Introduction

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The purpose of this book is to analyse the balance that exists in a democracy between freedom and coercion, and how and how far a democratic regime can cope with coercion. The question can be viewed from the perspective of a comparison between alternative institutional devices – or from the perspective of one regime only. This is the angle adopted in this book: to analyse the extent to which democracy can legitimize violence in order to enhance liberties. We concentrate here on democracies and investigate the institutional and legal conditions under which coercion or violence are admitted, permitted and thus have to be organized in order to preserve as much freedom as possible. The problem is analysed from the perspective of constitutional law and economics, of constitutional political economy, and more broadly, of public choice.

One crucial element of the problem – and the point of departure of our reasoning – lies in the conflict between the capacity to protect individual freedom while organizing the necessary coercion associated with any form of government, either autocratic or democratic. Whether violence is normal or abnormal, it seems that any kind of political regime, even democratic societies, although designed to protect individual freedom, nonetheless implies coercion and a certain amount of violence. In other words, the essence of a democratic power is the protection of freedom through coercion. There is no such thing as a free lunch and costs always have to be taken into account, even when the question is that of institutions. Certainly, democracies are preferable to autocratic regimes. There is no doubt about that. However, democracies have to reach a subtle balance between freedom and coercion in order to both develop and contain the state. The present book studies this balance along three directions: the necessary coercion implied by institutions; the legitimacy of democratic coercion; and the ways that can be used to tame democratic Leviathans.

DOES POWER NECESSARILY MEAN COERCION?

The choice of a set of institutions to order a society can be presented as a dilemma, what has been referred to as a ‘constitutional dilemma’ (Nozick,

1974) or the ‘Hobbesian dilemma’ as Donald Wittman names it in the concluding chapter of this book. The direct reference to the famous eighteenth-century political philosopher interestingly designates the origin of the problem: individuals have to choose between the anarchical violence and coercion of the state of nature or the institutionalized violence and coercion of a civil society. In other words, the ambiguity of constitutional choices rests on one crucial assumption: the existence of a violent state of nature. More precisely, institutions are needed, and institutionalized violence is unavoidable, because egoist and rational individuals fight each other in the state of nature.

Now, although imaginary and designed as explanatory devices, the state of nature and the social contract have real implications in that they justify specific forms of institutions: to assume that nasty, brutish and violent individuals populate the state of nature necessarily implies that a social contract is required. The social contract gives birth to a society that displaces or transforms violence into coercion. As argued by Giuseppe Eusepi and Alessandra Cepparulo in Chapter 1, Hobbes’s theory is problematic because his conception of the social contract implies that power lies in the hand of the Leviathan and therefore, to put it in the terms of this volume is hardly compatible with a democracy. Is it possible to escape the problem, and to use a social contract as a foundation of a democratic regime?

The analysis developed by Eusepi and Cepparulo suggests that there are two (apparently) alternative answers to the question. The first refers to what James Buchanan named a constitutional democracy. The perspective of the 1986 Nobel Prize laureate consists in using the same assumptions about human nature as Hobbes to ground democracy on a social contract different from Hobbes’s. Buchanan’s social contract thus could be depicted as ‘a tool through which morally equal individuals are equally free’ (Eusepi and Cepparulo, this volume). In effect, from Buchanan’s perspective, the social contract is designed under a veil of ignorance and during a procedure that allows individuals to choose themselves the limits of their choice set. It nonetheless remains that, argue Eusepi and Cepparulo, the individuals who have not signed the social contract are obliged to choose elements within a set of choice delineated by others. Power seems transferred into the hands of the elected officials, bureaucrats and policy makers. Coercion thus reappears during the post-constitutional stage. Constitutional democracy can then be considered as coercive because it is a regime which assumes that individual behaviours are restricted to choosing within given opportunity sets.

Another set of literature, the economic theory of freedom of choice, proceeds to the same reduction and analyses freedom by comparing ‘decision situations as given by opportunity sets’, as stressed by Manfred Holler (this volume) at the outset of Chapter 2. Now, freedom also depends on the

capacity to control opportunity sets. Freedom cannot be restricted to the capacity of choosing in a set of given alternatives. As demonstrated by Fabienne Peter (2004), this capacity may be referred to as consumer's sovereignty but can hardly be considered as freedom. Then, it is not only important to understand how individuals are capable of selecting their most preferred element. Obviously, it becomes critical to know who holds power, or 'who controls the opportunity sets?' (Holler, this volume). Thus, a discussion on freedom of choice implies a reference to power.¹ Furthermore, and this is a particularly interesting element in Holler's contribution, power and freedom of choice necessarily relate to responsibility and guilt. Not only in the sense that decision makers, because they are granted with the capacity to influence citizens' choice sets, have also to carry the burden of their charge. Also, any individual may be held responsible because of the influence he or she may exert on social opportunity sets. Violence and coercion is not only that of policy makers. It becomes that of the society as a whole.

Alternatively, there exists a second and drastic solution for avoiding the trap of coercion in a society based on a social contract. It consists in rejecting the social contract itself. This perspective requires that strong assumptions about human nature be made. Human beings are no longer viewed as 'bad' economic men, who once lived in a war against all in the state of nature. To the contrary, they are either altruists, 'intrinsically motivated', or they feel sympathy towards the others. As a consequence of these assumptions, the state of nature can be modelled as a peaceful situation in which repeated interactions are made possible because of altruism or sympathy. In their chapter, Eusepi and Cepparulo explore the institutional settings which emerge from it. In particular, what can be noted is that no social contract is required: individuals have always lived, even if on various scales, in civil societies; violence is not the only feature of social interactions and, then, rules and institutions spontaneously emerge as the result – and even as the by-product – of interactions. Thus, from the perspective of a democratic regime that is not founded on a social contract, coercion is far less central than when a social contract is required.

Undoubtedly, when individuals are altruist or sympathetic, cooperation and order would seem to be less problematic. This argument is fundamental to spontaneous order theories, and also grounds what is labelled 'monist' democratic regimes. However, the absence of a social contract and the belief that societies are spontaneously ordered does not necessarily mean that institutions and coercion disappear. David Hume, for instance, pleaded against a social contract but nonetheless argued that coercive governments are necessary (Marciano, 2005). One explanation could be that a social contract even seems to be necessary to overcome the limits of

spontaneous order because as Hume stressed, sympathy is mostly restricted to friends and acquaintances. Therefore, spontaneous order applies to small groups and small societies. Beyond such instances, for inter-group interactions, or when the size of groups increases, then institutions are required. Another explanation refers to the role of public decision makers. In theory, the latter should not interfere in the bottom-up process through which rules and institutions emerge. In practice, however, they do more than just say what rules are. By interpreting and implementing them, they often go beyond what spontaneous order requires and they tend to impose their own preferences on society. This is exactly Friedrich Hayek's problem, as is argued by Enrico Colombatto in Chapter 3. Hayek is undoubtedly known for having contributed to putting 'liberty' and 'freedom' high on the research agenda of economists and political scientists. However, Colombatto argues that Hayek's work can be viewed as a 'manifesto against freedom' because policy makers are capable of imposing their views on society. In other words, policy makers are not the impartial spectators they should be and they are not even enlightened social philosophers. They tend to influence the choice of individuals and, as said above, restrict individual freedom. The same conclusion applies as in social contract theories.

Interestingly, the limits of Hayek's theories as they are stressed by Colombatto, reinforce the idea that Holler develops about power as something necessarily coercive. The argument implies that the violence exerted by the state, through institutions and power, in civil or social contract societies cannot only be the consequence of assumptions about human nature and about the state of nature. Power *per se* implies coercion and is necessarily paradoxical when it claims such coercion in order to enhance liberties.

IS LEGITIMATE COERCION REALLY LEGITIMATE? DEMOCRACY WHAT FOR WHAT KIND OF LIBERTIES?

The first step of the book has taken the definitions of 'democracy' and 'coercion' as granted. However, even if the *demos* part of a democracy is necessary, it is not a sufficient condition. One has to take coercion into account to understand what a democratic regime means. Furthermore, the first part of the book demonstrates that a democratic regime – based or not on a social contract – cannot escape coercion. Therefore, the next step consists in asking what delineates legitimate coercion, and if or how it is possible to distinguish between legitimate coercion and abuse of power. The second part of the book is thus dedicated to understand why and when

coercion can be defined as acceptable or, to the contrary, illegitimate in a democratic regime. This question touches upon the problem of the types of liberties democracy has to protect.

Basically, it is admitted that a democracy is a political regime; that is, a regime based on the protection of political liberties. Thus, most of the measures that are made to evaluate whether or not a regime is a democracy rest on variables such as elections, the existence of political parties and unions, the reality of a free press, and so on. This definition does not only consider that political freedom is more important than economic liberties; it also assumes or implies that a distinction is possible between political and economic regimes. The former define and primarily protect political liberties and the latter are meant to do the same with economic liberties. If we consider the theories presented in the first part of the book, the separation between the economic and the political sides of society is far from obvious. Thus, even in Hayek's liberal regime or in Buchanan's constitutional (and liberal) democracy, policy makers interfere with the economic choices made by individuals. Policy makers are not only in charge of political issues, but they also take decisions that have economic impact.

Chapter 4 by Christian Barrère develops a reflection upstream of the economic consequences of political actions. An economic regime is based on economic liberties such as the right to work. Political liberties become subordinated to economic rights. In a way, the definition of freedom goes beyond the choice set of individuals to reach their budget constraint. Democracy thus has both political and economic dimensions. As to the economic side, it can be limited to the consequences of political actions, democracy is then mostly political and political liberties prevail. If the economic side is prevalent, then economic liberties should be the dominant feature of democracy; political liberties would then derive as a consequence.

At the theoretical level, the debate whether the economic or the political side should prevail is mostly a matter of personal philosophical inclinations. In practice however, there are some urgent questions. To move from an undemocratic towards a democratic regime, has one to favour political or economic reforms? Should economic liberties be promoted to ensure that a transition to more political freedom will be guaranteed? Or, by contrast, are political liberties the cause for more democracy? The next two chapters are dedicated to those questions.

In Chapter 5, Martin Paldam uses the Gastil Index, which measures the degree of democracy for 171 countries between 1972 and 2003, and finds a confirmation and of the law Seymour Lipset established in 1954. Thus, with the exception of the 'rather undemocratic' Muslim countries that 'show no tendency to become more democratic when income grows' (Paldam, this volume), one observes that a democratic transition occurs as a consequence

of economic development and when income increases. This would support the view that political liberties do have some relationship with economic progress, though causality is hard to unambiguously establish. When political liberties concede to economic liberties, evidence suggests poor economic performances, such as in socialist countries.

From the perspective of Paldam's chapter and in the view of the Gastil Index, not only good economic performances tend to favour democracy, but also they may be considered as a necessary condition for the existence and survival of a democratic regime. This argument can be used to explain why, in some countries, democracy survives in spite of particularly intense violence, such as in Colombia. As stated by Giorgio Brosio and Roberto Zanola in Chapter 6, Colombia is one of the most violent countries in the world. The figures they display are extraordinarily striking, as it appears in the following quotation:

A former minister of Defence, Rafael Pardo, reported in 2000 that since the mid-1980s '4 presidential candidates, 200 judges and investigators, half of the Supreme Court's Justices, 1200 police officers, 151 journalists and more than 300,000 Colombians have been murdered'. (p. 139, this volume)

However, Colombia remains a democratic, partial or semi-democratic regime. Brosio and Zanola devote their chapter to the analysis of the impact of democracy on violence. Inspired by Becker's model of rational addiction, they show that no rational addiction to violence can be detected. On the contrary, there exists, as they note, 'a natural way of reducing violence consisting only in the passing of time'. Then, active political strategies involving incentives towards more political participation and less poverty and inequality (possibly including the affirmation of basic economic rights) can be used to accelerate the decrease in violence in Colombia. Therefore, one may say that economic factors indeed, as suggested in Paldam's chapter, play an important role in the existence of democratic regimes. Furthermore, the analysis of the evolution of violence in Colombia also indicates how important is the combination of economic circumstances and political liberties in the functioning of democracies. Finally, one may also interpret the demonstration made in this chapter as a confirmation that spontaneous processes and constructivist reforms simultaneously can help countries or societies escape from what is an obvious instance of a Hobbesian state of nature. In other words, when violence increases to levels similar to those that frightened Hobbes in seventeenth-century England, a new social contract – under the form of economic and political reforms – may improve the situation because and when society displays a natural and spontaneous tendency towards improvement.

Thus, we are told how violence – among individuals – can be decreased. However, the post-constitutional stage, the functioning of democracy and the question of the possible transformation of coercion into violence on the part of government to the detriment of citizens still remains to be dealt with.

DEMOCRATIC SAFEGUARDS AGAINST COERCION

After having stressed that coercion is unavoidable and having discussed how to define democracy in terms of coercion another problem has to be discussed: what does legitimate coercion mean? Another problem relates to the means and incentive mechanisms that can be designed and used to tame democratic Leviathans. The third step of the book is thus to study the instruments that can provide effective safeguards against illegitimate coercion.

From this perspective, to allocate power among different parties – that is to introduce competition between various institutional levels – is certainly the most frequently envisaged solution. But are there ways of splitting power between different parties (or institutional levels) that allow a better control of the functioning of democratic states? The question is discussed in this volume by Louis Imbeau in Chapter 8. He proposes a typology of power abuses and of the mechanisms that can be devised to deal with them. The chapter insists on the role of concentration and monopolization as a major source of power abuse. Thus, the problem of (both political and economic) power comes from the concentration of authority, force, wealth and knowledge in the hands of a few individuals. When one individual is able to ‘use all three types of resource to pursue his objectives, then the potential for power abuse is at its apex. Recent history provides us with several examples of such concentration’ (Imbeau, this volume). Accordingly, the ‘best protection against power abuse is the playing of the power of one against the power of another: division and competition within each type of power relationship and between them’.

This protection can be envisaged in two forms, depending on whether it is viewed in horizontal or vertical terms. From the perspective of horizontal competition between institutional levels, division of power literally corresponds to the separation of power between different branches, the celebrated mechanism of ‘checks and balances’. In Chapter 9, Lars Feld and Jan Schnellenbach analyse how the mechanism functions in different types of political regimes and in particular how it affects reforms and political innovations. Reform then appears more probable when checks and balances are ‘high’ (in presidential systems) than when they are ‘low’ (that

is in parliamentary systems). In addition, they show that centralization decreases the probability of reform. Thus, checks and balances and decentralization make reform easier; control is thus easier and, one may reasonably assume, coercion decreases. However, Feld and Schnellenbach also stress the frequent reliance on political leaders to manage reforms. The role of leaders tends to decrease the importance of checks and balances as means to control the behaviours of governments.

Interestingly, this line of reasoning draws us back to both Holler's and Colombatto's chapters. Although leaders such as Ronald Reagan or Margaret Thatcher may have been inspired by liberal mentors – Thatcher being directly inspired by Hayek – they nonetheless were decision makers who benefited from power. Their action thus affected the opportunity sets of agents and certainly had a coercive dimension. Thus, the link between decision, power and coercion seems to be confirmed: decision making implies power and power implies coercion.

The picture is somewhat different when one moves to vertical competition. It is then assumed that multi-level governance is a means to control state coercion. From this perspective, no institution is in the position of a monopolist holder of power. Rather, tasks are assigned to different institutional levels, both in unitary states (through administrative decentralization) or in federations (through devolution). Furthermore, in the latter case, no responsibility is assigned once and for all but is allocated through ongoing and competitive procedures. Individual mobility reinforces the control that citizens exert on the actions and behaviours of the different governmental institutions. Furthermore, decentralization implies that tasks are delegated to the smallest institutional levels, as close as possible to the citizens. Therefore, a democracy in which tasks are decentralized (either in unitary or federal contexts) is supposedly less coercive than a unitary and centralized political regime.

However, one must not forget that the provision of some collective goods is more efficient when realized at the highest institutional level – in particular when there are economies of scale. This is a point on which Nozick (1974) particularly insists in his analysis of the production of defence and security. Thus, and although decentralization may lead to a decrease in coercion, centralization and monopolization of power are in certain circumstances unavoidable. And it is not a surprise that democracies in practice are indeed hybrid, since the economic theory of federalism predicts that a balance has to be found between a necessary (and necessarily coercive) centralization and decentralization, between monopolization and division of power.

In Chapter 7, Leonard Dudley extends this standard explanation by using network theory. His reasoning rests on the distinction between 'a

standardized language or culture used by a network of citizens' and the programs proposed by governments 'whose availability increases the value of the linguistic platform to those who share it' (Dudley, this volume). It then appears that the degree of monopolization or division of power depends on the extent of economies of scale. The provision of public goods by different levels of governments is thus linked to the capacity of such goods to reach individuals. Language may be an obstacle to the spreading of a policy. If it works as a large network, it enhances social cohesion and reinforces the efficiency of large scale collective services. Concurrently, a standardized language or culture is usually obtained through coercion (at least partly), which brings us back to the difficult balance between individual freedom and coercive authority.

If there are different ways to explain that political regimes are hybrid, trying to combine the features of centralization and decentralization, one cannot be sure that the situation really results from a deliberate choice to follow the requirements of economic theory. And indeed, most of the time centralization seems to result from strategic behaviours. It certainly was the case in the USA in the nineteenth century and also probably has been in Europe since the 1950s. The European Union seems to be an instance of a democratic Leviathan, as witnessed by the number and influence of pressure groups in policy making. Furthermore, the increase in the size of the Union while its constitutional status remains vague and unsettled may generate more centralization while allowing at the same time each country to substitute private interests for common objectives. The many safeguards that were envisaged – the separation and division of power, the increase in the role of parliament and the role attributed to the European Court of Justice – do not really appear to be efficient. Another incentive mechanism – conditionality – may prove to be more efficient. In Chapter 10, Bernard Steunenberg and Antoaneta Dimitrova analyse the use of this instrument by the European Union, in particular in relation with enlargement. Conditionality can be considered as an incentive mechanism since it means that the distribution of resources depends on the capacity of the beneficiaries to fulfil certain objectives or conditions. However, Steunenberg and Dimitrova demonstrate that EU conditionality is not equally effective throughout the period of preparation of a candidate for accession.

The chapters by Dudley, Steunenberg and Dimitrova point to a dimension of our problem that has up to now been slightly overlooked. Coercion by the state is not simply of individuals. It is also of groups. These are identified as such by language, religion, historical cleavages, and so on. They can also be states in a multinational context. States' rights can often be threatened by centralizing trends or conversely can compromise the efficient provision of 'central' public goods, which brings a further dimension to the

balance between liberty and coercion. Indeed, whereas individuals usually have little strategic capacity, groups or states do have some, hence the importance of a well-designed incentive mechanism, as is illustrated in the EU case by Steunenberg and Dimitrova.

CONCLUSION

Throughout the book, it should appear that the use and abuse of power is problematic even in democratic contexts – and not only in autocratic regimes. The different chapters presented above analyse various aspects of the balance between freedom and coercion in democracies. However difficult this balance may be, it nevertheless appears that, although sometimes endangered, democracies do not (always) disappear. Not all governments become repressive military dictatorships even though they all could use their power to promote their own goals. Thus, ‘even when certain segments of the society . . . have the power to coerce’ (Wittman), democracies function and do not systematically turn into autocratic regimes. The fact is reassuring but, as argued by Donald Wittman in the concluding chapter of this volume, puzzling for public choice scholars. Why, in contradiction with the predictions of public choice theory, do democracies function? Why are Leviathans often only paper tigers? Wittman investigates ‘the more than occasional absence of extreme exploitation by those who ostensibly have the power to coerce’. Though coercive, democracy can remain ‘dictator-proof’ whenever well-designed democratic coercion enhances freedom. However, and despite all the efforts exerted in this book, there remains a flavour of mystery in it.

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NOTE

1. In his chapter, presented in the third part of this introduction, Louis Imbeau considers that power is problematic when it is concentrated in the hands of a limited number of

individuals. In Holler's view, power is problematic as long and as soon as it exists, in itself because whatever its concentration it restricts the choice set of others.

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