plans offer special tax-deferred status: that is, the assets accumulated in the plan are not taxed until they are distributed or withdrawn. After your death, withdrawals from these plans are characterized as "income in respect of a decedent" (or IRD), a technical phrase meaning income that was not taxed before death. Thus someone—typically the person withdrawing the money—must ultimately pay income tax on it. And your retirement assets will be includable in your estate, with the result that estate taxes may be payable as well, depending upon the level of "estate-tax exemption" in effect at the time.

But—and here comes the cavalry—a tax-exempt charity can receive funds from an IRA or other retirement plan without paying tax on that distribution. Furthermore, your estate, in the event it is burdened with estate taxes, can take a charitable deduction for the amount left to charity. Thus, retirement assets can pass to the charity in a tax-efficient way, free of income and estate taxes. For gifts to your family, you can make use of other investment assets. These may be subject to estate tax but will not engender any immediate income tax liability (only capital gains when ultimately sold).

If you are thinking of taking advantage of this strategy, make sure you get the mechanics right. Just because you have executed a will, it does not mean that you've done an effective job of naming a beneficiary. IRAs and other retirement assets should not pass via your will but, rather, they should pass to the charity named as your beneficiary on the "beneficiary designation form" specifically used for that plan. It is also a good idea to make the charity a 100 percent beneficiary of the retirement plan, but if you don't want the whole plan to go to charity, carve out the desired charitable portion and put it in a separate IRA.

If you are wondering what happens if you forget to fill out that designation form, the answer is that your retirement assets would be distributed according to your will (if you have one). At first blush that may seem OK, but it's really not because your retirement assets would then be subject to the delays of probate administration and to the claims of creditors. Plus, important tax-deferral opportunities, otherwise available to family beneficiaries, are lost.

Please consider making Cato a beneficiary of your retirement assets—it's tax efficient for you and a splendid contribution for us.

For more information about this or other gifting topics, please contact Cato's director of planned giving, Gayllis Ward, at 202-218-4631 or at gward@cato.org. ■