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On Makovi on public goods*

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Abstract

On Makovi on public goods

Makovi (2019) has traveled a long distance, all the way from his 20-yard line to his opponent's 5-yard line. But, he needs a little push to score a goal. The present essay is our attempt to provide that for him in terms of public goods, externalities, and laissez faire capitalism.

There are three main market failures used as a stick with which to beat up economists in the Austrian tradition who reject criticism. They are monopoly, externalities, and public goods. Makovi (2019) is a good attempt to defend the praxeological school of thought against the charge of market failure on the basis of so-called public goods. The present paper is an attempt to strengthen Makovi (2019), which we regard as an important contribution to this literature.

Makovi (2019) does not define public goods. Rothbard (2004, 8) makes good this oversight as follows: "The *means* to satisfy man's wants are called *goods*." The standard definition of a public good is that it is one that exhibits non-rival-

* As it happens, Michael Makovi is a former undergraduate student of the two present authors. So, this paper is an attempt to improve an excellent paper written by a former student of theirs.

rous use and non-excludability.[1] Standard theory maintains that a public good will not be provided at all by a free market;[2] i.e., free enterprise/voluntary exchange, and, therefore, assuming the benefits that would obtain were the good to be produced would exceed the costs of providing it,[3] it must be provided coercively, i.e., by a government.

A good that exhibits positive externality is one that demonstrates non-excludability. Whether or not rivalry is involved is a matter of degree, not kind. But, so then is the matter of rivalry a matter of degree when the good under consideration is a public good.

A couple of simple examples are offered. National defense is considered the pre-eminent example of a public good. Once provided, no one who has not helped pay for it can be excluded from using it and no one's use reduces the amount available for others. Consider next the example of keeping up the appearance of one's property. You cannot preclude others from enjoying the view, or even benefitting monetarily because your action enhances the value of their property, because they do not help to defray your costs. Moreover, the fact that one person gains from your actions does not preclude others from also benefitting. The assumption is that in the former case, the ex-ante voluntary payments would be insufficient to call forth any supply whatsoever; i.e., one might refer to this as the free-rider problem à outrance, which precludes *any* provision of the relevant good. Whereas in the latter case, such payments, although sufficient to call forth some supply of the good, are insufficient to call forth the "socially-optimal" quantity; i.e., a less-than-complete, free-rider problem.

More technically, a public good is one for which the demand price is less than the supply price for every relevant quantity. The neo-classical assumption is that, but for the non-excludability; i.e., the free-rider, problem, the demand price would be sufficiently high to call forth a positive, socially-optimal quantity of production. Alternatively, a good that is said to exhibit a positive externality is one for which the demand price exceeds the supply price, but only for socially-sub-optimal quantities, and thus, although some output is called forth, because of the (partial) free-rider problem, it is less than the socially-optimal quantity; i.e., some of the benefits cannot be captured by voluntary action.

Thus, we see that the difference between a public good and one that exhibits positive externalities is but a matter of degree, not kind. In the former case, the

[1] Non-rivalrous use refers to situations in which, once a good is already provided, one party's use of it does not decrease the amount available for use by others. We can all tune into a radio program without dis-accommodating any other listener. Non-excludability refers to situations in which once a good is provided, no individual can be excluded from using on the basis that they did not pay to use it. National defense and the light house are the traditional examples offered by mainstream economists. This latter condition gives rise to the so-called free-rider problem.

[2] If provided, but to a less than optimal degree, such goods are said to be instances of positive externalities.

[3] This begs the question of interpersonal utility comparisons, an issue ignored at this point.

free-rider problem is so extensive as to make it unprofitable to supply the good at all, whereas in the case of positive externality, the free-rider problem is not that extensive. That is, at least one of the beneficiaries of the good values it sufficiently to call forth some supply, but less than the socially-optimal quantity, because some free riders remain.

The idea, then, is to eliminate the externality, in either case, by internalizing it, so long as the cost of internalizing does not exceed the benefit in each case.

In our estimation, Makovi (2019) makes an important contribution to these issues. However, we offer some hopefully constructive criticisms of this otherwise excellent treatment of this phenomenon.

Makovi (2019)[4] opines as follows: "Libertarians tend to oppose hierarchical authority." Not so, not so, and this author offers no evidence for such a claim. However, it must be conceded to him that some who characterize themselves with this honorific do indeed oppose authority and hierarchy, even when this is entirely voluntary. But these are few and far between, mostly confined to thick "libertarians" associated with the Bleeding Heart Libertarians Blog.[5] For example, there are those who object to "bossism" (Carson, 2015; Long, 2008),[6] supposedly, but actually not, on libertarian grounds. As far as mainstream, sensible, libertarianism is concerned, hierarchy, authority, no matter how intrusive, is entirely compatible with the non-aggression principle (NAP) of libertarianism, provided, only, that it is voluntary.[7]

Another difficulty is with Makovi's claim that "the essence of the market process is not the atomic (sic)[8] individual but consent." No one can properly object to the latter, but who is it that is supposed to be providing the "consent" aspect, apart from the individual, "atomistic" or not? Only individuals, not even groups unless all members agree, can "consent" to anything. Elevating "consent" is all well and good, but denigrating the individual is problematic.

Then there is the issue of the purely verbal, but not unimportant, matter of market "based." Makovi is assuming pure free enterprise in this article. In sharp contrast, not market, but market "based" systems constitute semi, or demi, or quasi, capitalist systems, not pure laissez faire. For example, school vouchers,

[4] All citations to this author will focus on this one essay of his, so henceforth we will drop the date of its publication.

[5] https://bleedingheartlibertarians.com.

[6] For a splendid critique of "bossism" see Klein, 2008.

[7] For example, in the orchestra, the breathing of the wind players is strictly limited. They are only permitted to inhale when indicated by the score. If they deviate from this very intrusive requirement, the conductor becomes highly miffed, and is likely to lash out at them. And yet, this is entirely justified, given that no one was drafted to perform. Even under outright slavery, the hapless victims were allowed to breathe whenever the mood struck them (not breathing is entirely a different matter).

[8] Atomistic?

tradeable emissions rights, are all market-"based" but are actually violations of anarcho-capitalism.[9]

We also have a verbal dispute with how this author employs the word "monopoly." He says (p. 40), "It may be necessary for private firms to provide a variety of bundled goods with a monopoly within a restricted territory." For an Austrian economist, this term signifies a lack of legal entry into the field or profession. For example, taxi cab companies try to prohibit Uber and Lyft; hotel associations attempt to proscribe Airbnb; states which feature butter production outlawed the colorization of margarine; and the American Medical Association restricts entry of new physicians. In sharp contrast, mainstream economists use this appellation to depict concentration ratios, Herfendahl Indices, eliding over the objection that the scope of an industry, on the basis of which these calculations are made, is far from being an objective fact. Does the automobile industry include trucks? Motorcycles? Buses? Motor homes? Trains? Is the breakfast "industry" limited to cold cereals or will hot ones fill the bill? What about waffles? Ham and eggs? How any of this fits in with Makovi's focus is far from clear.

This economist allows to pass, without criticism, his mentions of Friedman's (2014 [1993], pp. 70–72) notion of "selling the streets." But this, too, is incompatible with his premise of laissez-faire capitalism. Who will sell them? Why, the government of course; who else? But why should they be allowed to do any such thing, given that they are not the proper owners of these facilities, built with money coercively collected from the long-suffering taxpayer? Who, in turn, will receive the monies bid for their sale? It cannot be any other entity than the state, their present owner. But respecting the property rights of an outlaw organization (Spooner, 1870; Rothbard, 1982B) is hardly compatible with the philosophy of anarcho-capitalism that Makovi quite properly embraces. Rather than "sell" the streets, roads, highways, etc., to the benefit of governmental bureaucrats and politicians, these amenities should be given to their proper de jure owners, the taxpayers[10] from whom the funds were mulcted in order to pay for their construction.

[9] For critiques of school vouchers, see: Gordon, 2011; Hornberger, 2017; McMaken, 2018; North, 1976, 2011; North and Friedman, 1993; Rockwell, 1998, 2000, 2002; Reel and Block, 2013; Rome and Block. 2006; Rothbard, 1971, 1973, 1994, 1995; Salisbury, 2003; Vance, 1996; Yates, 2002a, 2002b; Young and Block. 1999. For a criticism of tradeable emissions rights, see McGee and Block, 1994.

[10] To say this is to elide the issue of to which taxpayers the titles to specific streets, etc. should be remitted. To respond, fully, to this question would take us too far away from the subject of this paper. We content ourselves in this regard with offering a bibliography of publications that have dealt with it to our satisfaction. See the following: Anderson and Hill, 1996; Block, 2002, 2009, 2015; Butler, 1988; Carnis, 2003; Ebeling, 2013; Hanke, 1987A, 1987B; Hannesson, 2004, 2006; Hoppe, 2011; Karpoff, 2001; Megginson, 2001; Moore, 1987; Moore and Butler, 1987; Motichek, Block and Johnson, 2008; Nelson and Block, 2018; Ohashi, 1980; Ohashi, Roth, Spindler, McMillan and Norrie, 1980; Pirie, 1986; Savas, 1987; Walker, 1988; White, 1978.

The question arises (p. 40, f.n. 7) of would the market be able to lay out streets in a rectangular or grid or checkerboard fashion — without the advent of (necessarily coercive) eminent domain laws. States Makovi in this regard:

> Ellickson (2017, pp. 381–85) argues that without eminent domain, an anarcho-capitalist New York City could never have arranged its streets in a grid […] Block (1979) seems to concede, saying that eminent domain is not necessary because roads need not follow the shortest path, and roads can be built to curve around holdouts. In addition, developers can purchase options to multiple routes (Block 1979, p. 218). This concedes that grids may be infeasible without eminent domain.

Not so, not so. There is no such "concession" in Block (1979).[11] Just because it is not necessary that all roads follow the shortest path, or because they can curve around holdouts, does not all imply that the market cannot achieve rectangular grids in the entire absence of eminent domain laws. How, then, can the holdout be thwarted while still adhering to the checkerboard format? It is simple: by building under his holdings (tunnels), including importantly, subways, or over them (bridges and els).[12] Perhaps, more important, *why* does the holdout have to be thwarted? What is so sacred about rectangular grids for roads? There are those who would maintain that such Cartesian layouts are soul-destroying. Far better are the street patterns that arise spontaneously, i.e., spontaneous orders, such as are found in many (most?) cities. Moreover, if we accept that peace and justice require voluntary actions based on private property, then if we *must* have soulless grids (and even NYC has Broadway and areas of Manhattan, not to mention the other boroughs, that are free from such grids), there is always the option of buying the necessary rights from the holdout(s), expensive as that may be.[13]

Makovi also misconstrues the lighthouse situation. Our author agrees with Ellickson (2017, pp. 385–388) that "in Britain, according to Coase, the private lighthouses were still funded by a government monopoly." This is the exact opposite of the truth of the matter. According to Coase (1974), lighthouses during the time he examined them, were financed privately. To be sure, Coase erred in this claim of his, but that is an entirely different matter. In the event, Coase confused the public and private sectors in this regard.[14]

What are we to make of this claim: "As long as there exists even one collective [public?] good which cannot be provided by the market, it is possible to justify the necessity of the state"[15] (p. 47)? There are problems here. Why does the auth-

[11] For more of his views on this matter, see Block 2009.

[12] Tullock (1996) took great umbrage at this suggestion made by Block and Block (1996). For a refutation of his objection, see Block (1998). It must be conceded to Makovi that this grid only applies to the view of roads from above (or below). From the perspective of the surface of the earth, there will still be "curves" (up and down ones, not sideways ones), and not a grid.

[13] Moreover, long stretches of straight roads have proven to be less safe than roads that are not straight; e.g., the German autobahns.

[14] See Barnett and Block (2009) on this.

[15] We assume that Makovi uses the terms public good(s) and collective good(s) as synonyms. This classification leaves something to be desired, to say the least. We also assume that he uses

or limit his claim to collective goods? Suppose there to be a non-collective good that *cannot* be provided by voluntary actions of individuals. Should not its existence also make it possible to justify the necessity of the state? If the state is to be used justly to provide one type of good (a collective good), why not the other type of good (a non-collective good)? State provision of either or both requires coercion, obviously for the benefit of some — the coercing parties and those, if any there be, with whom they share the benefits of coercion — and to the detriment of others: the coerced. That is, one can justify the necessity of the state for any good that cannot be provided by the market.

Then there is the matter of *cannot*; i.e., the implication is of a physical impossibility of provision by voluntary action(s). Makovi does not explain how coercive action makes possible the physical provision of some collective good(s) that voluntary action precludes. Of course, if what the author means is *will not*, then this is an entirely different matter. It is one thing to consider a good that cannot be provided in contradistinction to one that will not be provided. There are many goods that can be provided, but which will not be provided voluntarily. Consider that there are some things that an individual cannot accomplish solely by his own efforts, but that can be done with the assistance of another or others. Such a good can be provided; however, it may not be supplied voluntarily. Rather, it may be provided, but only if the necessary other(s) are coerced. So, it is one thing to say that a good cannot be provided and quite another to say that it will not be.

Examples of this are the Egyptian pyramids. Certainly, when they were created, they were goods, but not collective goods. Rather, each was a private good of a pharaoh, and they could not have been built by that pharaoh, alone. Others (slaves) had to be coerced to provide that pyramid. Are we to say that such pyramids justified the existence of the state?

Moreover, the state is a band of murderers and robbers (Spooner, 1870; Rothbard, 1982B). It would thus be difficult to justify such an institution, even if there were dozens, nay, thousands, of collective goods not provided privately. For what is a collective good? It is one for which people are not willing to pay (sufficient amounts) to acquire, yet they desire it (of course, this is true of any good, collective or individual).[16] But how do we discern whether or not consumers desire a good or service?[17] It is simplicity itself: they demand the item. That is, they are willing to plunk cash down on the barrelhead, which would demonstrate that they do value it more than its costs. But, in this case, the very opposite holds true. By stipula-

"market" to refer to any voluntary interactions among individuals, not necessarily confined to those involving purchases and sales or borrowing and lending.

[16] This brings us back to the issue of classifying goods. Public goods and collective goods are not identical. The correct classification is pubic v. private and collective v. individual.

[17] That is, how can *other people* determine whether or not someone desires a good or service?

tion, funds for these purposes are *not* forthcoming voluntarily from the populace, or at least not to a sufficient extent. Then how can we, as social scientists looking at the issue from the "outside," acquiesce in the notion that consumers really do desire these objects? By consumer surveys? But people can *lie* about their answers to such questions. No, the only way we as outside observers can verify consumer demand is by demonstrated preference (Rothbard, 1956), but this is demonstrably *not* forthcoming.

There is yet another verbal dispute in the offing (p. 48):

> A proprietary community is an institution in which governance is provided by the owners of private property to voluntary members and participants […] A real-estate developer creates a governance association prior to subdividing the land and selling it off. A restrictive covenant is attached to all such sales, so that all the newly privatized land continues to be governed by the association (HOA) according to its constitutional rules. Examples of subdivision include condominium associations ("condos") and homeowners' associations (HOAs). In a condominium association, common property — such as green space — is owned collectively by shareholders. By contrast, in an HOA, the HOA itself owns the common space. Different kinds of communities *tax* and assess members differently, and they also distribute voting and decision-making powers differently. (emphasis added by present authors)

The problem is that no private person can ever, ever, legally "tax" anyone else. Were he to do so, he would go to prison forthwith. For a "tax" is a compulsory levy make against an innocent person against his will. And we have a perfectly good English word to describe such goings-on: theft. The government is very jealous of its taxation prerogatives. It looks down its nose when private individuals try to horn in on this racket of its. Well, government does more than look down its nose. When private "entrepreneurs," (think Cosa Nostra) offer involuntary protection-services to legal businesses, the state makes such activity a crime. Of course, sometimes agents of the state get in on the action by looking the other way. Moreover, we have a perfectly good English word to describe voluntary payments to associations, etc.: contributions.

Then consider this statement of our author's: "Reichman (1976) fittingly refers to proprietary communities as "private governments" while Ellickson (1982, 1527) characterizes their governing contracts as 'private constitution[s].'"

Fittingly? No. There is no such thing as a private government. Makovi seems here to be too much in thrall to the Public Choice School's attempt to conflate markets and governments. A private government is a contradiction in terms, like a voluntary rape. If it is the one, it logically cannot be the other. A small town and a proprietary community may be of the same size, and go through the same motions of passing rules; may both have a police, sanitation and fire department; may both boast of a swimming pool open to all members of the community. But one is based on coercion, the other not. It is similar to rape versus voluntary intercourse. It may look exactly the same (if the rapist threatens to murder the woman's baby, she may look as if she is agreeing to the sexual act). Nevertheless, careful

social scientists will insist there is all the world of difference in both cases between voluntary and coercive institutions.

Another difficulty arises with the (f.n. 13) claim that "The Supreme Court itself presaged the public-choice literature when it noted in *Anderson v. Dunn*: 'The science of government is […] the science of experiment.'" No. The science of government is the science of coercion and criminality.[18] This institution encompasses many things: in the U.S., it is the subject of reverence (the Pledge of Allegiance), celebrated in song (*The Star Spangled Banner*); it has the trappings of power (the Stars and Stripes flag). But its essential aspect is none of these. Instead, it is that it has a legal monopoly of *initiatory* violence in a given geographical area.

Next, consider this statement:

> the landlord of an apartment complex is in a better position than a municipal government to know how much noise to tolerate and at what times of day. And if the landlord makes a mistake in setting a noise policy, he will bear the costs of his poor decision because his property will be less valuable than it could be. Compared to a larger, distant government, the landlord will often have access to more knowledge and he will possess superior incentives to act on that knowledge.

But the difficulty with government is not that it is large and distant. This is a category mistake. Even a small close-by government is necessarily a predator. Moreover, there is every reason to expect that even a distant (absentee) landlord will have more knowledge and superior incentives than a nearby government. There are some condominium associations, surely, that are larger than small towns. Size may well "matter" in some contexts, but not in this one. There are even some big or little condo groups, it matters not, which are far more intrusive than some small or large town or city governments. Some of the former mandate that all houses must be painted the same color, all fences be of the same type (e.g., picket fences); a few of them even enter the home and require curtains of a specific hue. Very few town or village councils are so meddlesome. Yet all of this matters not. All members of the condominium *agreed* to be bound by them; this cannot be said for even a single, solitary townsfolk.

Which is more economically efficient: land lease or subdivisions? Makovi offers the following analysis to address this debate:

> Land lease promotes a stronger residual claimancy and incentive alignment than subdivision because the landlord bears a continuing interest in the property values, whereas the subdivider's interest is speculative and one-time only. And while the developer is a residual claimant when he sells his subdivided plots, the HOA is usually not a residual claimant, because the HOA's revenue stream is contractually guaranteed, without any close connection to service quality.

There is an assumption that the subdivider's interest is speculative and one-time only, which may be correct in some cases, but for many (most? the vast majority of?) subdividers, this is a full-time profession, and thus their reputations are

[18] There are problems here. The original full quote, not provided by Ellickson or Makovi, is from Anderson v. Dunn, 19 U.S. 204, at 226. This abbreviated quote is from Ellickson, *University of Pennsylvania Law Review*, 130 (6), 1982, 1519 at 1562. For more on this, see our appendix.

of great importance to them. We suggest this ranking is faulty. The correct answer, emanating from actual market performance, is that there is no one clear proper answer. Both formats survive in the market-place; therefore, both are efficient. This is akin to asking which the most efficient commercial type of organization is: the corporation, the partnership, or the individual proprietorship, and any of the variants, thereof. The answer, here, too, is that all three types, as well as variants thereof, of commercial cooperation exist, and thus, there can be no definitive answer to this query either. Large law firms tend toward the partnership modality. Many large firms are organized as corporations. And numerous small businesses are single proprietorships. There is thus no one proper organization that fits all.

Makovi also puts his foot down into yet another Public Choice morass: rent-seeking. Rent is a perfectly good, virtuous, non-objectionable concept. It can refer to economic rent, or renting a car or an apartment. And, yet, the Public Choicers, along with Makovi, use this term to refer to one of the most heinous acts performed by man: theft. Why do they do this? One possibility is that it stems from the fact that this school of thought is congenitally unable to sufficiently distinguish between peaceful market activity and statist depredations. Why else would anyone use a perfectly good, peaceful word like "rent" to depict such a horror? Why has this phrase spread out from the Public Choice School to the wider, literate public? This is due to the fact that there are an awful lot of people who also cannot appreciate the distinction between war and peace.[19]

Let us consider one last quote from this author (pp. 51–52):

> Sometimes, the externalities to be internalized may affect a physically large area. 'Not all public goods are of the same scale' and 'various scales of organization maybe [sic] appropriate for different public services' (Ostrom, Tiebout, and Warren 1961, pp. 831n1, 833). When the externalities are too large to be internalized by a small community, then proprietary communities would have an incentive to form regional alliances and 'associations of associations' (Foldvary 1994, p. 210, Stringham 2006, p. 529, Pennington 2011, pp. 234f.). It may be objected that the transaction costs would be too high. But the transaction costs of constitutional bargaining are high as well.

We discern from this two elements. First, this demonstrates that while Makovi, elsewhere, supra, fails to properly distinguish between constitutions, a government prerogative and contracts, a market phenomenon, here he does so, fully. Second, this emphasis on "transactions costs" is problematic. If anyone is to blame for over-stressing the importance of this type of costs, it is Coase (1960).[20] It is not that costs of this type are not costs; they are. It is rather the over emphasis on them that is problematic. Why? This is due to the fact that people evolve institu-

[19] Or, perhaps we are biologically hard-wired not to be able to make such a "fine" distinction. See on this Levendis, Block and Eckhardt, 2019.

[20] For blistering critiques of this highly cited essay, see Barnett and Block, 2005, 2007, 2009; Block 1977, 1995, 1996, 2000, 2003, 2006, 2010A, 2010B, 2010C, 2011; Block, Barnett and Callahan, 2005; Bylund, 2014; Cordato, 1989, 1992a, 1992b, 1997, 1998, 2000; DiLorenzo, 2014; Fox, 2007; Hoppe, 2004; Krause, 1999; Krecke, 1996; Lewin, 1982; North, 1990, 1992, 2002; Rothbard, 1982A, 1997; Stringham, 2001; Stringham and White, 2004; Terrell, 1999; Wysocki, 2017.

tions, practices, and legal precedents to reduce costs, and the higher the costs, the greater the incentives to develop such methods. Thus, in a free society, over time, such costs are significantly reduced.

Thus far, we have focused only on the errors in this otherwise splendid essay of Makovi's. There are many of these, but most amount to no more than verbal misuse. It is time to give a more accurate assessment of his contribution. It is a magnificent one. It delves into the collective good issue in an inspiring manner. It makes an important contribution to the public goods literature.[21] Its analysis of "empowering women in nonfeminist societies" (p. 53) is nothing short of ingenious. And it makes, too, an entirely original contribution to the (non)[22] issue of sexual assault on university campuses. All-in-all a splendid contribution to the dismal science.

Appendix

We have copied the relevant materials. First Makovi, then Ellickson, then the US Supreme Court. Makovi quotes Ellickson quoting the Supreme Court. for comparison with Hayek and Vihanto. But Ellickson did not give the full Supreme Court quote. The quote from Anderson v. Dunn seems to say government should have carte blanche.

MAKOVI

One of the most important characteristics of such proprietary communities is that membership is perfectly voluntary, with truly unanimous consent (Ellickson 1982, p. 1520). Although the private community is a monopoly within its territory, its relationship with its residents rests on voluntary contract (Stringham 2006, pp. 521–22). There is no appeal to legal or philosophical fictions such as "tacit consent" or "conceptual unanimity." Every resident or tenant must agree to a contract—either a restrictive covenant or a rental agreement. They agree to be bound by the constitution because the benefits are expected to outweigh the costs (cf. Buchanan and Tullock [1962] 2004). A resident may not be entirely pleased that they must navigate a bureaucratic process before painting or landscaping their own property, but this inconvenience is more than compensated by the fact that their neighbors cannot paint their houses in garish colors or litter their front yards with rusted hulks. A resident may not be satisfied with each and every collective good offered by the community, yet prefer the bundle of goods being offered to any alternative being offered elsewhere. Proprietary communities engage in jurisdictional competition with one another, and residents will be attracted to the community that offers

[21] Which can use all the help it can get.

[22] See McDonald, 2018.

the most attractive bundle of goods (Tiebout 1956; Leeson 2011; Ellickson 1982, p. 1548; Boudreaux and Holcombe 1989, pp. 272–74). Landlords and developers will be entrepreneurs engaged in an active effort to continually innovate new, better constitutions.

ELLICKSON

How best to organize a municipal political system is currently far from clear. The Supreme Court should therefore refrain from rendering decisions that prohibit virtually all state and local experimentation in local voting mechanisms. The Supreme Court itself presaged the public-choice literature when it noted in Anderson v. Dunn over a century ago: "The science of government is … the science of experiment."

The idea is utopian, that government can exist without leaving the exercise of discretion somewhere. Public security against the abuse of such discretion must rest on responsibility, and stated appeals to public approbation. Where all power is derived from the people, and public functionaries, at short intervals, deposite it at the feet of the people, to be resumed again only at their will, individual fears may be alarmed by the monsters of imagination, but individual liberty can be in little danger.

No one is so visionary as to dispute the assertion, that the sole end and aim of all our institutions is the safety and happiness of the citizen. But the relation between the action and the end, is not always so direct and palpable as to strike the eye of every observer. The science of government is the most abstruse of all sciences; if, indeed, that can be called a science which has but few fixed principles, and practically consists in little more than the exercise of a sound discretion, applied to the exigencies of the state as they arise. It is the science of experiment.

But if there is one maxim which necessarily rides over all others, in the practical application of government, it is, that the public functionaries must be left at liberty to exercise the powers which the people have intrusted to them. The interests and dignity of those who created them, require the exertion of the powers indispensable to the attainment of the ends of their creation. Nor is a casual conflict with *227 the rights of particular individuals any reason to be urged against the exercise of such powers. The wretch beneath the gallows may repine at the fate which awaits him, and yet it is no less certain, that the laws under which he suffers were made for his security. The unreasonable murmurs of individuals against the restraints of society, have a direct tendency to produce that worst of all despotisms, which makes every individual the tyrant over his neighbour's rights.

That "the safety of the people is the supreme law," not only comports with, but is indispensable to, the exercise of those powers in their public functionaries, without which that safety cannot be guarded. On this principle it is, that Courts

of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates, and, as a corollary to this proposition, to preserve themselves and their officers from the approach and insults of pollution.

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