

# The Market and The State

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## Lecture 4

# Why are there governments?

- We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are *Life, Liberty and the pursuit of Happiness*.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed...
- We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.
- It shall be lawful for [Parliament] to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not ... by this Act assigned exclusively to the Legislatures of the Provinces
- But what about governments of Henry VIII, Ivan the Terrible, the Khymer Rouge, Joseph Stalin, Adolph Hitler, etc.? Some government don't have noble goals, but they all have goals.

# Elements of functional governments

- A (near-) monopoly on the use of force within some territory – lack marks failed states. (Syria...?)
- Functional legitimacy – people are generally willing to accept policies/decisions without the use of force
  - Perhaps because they come from a process perceived to be fair or divinely endorsed, or because they serve popular goals
  - Or to some extent because order & stability are always valuable and the costs of disobedience or attempted revolution are perceived to exceed the likely benefits
- Functioning states generally have both a set of policies (law, regulations, unwritten rules) and a process (open or secret) for changing them

# The market **v.** the political world

- Individuals pursue self-interest **v.** groups also pursue self-interest and (different views of) the public interest; most decisions affect the whole community – collective choice, public goods...
  - Preferences **v.** Ideologies: different views of how *society* should work & ideal arrangements to make it do so – reflects both values and beliefs
  - Howard Roark's speech: very strong (Libertarian, Ayn Rand) ideology
  - Hughes reading: London's awful pre WWI electric system (65 utilities, 10 frequencies, 24 voltages) reflected strong ideology favoring local control
- Without a dictator, no guarantee of collective consistency
  - E.g., Condorcet (1785) paradox of voting: 3 voters, 3 alternatives, preferences  $A > B > C$ ,  $C > A > B$ ,  $B > C > A$ ; voting  $A > B$ ,  $B > C$ ,  $C > A$ ...
- Competition **v.** competition & influence, cooperation, and loyalty
- Goals: wealth **v.** wealth & power (the ability to get others to act against their self-interest, for your interest or your view of the public interest) – depends on influence, cooperation, loyalty, and, sometimes, force

# Carter v. Carter Coal

- Beginning in early 1935, the Supreme Court struck down several New Deal laws as unconstitutional
- The Bituminous Coal Conservation Act of 1935, at issue in *Carter v. Carter Coal*, was an attempt to raise coal prices & wages while satisfying the criteria for constitutionality laid down in an earlier such decision
- James Carter, President of Carter Coal, sued his board when they voted to pay the tax the Act imposed
- While the opinions in this case are written as technical exercises in legal analysis, they reflect fundamental differences in ideology

# The Debate (1935 and 2012)

- What's the two provisions were at issue here?
- What reasons did Sutherland give for finding both unconstitutional?
- What does Sutherland's opinion imply about the proper role of the federal government?
- Team A, why was Sutherland right about this case and about the proper role of the federal government?
- What reasons did Hughes give for dissenting?
- What reasons did Cardozo give for dissenting?
- What does Cardozo's opinion imply about the proper role of the federal government?
- Team B, why was Cardozo right?
- **The floor is open for rebuttals...**

# Later Developments

- On February 5, 1937, Roosevelt introduced the “court-packing” bill, which would have let him appoint additional Justices
- On March 29, 1937, the Court published a 5-4 opinion upholding a minimum wage law
  - One Justice, Roberts, had changed his view of such laws
  - Called “the switch in time that saved nine”, but the Court’s vote had been taken in late 1936
  - The “court-packing” bill died in the Senate in July, 1937
- Which broad view of the role proper of the federal government has generally prevailed since?
- **Is this big issue settled permanently?**

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