

VOLUNTARY ASSOCIATIONS AND THE STATE

SYLVESTER PETRO

A STRIKING FEATURE of the free society is the diversity of the voluntary associations it tends to breed. A voluntary association is potential whenever two or more members of the free society decide that it would be mutually advantageous to pool their efforts, or a part of their efforts, in the achievement of a mutually desirable objective. Even a relatively ungregarious member of the free society may find himself belonging to more voluntary associations than he can enumerate offhand. His associations may include economic, professional, educational, health, good-fellowship, sporting, and religious societies or associations, to mention only the possibilities which come to mind instantly.

Nor is there anything in the theory of the free society which confines a voluntary organization to any particular function. The

functions of an association may be as various as its members wish them to be and can agree upon. The mutual interests of the membership define the objectives of the voluntary association.

The only limitation upon the voluntary association in the free society is the standard limitation placed upon the activities of all men in such a society: the voluntary association as a separate entity may not invade the property rights of persons; it may not engage in violent, coercive, or fraudulent conduct.

While the function of the voluntary association in the free society is to advance the interests of its members, whatever those interests may be, the function of the state in such a society is to preserve the peace: to prevent and remedy expropriations, to establish and maintain conditions which insure

Dr. Petro is Professor of Law, New York University School of Law. This article is a condensation of Chapter 6 from his book, The Labor Policy of the Free Society. New York: The Ronald Press Company, Copyright 1957. 339 pp. Indexed. \$5.00.

the freedom of persons to go tranquilly about their business. The state establishes the conditions of peace and freedom; within that environment men cooperating singly or in groups are free to exercise all their ability, ingenuity, power, and imagination to improve the lot of man on earth.

Preservation of the peace involves insuring domestic tranquility, providing for the common defense, and establishing an effective system of justice. These, in the free society, are the primary and essential functions of the state. They are the primary and essential functions because they are the things, desired by and necessary to free men, which an institution organized like a state can best do and which no other form of organization can do as well.

Of all the insights afforded by the theory of the free society none perhaps is more significant than the teaching that by its very nature and inner structure the state is an organization well-designed to secure the peace of society, but rather poorly designed as regards the creative and productive functions. Appreciation of this teaching is enhanced by a comparison of the constitution and the authority of voluntary associations with those of the state.

Composition

In the theory of the free society, a voluntary association is composed of those who have freely chosen to form or join it, whereas *every* citizen is a member of the state and *every* person within the physical boundaries of the state is subject to its jurisdiction.

Membership in a voluntary association must be volitional for more than merely grammatical reasons. An association entitled to compel membership by violent, coercive, or fraudulent means would not only no longer be a *voluntary* association; it would have the privilege of destroying property rights. A voluntary association is a contractual arrangement among persons. To say that a person may be compelled to participate in such an arrangement is to deny him the right to refuse to make a contract which, in the exercise of his own choice, he would rather not make; and that, in turn, amounts to a deprivation of a basic property right.

The strictly voluntary association prospers only if it performs a needed function relatively well. And whether or not its performance is good can best be judged by whether or not it survives the test of the free market. It does not matter what kind of private association we examine; whether it be a business enterprise, an as-

sociation of such enterprises, a bar or medical association, a religious group, a charitable foundation — in every instance the best test of the effectiveness of the organization is whether or not it stands up in competition with other organizations engaged in like or competing functions, or with other methods of attaining the ends which it seeks. The test is not necessarily absent merely because there does not happen to be another such organization in existence at any given time. The opportunity to compete is what really counts. There would be no test only if persons were not free to form competing organizations at will—only, that is, if “voluntary” organizations were permitted to practice compulsion, or if they were given a protected monopoly by the state.

Permitting compulsion by private associations would seem to presuppose that association is always superior to individual action. As a general proposition, however, such a presumption would certainly be inaccurate. Associations sometimes provide more effective methods of getting things done; but not always.

In those instances in which associated efforts are more productive than individual effort, the ordinary effects of free competition between individual men and

associations of men will make the point clear to all. Associations will be formed, for men well understand their own interests. But it serves no socially useful purpose, even in such circumstances, to give a private association the privilege to compel membership.

But while compulsory membership in a private association conflicts with the theory of the free society, that theory holds it necessary for every person to be a member and subject to the rules of the state which has sovereign power in the territory in which he happens to be.

Protection of Property Rights

A society determined to establish the conditions of freedom must have the means of suppressing or discouraging attempts by any individual, group, or group of groups to invade the property rights of others. Nothing less than the full power of the society will adequately serve this end. In consequence, the society's defender of property rights must be able to count upon the life and treasure of every member of the society; and the organization so constituted, the organization which is authorized to represent the greatest combination of power of the society, is called the state.

It is unrealistic to assume that the state can perform its basic

functions without the power to compel the acquiescence of all in the measures designed to serve those functions. One may regret that violators of the peace and other invaders of property rights exist, or that superior force concentrated in that agency of society called the state is necessary in order to provide reasonable security against criminals. Yet political science must operate within the deficiencies of the other sciences; until biologists and other natural scientists demonstrate a better method of dealing with antisocial persons who would appropriate their fellow members of society, the compulsory powers associated with the state will continue to be necessary if the free society is to carry on.

Compulsory and coercive powers are needed also if the state is to perform its function of settling definitively the civil disputes over property and contract rights which continually arise among members of a free society. The state does not fulfill this function merely by formulating and promulgating clear-cut rules of law concerning property and contract rights. A large job is left even if the rules are supplemented by the best judicial system that can be conceived. That job is the one of seeing to it that the decisions of the judges, in applying the rules

to the disputes brought before them, are obeyed.

The compulsory, coercive characteristics of the state must be contrasted to the voluntary character of private associations in the free society. Compulsion and coercion are necessary to keeping the peace; but freedom is indispensable to the achievement of the great spiritual-material goals of men. To utilize an agency conceived in terms of compulsion and coercion in order directly to achieve those goals, rather than merely indirectly by establishing the conditions of freedom for individuals, is to choose the less intelligent way of doing things and to invite confusion and ineffectiveness, if not disaster. These observations gain in cogency when one considers also the nature of the authority and power of the state, as contrasted with the authority and power of voluntary associations.

Authority and Power

The authority and power of a voluntary association differ essentially from the authority and power of the state. Strictly speaking, a voluntary association is a contractual arrangement; but the state may be called a contractual arrangement only in loose terms. The membership of a voluntary association may not contract to

do together that which the law would not allow to any member as an individual; but the state both *may* and *can* do anything which representatives of a large enough majority of the people will countenance (and this is true, as we shall see, even under the Constitution of the United States).

The voluntary association has only such authority as its members agree to give it and only such power to act as is consistent with the ruling principles of the free society. The members may join together, and from their association they may reap benefits which none could secure from individual action; but they may not, in the free society, create in their association the authority to act in a way forbidden to individuals. Scientists may find their researches benefited by the pooling of their efforts, just as investors may find their purposes best served by putting their savings together; but neither group, any more than an individual, may invade property rights in promoting its interest.

Confounded by Numbers

While it is plain that an association may *not* engage in conduct prohibited to individuals, it is not nearly so plain that an association *may* take every kind of action open to individuals. At times the

essential character of an act changes when done by many people concertedly. One person rushing down a sidewalk probably does not hamper the passage of others, not very much, anyway; but if five or six persons rush abreast, they will very probably materially affect the passage of others. One picket at the scene of a labor dispute will probably frighten no one, but multiply the pickets and the intimidatory potentialities increase. Where a single person refuses to work for an employer unless the employer agrees to hire only union members, the access of a nonunion worker to employment opportunities is probably not materially hampered; his chances of securing employment for which he is qualified are about as good as ever. But if a large enough group of men unites against an outsider, the effect may be to replace the competition which it is in the interest of the free society to foster with a genuinely monopolistic condition which involves essentially the vitiation of property rights. A man may find himself denied access to employment possibilities despite the fact that he is fully qualified to do the work involved, and indeed despite the fact that he is the best qualified man available in the judgment of persons offering employment.

The "Contract Theory"

A precise formulation would have it, then, that in the free society the voluntary association has only such authority as its members may properly give it; and its members may not authorize their association to engage in conduct which invades the property rights of others, even though such conduct resembles that which, when done by an individual, does not invade property rights. Again, the rules lying within the authority of a voluntary association are rules applicable to and only binding upon members of the association; they cannot bind outsiders.

As a matter of history, the formation of some states has resembled in certain respects the methods of forming voluntary associations; and the fragmentary resemblance tends to lend color to the "contract theory" of the state. This theory holds that states generally are the product of a "social compact" among their members. Few careful students now accept the compact theory as a valid explanation of the actual genesis of states; there is, therefore, no need here to recount the historical researches and the analyses which have induced the virtually universal rejection of the compact theory. It does seem necessary, however, to establish the point

that it can never be accurate to identify the kind of authority possessed by a state with that of voluntary, private associations.

In its origins, the government of the United States came about as close as any government in history to being the product of a deliberate contract among the men within its sovereign boundaries. Standard theory holds this government limited by the terms of the grant of power from the people expressed in the Constitution, and the Constitution did not take effect until approved by the people of the United States in the ratifying conventions.

Majority Rule

Speaking loosely, one may call the United States a government by consent of the governed. One would speak entirely too loosely, however, if he should go on to say that the government of the United States is a contractual arrangement. The votes of a *majority* in the ratifying conventions determined the adoption of the Constitution in the first place; and a large enough majority can do just about what it wishes as regards amending the Constitution. Majority rule is the principle which governs in the United States in matters involving the action of the state. And it serves no useful purpose to confuse the principle

of majority rule with the principle of contract. The two principles are distinct in all material points, and confusing distinct principles is never conducive to fruitful analysis and accurate conclusions.

Contract means that the parties mutually assent to the rule which is to govern their conduct for the duration of their agreement. Majority rule means that the conduct of some persons is governed entirely without regard to their desires. In recognition of the fact that majority rule does not necessarily insure the most desirable results in all cases, some societies have more or less explicitly adopted the so-called limiting principle of "minority rights." In the nature of things, however, such a principle cannot mean very much, and no society today is really governed by that principle in any ultimate sense. It is open to a large enough majority in the United States to pass any kind of law it wishes, and it can do so entirely in accord with due process by amending the Constitution first if it wishes to pass a law which the Constitution presently forbids.

Doubtlessly, therefore, the principle of majority rule, rather than the principle of contract, defines the authority of the state, even in a society such as that of the United States. The fact that both

historically and contemporaneously, some societies have defined the authority of the state on the basis of some principle other than majority rule (i.e., "divine right of kings," or "dictatorship of the proletariat" as divined by such an agency as a politbureau) should not be allowed to obscure the central feature of the analysis: namely, that the contract principle does not define the authority of the state.

Nor should we allow ourselves to be confused by the fact that, even in the "western democracies," it is true only in principle that majority rule governs. In the real world of action, it must be recognized, an actual majority is rarely responsible for the enactment of any law, even in countries which have relatively enlightened and interested electorates. What actually happens is that a majority of *those voting* in an election select representatives; and then, influenced in one way or another by pressure groups or leaders, the representatives legislate. The people in rare and relatively unimportant instances may be given the opportunity to vote directly by way of referendum on some proposals. Usually, however, the majority's will regarding any specific item of legislation is unknown, unknowable, and, in fact, unsought.

Representative Government

Representative government — government by consent of the governed — is itself a principle of the free society; for no society can be really free, if indeed it can survive at all, which does not in one way or another, directly or indirectly, reflect the large consensus of its members. Representative governments may and often do enact and enforce measures which conflict with the theory of the free society. And yet representative government is essential to the free society because it is the best available method of changing governments without the disturbances and potential lawlessness that are inconsistent with the free society. Mises has put this matter definitively:

Liberalism realizes that the rulers, who are always a minority, cannot lastingly remain in office if not supported by the consent of the majority of those ruled. Whatever the system of government may be, the foundation upon which it is built and rests is always the opinion of those ruled that to obey and to be loyal to this government better serves their own interests than insurrection and the establishment of another regime. The majority has the power to do away with an unpopular government and uses this power whenever it becomes convinced that its own welfare requires it. In the long run there is no such thing as an unpopular govern-

ment. Civil war and revolution are the means by which the discontented majorities overthrow rulers and methods of government which do not suit them. For the sake of domestic peace liberalism aims at democratic government. Democracy is therefore not a revolutionary institution. On the contrary, it is the very means of preventing revolutions and civil wars. It provides a method for the peaceful adjustment of government to the will of the majority. When the men in office and their policies no longer please the majority of the nation, they will — in the next election — be eliminated and replaced by other men espousing different policies.¹

There are those who may regret some of the consequences of representative government, but there is really not very much that can be done about it. Mises' remarks are relevant here, too:

There is, of course, no guarantee that the voters will entrust office to the most competent candidate. But no other system could offer such a guarantee. If the majority of the nation is committed to unsound principles and prefers unworthy office-seekers, there is no remedy other than to try to change their mind by expounding more reasonable principles and recommending better men. A minority will never win lasting success by other means.²

¹Mises, Ludwig. *Human Action*. New Haven: Yale University Press, 1949. pp. 149-50.

²*Ibid.*, p. 150.

The power of majorities to do "bad things" is thus as ineluctable as the power of the sun to destroy as well as to create. The theory of the free society is built around the awesome paradox that a free society must be free, also, to destroy itself. The hope held by those who understand the theory is that good sense will ultimately prevail among the people; that they will use the power of the state essentially to protect property rights, not to destroy them.

Consequences of the Confusion of Roles

Everyone now has some understanding of specialization and exchange, and of how application of that principle has transformed the condition of men. Yet, perhaps the most portentous and most prevalent error in the world today grows out of the common failure to realize that the insights to be derived from it apply also to governments. There is nothing supernatural about the state. The state is only a human agency, created by human beings and manned by human beings. Whatever the totalitarian mystics may try to make it, the state is really, as Somerset Maugham might say, only a human institution like another. In the free society it differs from other associations only in that it is based essentially on the

principle of majority rule and has the exclusive legal right to use compulsion, force, and violence.

These special characteristics equip the state particularly well to preserve the peace of society; indeed, as already noted, they are specifically designed to that end. But the trouble is that they also leave in the hands of the men in charge of the machinery of the state the power to try to do anything else they may wish to do — *and the only limiting factor of any real significance lies in a proper popular understanding of the principle of division of labor, specialization, and exchange.*

Specialization and Exchange

This principle declares that it is best to leave to a person or institution only the function or functions which that person or institution performs better than any other person or institution. It teaches, moreover, that if one person does several things supremely well, everyone is still better off if he concentrates on one and lets the next best men do the others. So, if Mr. X is an excellent plumber and machinist, but an unexcelled physician, he and everyone else will be much better off if he concentrates on being a physician and leaves the plumbing and machinist work to others specializing therein. If Mr. X insists upon

doing them all, he may well end up doing nothing very effectively; in any case he and the plumber and the machinist will not profit as much as they would if they all took advantage of the principle of specialization and exchange.³

States characteristically take a hand today in a great number of activities unrelated to keeping the peace. Here in the United States, federal, state, and local governments engage in just about all the kinds of activities known to man. They run schools and hospitals; they operate golf courses, amusement parks, and other forms of recreation; they build and maintain roads and sewage systems; run production establishments of various kinds; generate and sell electric and other kinds of power; help farmers, small businessmen, and some tenants; subsidize such industries as aviation and shipping directly and others indirectly by way of tariffs. They do a virtual infinity of other little things related to the foregoing functions, but unrelated to the function of keeping the peace.

Of almost everything that governments in the United States do, one thing may be said: the means of accomplishment are derived

from taxing the citizenry; that is, the governments' activities proceed by way of compulsion. This is as true with respect to the functions associated with keeping the peace as it is with the interventionist measures of the kind just sketched. But there is one great difference. In preserving domestic tranquility, the state serves the whole society as such; every member of society owes everything he has or hopes to have to civilization, and therefore has no ground for objecting to equal taxes levied in order to preserve civilized society. But interventionist measures do not characteristically serve the whole society as such; instead, as a general rule, they serve one or another minority group *at the expense* of the society as a whole.

Invitation to Chaos

When one properly understands the operation of the political process, even in a tolerably advanced representative government such as that of the United States, he is forced to concede that a tradition of government action for the benefit of anything less than the whole body of taxpayers invites chaos. It tends to lead to the pitting of group against group, or at least to the process of "group accommodation," to use a current idiom. We may find ourselves once again

³Cf. Ricardo, David. *The Principles of Political Economy and Taxation*. Everyman's Library. London: J. M. Dent & Sons, Ltd. pp. 77-94, 253 ff.

fitting Maine's definition of the primitive society: "It has for its units, not individuals, but groups of men."

Interventionist legislation is always proposed by some group asking for a special privilege at the expense of the general tax-paying population. But if golfers get their golf course, how can one deny a similar benefit to bowlers, or chess players, or aviation enthusiasts? If dairy farmers are subsidized, how can one resist a request for similar aid by peanut farmers or cotton planters? There is no rational basis for rejecting a subsidy request by people who would like to grow bananas under glass in New England, or orchids, or coffee; that is to say, no rational basis other than that dictated to legislators by the vagaries of politics and political alignments.

This is interventionist government by pressure groups. There are those who defend this kind of thing by saying that, in the long run, such government tends to dispense more or less equal benefits to all groups. Thus, while the general public is exploited by special subsidies, devices such as rent and price controls and "social" security measures "tend to even things out." But the fact is, of course, that in neither the long run nor the short run can such a

blunt and relatively savage instrument as group political pressure produce any kind of equal distribution of benefits. Someone is always going to be hurt more than he is helped. Moreover, the fact that two wrongs have never made a right does not mean that multiple wrongs can make a right. For every special subsidy amounts to a wrong against the undifferentiated persons who make up the general taxpaying public (that is, against those who pay the taxes but do not receive the benefits for which their taxes pay); and the wrong is aggravated, not remedied, by each additional subsidy. Generally reduced productivity is the unavoidable mediate result; and the completely regimented society, engulfed in the totalitarian state, the ultimate product.⁴

Forgetting the Purpose

Again, the never-ending potentialities of special governmental subsidies tend to divert government from its primary and essential social function. Two somewhat independent factors are at work here. First, the task of contending with all the pressure groups who come begging for special privileges becomes a labyrinthine and all-absorbing one. The newspapers

⁴Cf. Hayek, Friedrich A. *The Road to Serfdom*. Chicago: University of Chicago Press, 1944. pp. 61 ff.

daily carry stories of this or that pressure group asking the government to "step in." Congress, the Chief Executive, and his subordinates have about all they can do to placate persons and groups who want to make sure that they will not be passed up. There is little time left for careful consideration and enforcement of the laws necessary to protect the property rights which alone can secure the general welfare of the society.

In the second place, contrary to some opinion, not even governments are omniscient and omnipotent; not even they can do the impossible; and there is a limit even to taxes. Interventionist government by pressure groups may be able reasonably to satisfy the demands of the most insistent seekers after special privilege; but when that has been done, there is little talent and less money left to perform the basic functions of the state.

The state seems to get into its worst troubles when it takes over the job of providing for the economic welfare of individuals and groups. In the free society, that is the job of individuals themselves, who are free to form voluntary associations when independent action seems inferior to association as a means of reaching

desired ends. Few men are in a position to have a golf course of their own; but the free society recognizes a right in golfers to combine their resources in order to maintain a golf course. Not every person is able to make a suitable living through farming; but in the free society those who cannot make a living by farming alone are always free to join together into more efficient agricultural production units, or to try some other occupation, the product of which is in more demand than farm commodities.

Ultimately, if government by pressure group follows its inherent logic, there is no doubt that the ability of individuals to provide for themselves through their own action or through voluntary associations must be drastically impaired. If the agency of force and compulsion assumes the functions allocated in the free society to persons and their voluntary associations, it must take from individual persons the wherewithal to do so. No great insight is necessary in order to realize that the individuals will then no longer have the wherewithal to provide for themselves and to forge ahead with creative plans for realizing their own potentialities. • • •

SMALL STATES ARE BEST

John Chamberlain

LEOPOLD KOHR, a writer of knockabout charm despite his professorial background, throws his *The Breakdown of Nations* (Rinehart, \$6.00) smack in the face of virtually every modern shibboleth. He tells us why there can be no peace through empire or pursuit of the universal state. He isolates the "political cancer" (his word for it) which consumed the League of Nations and will surely be the death of the United Nations. He explains why so much of the energy of the contemporary world must be devoted to overcoming the inconveniences created by the progress which has heaped us all together in great urban warrens. Incidentally, Dr. Kohr does not expect to convert anybody. We learn, he seems to say, only through failure; and the only cure for the sterility of the universal state is to try it on for size and watch it burst into smithereens after the forthcoming inevitable war between the U.S. and Russia.

Dr. Kohr's theory is that life is only manageable through cultivation of the "small-cell principle."

Anything big, he says, is bound to break down through instability. Bigness can, indeed, be handled through the principle of decentralization, as many U.S. business concerns (General Motors, Johnson and Johnson) have discovered. But only when the decentralization permits true local responsibility in the various parts. The parts, in turn, must be small parts, no one of which has the latent power to impose an imperialistic design on any of the other units.

Inasmuch as political Bigness is the worst sort of Bigness (it has a monopoly of force to back it up), Dr. Kohr is primarily concerned with explaining why Great States are their own Nemesis. But Dr. Kohr's mind is only interested in politics for purposes of outwitting and circumventing the politicians. Though he is by trade a political economist (he teaches economics and public administration at the University of Puerto Rico), Dr. Kohr is actually far more interested in his hobbies and his avocations. He delights in things which, though "socially useless," minister