

Emergencies, government intervention and the “No vote mechanism”

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“the only difference between voting for someone because he pays me to vote for him and voting for someone because he promises to use public powers and resources in order to promote my private interests once he is in office, is that in the latter case the candidate does not use his own money to buy my support”

As Gary Becker put it in a recent interview for the Wall Street Journal, “The more you have dependence on the government, the stronger the interest group of people who want to maintain it. (...) The higher [the government spending] is, the more people who are directly or indirectly dependent on the government. (...) The basic theory of interest-group politics says that they will have more influence and their influence will be to try to maintain this, and it will be hard to go back” (Becker, 21.3.09).

Can the tendency of government expansion be inverted, or at least stopped? In this paper I will discuss two inter-dependent policies suggested by Professor Von Hayek to contain government expansion in general, and that part of it initially motivated by emergency situations in particular.

In fact, common experience shows that emergency situations tend to be used by governments in order to expand both their areas of intervention and their powers within the areas of intervention in which they already play a role. Of course, emergency situations justifying government intervention are only one of the factors producing this long-term tendency of government expansion. However, this article focuses specifically on this factor, and discusses a possible approach to deal with it.

It is important to stress that only some *kinds* of emergency situations may require government intervention. The complex and debated issue of what justifies the latter (and, more specifically for the purpose of this article, of what kind of emergency situations justifies it) is left aside in this paper, and the emergencies discussed below are assumed to be of the kind that requires government intervention.

Emergency as an opportunity for power

Governments tend to use emergencies as an opportunity to expand immediately their areas of influence (i.e. to expand horizontally) and/or their powers (i.e. to expand vertically). When the emergency is over, however, they tend not to retreat from the areas they expanded in because of the emergencies, nor to give up the powers or the resources that they have acquired (or to give them up much more slowly, or only partially).

Since emergencies happen regularly, this pattern is one of the factors that contribute to explain the long-term, self-reinforcing tendency of expansion of government, and therefore the consequent reduction of liberty: as more and more individuals and businesses tend to be (e.g. economically) dependent on the government, the basis of free market are progressively destroyed and, with it, a major necessary condition for the maintenance of the creative spirit of a free people.

Hayek's “top down” approach

Within the framework of his constitutional proposal (Hayek, 1982, Vol. 3, ch. 17), Professor Von Hayek offered a conceptually extremely simple suggestion to address this problem “from above”, which we can refer to as the “top down” approach: if the institutions assuming emergency powers (including that of disposing of emergency resources) are different from those which concede these

powers *and* which have the responsibility to withdraw them once the emergency is over, then it is more likely that such withdrawal will happen, or that it will happen more quickly.

In particular, Hayek suggests that the institution that should concede the emergency powers and that should have the responsibility to withdraw them would be the *legislative assembly*, which in Hayek's constitutional proposal would have the power to approve *laws* intended as abstract principles, and that power only: in other words, it would *not* have the power, for example, to approve measures proposed by the government and relative to the administration of the state or to the allocation of resources.

Vice versa, the institution that should assume the emergency powers would be the *governmental assembly*, which in Hayek's framework would have governmental powers (e.g. the powers to approve *measures* relative to the administration of the state and to the allocation of resources, for example) and those powers only: in other words, it would *not* have the power to approve or propose laws: on the contrary, its measures would have to be limited by the laws, i.e. the (few) abstract principles, approved by the other superior and separated assembly.

It is not surprising that Hayek's approach for the management of emergency situations has hardly been attempted: in fact it requires, as one of its preliminary conditions, the effective separation of two powers which today are often concentrated in one single assembly or institution, namely the power of passing *laws*, that is matters of principle, and the power of approving *measures*, that is, to put it in lemons terms, to spend money. For obvious reasons, the members of the institutions which combine both these powers have no intention to separate them, contributing to perpetuate the most outrageous conflict of interests of our time.

It is hardly deniable that Hayek's suggestion for the management of emergency situations would be a dramatic improvement as compared to the present common arrangements, in which the power to concede and to withdraw emergency powers are in the hands of the same people who have to execute them and who directly benefit from having them. However, such proposal could hardly be considered a "certain solution" of the problem: in fact, Hayek's constitutional proposal in general (and the management of emergency situations in particular) still leaves control in the hands of a few individuals, even though (and here lies its advantage as compared to most present arrangements) these are different and separated from those who are supposed to be controlled. As De Jasey claims, "Hayek does not solve the *qui custodet ipsos custodes* dilemma" (De Jasey, 2002, p. 11).

The "No vote mechanism"

Hayek's proposed framework, however, may include also another instrument that could significantly contribute to a faster withdrawal of emergency powers once the emergency is over and, more in general, to a stronger resistance against the expansion of government.

This second instrument, however, is not explicit in Hayek's approach to the management of emergency situations, but it may be a "collateral" consequence of another, only apparently independent aspect of Hayek's proposal. In this paragraph I will briefly introduce the latter, leaving to the next paragraph the discussion of why this instrument could reinforce the "top-down approach" in its attempt to make the the withdrawal of emergency powers as elastic as their concession.

In particular, Hayek argues that, *in an institutional framework compatible with the separation of powers outlined in his proposal*, those who receive public money (e.g. all public officials and em-

ployees, the unemployed receiving subsidies, the retired whose pension is financed via public funds, the individuals working for businesses dealing directly with government agencies, etc.) should *not* have the right to vote *for the governmental assembly* (Hayek, 1982, Vol. 3, pp. 119-120). (For simplicity, let us call this the “No vote mechanism”). The reason is that, if I am interested in receiving something from the public pot, I should not have the power to choose those who decide what to give to whom, otherwise there would be a clear conflict of interests. In other words, one thing is to vote for a coalition because I believe that it will do a good job in the administration of the state, and quite another is to vote for it because I expect it to promote my private interests: the only difference between voting for someone because he pays me to vote for him and voting for someone because he promises to use public powers and resources in order to promote my private interests once he is in office, is that in the latter case the candidate does not use his own money to buy my support.

The most common argument against the “No vote mechanism” is that it would be unfair because it would exclude some citizens from the democratic process. If, on the one hand, this would be true in an institutional framework, such as the most common one today in Western countries, where the power to decide on matters of principle and the power to approve a particular allocation of resources are concentrated in the same assembly, on the other hand this would *not* be true in a situation, such as the one proposed by Hayek, in which these two powers belong to different and separate assemblies. Those who could not vote for the assembly responsible for the allocation of resources because they directly benefit from such allocation, would continue to vote for the assembly responsible for the decisions on matters of principle, regarding which they would not be in a different position from that of someone who would not have specific interests in a particular allocation of resources, therefore they would continue to participate in the democratic process.

The “bottom-up” approach

The concession of emergency powers is a political cost for the community, chiefly, though not exclusively, in terms of freedom. Since emergency powers, once acquired, are hard to be given away once the emergency is over, this cost tends to be not a one-off cost, but rather a fixed, long-term cost. Like the cost of pollution for the community, this cost is not immediately evident and it is not borne by those who create it (i.e., one part of it is a negative externality): this includes not only those who exercise emergency powers (i.e., in Hayek's proposal, the governmental assembly), but also those who have the function to concede them and to withdraw them (the legislative assembly); that is why the “top-down” approach may not be able to limit sufficiently the expansion of this cost and why a “bottom-up” approach, that is a spontaneous and dispersed mechanism of control independent of the decision of authority, may help it.

Hayek's proposal includes also this second instrument for containing the expansion of government intervention and, in particular, also for increasing the elasticity of the withdrawal of emergency powers. In fact, the same instrument that could help contrasting the conflict of interests of electors (the “No vote mechanism”), could also contribute, together with the “top-down” approach, to enhance such elasticity, and therefore to contrast in the long run the self-reinforcing process that necessarily leads to an ever increasing expansion of government.

In fact, if the “No vote mechanism” was in place, the governmental assembly would be elected only by those who (say in the last x years) have not benefited *directly* from government spending. For obvious reasons, this would be very likely to produce a governmental assembly more careful to the expansion of its own activity: in fact, during the elections, it would be more limited in saying: “vote for me because I will use public resources to promote your interests”, for a) the people that would be allowed to vote for it are more likely to be those whose income is independent of public expenditure

and b) in expanding the number of those who directly benefit from public expenditure, a coalition would reduce the number of its electors at the next run, and therefore the support for government spending.

Indirect effects

In addition, the “No vote mechanism” could resist government expansion also in other, less immediately evident and less direct ways. In fact, every expansion of government intervention would be accompanied by an increase of the portion of the population which could not vote for the governmental assembly. Even though, for each individual, the benefit of receiving public funds is very luckily to be much higher than that of being allowed to vote for the governmental assembly, on a more general level this may contribute to produce a psychological environment more favourable to the resistance against government expansion: in fact, in time, the receipt of public money would be associated, not to something positive (e.g. a “right”, or “social solidarity”, or an “interventionist policy”), but rather to something negative: in other words, the negative externality of government intervention would be forced into surface. This association would be perceived by every elector and in time it could contribute to go to the very heart of the problem, that is to break that artificially generated culture which, by arbitrarily changing the meanings of words such as “law”, “liberty” and “democracy”, and by artificially creating meaningless or confusing concepts such as “social solidarity” or “social justice”, in order to beget more power, instrumentally associates these to positive ideas.

Discrimination

The first accusation that the “No vote mechanism” is likely to inspire is that it would be a reactionary measure that would allow representation only to the rich, therefore discriminating against the poor or those who have less.

We have already seen that those who would be excluded from the elections of the governmental assembly because they have a conflict of interests as voters, would not be excluded from the legislative assembly which would approve the laws which limit the content of the measures that the former assembly would approve, and therefore they would continue participating in the democratic process (even though not in the process of choosing the allocation of resources).

The accusation of being reactionary, however, can be discussed further. On the one hand, as long as the government provides those suffering severe privation with resources directed at (and sufficient for) the satisfaction of “basic needs”, it is true that *a fraction* of those who receive public funds are luckily to belong to the economically weakest groups of society. Saying this, however, does *not* imply that *in general* those who receive public funds belong to such groups, or that they are luckily to belong to them: the economic situation of public employees is not different from that of private employees, apart from the fact that their risk of losing their job is much lower; a minister, a member of parliament, an employee of the house of representatives, a public university professor, a researcher whose salary is paid with public funds hardly belong to the economically weakest groups of society. Redistribution and government intervention has been more and more used to buy the support of the middle class, which in Western countries constitutes the majority of the electors, not of the poor: it is mainly the middle class that today directly benefits from government spending.

In addition, admitting that a fraction of those who receive public funds belong to the economically

weakest groups also does not mean that the individuals belonging to these groups necessarily are those who receive public funds: it is not uncommon to encounter individuals who clearly belong to the weakest segments of society but who in their particular situation do not directly benefit from government spending (let us think, for example, of those who moved to the country in order to be able to live with much less than it is necessary in the city).

In short, the “no vote mechanism” would not be discriminating against the economically weakest groups, but only against those individuals whose participation in the elections of the governmental assembly, because of their conflict of interests, would necessarily involve forms of discrimination against other individuals.

Equality before the law

A second accusation that could be made against this mechanism is that it would violate the principle of equality before the law. Now, obviously the “No vote mechanism” would not violate the principle of equality before the law on which all “made” laws (that is, all the “laws” enacted by current parliaments in continental Europe, for example) rest. In fact, equality before “made”, or “positive”, law (*positive equality*) implies the arbitrary formation of a category (say, those who earn more than x, or, as in our case, those who directly receive public money) and the uniform enforcement within it of a command enacted by authority (Leoni, 1991, p. 68). Therefore, the “No vote mechanism” does not violate this principle of equality before the law, in the same way as progressive taxation, or the racist laws of Nazism, do not violate it.

However, it is not the principle of positive equality before the law that the “No vote mechanism” may be accused of violating, but the *negative* one, that is the one that implies equal treatment of all citizens before an abstract principle, independently from arbitrarily chosen categories. Before discussing whether the “No vote mechanism” violates this principle of equality before the law, it is worth noticing that the latter is commonly violated by many “laws” enacted in Western countries, including those enforcing progressive taxation, for example; the discussion of why this is so is however beyond the scope of this article.

It could be argued (rightly, in my opinion) that private interest is not satisfied only via the direct provision of public money. If a coalition spent a sum of public funds to build a highway to my town, while another spent the same sum of public funds to form a governmental agency for the organization of, say, a music festival, both the employee of that agency and I would benefit from government spending. However, while under the “No vote mechanism” I would be allowed to vote, the employee of that agency wouldn't. Therefore, it could be argued, the “No vote mechanism” violates the principle of (negative) equality before the law, for the employee and I would be treated differently before the general principle that no one who benefits from public resources should have a say in who allocates them. This argument, however, would be flawed: in fact, even though the two situations may seem similar at first sight, they are not: while the employee would benefit *directly* from such spending, I would benefit only *indirectly*. In addition, on a practical level, while in the case of the employee the benefit is clearly and certainly identifiable, in my case it is not (many citizens of my town could be against the construction of that highway for the most various reasons, e.g. residence in proximity to the building site, environmental reasons, etc. and, unlike the case of the employee, their exclusion from the benefit of that particular government spending would be impossible).

In other words, there are no reasons to doubt that the “No vote mechanism” combined with an institutional arrangement compatible with the separation of powers proposed by Hayek, would tend to reduce inequality before the law (in the negative sense) as much as possible, and that, in any case,

this inequality would be much smaller than in the alternative system in which government intervention has no effective limits to its long-term expansion.

Conclusion

Emergency is often used by governments as an opportunity for additional government spending. Government spending motivated by emergency tends to be very elastic in its expansion and very inelastic in its contraction. In the long-run, this asymmetric elasticity is one of the main factors contributing to the expansion of government intervention in general, and to the corresponding reduction of freedom, intended as “that condition of men in which reduction of some by others is reduced as much as possible in society” (Hayek, 1960, p. 11).

Within his constitutional framework, Hayek suggested an approach to increase the elasticity of the contraction of government intervention motivated by emergency. This approach is based on the separation of the power to concede emergency powers and/or temporary access to emergency resources, combined with the power and the responsibility to withdraw such concession once the emergency is over, from the power to execute emergency powers and to allocate emergency resources.

Because those who have the first powers do not directly bear the cost of government spending, even though Hayek's proposal is a certain improvement as compared to the present arrangements, it may turn out to be insufficient to produce a contraction of government intervention as elastic as possible.

However, the part of Hayek's proposal designed to address the only apparently different problem of the conflict of interests of electors (the “No vote mechanism”) may have, as collateral effect, also the result of contributing to the elasticity of the contraction of government intervention (and, in particular, also to the part of it motivated by emergency).

Unlike the first, this second instrument works “bottom-up” (in other words, it does not depend upon the decision of a few individuals). In addition, it tends to be counter-cyclical, in the sense that it tends to generate forces that resist emergency powers (and, more in general, the expansion of government) in the moment in which the latter are conceded, and whose intensity grows with the extension of these powers and of the time during which they are held, therefore contributing to their more rapid withdrawal once the emergency is over. Last but not least, in comparison to today's contemporary arrangements in the Western countries, the “No vote mechanism” reduces significantly the discrimination and the violation of the principle of (negative) equality before the law.

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