

quickly and not for rational reasons. Until and unless we know what changes are in fact “best,” it is far better to accept certain “relatively absolute absolutes,” both in ethics and in the rules defining the social order. And we cannot really know what fundamental or constitutional changes are needed until we are able to observe the working of a given set of institutions over time, through a long succession of events. The willingness to do this, to play a series of games by the same rules in order to evaluate properly the rules themselves, is the essential attitude that is required. The need for this attitude is not, of course, confined to the monetary problem. The monetary problem does serve, however, to point up sharply the general relevance of the attitude that is more generally required for the maintenance of orderly civilized life.

Specifically, with the emergence of a genuinely constitutional attitude, there are many possible monetary systems that would work well, that would ensure an adequate degree of monetary predictability. Without the emergence of this attitude, there is no monetary system that will work well, and continued monetary chaos, of sorts, can be expected to prevail.

Generality as a Constitutional Constraint

I. Introduction

I appreciate the opportunity to visit Japan again and, especially, to speak to this meeting of the Asian Public Choice Society. It is nice to see so many of my Japanese friends again, many of whom have been visiting scholars at our Public Choice Center in Virginia, either in Blacksburg or in Fairfax (and, for some, both). For three decades now, I have been both pleased and surprised at the reception accorded to the public choice research program in Japan. My residual fear has always been, and this applies to all national communities outside the United States, that the research program in public choice has been too closely tied to the historical and institutional United States setting to have much international applicability, even if, on its own, the program has been developed in quite abstract formulations. The interest expressed by both Japanese and European scholars over the years has helped to mitigate this fear.

As many of you know, my own interest and research emphasis have always been on the constitutional part of the public choice program—on the choices among rules or constraints within which ordinary political decisions are made. This work involves, in its positive variant, analyses of the working properties of alternative sets of rules on patterns of political outcomes and, in its normative extension, discussion of optimal or efficient structures. Again, as many of you know, in recent years we have called this part of the

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inclusive public choice program “constitutional political economy,” and we have tried to encourage particular research through establishment of the journal *Constitutional Political Economy*.

I do not propose here to try to summarize the comprehensive research programs in constitutional political economy. I want to limit this lecture to a summary treatment of my own program over the last four years—a program that has now culminated in a book written jointly with Roger Congleton and entitled *Politics by Principle, Not Interest*, which will be published by Cambridge University Press, presumably early in 1998.¹ This book develops, both analytically and in applicability, the generality principle, or norm, as a constraint that might be imposed constitutionally on the operation of majority rule politics.

II. Relation to Other Work

I can perhaps give you an introductory idea of this work by relating it to other writings, both my own and that of others. The most direct precursor is F. A. Hayek in his 1960 treatise, *The Constitution of Liberty*.² Those of you who know this book will recall that Hayek’s main theme is the necessary place of the rule of law in any liberal order—with the rule of law defined in terms of the generality norm. Persons are to be equal before the law and are to be equally treated by the law. Everyone is to play by the same rules; there are no persons or groups who are to be either specially privileged or specially disadvantaged.

This principle or precept is a long and well-understood part of post-Enlightenment liberal thought, and it has informed legal philosophy for at least two centuries. The principle also finds embodiment in legal structures throughout the world—both as formally stated and as informally applied. Only very recently, and then only in fringe groups, have we found legal scholars who would overtly advocate departure from the generality norm in

1. James M. Buchanan and Roger D. Congleton, *Politics by Principle, Not Interest: Toward Nondiscriminatory Democracy* (Cambridge and New York: Cambridge University Press, forthcoming).

2. F. A. Hayek, *The Constitution of Liberty* (Chicago: University of Chicago Press, 1960).

the application of law itself. (I should add that I speak here only for United States legal scholarship.)

Our effort in the book may be described, in one sense, as an extension and elaboration of Hayek’s theme. What we do, reduced to its essentials, is to suggest that the generality principle be extended to the realm of political action, that is, beyond the law as ordinarily interpreted. Indeed the subtitle of our book is *Toward Nondiscriminatory Democracy*. We suggest that, in part, the generality norm has not been explicitly extended to politics due to the heritage of idealism in political theory and that a rather direct implication of the public choice exorcism of romance from political action should be the recognition that some generality-like constraint is required.

I can also relate this current effort to earlier works of my own. In our book, *The Calculus of Consent*, Gordon Tullock and I analyzed the choice among constitutional rules for making collective decisions.³ That work was motivated and informed by Knut Wicksell’s seminal insight concerning the relationship between economic efficiency—defined in the standard manner—and unanimity as a collective decision rule. In a sense, our book might have been interpreted as a criticism of majority rule or majoritarianism with the subsidiary theme that, for many collective actions, a supermajority or qualified majority, short of unanimity but more inclusive than a simple majority, might be preferred.

I should not propose to modify in any way the analytical argument in *The Calculus of Consent*. However, in the three and one-half decades since that book was initially published, I have come increasingly to recognize, and acknowledge, that majority rule is equated in public attitudes with democracy, in some rather deep evaluative sense, and that proposals to impose constitutional requirements for qualified or supermajorities are likely to get little support. This recognition has prompted me to analyze alternative means through which collective action might be constrained. The present effort is, therefore, predicated on the maintenance of majoritarianism as the basic decision rule, while opening up the possibility of constraining the operation of this rule by restrictions on the set of feasible outcomes.

3. James M. Buchanan and Gordon Tullock, *The Calculus of Consent: Logical Foundations in Constitutional Democracy* (Ann Arbor: University of Michigan Press, 1962).

III. The Elementary Logic of Majority Rule

Public choice theory has been seriously flawed from its beginnings by the implicit presumption that the alternatives for choice—the members of the choice set—are exogenous to the constitutional rule through which choices are to be made. Early analysis in public choice concentrated on pairwise voting choices between alternatives (candidates, motions, positions) that were simply presented to the relevant electorate, as if by some external source. There was no recognition of the obvious fact that alternatives must, themselves, come from somewhere and that the rules might be influential in generating the choice set. In application to simple majority voting, an alternative that is majority-dominated or preferred for all members of any and all possible majority coalitions would never be presented for consideration. The criteria of domination and nondomination, familiar from Paretian welfare economics, can be directly extended to any collective choice rule.⁴

The elementary logic of a majority voting rule is straightforward. Majority voting means what it says—the majority rules the minority. Almost by definition, symmetry in result or outcome is ruled out; any symmetrical result will be dominated by a nonsymmetrical result, regardless of the makeup of the coalition that assumes control.

Consider the simple majority voting game in which a given value is to be divided among three persons. The symmetrical solution would assign one-third of this total value to each of the three members of the group. Note immediately, however, that this solution is dominated, for any majority, by a solution that assigns all of the value to the two members who happen to make up the majority coalition. The symmetrical solution, or distribution of value, would never, therefore, be presented for a vote by any potential majority coalition.

I have found it helpful to use the simple two-by-two matrix illustration to demonstrate the elementary logic here, despite the necessary collapse into two dimensions. Consider two persons, *A* and *B*, but think of these persons as coalitions that might rotate sequentially in positions of collective choice authority. Draw in payoffs in the four cells of the matrix, ordered precisely as such payoffs are found in standard versions of PD (prisoners' dilemma)

4. See my paper "Majoritarian Logic," forthcoming in *Public Choice*.

games. For our purposes here, however, the interaction in question is presumed to have been collectivized. A solution does not emerge from the separated and independent choices of the two persons. Instead a single outcome or solution is to be chosen by the person or coalition that assumes collective decision authority. The results are evident. If *A* is in a position of political power, the off-diagonal solution that differentially rewards *A* and penalizes *B* will be chosen. And similarly for *B*. If *B* is the decision maker, the off-diagonal solution that differentially rewards *B* and penalizes *A* will be selected. The symmetrical or on-diagonal solution in which both players or participants are benefited, by comparison with the no-action or status quo alternative, will never emerge from a "voting rule" that assigns decision-making authority to less than the full membership of the group. Note that replacement of majority (or in this case one-person rule) by unanimity will generate the symmetrical, and Pareto-superior, outcome.

IV. Eliminating the Off Diagonals

I am forced by space and time constraints here to summarize much analysis—some of it highly abstract—into a relatively short summary treatment, but I hope that the direction of the argument is clear. The elementary logic of majority rule must generate off-diagonal solutions; this logic dictates that members of majority coalitions are differentially advantaged relative to members of the polity outside these coalitions; majoritarian democracy is necessarily discriminatory in its operation, until and unless this feature is explicitly constrained.

It is at this point that the generality principle takes on its normatively desirable attributes. If we can think of generality in terms of symmetry in treatment, as if choices are among the cells of the diagonal whatever the dimensionality of the problem, we do not need to replace majority rule with some rule that requires more than majority agreement. For me, this point is the critical one. Majority rule can be forced, by the nature of the constraints on the choice set imposed by the generality norm, to operate much as if it were a unanimity rule. In the previous illustration of the simple two-person model, application of the generality constraint would, of course, make the operation of majority rule fully equivalent to the unanimity rule. In more extended, and more realistic, models in which both the number of options

and number of members of the total electorate are expanded, majority rule constrained to choose only among locations or final positions along the diagonal would not produce results fully analogous to the unanimity rule. But as a generality norm constrains choice options to those along the diagonal, even if n -dimensional, the set of feasible options is dramatically reduced, and, importantly, overtly discriminatory treatment of minority members is effectively prohibited.

V. From Abstract Models to Applications

The elementary analysis, which I have done little more than sketch out earlier, is relatively straightforward, and, to me in any case, this analysis is both aesthetically and ethically appealing. In effect, this analysis translates the normative implications of elementary public choice theory into a politics that would embody the equivalent of the idealized rule of law. Through this analysis, we can perhaps begin to sense, abstractly, just what a genuinely nondiscriminatory majoritarian democracy would look like. As an ideal, it becomes quite exciting.

It is more difficult to translate the abstracted ideal into reality—even the reality that we deal with as academicians—than the analysis might itself indicate. To take this step, we must, and quite specifically, put precise labels on the rows and columns of our imagined n -dimensional matrices. What does it mean to say that solutions are either on or off the n -dimensional diagonal in the reality of modern politics?

In our book, we try to make several applications, with more or less success. Let me consider, first, the elementary fiscal setting, in which a commonly used public good is financed by taxes paid by separate members of the political community. David Hume's familiar example of the farmers who live alongside the common swamp or meadow that needs to be drained is called to mind here. To the extent that the benefits are equally available to all, once the investment is made, we can, plausibly I think, make the claim that the members of the group are treated symmetrically on this side of the fiscal account. But what is the tax side equivalent? Here it seems that symmetry in treatment would involve equal tax payments by each farmer. In this simple setting, with the outcomes constrained to those that embody equal taxes and equal availability of the public good, majority rule could be allowed full

operation with no concern about undue or discriminatory exploitation of minority by majority. This remains true even if and when separate persons do not agree on their preferred results; the majoritarian solution is that which tends to meet the preferences of the median voter, as among the alternatives along the diagonal.

We move a step closer toward political reality when we drop the implicit assumption that the members of the political community are equal in their taxpaying capacity. What is the tax side equivalent of generality or symmetry in treatment when persons differ, perhaps very substantially, in their ability to pay taxes? What, if any, plausibly acceptable base for taxation, income or wealth, must commence from major differences among persons in their pre-tax positions?

It seems to me here that an argument can be made to the effect that a flat rate or proportional rate on an income base offers the closest approximation to meeting the generality norm. The elementary logic of the analysis suggests to me that Einaudi's scheme to the effect that each and every unit of value should be treated as equal for tax purposes carries considerable normative weight. In many respects, a flat tax, without exemptions, deductions, credits, or other special dispensation, meets the criterion of generality.

Differing members, and groups, in the electorate will, of course, differ as to the level of taxes to be imposed, and, residually, on the size of the overall budget. But the tax-rate structure cannot be used, deliberately, by a majority coalition as a means of exploiting members of a political minority, whether applied directly or indirectly. If constrained in this way, I, for one, would be quite willing to allow majoritarian decision processes to work their will.

If we shift outside the financing of public goods and consider direct transfers, it seems to me that the generality norm suggests that all direct transfers should take the form of equal-per-head payments—sometimes called demogrants—again without exemptions through means tests or otherwise. Note that the financing of demogrants through the levy of proportional or flat-rate taxes will, indeed, allow for some, perhaps considerable, redistribution through the fiscal process. Persons who are net taxpayers under this scheme will tend to prefer lower rates of tax, and transfers, than those persons who are net transferees. Even here, however, there is no overt discrimination involved, or so it seems to me.

I cannot, of course, go over the many other applications of the analysis

here. Clearly, any particularized regulation or restriction on this or that market would violate the generality constraint. If government is to regulate or to protect one industry, profession, or product category, such a constraint would require that all comparable groups be treated similarly. This constraint would, almost immediately, remove all pressures toward market restrictions, since those who seek to secure differential benefits do so in the expectation that their group will be treated advantageously relative to other groups.

VI. Efficiency, Rent Seeking, and Generality

I previously suggested that the generality constraint was both aesthetically and ethically appealing. Let me now move into areas of discussion where economists are more at home—let me discuss the efficiency implications of a generality requirement.

First of all, let me acknowledge that, if we adopt the mind-set of the orthodox welfare economist and hold fast to the standard definitions of economic efficiency, there may seem to be little or no relationship between the two criteria: efficiency and generality. Would a flat-rate tax on incomes, without exemptions or deductions, with revenues devoted to the financing of a Samuelsonian public good, satisfy the necessary conditions for Pareto-Lindahl efficiency? Only under a specific combination of elasticities of demand and supply could this question be answered affirmatively.⁵ If divorced completely from the politics of implementation, efficiency in financing public goods and services, or transfers, would dictate differential taxes on any given base, not general taxes of the sort imposed under any generality constraint.

We cannot, however, leave out the political structure through which we might expect both budgetary and taxing decisions to be made. That is to say, public choice cannot be ignored. And I should argue that, when political decision structures are analyzed, and particularly those of majority voting rules, a generality constraint will enhance rather than retard the approach to any efficiency standard. There is no more likelihood that political majorities

5. See my early treatment of this issue, "Fiscal Institutions and Efficiency in Collective Outlay," *American Economic Review* 54 (May 1964): 227–35.

would, indeed, implement the criteria for tax allocation dictated by the economists' efficiency calculus than that the two-person majority in the simple distribution game previously discussed would adopt the symmetry solution.

However, if constituents know, in advance, that is, constitutionally, that taxes for the financing of public goods are to be imposed *generally* on a designated base, there is no incentive for investment in efforts to secure differentially or discriminatorily favorable treatment, on the one hand, or to avoid differentially unfavorable treatment, on the other. The waste of resources in tax-related rent seeking would be very substantially reduced, if not totally eliminated. There would, of course, remain advantages to membership in majority coalitions, since constituency groups may differ over preferred budgetary size and composition, even under generality constraints on taxes, transfers, and on public goods. But clearly the difference between majority and minority status would be very substantially reduced under generality and, along with this, a reduction in fiscally motivated rent seeking. Resources that are spent on lobbying effort can, of course, be productively employed in alternative value-generating uses.

VII. Generality in Modern Democracy

One reaction to the inquiry that I have sketched out in this lecture might well be to the effect that the program is much ado about little or nothing. Critics may suggest that, indeed, generality is an important aspect of modern liberal societies, but, they might suggest that the principle does describe the basic working of structures in existence and departures may be relatively exceptional. Here, I must plead provincialism in my illiteracy about other fiscal-political structures than those of the United States. In the latter, there are well-understood constitutional limits on the degree, as well as the kind, of differential or discriminatory treatment of specially identified persons and groups. Attempts to differentiate against persons in terms of defined political affiliation would be ruled out of bounds constitutionally. So would attempts to discriminate on the basis of gender, race, ethnic background, and other like characteristics.

On the other hand, and by contrast, there is no constitutional restriction against discrimination on the basis of economic position or many other characteristics. Rates of tax may vary among different income or wealth cate-

gories; and, more importantly, rates of spending benefits can be targeted to specific locations, professions, industries, production or consumption categories, and age levels. Or, on the other side of the political account, particular groups may be subjected to discriminatorily unfavorable treatment.

It is possible to imagine an activist judiciary that might rediscover in the American constitutional documents a more robust generality constraint than modern courts are likely to enforce. The United States experience in the nineteenth century does suggest that the generality principle might not require a totally novel interpretation of constitutional law.

In one sense, therefore, at least in the American context, my argument in support of generality as a constraint on the operation of majoritarian democracy becomes a plea for rediscovery of what was once a wider understanding by politicians, by judges, by academicians, and by the public—an understanding that recognizes that overly discriminatory democracy cannot retain legitimacy. My own fear, at century's end, is that the extended commitments of modern welfare democracies may have created conditions where ruling coalitions will be tempted to resolve apparent fiscal crises by moving away from, rather than toward, generality. Quasi-general programs of income support, for old-age payments in particular, may be subjected increasingly to means testing. "Targeted," rather than general, tax adjustments may become increasingly important on the agenda of political coalitions in authority, in part motivated by residual *dirigiste* attitudes, but also driven by demands of fiscal expediency.

It is surely time that we read and understand what Hayek was telling us almost four decades past. "The Constitution of Liberty" must embody adherence to the principle of generality, whether emergent in the application of ordinary law or to the operation of majoritarian politics. All citizens must be made to play by the same rules, and all politics must be nondiscriminatory in its application.

Before Public Choice

A contract theory of the State is relatively easy to derive, and careful use of this theory can yield major explanatory results. To an extent at least, a "science" exists for the purpose of providing psychologically satisfying explanations of what men can commonly observe about them. Presumably, we "feel better" when we possess some explanatory framework or model that allows us to classify and interpret disparate sense perceptions. This imposition of order on the universe is a "good" in the strict economic sense of this term; men will invest money, time, and effort in acquiring it. The contract theory of the State, in all of its manifestations, can be defended on such grounds. It is important for sociopolitical order and tranquility that ordinary men explain to themselves the working of governmental process in models that conceptually take their bases in cooperative rather than in noncooperative behavior. Admittedly and unabashedly, the contract theory serves, in this sense, a rationalization purpose or objective. We need a "logic of law," a "calculus of consent," a "logic of collective action," to use the titles of three books that embody modern-day contract theory foundations.¹

Can the contract theory of the State serve other objectives, whether these be normative or positive in character? Can institutions which find no conceivable logical derivation in contract among cooperating parties be condemned on other than strictly personal grounds? Can alleged improvements

From *Explorations in the Theory of Anarchy*, ed. Gordon Tullock (Blacksburg, Va.: Center for Study of Public Choice, 1972), 27–37. Reprinted by permission of the publisher.

1. See Gordon Tullock, *The Logic of Law* (New York: Basic Books, 1970); James M. Buchanan and Gordon Tullock, *The Calculus of Consent* (Ann Arbor: University of Michigan Press, 1962); Mancur Olson, *The Logic of Collective Action* (Cambridge: Harvard University Press, 1965).