1.1

The Most Valuable Thing in the World?

1 INTRODUCTION: AWAKE?

Who cares about government?


Why do we all care about government? Because we are, most of us, conscious. And you would have to not be conscious to not notice that governments have the power to make our lives a little bit better or a lot, lot worse. From smooth roads, to a big tax refund, to the prospects of nuclear holocaust and nuclear winter – government offers it all.

So everybody can agree that government matters. But would you agree that good government – more specifically, the rule of law – ranks as the most valuable thing in the world? If not, this chapter might change your mind.

Section 1 highlights a fact about the rule of law that it almost seems the World Bank would rather you overlook. Section 2 reviews how the World Bank defines and measures the rule of law, resulting in a few quibbles but no major objections. Whether it meant to or not, the World Bank makes a strong case for believing that the rule of law accounts for more of the world’s wealth than natural resources, material goods, or human knowledge. Section 3 explains why that constitutes good news: Reforms like those discussed elsewhere in this Book stand to greatly improve the rule of law, generating not just better government but more wealth and, with it, lives saved.

2 THE RULE OF LAW … RULES

In 2006, the World Bank set forth on a gargantuan undertaking: to catalog and measure every kind of human wealth. What it discovered might shock you.

Perhaps it even shocked the World Bank. Because while you might think that discovering the most valuable thing in the world would merit some highlighting, if not fanfare, the bank’s final report merely hints at the leading candidate: the rule of law.

True, the report’s foreword comes close when it admits that “human capital and the value of institutions (as measured by rule of law) constitute the largest share of wealth in virtually all countries.” But note how the World Bank squeezes human capital onto the first-place podium, hides “rule of law” in parentheticals, and stops short of assessing all countries. Nowhere does it simply trumpet the fact, plain in the data of its own report, that the rule of law constitutes the single largest source of wealth in the world. Figure 1.1-1, created from data scattered throughout the World Bank’s report, corrects that oversight by giving the big picture in one shot.

The pie chart in Figure 1.1-1 holds a number of surprises for those unused to studying wealth. First: Relatively little economic value lies in natural resources such as fertile fields, rich mines, or oil reserves. “Raw” does not pay. Second: All

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**Figure 1.1-1. Sources of Wealth, Worldwide, 2006**

1. Id. at VII (“human capital and the value of institutions (as measured by rule of law) constitute the largest share of wealth in virtually all countries.”).
2. Data from The World Bank, supra note 1, at 26 tbl. 2.3 (relative percentages of natural, produced, and intangible wealth); 96 fig. 7.2 (relative percentages of intangible sources of wealth).
the many things made by humans – their buildings, cars, jewelry, and more – amount to only 18 percent of their wealth. Our stuff evidently is not worth much either. Third: The economic value of the rule of law overwhelms not only the next single largest source of wealth, schooling, but every other source of wealth, tangible or intangible. So far as economic value goes, the rule of law . . . rules.

Does that surprise you? It is easy to perceive the tangible sources of wealth – the bounty of nature; all the things we make and own. The rule of law, in contrast, is not something you can touch or see. It is not a something at all, really. The rule of law describes a condition – you might think of it as the health of a system of government. Few people include their own good health when they tally up their assets, yet when it fails, they value it beyond measure. So, too, with the rule of law.

To better appreciate how rule of law affects wealth, consider a hypothetical weapon: the law bomb. This sinister device wreaks havoc not by destroying its victims, but by destroying the binding force of all rules within its blast area. Whereas a neutron bomb kills humans but not things, the law bomb kills rules but not humans. What do you think would happen if an evil villain exploded a law bomb high above New York City? The people would remain, untouched. The buildings, cars, jewels, bank accounts, and other tangible sources of wealth would remain, too. But what would any of those things be worth in a world without law? And how or why would anyone bother to go to work, knowing they could not demand pay? But then again, how could they stay home, knowing that their persons and property now lay in peril of theft and destruction, utterly bereft of legal protection? One could only flee, leaving New York City a vacant waste.

Once you imagine a world without the rule of law, you can better appreciate how it quietly makes our world so wealthy. Like health in bodies, the rule of law measures whether a government functions well. As with bodies, there remain crucial questions about what to do with a functioning government. But without health, and without the rule of law, none of those questions matter.

3 WHICH RULE OF LAW?

You might and indeed should wonder what the World Bank means by Rule of Law. It explains, “This measures the extent to which agents have confidence in and abide by the rules of society. It encompasses the respect of citizens and the state for the institutions which govern their interactions.” 4 Though not the

4 Id. at 92.
only measure of good government, “it captures particularly well some of the features of a country’s social capital,” also associated with “generalized trust.”

Does the World Bank’s definition of the rule of law match that of history’s great jurisprudents? Lon L. Fuller defined the idea in the negative, describing eight ways in which a legal system could fail to establish the rule of law:

1. Resolve everything on an ad hoc basis, thus failing to make rules at all;
2. Failure to publicize the law;
3. Retroactive laws;
4. Incomprehensible laws;
5. Contradictory rules;
6. Rules that are impossible to comply with;
7. Too frequent changes of the rules; and
8. Incongruence between stated rules and actual administration.

In his historically influential account, A.V. Dicey described the rule of law as having three major features:

1. The supremacy of regular law as opposed to arbitrary power;
2. Equality before the law of all persons and classes, including government officials; and
3. The incorporation of constitutional law as a binding part of the ordinary law of the land.

Friedrich A. Hayek grounded the rule of law in a single fundamental idea: predictability. “Stripped of all its technicalities,” he said, it “means that government in all its actions is bound by rules fixed and announced beforehand – rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances and to plan one’s individual affairs on the basis of this knowledge.” In his idealized formulation of the concept, force flows through a government subject to the rule of law as regularly as force flows through a system, such as a computer chip or comet’s orbit, subject to the laws of nature.

Those accounts of the rule of law, while more philosophical than the World Bank’s blunt generalized trust, reflect the same basic understanding. An arbitrary government breaks promises, violates property rights, and imperils humanity. In its violent thrashing, it wounds social bonds throughout a community.

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5 Id. 6 Lon L. Fuller, The Morality of Law 39 (rev. ed. 1969).
8 Friedrich H. Hayek, The Road to Serfdom 72 (1944).
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...giving rise to a general atmosphere of mistrust. Among the casualties: wealth. So, at least, the World Bank’s study indicates.

And exactly how does the World Bank measure the Rule of Law? By copying data from another World Bank study, which in turn generates an aggregate measure of the rule of law by compiling data from various other studies. And those studies? They measure the rule of law using survey evidence from a diversified portfolio of individuals and organizations, including commercial risk rating agencies, nongovernmental organizations, and multilateral aid agencies. The evidence includes not only direct assessments of a country’s achievement of the rule of law, such as by scoring its performance on a 1-to-10 scale, but also questions about closely related effects, such as respect for property rights, levels of crime, independence of the judiciary, enforceability of contracts, corruption of officials, and quality of police. It bears noting that, while perhaps the best available means for systematically measuring the rule of law, the surveys used by the World Bank remain mere “information on perceptions of governance.” Researchers have evidently not yet found a way to measure of the rule of law more directly. Perhaps this would provide a quick, simple, and objective test: Drop a wallet with identification and cash on the sidewalk outside a capital’s seat of government and measure how quickly, if at all, it finds its way back to its putative owner. That device, however, will have to wait for another day and another study.

4 FROM LAW, TO WEALTH, TO LIFE

To say that the rule of law has a very powerful effect on wealth, and thus on human well-being generally, is not to say that it merits much attention. Suppose, for instance, that the sun instead of the rule of law qualified as the single greatest source of earthly wealth. So what? All the talk in the world cannot change the day’s length or glory. In that event, we would duly note the sun’s importance and then turn our attention to matters we can do something about.

The rule of law is not, however, like the sun. It falls prey all too easily to human influence – especially in the form of politicians willing to sacrifice the long-term systemic benefits of the rule of law for short-term personal gains. But it works on the upside, too.

10 Id. at 5–6. 11 Id. at 108–09, tbl. B-5. 12 Id. at 5.
Researchers have discovered that small improvements in government services, of which the rule of law figures paramount, have large impacts on human well-being. The World Bank found that a 1-point increase in a country’s “rule of law” score in its 100-point index boosted per capita wealth by more than $100 in low-income countries, more than $400 in middle-income ones, and nearly $3,000 in high-income countries.\footnote{The World Bank, supra note 1, at 14.}

Other research indicates that improving the quality of a jurisdiction’s governing services by a standard deviation increases residents’ personal income by about threefold in the long run.\footnote{Daniel Kaufmann, Governance Matters 2010: Worldwide Governance Indicators Highlight Governance Successes, Reversals, and Failures, BROOKINGS (Sept. 24, 2010), www.brookings.edu/opinions/governance-matters-2010-worldwide-governance-indicators-highlight-governance-successes-reversals-and-failures/.} Notably, that is not call for unthinkable reforms. A standard deviation in governing services amounts to the difference between places with very low ratings, such as Afghanistan or Zimbabwe, and those with still-low ratings, such as Nigeria or Paraguay; or the moderately rated Turkey and Ghana from the next-best governments of Chile or Portugal; or what separates those from top performers like Norway or New Zealand. Moving just one rung up that ladder increases means not just treble the money in people’s pockets; it means less than half the infant mortality.\footnote{Daniel Kaufman et al., Governance Matters 3 (World Bank Policy Research, Working Paper No. 2496, 1999), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1883568.} It means better education, too; a standard deviation’s worth of government improvement nets a 15–25 percent increase in literacy.\footnote{Id.}

5 CONCLUSION: CHOOSE YOUR RULES

This chapter has argued for the importance of the rule of law. Admittedly, it was not an especially difficult challenge. As any devoted student of law can attest, humans deeply value – crave, even – the comforting guidance of rules. Not rules imposed without justification, of course; that marks oppression. But the rule of law? That, we relish, and rightly so.

Humans want both freedom and constraint, and they want them in that order. They do not want their options to come already predetermined by another’s will. They instead want the right to choose up-front the rules that will bind them prospectively. Instead of Homo Sapiens, Latin for “wise man,”
perhaps our species should go by *Homo Eligens*, in honor of the choice (more than wisdom, alas) so characteristic of human action.\(^7\)

The value of the rule of law is thus not only or even primarily economic. It affects wealth so powerfully because it affects human well-being so powerfully. We need social life to thrive, and social life needs social rules. What could better promote our happiness, therefore, than to live under rules each of our own choosing, among those who share our judgments of right and wrong, under the administration of a just and efficient government?

This chapter gives good reason to believe that the rule of law really is the most valuable thing in the world. Even if not, though, it still has a world of value. And unlike the other contenders for the title of “most valuable thing in the world” – a loving family, a virtuous life, or divine happiness, for example – better government falls well within our reach. How can we get more of it? Read on.

1.2

Revolution, Inside Out, Bottom Up, Worldwide*

1 INTRODUCTION: REVOLUTION, WITH A TWIST

The word revolution evokes conflict, violence, and upheaval. It does not have to, though. Outside of political contexts, the word simply refers to motion around a fixed point. That kind of revolution can occur deliberately and slowly, like the rolling wheels of a covered wagon. And yet, as the role that covered wagons played in settling the American frontier suggests, this more prosaic sort of revolution can transform the world just as completely as the kind favored by bomb-throwing fanatics.

The astonishing growth in special jurisdictions qualifies as a revolution of sorts, but not the usual, political kind. Instead of being imposed by domestic or foreign enemies, the special jurisdiction revolution has come from within, allowed or even encouraged by existing authorities. Instead of descending from the rarefied theories of armchair radicals such as Karl Marx, it rises from the bottom up, expressed in the everyday choices of everyday people. And instead of merely plugging a few new politicians into the same old offices, a cycle that ultimately goes nowhere, special jurisdictions have the power to quietly and gently transform government across the globe. Read on to learn about this hitherto hidden revolution.

2 REVOLUTION FROM THE INSIDE OUT

Revolutions typically result in revolutionary wars. The origins of the United States offer a classic example of the phenomenon. The exemptions prove rare

* This Chapter derives in part from Tom W. Bell, Special Economic Zones in the United States: From Colonial Charters, to Foreign-Trade Zones, toward USSEZs, 64 Buffalo L. Rev. 959 (2016).
enough to get special names like the “Velvet Revolution” or “Singing Revolution.”¹ The cause of this correlation is not hard to discern: those who hold political power seldom give it up willingly. And yet the revolution in special jurisdictions now sweeping the planet has come from the inside out, always with the acquiescence of governing officials and often with their active encouragement.

Mere acquiescence happens only with regard to the most local kind of special jurisdiction – the common interest development. These are not very grandiose; think of a subdivision governed by a homeowner association or of a co-op’s board. Yet these modest institutions take over functions ordinarily provided by local municipalities, such as the upkeep of roads and other common areas. In some cases, the developers and residents of such projects may not have to ask permission from political authorities, since by definition the community arises entirely on private land, between private parties. In other and more typical cases, where applicable regulations require the issuance of a building permit, government permission usually follows as a matter of course. Why? Because common interest communities typically bear the full brunt of applicable taxes while providing privately for the sorts of services the hosting municipality would otherwise have to fund. Politicians like the effect that has on discretionary funds.²

It is less easy to explain why governments have actively encouraged other kinds of special jurisdictions, especially those that offer lower taxes and lighter regulations than usual. What could motivate politicians to willingly cede power? Well-reasoned arguments by proponents of liberalization and concern for residents’ welfare perhaps drive some such reforms. One hopes so. But it seems more likely – indeed, it approaches a tautology – that politicians willingly relax their power within special jurisdictions as a means for winning still greater power.

Politicians might, for instance, see the jurisdiction as a way to encourage economic growth and, thus, potential rents. These prospective gains might come from taxes, as would follow if a Special Economic Zone (SEZ) helped a country back down the Laffer curve, moving it toward lower net taxes but higher net government revenue.³ Or the political rents of zone-induced

² Evan McKenzie, Beyond Privatopia 6 (2011).
growth might come through less formalized channels, such as in bribery or graft. A successful SEZ might generate jobs and increase local wealth, too, creating happy – or at least not riotously malcontent – residents, citizens, and (crucially, in democracies) voters.

In addition to easing tax and regulatory burdens within special jurisdictions, politicians have also increasingly seen fit to delegate their development and operation to private parties. Again, this likely reflects not simple ideological preferences, but a hard-nosed recognition of what works. The World Bank Group’s review of the data suggests that private zones are less expensive to develop and operate than their public counterparts (from the perspective of the host country), and yield better economic results.

The seeming paradox of political actors choosing to decrease state power dissipates under the unstinting glare of public choice theory. The state can act only through individuals, be they politicians, bureaucrats, or other government officials. Here as in the employer–employee relationship, the interests of principal and agent diverge. The employee shirks to the disadvantage of the employer; the politician steals the spotlight by selling off sovereignty.

It thus arises that, under certain conditions, self-interested individuals serving a nation state can rationally pursue policies that redound to their benefit while ultimately decreasing the size and power of the state itself. Thus, for instance, might a politician launch an SEZ program that gives her good press while ultimately eroding the state’s control over the economy. The rest of us should not necessarily condemn that effect. The state itself wins such justification as it can (which on close scrutiny, is not a lot) only by dint of how well it serves those under its sway – its citizens and residents, at the very least, but also, arguably, the world at large. If special jurisdictions can do a better job of promoting economic growth, human welfare, and personal freedom than the nation state does, we should promote and indeed celebrate that effect.

7 See Moberg, supra note 5, at 176–77.