

## Chapter Four

# A Postscript to “Political Foundations of Democracy and the Rule of Law”

Maravall and Przeworski open this book with a difficult question: why do governments act according to laws? The fact that so many governments, both contemporary and historical, have difficulty doing just this indicates that the answer is not obvious. The principal argument of this book is that the force of law is not normative – citizens and political officials do not obey law because of a duty to obey law. Instead, political officials obey the law because they have incentives to do so.

Maravall and Przeworski fill out this logic. For example, they suggest that the constitution is important for the rule of law. “But the constitution matters not because governments feel a duty to obey it. Rather, it serves as a focal device, enabling particular individuals to guess what others will consider as major transgressions and thus to agree when to act.” To police the behavior of government officials, “Actions of groups with different interests must be coordinated.”

Maravall and Przeworski emphasize another important aspect of the rule of law, that “laws inform people what to expect of others. . . . At the same time, [laws] facilitate coordination of sanctions against a government that deviates from its own announcements. In this sense, publicly promulgated rules provide an equilibrium manual.” They note that “laws indicate to citizens when to act against the government. By coordinating expectations, they facilitate collection actions that impose sanctions on governments.”

In short, one answer to Maravall and Przeworski’s question is that political officials obey the law because not doing so puts their political future at risk. How does this work?

The approach developed in my 1997 article suggests one way to develop the logic underlying this argument (Przeworski suggests another). Although its main application is to democracy, the model in this article applies more generally (as the title suggests) to the rule of law. As with

other works in the “equilibrium institution” perspective, this article argues that institutions – such as constitutions, democracy, independent judiciary, free markets – must be supported by political officials who have incentives to honor these institutions. Democracy survives only if political officials have incentives to honor the rights of citizens, respect the outcome of elections, and refrain from using force to settle conflicts. Free markets exist only so long as political officials refrain from intervention and regulation. An independent judiciary holds only when elected officials and bureaucrats abide by judicial rulings.

As Maravall and Przeworski suggest, political officials must have the incentives to honor law. Diamond (1999: 70) puts it this way with respect to democracy: “Only when [citizen] commitment to police the behavior of the state is powerfully credible . . . does a ruling party, president, or sovereign develop a self-interest in adhering to the rules of the game, which makes those constitutional rules self-enforcing.” Citizens must have the ability to defend principal institutions of the rule of law.

### **The Logic of the Equilibrium Approach to the Rule of Law**

In parallel with Holmes and Przeworski (Chapters 1 and 5 in this volume), the ruler or sovereign obeys restrictions on his power only when it is in his interest to do so. In my approach, the fundamental problem of the rule of law is one of citizens policing the state. When citizens possess the ability to react in concert to potential transgressions by the state, they can deter the state: because leaders risk being deposed when transgressing citizen rights, they will avoid doing so. Paralleling Holmes’ argument, rulers obey restrictions on their behavior only when it is in their interests to do so.

Policing the state is therefore a form of coordination problem: when citizens have the ability to coordinate against transgression by the sovereign or ruler, the ruler is deterred from transgressing citizens’ rights. As Holmes (Chapter 1 in this volume) observes, “The threat to withdraw cooperation, in fact, provides a more enduring motivation for the regularization of government power than the threat to inflict physical harm noted by Machiavelli and stressed by Przeworski.” Yet acting in concert to police the state is problematic in large part because citizens naturally disagree about what is good and bad, that is, what constitutes a transgression. These differences lead naturally to profound differences in opinion about the appropriate role of the state, political structure, and rights of citizens. These profound differences, in turn, hinder citizen coordination against the state.

The first result of my model is to demonstrate that when citizens differ about the appropriate role of the state and the rights of citizens, sovereigns can take advantage of them through the well-known mechanism of divide and conquer. The sovereign transgresses the rights of some citizens while retaining the support of other citizens sufficient in number to keep the sovereign in power. This scenario is repeated endlessly across time and place: in seventeenth-century England, the group who became known as the Tories by century's end supported the Stuart kings who transgressed the rights of groups later known as Whigs. Similarly, conservative landowners supported Pinochet and the military in the 1973 Chilean coup against the democratically elected president, Salvador Allende.

The model shows that this pattern is an equilibrium and is thus stable. Because of the difficulties in solving the citizen coordination problem, I argue that it is the most natural equilibrium. Of course, it is not possible for a complete rule of law to be observed in this setting (although, as Barros, Chapter 8 in this volume, suggests, elements of the rule of law can emerge even in dictatorships).

For the rule of law to emerge, citizens must somehow solve their coordination problem so that they can act in concert against potential transgression. Their fundamental differences about the state make this coordination problematic.

Solving this coordination dilemma requires constructing a coordination device – often a constitution but generally a pact. The essence of the new device is that it coordinates citizens in their reaction to the state. Thus, the constitutions and pacts qua coordination devices typically create new procedures for governmental decision making and the rights of citizens. These specifications define the meaning of a transgression, thus helping citizens to coordinate: a government that violates these procedures or rights is, by definition, transgressing.

In more recent work, I argue that pacts become self-enforcing when they meet four conditions (Weingast 2002 and forthcoming). First, the pact must create (or be imbedded in a context that has already been created) structure and process – citizens' rights and a set of rules governing public decision making – defining a series of limits on the state. Second, the parties agreeing to the pact must believe that they are better off under the pact than without it. If this condition fails for one of the parties, that party will be better off without the pact, so the pact will fail. In particular, the parties must believe that the structural and procedural limits on average lead the government to make them better off. Third, each party agrees to change its behavior in exchange for the

others simultaneously doing so. Fourth, the parties to the pact must be willing to defend it against transgressions by political leaders. That is, they must be willing to defend not only the parts of the pact benefiting themselves but also the parts benefiting the others against transgressions by political leaders. This fourth condition occurs when each party anticipates that its rights will be defended by the others; that each party is better off under the agreement than not; and that, if ever one party fails to protect the rights of others, the others will fail to come to its rescue. Put another way, the pact becomes self-enforcing when all parties are better off under the pact and when all realize that unilateral defection implies that the others will also defect, destroying the pact.

In short, a critical element of the rule of law is that constitutions and pacts solve the citizens' coordination problems so that they can react in concert against potential transgressions. When citizens have this ability, they can deter rulers from contemplating transgressions.

## Implications for Consensus

Perhaps consensus was a poor choice of words, although I did so because the previous literature had done so, and I sought to apply my model to the problem previously studied. There is a profound difference between the use of this concept in my work and in the earlier literature on democracy. The earlier literature had consensus as an independent variable. Some political cultures had consensus and hence democracy, whereas others did not. The degree of consensus – and, more generally, political culture – was the independent variable.

In parallel with Holmes and Przeworski (both in this volume), my model denies this logic. In this model, consensus is not an independent or a causal variable. Rather, the causal mechanism involves the coordination problem. Do citizens in a society possess a mechanism for coordinating against the government?

Consider a society with a constitutional mechanism that constructs the relevant focal points allowing citizens to police their government. I observed that this endogenous behavior – the ability to coordinate – would appear to political scientists working within the behavioral tradition as a consensus. That approach assumed that culture as an independent variable.

The new equilibrium approach to culture (Chwe 2001; Fearon and Laitin 1998; Ferejohn 1991; Przeworski, Chapter 5 in this volume) holds that political culture emerges from the equilibrium behavior of a group: culture arises when all citizens behave in a given manner in a particular

circumstance and, further, that they behave in that manner because of the incentives they face.

My equilibrium argument suggests that societies that have solved their coordination problems behave as if they have a consensus. However, this is not because citizens agree but rather because they have been able to move beyond their disagreements to agree on a coordination device from which to police the government.

To put this another way, the political-culture-based approach about consensus and my approach are “observationally equivalent” along the dimension of behavior within an equilibrium. But the mechanisms are diametrically opposed.

## Conclusions

The essays in this volume advance our understanding of the mechanisms underlying the rule of law. A common theme, taken in my chapter and the one that follows, is that sovereigns and governments obey restrictions on their behavior when it is in their interests to do so. My chapter reveals one of the mechanisms supporting this logic.

## References

- Almond, Gabriel A., and Sidney Verba. 1989. *The Civic Culture: Political Attitudes and Democracy in Five Nations*. 1963. Reprint, Newbury Park: Sage Publications.
- Chwe, Michael. 2001. *Rational Ritual: Culture, Coordination, and Common Knowledge*. Princeton: Princeton University Press.
- Diamond, Larry. 1999. *Developing Democracy*. Baltimore: Johns Hopkins University Press.
- Fearon, James, and David Laitin. 1996. “Explaining Interethnic Cooperation.” *American Political Science Review* 90: 715–35.
- Ferejohn, John. 1991. “Rationality and Interpretation: Parliamentary Elections in Early Stuart England.” In Kristen Renwick Monroe (ed.), *The Economic Approach to Politics*. New York: HarperCollins.
- Lipset, Seymour Martin. 1960. *Political Man*. Garden City, N.Y.: Anchor Books.
- Weingast, Barry R. 2002. “Self-Enforcing Constitutions: With an Application to American Democratic Stability.” Hoover Institutions, Stanford University. Unpublished manuscript.
- Weingast, Barry R. Forthcoming. “Constructing Self-Enforcing Democracy in Spain.” In Joe Oppenheimer and Irwin Morris, eds., *From Anarchy to Democracy*. Stanford: Stanford University Press.