

Strategic Approaches to Limiting State Power: Theoretical Insights and Practical Solutions. Could we really Kill Leviathan?

Introduction:

In analyzing the enforcement of rights and contracts, one needs not only to consider thoroughly how these principles apply amongst individuals but also to see how they work out in the larger frame of governance of society. The inquiry into collective conceptualization of rights and mechanisms for their enforcement will have to be pursued further. The discussion of state authority and its boundaries is complex and fundamental on many levels, both theoretical and practical. In this direction, it is not sufficient to merely think of a higher enforcing agent standing above individuals and the state. Such an approach, tempting as it is, does not squarely address the basic question of where the enforcement hierarchy is to end. In this connection with our purpose, the boundaries of the hierarchy have to be drawn to focus on the position of state power with respect to the protection of individual rights and freedoms.

James Buchanan's contributions to public choice theory provide a significant framework from which one can understand this dynamic. Buchanan's work highlights the delicate balance between collective power and individual rights, a balance that remains a cornerstone of contemporary discussions about the role of the state in society. His perspective emphasizes that the state must act as a mediator, ensuring that collective decisions do not infringe upon individual liberties while promoting democratic efficiency and community values (Lynch, 2004). Buchanan's ideas are not only abstract, but his socio-political context and personal philosophy form rich bases for his thoughts. His skepticism of large governments and federalism showed the concurrence of thought regarding the protection of individual liberty from overreach on the part of the state.

Thomas Hobbes's concept of the Leviathan provides an essential founding framework for this contention. Hobbes' Leviathan represents a powerful sovereign entity created through a social

contract to ensure peace and stability by wielding absolute authority (Tran, 2023). This authority, akin to the biblical sea monster Leviathan, is vested with the responsibility of safeguarding individuals' natural rights, particularly the right to self-preservation. However, this power comes with significant implications for individual freedoms. Citizens relinquish certain liberties in exchange for security and order, a trade-off that raises questions about the potential for state overreach and the resulting impact on personal freedoms.

The Leviathan model characterizes the trade-off between state authority and individual rights. On one hand, effective state authority is deemed essential for embedding universal human rights and freedoms within the societal fabric, thereby legitimizing its existence and ensuring the protection of these rights (Engelen, 2007). On the other hand, power in Leviathan is concentrated and hence can be used to constrain individual liberty, whereby the state may justify encroachment into personal freedoms in the name of public safety and security (Lamp, 2019). This tension represents the broader discourse on balancing state power with individual rights, one of the continuous concerns of political theory and practice (Berglöf and Claessens, 2004).

The complexities of this balance are further illuminated by Buchanan's work with Gordon Tullock in "The Calculus of Consent." Their analysis delves into the intricacies of collective decision-making and the potential for government overreach, emphasizing the need for constitutional safeguards to prevent such excesses (*The Calculus of Consent: Logical Foundations of Constitutional Democracy - Econlib*, 2018). Buchanan's perception about the link between collective power and individual rights continues to have relevance in modern societies that are grappling with governance challenges in an interdependent world. His work is a reminder that constitutional frameworks are essential to protect individual autonomy while meeting collective needs.

Legal, political, and philosophical considerations work out in a combination to strike the necessary balance between the enforcement of rights and limitation of state power in the present context. The new technologies and digital platforms make the interaction of dimensions associated with the discussion on the scope of state authority and individual rights more

complex. As societies continue evolving, the challenge of maintaining a balance between effective governance and protection for personal freedoms becomes increasingly relevant.

Therefore, any holistic understanding of how to restrain state power while at the same time protecting rights would involve an exposition of the different theoretical and practical approaches that have been advanced. Such a discussion necessarily goes beyond purely philosophical notions about state authority onto more specific mechanisms through which these principles are implemented. Only by weighing concepts like decentralization, human rights, and constitutional frameworks does one begin to realize the difficulties and possibilities presented by efforts towards state power limitation in the pursuance of an ideal society that is just and equitable.

II. The Problem of Leviathan

The idea of the Leviathan, according to Thomas Hobbes, is that of a mighty sovereign force created by a social contract that maintains order and peace through the exercise of complete power (Tran, 2023). This leviathan, this biblical creature of the sea, is supposed to be a protector of individual rights, of life, liberty, and the pursuit of happiness, the right to self preservation. However, this comes at the cost of certain personal freedoms, as citizens relinquish some of their rights in exchange for security and order (Berglöf and Claessens, 2004). The Leviathan's impact on individual freedoms is complex. On one hand, a strong state authority can embed universal human rights into society, legitimizing its role and ensuring these rights are protected (Engelen, 2007). However, powerful centralization could result in the loss of personal liberties, for the state would deem it necessary to infringe upon the rights of the people for the sake of safety and security (Lamp, 2019). This conflict is reminiscent of the constant struggle between state authority and personal liberty, one of the main subjects in theories of politics (Berglöf and Claessens, 2004).

The leviathan metaphor emphasizes how difficult it is to balance the necessity of a strong governing body with the necessity of keeping it from becoming a tyranny. To see that the Leviathan does not use its power to trample the very liberties it is supposed to safeguard is a vital test. Setting up checks to state abuse is basically setting up a situation in which authority does

not evolve into tyranny or totalitarianism. This balancing act is the crux of political philosophy and the practice of government, to ensure that the state does not become a tool of tyranny.

The restraint of state power has long been realized as a necessity in order to secure individual rights and avoid tyranny. The Greeks, biblical history, and even contemporary politics all provide examples of uncontrolled power leading to tyranny. It is these legal limitations on representation that are the cornerstones of modern democracies, and the safeguards against any possible state abuses, and the balancing of the individual interests against the welfare of the general public.

However, contradictions emerge when considering these limitations. Legal limitations on state power are indispensable to democratic systems but nevertheless, they can sometimes bind the hands of the government and prevent it from taking the necessary measures in the face of urgent national security challenges. The need for a fair equilibrium between human rights and public safety may freeze the decision-making process, especially in cases that are moving fast like cybersecurity challenges. Further, the connection between government spending on law and order and improved rights indicators could not be a causal one, as other factors could contribute to this relationship as well.

Although it is extremely important to limit the power of the state, rights are not absolute, and can be curtailed, within certain situations, as in the context of cybersecurity (Karpiuk, 2022). This makes for an intricate balance between security and civil liberties. Not only that, but government expenditure on law and order is correlated with better rights indicators, which suggests that the state can have a paradoxical role in both repressing and promoting rights.

Any state power must be restricted in order to protect individual rights and prevent tyranny through laws and constitutional processes. However, the challenge lies in defining clear criteria for when these limitations should apply, particularly in the face of threats like terrorism. Historical and contemporary examples of state power leading to human rights abuses, such as Nigeria's Joint Task Force and North Korea's regime, underscore the need for vigilance and multifaceted responses to prevent and address such violations.

III. Ideal Solutions: Theoretical Approaches

Constitutionalism and the rule of law are vital in forming principles and boundaries for controlling government power. According to constitutionalism, the sovereignty of a state is not unlimited and governmental discretion must be exercised only within constitutional bounds (Berglöf Claessens, 2004). The rule of law states that every individual, including government, is subject to law and must respect basic human rights (Engelen, 2007).

The implementation of these principles differs among various systems. For example, in the case of China, party-state constitutionalism merges the values of the ruling party into the constitution and thus makes party leadership compatible with legal constraints (Estrada, 2010). On the other hand, in Hungary for example, according to current developments a shift from the rule of law with frequent constitutional border crossings (Hoffman Karpiuk, 2022). South Africa's shift to constitutional rule highlights the role of the judiciary in controlling state power and promoting the rule of law (Lamb Primera, 2019). The good in constitutionalism and the rule of law lies mainly in its ability to restrain government power, protect individual liberties, and foster a liberal society (Lynch, 2004). Citizens can challenge the state if it acts unconstitutionally through constitutional complaints, which helps to uphold democratic ideals (Tuoi, 2023). These principles can also support anti-colonial critique, see the effect of Parsi legal tradition on the evolution of Indian constitutionalism (Berglöf Claessens, 2004).

Nevertheless, challenges remain. The effectiveness of constitutionalism and the rule of law can be frustrated by chronic government overreach or a lack of commitment to one or both principles (Engelen, 2007). This digital constitutionalism, however, adds a new dimension of complexity to the application of these ideals in a digital world (Hoffman Karpiuk, 2022). However, these obstacles do not negate the fact that constitutionalism and the rule of law are vital for limiting governmental power and safeguarding individual liberties (Estrada, 2010).

Constitutionalism and the Rule of Law are two important areas that place limitations on state powers through the establishment of legal frameworks which direct state actions and guarantee the protection of individual rights. But their power is primarily in checking and balancing and promoting democratic rule (Lamb Primera, 2019).

But this effectiveness is compromised by government non-compliance or the changing problems of constitutional government in the electronic age (Hoffman Karpiuk, 2022). The doctrine of separation of powers and checks and balances are the primary structural inhibitors of the concentration of governmental power and protectors of individual liberty through the distribution of power amongst various branches of government (Berglöf Claessens, 2004).

These checks are in place to prevent any one branch of the state from acting without the consent of the others, thereby maintaining a balance that prevents the abuse of power (Lynch, 2004). But their effectiveness can be compromised by political factors such as one-party rule, electoral fraud and cultural practices that can undermine accountability (Engelen, 2007). But then again, the checks and balances effectiveness in curbing corruption is a complex issue because this mechanism operates on "hard" factors such as political dynamics and "soft" factors like the behavioral norms of elites (Estrada, 2010). This constitutional restraint is only enforced by the pluralism of power among elites with competing interests, which may at times be checked by a democratic accountability crippled by voter indifference and ignorance (Lynch, 2004). However, in this light, although the doctrines of separation of powers and checks and balances are theoretically created to limit government power and corruption, they are still very difficult to apply in practice and can be easily bogged down by politics, institutions, and culture (Engelen, 2007). Which is only as good as the institutions that embody them, the political will to enforce them, and the participation of an electorate informed enough to insist upon them (Lynch, 2004; Estrada, 2010; Engelen, 2007).

Federalism and decentralization are both schemes to disperse power from the central government, and this may limit state power through the granting of self-rule to sub-national units (Berglöf Claessens, 2004). Federalism encompasses a constitutional distribution of authority between the national government and federal entities, whereas decentralization, specifically devolution, assigns power to local governing bodies (Lamb Primera, 2019). Responsive and accountable governance may be enhanced through such structures because they allow for decisions to be made closer to the people and local governments usually have the ability to serve the unique needs of their communities better (Estrada, 2010).

Not only that, but they also have the potential to promote regional development through the unique political, social, and economic conditions that exist in any given nation (Lynch, 2004). However, the success of federalism and decentralization in checking state power and achieving good government is not a guaranteed one and faces many hurdles. These hurdles include a possible lack of political will, inadequate bureaucratic support, and resource scarcity at the grassroots level (Engelen, 2007).

However, Lamb and Primera (2019) point out that sometimes local governments can still operate as agents of central control even after decentralization on paper. Also, the allocation of power among different levels of government could be problematic with confusion and inequalities and thus the purpose of federalism and decentralization (Berglöf Claessens, 2004). Although federalism and decentralization restrict state power, and other advantages such as local good governance and development will follow, other problems as political commitment, resource allocation, and clear delineation of powers will arise (Lamb Primera, 2019; Estrada, 2010; Berglöf Claessens, 2004). Libertarianism is defined as the lessening of government involvement with the emphasis on personal freedom and individual autonomy, and a decrease in regulation (Hoffman Karpiuk, 2022). It posits that individuals possess superior judgment regarding their own requirements compared to governmental entities and endorses policies aimed at constraining the state's influence in both personal and economic matters (Engelen, 2007).

This includes the development of free markets, personal liberty, and a negative income tax regarded as a minimal redistributive mechanism consistent with libertarian ideologies (Estrada, 2010). However, this approach offers practical implications and limitations. But the research also shows that the straightforward implementation of libertarian philosophy can sometimes have unexpected outcomes that could potentially result in harm to the greater society (Lamb Primera, 2019). Also, managing and creating a new economic world order may necessitate more complex behavior from libertarian ideals, considering the systemic nature of professional management in such an arena (Hoffman Karpiuk, 2022).

Even more than this, libertarianism is a very diverse philosophy, with more radical forms including anarchy, so this shows some of the complexity and possible difficulties of getting a

libertarian form of government to work (Berglöf Claessens, 2004). Libertarianism aims to reduce governmental participation by emphasizing the importance of personal freedom and market autonomy. However, the actual application of this philosophy requires thinking about unintended consequences and the need for good governance in a changing economy. The limitations of libertarianism are well demonstrated when one compares its various incarnations with the empirical facts encountered during policy implementation (Engelen, 2007; Hoffman Karpiuk, 2022)

IV. Practical Solutions: Real-World Examples

Checks and balances provided by the United States Constitution have played a critical role in curbing government powers by ensuring no single branch has had the ability to dominate the other remaining branches. The division of powers is a fundamental principle of constitutional law, which is designed to prevent any one branch from seizing powers constitutionally given to other branches (Ervin, 1970). A historical and legal perspective on the United States. The Constitution underscores the distinct organizational autonomy of the legislative, executive, and judicial branches, establishing the foundational framework for internal relations within the American state (Pietro Vanoni, 2020).

However, this structure has been confronted with challenges; including competition between institutions and uncertainty with regard to public legitimacy on various domains, which may cause instability and conflict, as depicted by the situation in Honduras between 2008 and 2009 (Taylor-Robinson & Ura, 2012). Furthermore, although the principles of federal separation of powers are not applicable to state governments, there is considerable diversity in the distribution of authority among these entities (Stolicki, 2023). This indicates that the efficacy of checks and balances may vary markedly within the context of state governance. Furthermore, the legal separation of powers has been epitomized by the relationship between the FERC and the DOE, underpinning various obstacles resulting from indistinct division and selective strengthening that can undermine defenses against concentrated policy authority within the executive branch (Jacobs, 2018). Conclusion Checks and balances within the American system have long served to contain an overreach of governmental power and abuse of such. However, it faces challenges such as institutional rivalries, uncertainty in public support and complexity arising from the

division of powers under the law. Constant scrutiny and probable reforms are necessary to maintain its effectiveness in checking on the balance of power.

The European Union (EU) embodies a supranational governance framework that reallocates authority across various tiers of power, which may result in the constraining of state sovereignty (Mac Amhlaigh & Glencross, 2009). This system includes the EU's ability to enact laws binding on member states, which can override national legislation in certain policy areas. However, it relies on voluntary compliance rather than a supranational enforcement mechanism (Gabel, 1998). The governance mechanisms of the European Union have undergone an evolution, indicative of a transition towards innovative governance paradigms (Panke & Haubrich-Seco, 2022). Moreover, notable advancements have transpired in domains such as asylum policy, which signal a heightened degree of supranational governance (Kaunert & Leonard, 2012). However, the efficiency of this framework in constraining state authority remains multifaceted. The Eurozone crisis highlighted the persistent dependence on national institutions for legitimacy, indicating that supranational governance has not yet been sufficiently prepared to supplant the functions of national governments (Schmidt, 2020).

Moreover, the EU's multi-level governance system involves fragmented and consensus-based decision-making, which may dilute clear mechanisms for limiting state power (Mac Amhlaigh & Glencross, 2009). Notwithstanding the absence of coercive enforcement mechanisms, the stability of the European Union's authority suggests a degree of success in facilitating compliance via voluntary approaches (Gabel, 1998). In conclusion, the supranational governance framework of the EU has achieved advancements in curtailing state power through the reallocation of authority and the establishment of binding regulations at the supranational tier. Nevertheless, this success is complex, characterized by difficulties in completely supplanting national governments and providing explicit mechanisms for the restriction of state power. The European Union's dependence on voluntary adherence, combined with the intricate interactions among multiple governance stakeholders, results in a system that is dynamic yet not distinctly effective in limiting state authority.

V. Conclusion

The limitation of state power forms the core of Buchanan's model of the Leviathan, where the state is seen to have a monopoly over tax revenues and is able to oppress taxpayers due to the latter's rational ignorance and the collusion between officials. According to the Leviathan model, constitutional measures are required to restrain the government from tapping into taxpayers for resources. In this view, the limitation of state power is necessary for the protection of individual freedom, as a lack of limitation leads to governmental abuses and the violation of personal freedom and property. Specifically, recent literature suggests that decentralization can be used as a means to restrain Leviathan. Decentralization is posited to diminish overall government interference in the economic sphere, since competition among various fiscal entities has the potential to regulate the collective magnitude of government.

The effectiveness of decentralization is contingent upon preventing collusion between different tiers of government; otherwise, it might lead to increasing government expenditures and consequently weaken the regulating power of fiscal federalism. The concept of human rights becomes another imperative instrument in legally limiting state power, making sure that the limitation by a state is necessary and legally justified and, therefore, acting as protection against arbitrary state decisions. This is an important process of limiting state power to address Buchanan's concerns regarding the revenue-maximizing Leviathan government at the expense of taxpayers. It is also essential for safeguarding individual rights, as it serves as a counterbalance to the government's capacity to encroach upon personal liberties and assets.

The processes of decentralization and the promotion of human rights are underscored as essential approaches in reaching these goals; however, they necessitate meticulous execution to prevent unintended consequences, including the potential for government collusion. Continued discourse is imperative for discovering viable solutions to curtail state authority, as it promotes a sustained interchange of concepts that is fundamental for fostering creativity and innovation. Creativity, defined as the formulation of novel and original concepts, alongside innovation, which pertains to the practical application of these concepts, is essential for devising effective strategies capable of responding to the evolving challenges presented by state power. Notably, creativity is often correlated with originality and significance, whereas innovation tends to be more associated with

marketability and the pragmatic realization of creative concepts. This distinction is important because it suggests that ongoing discussion should not only generate novel ideas but also consider their practicality and potential for implementation.

Furthermore, the distinction between idea and expression in copyright law exemplifies the intricacies involved in safeguarding creative concepts while fostering innovation, a consideration pertinent to the formulation of solutions aimed at constraining state authority without suppressing creativity. The unending discourse and innovation are necessary to support the consistent development and refinement of workable solutions to check state power. Creativity provides unique ideas, while innovation transforms ideas into feasible policy. One must balance generation and application properly to devise mechanisms for state authority cutback.

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