

## 1 The law/legislation distinction

Much has been made in libertarian circles of this distinction, to say firstly that order can emerge without centralized authority, and secondly that such an order will be subject to a different (in a good way) sort of incentives from a “centralized” order. De Jasay writes<sup>1</sup>:

It is a fact of life that while this basic layer of ageless and spontaneous rules does not altogether disappear, it gets progressively overlaid by what I propose to call statutory or (more tellingly) rule-made rules. [...] A rule-made rule is so named because it derives its validity (and, in the view of many, its legitimacy) from being created according to a rule to which new rules or changes of old ones must conform in order to be binding. [...] Whether the rule of rule-making is easy or difficult, simple or complicated, is of secondary importance. The important fact is its power to generate binding rules.

[...]

The fundamental difference between spontaneous and rule-made rules, then, is that regardless of the substantive content of each, the spontaneous rule is generated in a manner consistent with freedom and the rule-made rule is one that is inconsistent with it. The latter is designed to relegate to the unfree category an (albeit unpredictable) part of the feasible acts of an (often quite predictable) dissenting segment of the society that must obey the rule.

First recognize that the rule under which new rules are made (what De Jasay refers to as the “rule of submission”) must itself be a *spontaneous* rule—otherwise the whole system could never get off the ground. A democracy did not become a democracy because a majority voted for it, a monarchy not because the king decreed it, etc. Secondly, it’s important to observe that the rule of submission is not the only rule characterized by the ability to generate new rules: in fact, *every* rule of property (which, taken broadly as by Rothbard, can be interpreted to encompass (almost) all social rules) contains within it the ability for someone to make rules governing that property. E.g., If you’re in my restaurant you have to wear shoes and a shirt. Thus we see that, contrary to De Jasay, “spontaneous” and “rule-made” rules differ only in content, not in form. Statism and libertarianism are just two different ways of drawing the property lines.

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<sup>1</sup> *Freedom from a Mainly Logical Perspective*

## 2 The indeterminate and self-fulfilling nature of order

So suppose that we did away with the current government, and mind-wiped everybody to remove all their statist biases and prejudices—in short, created a pure state-of-nature. What would the new emerging order look like?

Some would say that there is a particular property allocation scheme that would emerge out of this state-of-nature, for economic or whatever reasons, and that *this* is what libertarians should advocate. This way, we have a concrete policy recommendation (i.e., a way of distinguishing our proposed social order from all the others, as being more “natural”), while at the same time we avoid engaging in any normative or ideological advocacy (since the demonstration that this order follows from the state-of-nature is purely fact-based).

However, to make a long story short, there is **no** particular order that follows from the state-of-nature.

### 2.1 Hawk/dove games

Cowan and Sutter picture social conflicts as a hawk/dove (or “chicken”) game, where each player prefers the other to back down, but for both to challenge results in huge costs. (Follow the link to see the diagram.)

The game in Figure 1 is a coordination game with two Nash equilibria in pure strategies, one where Able backs down to Baker’s challenge and the second where Baker backs down to Able’s challenge. The costs of conflict provide an incentive for a peaceful resolution of the confrontation (Rothbard 1978, Friedman 1989, Benson 1990), but do not determine which equilibrium will prevail. Nonetheless we can already see the potential for the evolution of government in the interests of some parties to the adjudication prevail over the interests of others.

We also can see that only one of these equilibria is libertarian (Sutter 1995). Both equilibria may be peaceful, but at least one equilibrium does not respect individual rights. For instance, Able (the victim) backing down is an equilibrium of the confrontation game. Caplan and Stringham (and other proponents of anarcho-capitalism) have not to our minds offered an argument why the competitive, libertarian equilibrium is likely to prevail.

[...] Anarchy might be peaceful after an initial conflict, but equilibrium selection then would depend on the relative strength of the agencies. If might makes right, as Umbeck (1981) argues, only by luck would the libertarian equilibrium prevail. And over time, an agency that consistently backs down would lose customers. Customers will patronize agencies that can win battles, and the protection market will become increasingly concentrated.

In other words, every equilibrium, once established, is self-enforcing because unilateral deviation would result in a worsening of one's position. Furthermore, there are as many equilibria as there are space-filling<sup>2</sup> property allocation schemes—among which is included statism.

## 2.2 Salience of equilibria

Perhaps there is some reason why a particular equilibrium will be selected over others? For example, in a bilateral ultimatum game, where two players must agree on a way of dividing a dollar between them, it seems most “natural” for each player to get 50 cents.

This sense of “seeming natural” is known as “salience,” and is discussed by Thomas Schelling in his explanation of a “Schelling point.” From the SEP:

As Schelling's example illustrates, salience is a “subjective” psychological trait that does not follow in any obvious way from the rational structure of the strategic situation. Hume already anticipated a role for subjective psychological traits, noting that our choice of convention often depends upon “the imagination, or the more frivolous properties of our thought and conception” (*Treatise*, p. 504, note 1).

While such salient equilibria may exist, they exist only by a mental whim of the parties; they are in no way objectively determined, even if the parties' individual economic preferences are given. Thus, a pure mind-wiped state-of-nature will have no general tendency to settle on any particular equilibrium rather than another. As it so happens, the salient points currently existing in the minds of people today are ones that grant the State the authority to make rules governing nearly everything.

## 3 Conclusion

If libertarians want to have any impact at all, they must try to change the generally-accepted salient-points from statism to libertarianism. This cannot be done solely by economic reasoning (since economic preferences do not determine salient-points), nor by an appeal to decentralization as a purely formal, non-content-based specification for a social order (since the rule of submission is itself a spontaneous rule). Rather, we must actually take a position and engage in ideological advocacy to alter people's opinions. And this means taking a stand on issues such as IP, abortion, slave contracts, and so forth.

I welcome your comments.

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<sup>2</sup>I.e., leaving no feasible action unallocated. (Backdown, Backdown) is not space-filling.