

Rigging the arena New Light on Old Practices

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Let me begin with some word-play in English, an intellectual puzzle. What is the common factor in these common phrases to describe a governmental action – what are they all metaphors for, what is the generic name for the essential act?

divide and rule
tipping the scales
loading the dice
rigging the market
priming the pump
achieving a level playing field
moving the goalposts
etc., etc.

I have given a great deal of thought to this question, and asked a lot of people; and although they usually see what I am driving at, we cannot find that there *is* a generic name for this activity. The nearest I can get is to say that they are all examples of *disturbing a balance*, or helping to establish a balance, or shifting a point of balance. So I have invented a generic name, *co-libration* or *collibration*: an act of manipulating an equilibrating process (Dunsire 1990, 1993a, 1993b).

My second starting point is this: in an advanced industrial society, social stability or the balance of centripetal and centrifugal forces is self-maintaining for most of the time without the constant attention of government. This is in part because a number of areas of social life are 'self-policing': one set of social or corporate actors can only get their way at the expense of one or more other sets of actors – whose interest therefore lies in getting together to keep the first set in check. It can be put thus: that the total amount of *governance* is much greater than the total amount of *government*.

Classic economic doctrines of the market, constitutional doctrines of the separation of powers, pluralist political systems, and the practices of industrial relations, for example, are all founded on such an understanding. It is a fairly widely accepted proposition, too, that social control by means of customs and taboos and moral codes of one kind and another is quantitatively more significant in defining our daily behaviour than overt governmental regulation (cf Simmel 1908, 1955; Ross 1910, 1920; Lindblom 1965). I leave aside in this paper the customs and taboos side of it, but I am interested in these self-regulating arenas of conflicting interests. It seems to me that governments would be happy to exploit this situation, and would want to see that such arenas remained self-balancing: on occasion, that might mean giving a little hand to one side, or handicapping another, in order to preserve the equilibrium.

And of course, it turns out that this idea of harnessing people's self-interest to the common benefit is as old as the hills. Spinoza wrote that »Men should be governed in such a way that they do not regard themselves as being governed, but as following their own bent and their own free choice» (1677). So he would not pay army officers, but leave them to win the spoils of battle; senators, on the other hand, would seek peace, because their remuneration would come from duties on imports and exports. The two groups would thus keep each other in check. James Madison in America said that »ambition must be made to counter ambition» (1788: No 51); and much later, Graham Allison conceived of »adversarial bureaucracies» in the same spirit (1971).

Utilising a »natural» social tension to produce stability is the basis of seventeenth and eighteenth century political thought.

teenth century doctrines of the »balanced constitution» (Vile 1967:67; Montesquieu 1748); and also, of course, of the »hidden hand» of the free market in the writings of Adam Smith and Herbert Spencer.

Rulers from time immemorial have also *inter-vened* in other peoples' struggles to their own benefit. This is explicit in traditional maxims of statecraft and colonialism like »divide and rule», and in judiciously shifting one's alliances in international affairs to maintain 'the balance of power' – tipping the scales a little while preserving the governance they are producing, aiding one of the combatants or somewhat handicapping another, steering the outcome to conform more closely to government policy aims. This is what I call 'collibration', and the practice is just as prevalent in modern domestic politics, as I hope to show.

Perhaps the paradigm image of collibration is that of the child at the fulcrum of a seesaw, shifting her small weight so as to raise and lower an adult at each end. Another illustration is the use by governing bodies in sporting affairs of the fertile notion of the *handicap* – in horse-racing, in golf and other sports. This is a sometimes extremely elaborate mechanism for establishing (within the rules of the game) what in a different sporting metaphor is often called a »level playing field», in order to achieve a fairer race or game in the face of widely-differing capacities in the players.

In government I have identified a number of types of collibratory intervention. Sometimes government will intervene to *formalise* an arena so as to turn 'discourseless' purely competitive relations into a bargaining forum. Sometimes intervention takes the form of *canalizing* the process by imposing rules or altering current ones, changing the variables by imposing minimum standards or criminalising certain behaviour, for example. Sometimes government leaves the relationships and other variables as they are, but alters a few values so as to *bias* the outcomes (for example, providing vital information to one of the actors, or otherwise altering transaction costs). These interventions are designed to *rig the arena*, while leaving its structural causes in place; but of course, unwise or overenthusiastic government action of this kind may *destabilise* an arena, destroying the balance of forces entirely.

Some examples will illustrate these categories. The most ubiquitous and almost traditional arena of continuing social antagonism, where one

collective actor aiming to maximise some value is invariably opposed and held at bay by another aiming to maximise a different and contradictory value, is probably the field of industrial relations, an expression of the labour market. In Sweden in the early 1970s the Social Democratic government passed a long list of laws »aimed at improving the situation of workers and limiting the prerogatives of employers» (Rehn/Viklund 1990:309), covering co-determination, employment security, paid time off for trade union work, union representation on company boards, safety and health »whistle-blowing», job security, educational leave, holiday entitlements, and retirement rules. In Britain not long afterwards, the Conservative government embarked on a similar long series of legislative changes, but in favour of the other side: acts restricting the rights of workers to picket their own workplace or to take 'secondary' action in support of strikes elsewhere; acts abolishing Pay Research Units and Wages Councils; acts to strengthen union members against their leaders, including the right not to join a union; subsidies to encourage secret postal ballots in elections for union officers and votes about striking; acts enabling employers to sue unions calling a strike without a prior ballot of members; acts requiring unions wishing to maintain a political fund to resubmit that decision to a secret ballot of members every ten years (Crouch 1990:330).

These lists show what a government bent on privileging one side or handicapping the other in the tug-of-war between employers and workers can do to »rig the arena». Yet in each of these two countries the prevalent norm was that wage bargaining and negotiations over conditions of work were matters for the »two sides of industry» to thrash out between them. A contrast could be seen in other countries of Europe at this time. In Belgium the government, »convinced that independent collective bargaining was no longer compatible with the economic and financial constraints imposed by the state of the economy, did not hesitate to ... do away with that independent sphere» (Spineux 1990:49), and imposed a wage freeze. In the Netherlands, Denmark, Italy, and elsewhere, governments set limits on increases or laid down fixed amounts or percentages, and so on, in various versions of incomes policy: not so much regulating collective bargaining as superseding it, and so destabilising that arena.

Any 'market' is by definition such an arena. For all the fashionable rant about the incompatibility of market methods and »government interfer-

ence», it has been well-accepted since Adam Smith's time that any *real* market is embedded in law and politics one way or another. There is a conventional distinction between *regulating* the markets and *intervening* in the markets. Regulating the market involves, for example, providing a framework of law to enforce contracts, furnish good coinage, and recognise collective bargaining; or taking government action to avert or remedy »market failure«, by for example anti-trust legislation. To intervene in the markets in *this* sense implies going in as a participant, by for example using the government's large purchasing power to drive down a price, selling foreign currency to prop up its own in the exchanges, exerting labour market leverage as a large employer.

The kind of government intervention we are looking at here, however, is neither of those: it leaves the powerful market mechanisms to work in their usual manner reconciling opposed but complementary interests to distribute values, but furthers government policy aims by manipulating these mechanisms in ways that are utterly familiar and yet unrecognised as a *category*. Large areas of the kind of government operations summed up as 'Keynesian', including demand management through public spending, pump-priming by providing cheap industrial premises, making good market deficiencies by subsidising training, influencing the financial markets by manipulating central bank interest rates, and so on, are neither 'regulating' nor 'participating' as defined above: they are interventions to avert one kind of market outcome the government doesn't want, and steer the markets towards another kind of outcome the government does want.

As well as these Keynesian interventions, governments use market mechanisms to further *unconnected* government policies. There are three main types of such action: using the taxing power as a programme tool; loan guarantees; and »remedial information«.

Taxation of commodities and services raises necessary revenue but it also clearly alters costs differentially, and quite sensitively. When the government uses selective imposition of duties not merely to collect revenue but to affect consumption patterns, to encourage or discourage spending on particular types of goods, it is *collibrating* – loading prices. High taxes on tobacco and alcohol for health promotion objectives, low or zero VAT on books and newspapers for »educational« or »democratic« reasons, lower duty on unleaded and diesel fuels or a more general

»carbon tax« for environmental protection purposes, and all such selective taxes on consumption goods, are »social engineering« via the market-place.

A loan guarantee is the government putting its thumb on the scales of a private transaction in the money market between one private actor and another, to make balance what otherwise probably would not – the banker's criteria of loanworthiness and the applicant's financial characteristics.

The third type of 'programme' collibration in the markets is »remedial information«: government action to redress an asymmetry of information so that the consumer may make a more rational choice. Sometimes government can without regulation or other legal sanction persuade producers to label a product in a prescribed way, a classic case being the »Government Health Warning« on every pack of cigarettes in UK and USA. The most frequent device, however, is »mandatory disclosure«, by which a producer of goods or services is by regulation (or condition attached to grant, contract, licence, etc.) required to furnish specified information, to customers, workforce, or the general public. This method is used extensively in the food retail markets, with shelf-life and contents labelling for example, and in financial services, in respect of interest rates and standard charges. Some countries require hotels and restaurants to post their meal menus and charges prominently outside the premises, and bar prices must often be posted up in the bar. The ubiquitous taxi meter represents mandatory disclosure of remedial information.

Another common form of such an arena is »politics« itself, the parliamentary party and electoral system. It is not unknown for government to reduce income taxes just before an election, or to manipulate electoral boundaries in the fashion known as »gerrymandering«, prevalent in Northern Ireland until recent years (Galliher and De Gregory 1985:24, 28–9). Such interventions in the conduct of »free and fair elections« are often known as »dirty tricks«. To some extent, the situation is self-righting precisely through its adversarial nature: one party will not be slow to reveal any alleged malpractice by one of its opponents, even if it is a case of the pot calling the kettle black. But if the trick is on the scale of the »political business cycle« (Nordhaus 1975), by which governments engineer an economic boom in an election year, it may be difficult to point to a legal breach; and for a government to hold back bad news statistics until a crucial by-election is

over, or to publish controversial information late on a Friday afternoon or just after the end of the parliamentary session, may be considered »ordinary politicking«. The standards of what is and is not »manipulation« are not always clear or universal.

Once you have grasped the idea, you can multiply the examples for yourselves. The British Government has been accused of 'rigging the market' for coal (and thus bringing about the closing down of virtually all the British coal mines) through its policies on nuclear energy. The Chancellor of the Exchequer in his recent budget, according to my newspaper, »changed the variables of the house-buying equation«. Collibration is all around us.

Changing variables of buying equations rather than trying to enforce regulations as a medium for achieving government policy aims may become more and more relevant in today's conditions. The dysfunctionality of coercive regulation is the subject of a large literature (see e.g. Mitnick 1980; Bardach and Kagan 1982), and regulation has few friends whether on the Right or the Left. Governments now do not dispose of the power they once did: many of their »subjects«, at the corporate level, have grown almost as mighty as they are themselves, and the multinational corporations are not even their subjects. Technological sophistication often finds government reliant on the targets of putative regulation for the expertise to know what rules to make, the means to detect departures from rule, and the sanctions to enforce them. Modern governments operate less and less by passing universal legislation, more and more by exerting influence in a policy or issue »network« (see e.g. Marin and Mayntz 1991; Marsh and Rhodes 1992; Dierkes and Hoffman 1992; Greenwood et al 1992). The aim is, almost perforce, the Spinozan one, so to rig the arena that the target actors see it as in their interest to go in the direction the government hopes they will.

One classic solution has been to get the corporate actors to agree amongst themselves what standards they should follow and to devise their own sanctions. Most of the regulation that takes place in the United States, say Bardach and Kagan (1982:217), is in the hands not of government officials but of inspectors appointed by associations of manufacturers, following rules drawn up by conventions of technical experts. In Europe, this is the province of »procedural regulation« (Mayntz 1983) and *reflexive law* (Teubner/Willke 1984).

But the achievement of common industrial standards, or other such agreements, involves a shift in the relations between such corporate actors, from market competition, which can be »discourseless« (Gretschmann 1986:389), towards a degree of cooperation, which requires communication. This shift in many older industries was generated in a previous era, in self-defence and from the need for collective strength in negotiations with government over, for example, import quotas, duties, price controls, safety regulations and the like; and markets have always been susceptible to aggressive price-fixing rings and other cartels. In some non-market areas like law and medicine, common standards are agreed, monitored and sanctioned by »professional« bodies with statutory backing.

But in newer industries, like soft drinks in the 1930s, pop music in the 1950s, and compact disc manufacture in the 1980s, trade associations might not exist when government came under pressure to fix standards. And there are sectors of modern life which are not market-oriented yet are not »professionally« organised either, or dubiously so, as in education, social welfare, recreation and the arts, and the voluntary and charitable sector generally. Here government must either regulate unilaterally, with all its accompanying opprobrium, or organise to bring about self-regulation.

Formalisation of such a clarified arena consists of any action by government to *register* these interests and any attempt to encourage the shift to communication among them for a specific purpose (such as arriving at an industry standard). This is a collibratory intervention, albeit in its weakest form, because by and large it circumscribes the freedom of action of the strongest actors by obliging them to use rational argument rather than market clout or (in non-market arenas) coverage and standing, and gives »voice« to less substantial actors out of proportion to their share of the market or field. It imports the political decision method of majority rule, enhancing the importance of numbers and devaluing size. That is not to say that the »giants« may not still get their way, of course. It also gives *government* a »platform«, and government may have a big stick of its own at its back: usually the threat of an imposed regulation if the corporate actors cannot agree to fix their own standards.

In its least forceful form, such a formalised arena becomes a *forum* in which the necessity, the scope, the sanctions and the precise terms of any proposed change in the law affecting these ac-

tors can be discussed. In more vigorous forms, an association can police its own agreements and punish errant members. If the government has bargained a measure with such an association's leaders and obtained their commitment to recommend it to their members, government is effectively harnessing the association's organisational loyalties to government's purposes. When the bargaining body is a neo-corporatist tripartite one, Mayntz says, its essence is »the reciprocal enjoyment by the peak organisations of capital, labour and government of each other's internal control capacity» (Mayntz 1983:140).

Peak associations are nowadays found in all modern industrialised countries and in virtually all sectors – religious, charitable, heritage and environmental protection, child and animal care, arts, entertainment and sport, and so on. They have a special tradition in Germany, where the *Spitzenverbände* were formalised by procedural regulation and legally recognised earlier than in other European countries, some of them having public law status (Offe 1986). In Britain and other non-public law countries some professional bodies have a statutory basis which gives their rulings legal force in much the same way, with the same formal expectation that the internal problems of the professions can be settled internally. But this does not extend to individual industrial associations or, for example, local Chambers of Trade, as in Germany.

Once an association is formalised and working satisfactorily in arriving at and maintaining standards, it becomes a potential locus for collusion manipulation, if government sees an advantage in strengthening the hand of one group within it, or weakening that of another. When the German system of self-administering health insurance funds was set up by Bismarck in 1883 the funds soon came to practically determine the fees of the doctors who worked with them, until in 1913 the doctors succeeded in setting up a collective bargaining forum. By the 1970s, however, the relative power position of the doctors and the insurance funds had reversed, partly because of lack of solidarity among the funds. In the interest of checking the escalation of health costs the ministry took steps to reduce the differences between funds, and so strengthen their bargaining capacity – a good example of collaboration (Lehmbruch 1992; Dohler and Manow-Borgwardt 1992).

In England it is a live question what government must do when the standards arrived at in a peak association are simply ignored by its mem-

bers, in the cases of self-regulation in the financial markets, of failures in corporate governance, and of self-regulation of the Press. The government is, of course, being urged to legislate statutory standards for bureaucratic policing, though encouraging bolder action by institutional and other shareholders and trade unions might be a better solution. A British Minister recently floated at a party conference the idea of a voluntary 'Ombudsman' for the Press to safeguard individual privacy against intrusive photographers and 'door-stepping' reporters, to strengthen current self-regulating mechanisms and avoid statutory legislation – an idea now taken up by the industry's Complaints Commission.

Conclusion. To sum up, then: I have not tried to do more than give a single generic name to a form of government intervention that has been well known, in its various guises, almost since government was invented, and yet not recognised as a *category*. Rulers from time immemorial have taken advantage of disputes between their peers or between their mighty subjects, and leant one way or the other as suited their own ends. But it is not a mode that can substitute for all other modes of government intervention.

First, it works only where relatively equal forces are already keeping each other in check: and too vigorous intervention may destabilise that balance. Giving loan guarantees to applicants whose financial characteristics fell too far below the thresholds for a commercial loan will reduce eventual cash flow to the point where the system cannot sustain itself. The rapid Bank Rate changes announced by the Bank of England on the morning of »Black Wednesday» (16 September 1992), despite or because of their unusually high steps, not only failed entirely in their purpose to secure the exchange rate of the pound sterling, because the underlying stability of the international money market had already been destroyed by currency speculators, but indeed, made things worse by confirming that the British authorities were »on the run», thus adding a twist to the downward spiral from which the speculators intended to profit.

Second, it cannot be used repeatedly or as routine. Injecting finance into a weaker contestant to even up resources, if then regularly repeated, becomes merely a commitment to subsidise, with less and less reference to the social dynamic. A handicapping of one group with a view to »levelling the playing field», if kept in place unmonitored, becomes a simple regulatory activity with no »balance» content. If a government, en-

couraged by initial success, loses sight of the structural objective and indulges in more and more handicapping, this may become a 'vicious circle' and lead to the death of the self-policing, so that government eventually has to institute regulation of the side left in possession of the field. Something like this may have happened in British industrial relations.

Third, it emerges from a pluralist political culture and may not be available where, for instance, one social cleavage dominates all others. Many states manage to maintain a precarious unity even though riven by religious, linguistic, or ethnic/nationalist divisions; but this is likely to require pretty constant attention by government to keep the pot from boiling over, and the smallest action to use such conflicts for a programmatic purpose other than merely preserving order is likely to prove destabilising. Racism, xenophobia, intergenerational tensions and sexual politics are likewise »no go areas» for collibratory interventions.

Fourth, some social conflicts are *not* self-policing; on the contrary, they constantly take up a great deal of government's energies, to preserve public order, or to ensure national economic development, or to restrain separatism, and so on. Collibration is not an option in these conditions, which in practice may well obtain in most countries of the world today, so that optimum conditions are probably found only in a handful of relatively-pluralist societies in Europe, North America and Australasia.

The main attractiveness of collibratory methods to governments is that, other things being equal, they give a cheap, non-committing and unobtrusive alternative to coercive regulation. There is often no need to specify objectives or criteria, and the executing energy is supplied by the rival social actors. The disadvantages of collibration are its precariousness – things can easily go wrong; its low targetability – it does not offer precisely predictable results; and its rapid decay – it cannot be routinised. From the citizen's point of view, it can pose problems of audit and accountability, though no more than the diplomatic activity of government, which in many ways it resembles.

In an emerging political culture where governments of all colours are committed to at least a measure of deregulation, disinvestment, and devolution of executive tasks, where enforcement of authoritarian rules is in any case deeply unpopular, and where the state has for many purposes shrunk to little more than one peak asso-

ciation among many, a technique of government intervention built upon the encouragement and maintenance of social self-policing and self-regulation would nevertheless seem to have a great future.

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