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Small, Sovereign and Resilient: Lessons from the Not-So Wild, Wild West

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In his book, *The State in the Third Millennium*, H.S.H. Prince Hans-Adam II defines the state as "a geographical area that is more or less defined, with a population that in the majority has accepted a central authority or has been forced to accept such an authority over a long period of time" (p. 17). He continues saying, "humans can organize themselves according to their needs, from a small tribe with a few dozen individuals to large states with millions of inhabitants" (p. 24).

These two points immediately beg the questions: how large is the geographical area; who is in and who is out of the collective; what determines the size of the majority; and what is the scope of the central authority as determined by the needs of the collective? This paper attempts to answer these questions in the context of how small states developed in the American West. It begins by offering a model for thinking about a world in which there would be no states—call it the "no states model." That model emphasizes that the geographic size of the state is conditioned by scale economies in the use of force and that the scope of the central authority is determined by the optimal size of the collective necessary to produce both private and public goods. To the extent that central organization is arranged around specific needs and that scale economies are small, it is possible that small states can develop and can be nested within larger ones without sacrificing liberty.

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This model is tested in the context of the American West in the nineteenth century where wagon trains, mining camps, and cattlemen's associations exemplified the potential for decentralized states. It will conclude by noting that challenges for small states arise when scale economies in the use of force increase. Thus the principle of federalism, meaning devolution to state size and scope to the lowest optimal scale, is crucial to maintaining individual liberty.

No States Model

Ronald Coase's seminal article on "The Problem of Social Cost" opened economists' eyes to the importance of property rights in resolving competing demands for resources. To illustrate his point, he noted that, if transaction costs were zero, the assignment of rights would not affect the ultimate use of the resource in question. Unfortunately, this pedagogical technique was taken by many to mean that Coase thought transaction costs did not matter, when, in fact, he thought just the opposite. Because transaction costs affect how well property rights are defined and enforced and affect whether people can bargain to exploit gains from trading property rights, institutions matter greatly. Indeed, Coase's much earlier article, "The Nature of the Firm," might have better followed the latter one because it makes clear why people organize into collectives in which authority supplants voluntary exchange. In that paper Coase explained everything a firm does could be done through market transactions—the tire producer could sell tires to the axle producer who would attach the tire to the axle and sell the unit to the chassis producer, and so on—thus taking advantage of prices as Hayek pointed out. Each of those transactions, however, would have a cost that might be reduced by having the owner of a firm coordinate production through hierarchical decisions rather than market transactions. Those tradeoffs thus determine which transactions occur through markets and which through firms.

The importance of Coase's zero transaction cost assumption was driven home to me in a graduate school class (many years ago, I might add) on urban economics taught by Robert Bish, a student of Vincent Ostrom. He used the zero transaction cost assumption as part of his explanation for why cities exist by positing a "no cities model." The hypothesizes was that people would not congregate into cities if

1. the world was a homogenous plain on which all resources were equally distributed,
2. there were no scale economies in production, and
3. there were no transaction costs (including transportation costs) associated with trade.

Of course, none of these conditions exist, and each one is a reason why we would expect cities. First, resources are location specific thus generating location rents for each resource. Location rents, in turn, encourage people to locate themselves nearer to resources in order to capture some of those rents. Hence, cities grow up near valuable ore deposits, e.g. Virginia City, Nevada, or major transportation waterways, e.g. St. Louis, Missouri. Second, given that there are scale economies in the production of many goods and services—whether private or public—aggregation of production in a central location means costs can be reduced. Hence, cities grow up around production facilities, e.g. automobile plants near Detroit, Michigan. Third, because there are transaction costs associated with finding trade partners, negotiating contracts, and borrowing money, firms locate in closer proximity in order to financial markets, e.g. the financial district in New York. The upshot is that cities do exist.

The same approach can be usefully applied to why we have states by asking under what conditions we would not have states. This is akin to Coase asking under what conditions we would not have firms. It follows that there would be no states if

1. resources were equally distributed around the world,

2. there were no costs associated with defining and enforcing property rights, and
3. there were no scale economies in the production of public goods, especially defense against outsiders.

Consider each of these in turn.

Scarce resources command rents and rents incentivize people to compete for them. If the world were a perfectly homogenous plain, there would be no need to compete for resource rents unless the population is large enough to prevent everyone from mixing his or her labor with resources as Locke suggested. However, with scarcity comes a race to take a claim to resources by expending effort to define and enforce property rights. This means that people will be attracted to higher rent geographic locations in a race to capture the rents.

In the limit, all of the rents can be dissipated in the race unless borders to the geographic location can be closed (see Anderson and Hill, *Southern Economic Journal,* 1983). In other words competition for resource rents requires expending resources in defining and enforcing property rights thus excluding others from claiming the resource rents. Definition and enforcement can be done privately, as with locks on doors and fences around property, or it can be done collectively by defining a geographic perimeter and excluding those outside the perimeter. Hence, defining and enforcing property becomes a reason for people to spontaneously organize some of their activities through the collective action of a central authority of the type described by H.S.H. Prince Hans-Adam II in the opening quote.

To the extent that there are scale economies in defining and enforcing property rights, the state might be as small as a tribe or as large as a nation state. Imagine defending boundaries using hand-to-hand combat versus using bows and arrows versus using intercontinental missiles. Therefore, to the extent that there are scale economies in military defense, states will be larger.

Three general factors determine the size and structure of that framework.

1. Preventing entry into this territory requires that members of the collective exert force both against trespassers and against members of the collective to ensure that they help pay for preventing trespass by outsiders.
2. Scale economies in the use of force generate pressure for people to form larger collective units. Especially, given modern warfare, such scale economies call for larger states that we typically associate with national governments.
3. The benefits of scale economies leading to a larger state, however, must be weighed against the agency costs of collecting revenues to pay for defense and against the potential for the state to act opportunistically by taking rents from citizens. Like the firm, individuals would voluntarily submit to such coercion depending on the tradeoff between gains from using coercion to ensure the production of the defense public good and the agency costs from collective action that runs counter to the individual's preferences. Collectives that are too small may not be able to exclude potential entrants to the commons, but collectives that are too large will face higher organizational costs, or what economists call agency costs.
4. A final consideration in the size and shape of states is the geographic extent of exchange. If trades and contracting are between a few, homogeneous individuals, the size of the state necessary for enforcing contracts will be small. However, if trades take place among many, non-homogenous individuals scattered over a large geographic area, a larger state may be called for.

David Friedman (1977), in his article on "A Theory of the Size and Shape of Nations," captures the elements of these tradeoffs saying, "Trade, as a major potential revenue source, should imply large nations; rent should imply small nations; and labor should imply that nations will have closed boundaries or be culturally homogeneous (to maximize exit costs)."

The Not-So Wild, Wild West

Though a fuller understanding of how smaller states fit within larger, powerful nation states is important for modern cases, the focus of this paper is on the evolution of smaller governments on the western U.S. frontier in the 19th century. That frontier is interesting because it existed at a time when scale economies were small, resources were abundant relative to the demands for their rents, and the larger, national government was both limited and far removed. Indeed, it provides an example where we might expect the "no state" model to apply. Indeed, initially there were no states until competition with the potential of dissipating resource rents encouraged finding ways of excluding outsiders except when production processes required collective action. To understand these forces, we consider wagon trains, mining camps, and cattlemen's associations.

[Note: the following discussions are based on Terry L. Anderson and Peter J. Hill. 2004. *The Not So Wild, Wild West.* Stanford, CA: Stanford University Press.]

Wagon Train Governments

Individuals or even small groups would have had little success in crossing the Great Plains unless they banded together as a collective. Though their group was not constrained to a geographical area because they were moving, the terms of collective action were well defined, with a population that in the majority has accepted a central authority or has been forced to accept such an authority" for the duration of their journey. As John Reid explained, "Combining resources was the technique by which a large percentage of travelers crossing the plains obtained the means to make the trip. Many, possibly most of the single men in small groups leaving the Missouri River might never have started had they been unable to share the elephant [the term used to describe the enormity of the journey]."

Because crossing the Great Plains had to be a joint effort, astute travelers developed the rules of collective action before starting their journey. Nearly every group adopted constitution-like agreements prior to embarking on the trail. A typical agreement read as follows:

> Resolved, that we as subscribers, members of the Green and Jersey County Company of emigrants to California, now rendezvoused at St. Joseph; in view of the long and difficult journey before us, are satisfied that our own interests require for the purpose of safety, convenience, good feeling, and what is of the utmost importance, the prevention of unnecessary delay, the adoption of strict rules and regulations to govern us during our passage: and we do by our signatures to this resolution, pledge ourselves each to the other, that we will abide by all the rules and regulations that may be made by a vote of a majority of the company for its regulations during our passage. (Hansen 1937, I)

Scale economies for nearly all activities of a wagon train made it necessary to establish specific rules for production. Making and breaking camp, defending against thieves and Indian attacks, crossing rivers, taking wagons up and down steep slopes, and hunting wild game were all more efficiently carried out by groups larger than the family. Returns on joint production were partly due to the indivisibility of inputs necessary for crossing the plains. For example, it made little sense for each person separately to acquire knowledge about the route when one person's knowledge could be utilized by several. Hence, wagon trains spread this cost by hiring an experienced guide to lead them on the trail. Similarly, a typical wagon equipped for the journey was too large for a single person and therefore was used and owned jointly by four or five people. The same was true for other human capital, such as medical and hunting skills, and for physical capital, such as draft animals and tools.

Of course, amidst this social order, conflicts inevitably flared over property rights and contractual arrangements for joint production. These occasions required procedures for dispute resolution. Unlike the violent, disorderly American West of the popular imagination, the overland trail was generally a place where rights were respected and order was maintained. Miscreants went to trial, and judgment was swift.

The resolution of conflict and pursuit of justice were high priorities for the emigrants. Wagon trains often cooperated with each other to capture criminals, and sometimes called upon one another to help in investigations or to provide more impartial judgments as to appropriate punishments. John Reid summarizes the nature of justice among emigrants on the trail:

> They [emigrants] were neither vigilantes nor regulators acting outside established law, for there was no sovereign command on the overland trail. They were not anonymous lynch-mobs enacting vengeance upon individuals who had transgressed some criterion of behavior offensive to part of the community. . . . Just as emigrants believed they had a right and a duty to arrest suspected wrongdoers and to determine their guilt by subjecting them to a trial judged by their peers, so they also believed they had the right to impose a sanction upon those convicted and it was their civic duty to punish certain “criminal” acts. (Reid 1977, 157)

Thus it is clear that the emigrants created and enforced contracts that allowed them to cooperate in joint-production efforts efforts yielding returns above what would have been available to travelers acting individually or in very small groups. They maintained a reasonable degree of law and order and respect for property rights. In short, wagon trains exemplified how government can be small, resilient, and sovereign.

Mining Camps

The “no states model” can be applied to California mining camps, where residual claimants had an incentive to conserve on resources consumed in the definition and enforcement process. Economist John Umbeck considered the productivity of claims, the potential for scale economies in mining those claims, and the ability of miners to use force against one another. Because the expected productivity of claims was relatively equal; because there were few scale economies in placer mining, especially prior to the use of hydraulic techniques; and because the six-shooter gave everyone a nearly equal ability to exercise force without scale economies, miners had every incentive to settle disputes peacefully (negotiate) rather than to fight (litigate). “Contrary to the television westerns which claim to depict this period of American history, the reported incidence of violence was remarkably low. Instead of fighting over the rights to mineral land, the miners entered into contractual arrangements which assigned mineral rights in an orderly and . . . predictable fashion” (Umbeck 1977, 430).

When conflicts arose among miners in a camp, a meeting was called and a contract drawn up that specified how property rights would be defined and enforced. The contract specified the boundaries of the district, the size of the allowed claims, and the methods by which claims would be enforced. These contracts reflected the special characteristics of the mining districts and were often reformulated as new information and new conditions arose. According to Theodore Hittell, a nineteenth historian of California mining: “Nearly every bar, flat and gulch had separate rules. Their jurisdictions were frequently changed, some consolidating into larger districts and others dividing into smaller ones—the change being dependent chiefly upon the character as to homogeneousness or otherwise of the mining region embraced and the convenience for the miners of access to a common place of meeting” (quoted in Davis 1902, 20).

Like wagon trains, miners in California and Nevada formed governments that were small, resilient, and sovereign. They quickly found effective contractual arrangements for defining and enforcing property rights created by states that offered resource savings in designing and adjudicating rules.

Cattlemen’s Associations

The advent of cattle grazing on the western frontier offers one of the best examples of states evolving in response to the benefits and costs of collective action. Cattlemen formed associations with specific rules for restricting one another’s access to the land for restricting entry by outsiders. Unfortunately, the success of these voluntary states was undermined by the federal government that trumped customary land rights and reopened the land for a homesteading race.

In the fall of 1883 there was not one buffalo remaining on the range and the antelope, elk and deer were scarce. In 1880, no one ever had heard of a cowboy on the plains, but by the fall of 1883, there were six hundred thousand head of cattle on the range. Osgood reported, “With a rapidity that could almost be measured in months rather than years, every available bit of range in north and central Wyoming was occupied; the country in eastern Montana, north of the

Yellowstone to the southern boundary of the Indian reservation was filled up, and herds began to look for favorable locations beyond the international boundary along the Saskatchewan River" (Osgood, 105).

In this setting of rapid settlement, first possession became the accepted way of establishing property rights. According to Osgood (183), "by grazing a certain area the stockgrower was in the way of gaining a kind of prescriptive right to the same as over against a newcomer who should attempt to drive off the stock thereon." This right was generally recognized by custom and even came to be respected by law enforcement officers.

To notify others that land was already claimed, cattlemen advertised in local papers outlining the areas they were claiming. For instance, on April 12, 1884, Charles S. Johnston announced in the *Glendive Times*, published in Glendive, Montana, "I, the undersigned, do hereby notify the public that I claim the valley, branching off the Glendive Creek, four miles east of Allard, and extending to its source on the Southside of the Northern Pacific Railroad as a stock range" (quoted in Osgood, 183).

To better define and enforce property rights to land, cattlemen established line camps along their customary range boundaries. From those camps, cowboys rode along the boundaries, driving cattle back to their customary ranges and guarding against cattle rustling. Line camps were especially important in the winter, when snow storms could compel cattle to drift long distances. Without line camps, neighboring ranchers and farmers would have had to leave the comfort of their "homes on the range" and expose themselves to the elements to drive stray cattle off their land and back to their accustomed ranges. Hence, the line camps effectively enforced customary rights to the open range, enforced property rights to cattle, and provided employment for cowboys when they were not involved in roundups.

To enforce their claims to livestock and land, cattlemen formed small states knows as cattlemen’s associations. These associations provide strong counterevidence to the claim that the early settlers in the West were highly individualistic, operating in an atomistic fashion without relations with other settlers. The cattlemens' associations had three aims: “first, to preserve the individual’s ownership in his herd and his increase; second, to afford protection to the individual’s herds; and third, to control the grazing of the public domain or to prevent overcrowding. These aims, which might have been achieved by an individual in the earlier days of comparative isolation, could now only be realized through group effort” (Osgood, 115).

Contrary to the image of range wars as the norm for resolving disputes over territories, the cattlemen recognized the negative-sum nature of such conflict and therefore opted for a more efficient enforcement mechanism—the roundup—before the advent of barbed wire. It provided a way for grazers to realize economies of scale in joint production while excluding outsiders. Starting in 1874, Wyoming stockgrowers organized a voluntary roundup system that depended, for its enforcement, on a refusal to cooperate with those who did not belong to the association. Other associations followed suit.

The associations effectively controlled entry into the grazing commons by not allowing nonmembers to participate. If a new entrant put stock on what was seen as someone else’s range, the ranchers would refuse to allow the newcomer to join the roundup. Such sanctions were quite effective. In 1885 John Conrad moved 6,000 head of cattle onto a range east of Musselshell River in Montana Territory. The Niobrara Cattle Company was already running livestock in that district and believed that the range was fully stocked. At their next meeting, the local stockmen “condemned Conrad for his violation of range law and warned him that they would not handle his stock or cooperate with him in any way. He got the message and withdrew his herd" Malone and Roeder, 124).

Local newspapers carried announcements that cooperation would not be forthcoming if additional cattle were placed on a range that was considered fully stocked:

> Notice is hereby given that at the fall meeting of the Little Missouri River's Stockgrowers' Association, September, 1886, it was decided that as the ranges on the Little Missouri River and Beaver Creek and their tributaries are fully stocked with cattle and horses, and that as any additional herds placed upon such ranges would entail severe losses, not only to present occupants but also to any new herds that may be up on said ranges, the members of the association, therefore, would refuse to aid or assist in any manner any party who may place cattle or horses upon said ranges after said meeting. (Quoted in Dennen, 426-27)

The roundup as an exclusionary mechanism broke down when cattle grazing interfaced with sheep grazing. Roundups were essential to cattle operations, and access to the roundup was an effective method of controlling the number of entrants and the total herd size in a given area. But when a sheepman arrived, he did not need to be included in the roundup to have a viable economic operation. Sheep were controlled on the open range by herders, and there was no need to rely on neighbors for any cooperative work. Therefore the cattleman warred with the sheepman not because of any natural dissonance between cattle and sheep but rather because of the institutional incompatibility of the two modes of operation. In the words of Osgood (189), "against the sheep herder, fences or force were the only successful protective measures."

To deal with the conflicts between grazers on the open range, to avoid some of the collective costs of roundups, and to reduce the costs of manning line camps, cattlemen were constantly searching for cheaper ways to define and enforce their property rights. Because conventional fencing was not an option on the Great Plains, where trees and stones were scarce, line camps were initially the answer. Ultimately, however, inventors of barbed wire responded to the demand for less expensive ways to define and enforce property rights, filing for 368 patents between 1866 and 1868. Economist Gary Libecap (33-34) concludes that this fencing "increased ranch values: pasture and water holes could be protected; the drift of livestock could be constrained to prevent straying into areas with poisonous plants, alkali water, or diseased animals; and breeding could be controlled to improved herd quality."

Unfortunately the effectiveness of cattlemen's associations as small, resilient, sovereign states was undermined by the federal government when it expanded its territorial reach through the Homestead Acts. Cattlemen's associations conserved on the investment in definition and enforcement activity. The Homestead Acts, on the other hand, undermined the customary range rights and encouraged a race for property rights. In 1884 the National Cattle Growers' Association lobbied Congress to "enact such laws as will enable the cattlemen of the West to acquire by lease the right to graze on unoccupied [customary] lands" (Webb, 201). Eastern political power prevailed, however, and Congress failed to pass any leasing legislation. Not only did the Homestead Acts foster a return to the tragedy of the commons that had been overcome by the voluntary states, they encouraged a race for property rights that dissipated at least a portion of the gains from privatization that had been captured previously through voluntary associations. This illustrates the difficulty of nesting a small, resilient sovereign within a larger, powerful sovereign.

Conclusion

The frontier of the American West provides a testing ground for understanding how and why states are created based on transaction costs and scale economies in enforcement, how they can prevent dissipation of resource values by excluding non-members, and how difficult it is to maintain the small, resilient, sovereign states in the face of enforcement scale economies generated by military technology. To be efficient, modern military technology requires protection of large territories over which the state has the power to tax to prevent free-riding by those protected. Unfortunately, the power to exclude non-members of a large state can also be used to extract rents from smaller states. Where small states continue to exist under the shadow of larger ones, it is either because they free-ride on the scale economies of the larger military power of larger state, because they have constitutional rules for nesting small states within larger states that do not allow the larger state to extract rents in excess of those necessary to pay for the cost of enforcing boundaries against non-members, or because small states can exit from the boundaries of the large one.

In *The Road to* Serfdom, Hayek fully realized that states, even those arising through spontaneous order as they did in the American West, tend to “replace the impersonal and anonymous mechanism of the market by collective and ‘conscious’ direction of all social forces to deliberately chosen goals.” His hope was that “We shall all be the gainers if we can create a world fit for small states to live in,” but he was not optimistic about the potential for constraining the ruling elite. If there is a way for small states to survive it will require creating a society in which individuals respect the rights of others and are willing to restrain the tendency to use the coercive power of the state—big or small—to violate those rights. Constitutions help, but only if buttressed by a liberal philosophy.

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