

IN MEMORIAM

A Conservative Anarchist?

ANTHONY DE JASAY
1925–2019

BY PIERRE LEMIEUX

Anthony de Jasay died January 23rd at age 93. Although he is not a household name even among academics and intellectuals, he was one of the most creative thinkers of our time and I think he will be recognized as such by future generations. He already has many fans among libertarians and classical liberals. Perhaps, as we shall see, he should have more admirers among conservatives, too.

He was an academic anomaly. His books, published by major academic publishers, and his scholarly articles were at the cutting edge of political philosophy but he was not affiliated with any university and did not have a Ph.D. (which, at least in America, is the membership card of the academic class). At age 23 he left his native Hungary to study economics in Australia and at Oxford. In 1962 he settled in Paris where he made a career in banking and finance. He retired in 1979, moved to Normandy, and devoted the rest of his life to independent scholarship.

I was privileged to know him personally, as he participated in several of the Liberty Fund conferences I directed in France from 1990 to 2009. He was nearly blind for most of the years I knew him; his wife Isabelle would read aloud for him. Our last contact was in June 2018. By that time, he had suffered a stroke from which he had not totally recovered. On June 4, I published a review of his masterpiece *The State* (1985) in the new Liberty Classics section of Liberty Fund's Library of Economics and Liberty. Two days later I received a nice email from him, beginning with, "You have given me great pleasure with your review of my book."

THE PROBLEMS WITH THE STATE

De Jasay's 1985 book set out the basic problem of the state, the whole apparatus of formal government. The state cannot please

("bring utility to," as economists would say) everybody because individuals have different preferences. Whatever intervention the state carries out, it will benefit some individuals but harm others. The simplest example is redistribution of money: it benefits the recipients and harms the coerced donors. Regulations and other interventions have a similar effect. The state is necessarily an "adversarial state."

Because individual preferences are subjective, there is no scientific way to weigh the costs and benefits of policy to all affected individuals and derive a net benefit or cost that is meaningful. Economics has been haunted by this problem for nearly a century but economists have generally tried to sidestep or ignore it. De Jasay took it seriously. Even if only one individual is harmed and countless others benefit, we cannot know if the utility (or satisfaction or happiness) lost by the harmed individual is larger or smaller than the utility gained by the others.

Comparing the utility of two individuals, and *a fortiori* between two sets of individuals, relies on nothing but the "personal value judgments of whoever is doing the comparison," de Jasay wrote in his last book, *Social Justice and the Indian Rope Trick* (2015). (See "The Valium of the People," Spring 2016.) Putting a money value on gains and losses from a government intervention does not solve the problem; only an actual voluntary exchange can guarantee that both parties gain.

As *The State* put it in immortal terms, "When the state cannot please everybody, it will choose whom it had better please." The chosen beneficiaries will of course be the clients whose support is most necessary to the state—that is, to the state's politicians and bureaucrats (including judges, prosecutors, policemen, and soldiers). The state buys the consent of the clients it needs in order to stay in power. The incipit of *The State* reads, "What would you do if *you* were the state?" (de Jasay's emphasis). You would, of course, try to increase or at least maintain your power, which is the proximate means by which to obtain money, perks,

access to people, and a host of subjective benefits.

A democratic state does not change that. On the contrary, it is a formal feature of the democratic state that it must satisfy (a majority of) the electorate. But the more it satisfies some voters at the expense of the others, the more dissatisfied the others become. If it then tries to compensate the latter, it will re-alter the distribution of costs and benefits, making more people unhappy. The state has no money but what it takes from its citizens. Its regulations rarely—never, de Jasay would say—benefit everybody and leave no one unharmed. Political competition forces the state to run the redistribution machine to the point where most people are inextricably both benefited and harmed, and where the state uses all its power to satisfy insatiable clienteles.

As time goes on, the state becomes more and more of a redistributionist drudge. While its total power has increased, its dwindling discretionary power is used just to stay in power. At some point it will have no choice but to limit electoral competition and put all its former clients under its yoke. Tyranny must be the ultimate outcome.

De Jasay exposed the concept of “social justice” as being nothing but a set of conflicting claims that put in motion and justify state redistribution. Some groups simply want to grab benefits at the expense of other groups. For a while, the most powerful and influential win; ultimately, everybody loses except for state rulers.

HOW CAN SOCIETY WORK?

Can society exist without state laws and social justice? Or, as the question is usually asked, if the state doesn’t make laws and pursue social justice, who will? De Jasay argues for a theory of justice based on evolved conventions that simply prevent wrongs and thus circumscribe exceptions to a general presumption of liberty. The performance of promises and the rules of property (including the principle of “finders keepers”) are such



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conventions. Ownership is prima facie proof of legitimate property unless it can be proven that a specific piece of property has been stolen or is creating a nuisance.

Conventions solve the problems of social coordination that can’t be solved by contract. By following established conventions, individuals contribute to the requirements of social cooperation, as shown by game theory in repeated interactions. Conventions solve prisoner’s dilemma situations (that is, situations where individual rationality leads to results that nobody wants).

One way to understand de Jasay’s theory is to contrast it with that of James Buchanan, the 1986 economics Nobel laureate and principal originator of the public-choice school of economics. Buchanan wrote in *Public Choice* a very favorable review of *The State* despite the fact that it represents a major challenge to his own political theory.

Like most economists, Buchanan believed that “public goods” exist, and they can only be produced or financed at an optimal level by the state. The reason is that, by definition, public goods are goods that everybody wants but are non-rival in consumption. For example, Buchanan would say, everybody equally benefits from national defense or (locally) from a flood-control dam once those goods are produced. Free-riders will not pay for such goods, hoping that others

will. But then the goods won’t be produced at an optimal quantity—if at all. The state ostensibly has to intervene and tax people to produce what everybody wants.

De Jasay, on the contrary, argued that contractual means and voluntary institutions exist to produce public goods. Many consumers will not want to risk the chance that a public good they want will not be produced, so they will not take the gamble to free-ride. Others might but, in the absence of a functioning market, there is no way to know what the “optimal” quantity of a public good is. If there is “market failure,” it is not as dangerous as “government failure”—government-mandated, non-optimal provision. One instance of government failure is that production

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of public goods by the state brings the “return of the free rider”: the larger the state is, the more benefits it can offer, and the more citizens will free-ride by minimizing their taxes and maximizing their receipt of state benefits (including subsidies). De Jasay’s 1989 book *Social Contract, Free Ride: A Study of the Public Goods Problem* analyzes these issues.

Another major point of discord between de Jasay and Buchanan is social contractarianism. Buchanan imagined an implicit, unanimous social contract that calls on the state to produce public goods while at the same time limiting the reach of the state. De Jasay countered that if individuals are capable of unanimously agreeing on a social contract, they also are able to contractually agree to the production of the public goods that supposedly justify the social contract. He also argued that a presumed social contract fools people into believing that they are, as it were, coerced by themselves, thus disarming resistance and strengthening Leviathan.

LIBERALISM, CONSERVATISM, ANARCHY

Where exactly does this put de Jasay on the political spectrum? Prodded by philosopher and economist Hartmut Kliemt of the Frankfurt School of Finance and Management in a 2000 video by Liberty Fund, de Jasay confessed, “Yes, I am an anarchist.” He might have worn that badge more proudly had he not believed, speaking of “the few other anarchists,” that “many of them are crazy.”

In a 2014 email I asked him if he would accept the label “conservative anarchist.” Without explicitly disavowing my proposal (on the contrary, he said that one of his grandsons had had the same idea), he replied, “If I have to describe myself, I would say that I am a modern liberal.” He later added, much in the vein of his conversation with Kliemt, that he did not like the label “anarcho-capitalist” because, he said, “I do not wish to be counted as one of that company.”

By “modern liberal,” de Jasay meant “classical liberal,” but the label does not fit perfectly. He seemed suspicious of universal values, yearning instead for the close community where conventions can be voluntarily enforced. He was critical of codified rights and their supporting theories, which he pejoratively called “rightsism.” He did not seem worried that his convention-based anarchy could be unenlightened, stifling, and oppressive, which may be the Achilles heel of his theory. All that seems more conservative than liberal.

I still believe that the label “conservative anarchist” partly fits him. His defense of property also looks at least as conservative as liberal. He invoked against immigration the strange argument

that a country can be viewed as “the extension of a home.” In some cultural sense, he was a non-politically-correct conservative. He did not try, like many libertarians, to be everything to everybody. An example, which also illustrates his devastating humor, is found on the first page of *Social Contract, Free Ride*. His first generic “he” (“Nobody would suffer or profit from ‘spillovers’ he did not cause”) directed to a footnote that read, “Wherever I say ‘he’ or ‘man,’ I really mean ‘she’ or ‘woman.’” He once told me that Murray Rothbard had said the book was worth its price if only for that footnote.

THE PRIMACY OF ANARCHY

The conjunction of anarchism and conservatism may look strange, but classical liberalism and anarchism are clearly related. As Raymond Ruyer, the late French philosopher, wrote in his

1969 book *In Praise of the Consumer Society* (*Éloge de la société de consommation*), “Real anarchism, feasible and actual, as opposed to mere emotional statements, is simply the liberal economy.” Another French author, academician Émile Faguet, wrote in 1888 that “an anarchist is an uncompromising liberal.” Tony is in good company.

The fraternity between anarchism and classical liberalism suggests a common denominator between de Jasay and Buchanan, who also defined himself as a liberal.

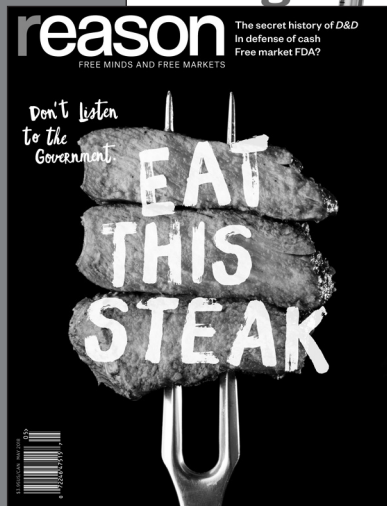
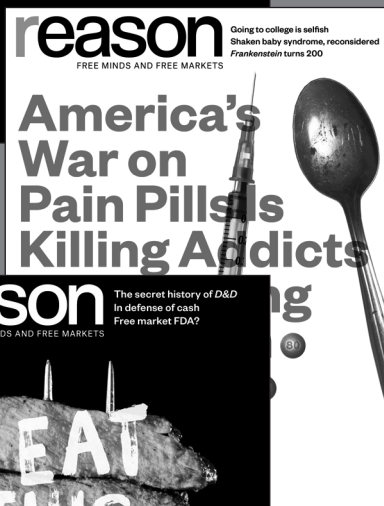
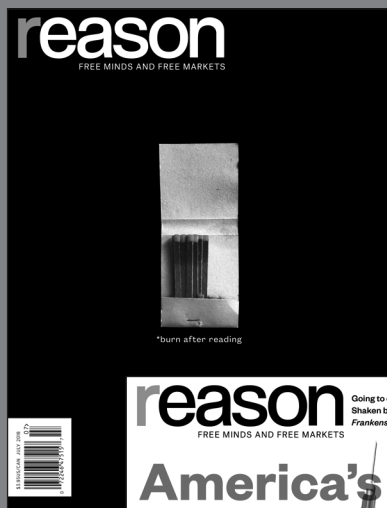
For both theorists, the state is dangerous and anarchy would be the ideal. Buchanan thought that a limited state was necessary to protect ordered anarchy, while de Jasay believed that limiting the state was a mission impossible. But both agreed with what we could call the primacy of anarchy. This provides us with a principle for evaluating all things political.

De Jasay went much further than Buchanan on the road to anarchy. The only state that could ideally tempt de Jasay was a “preemptive state” or “capitalist state” or “minimal state.” He wrote that such a state “would be an anti-state actor whose rational purpose would be the opposite of that of the state, preempting the place that a state can otherwise take and expand in.” The minimal state would protect anarchy, if that were possible.

In a sense, de Jasay combined the best in classical liberalism, cultural conservatism, and anarchism. In that, too, he and Buchanan were similar. But de Jasay was not an optimist. He was not sure that anarchy could survive if it were to appear again in the world as it appeared before in primitive societies. And constraining Leviathan, he argued, is impossible. I would suggest that we should try, even while keeping the focus on anarchy as an ideal. In this task, the work of Anthony de Jasay will be very useful. R

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