Gwartney, J.D. and R.E. Wagner. "Public Choice and the Conduct of Representative Government," Public Choice and Constitutional Economics. Eds. J.D. Gwartney and R.E. Wagner. Greenwich, CT: JAI Press, 1988. 3-28
ISBN: 0892329351 PC014012505.pdf

1

PUBLIC CHOICE AND THE CONDUCT OF REPRESENTATIVE GOVERNMENT

James D. Gwartney and Richard E. Wagner

> It remains to be enquired whether a majority having any common interest, or feeling any common passion, will find sufficient motives to restrain them from oppressing the minority. . . If two individuals are under the bias of interest or enmity against a third, the rights of the latter could never be safely referred to the majority of the three. Will two thousand individuals be less apt to oppress one thousand or two hundred thousand one hundred thousand?[1]
>
> —James Madison (1787)

Introduction

As many of the papers in this volume illustrate, American government has undergone a dramatic transformation over the past two centuries. The original constitutional compact established a federal government with enumerated powers: the federal government could do only what it was specifically authorized to do, principally as expressed in Article I, Section 8 of the Constitution. Everything else, the Tenth Amendment made clear, was "reserved to the States respectively, or to the people". While the Constitution placed limits on the substance of governmental activity, today those limits have little force. Certainly the federal government is not limited by the Constitution's enumeration of powers. Other constitutional limitations on the federal government are often equally ignored. For instance, the Fifth Amendment prohibits the federal government from taking private property, unless it pays "just compensation" and unless the taken property is put to "public use". However, during the last 50 years the Supreme Court has gutted this protection of economic liberty. For instance, in its 1954 decision in *Berman v. Parker* the Supreme Court ruled:

The authors are Professors of Economics at Florida State University.

[1] Quote from James Madison in a letter to Thomas Jefferson, October 24, 1787. (Saul K. Padover, p.41).

> The legislature, not the judiciary, is the main guardian of the public needs to be served by social legislation . . . This principle admits of no exception merely because the power of eminent domain is involved.[2]

Such a ruling would seem to eliminate all obstacles to legislative actions involving the taking of private property.[3]

At least with regard to economic functions and rights, we no longer possess a constitutionally limited government. Congressional majorities are now largely free to legislate as they choose, with government being limited only by the requirements of electoral competition. The framers of the Constitution feared this situation. After conducting an extensive study on the history of governments, James Madison warned against the gradual erosion of individual liberty under majoritarian democracy. Madison concluded:

> Since the general civilization of mankind, I believe there are more instances of the abridgment of the freedom of the people, by gradual and silent encroachments of those in power, than by violent and sudden usurpations: But, on a candid examination of history, we shall find that turbulence, violence and abuse of power, by the majority trampling on the rights of the minority have produced factions and commotions, which, in republics, have more frequently than any other cause, produced depotism. If we go over the whole history of ancient and modern republics, we shall find their destruction to have generally resulted from those causes.[4]

Madison sought to design the U. S. Constitution in a way that would stave off these dangers arising from majoritarianism. Clearly he was not entirely successful. We have moved quite far down the path Madison feared. However, some encouraging intellectual signs of a reawakening interest in the importance of constitutional limits on government are now observable. In this chapter, and in the next, we shall try to explain how the scholarship in the theory of public choice that has emerged during the past 25 years supports Madison's central insight about the importance of constitutional controls over government. In this chapter, we seek to explain the main defects that characterize political regimes where legislative majorities have practically unlimited ability to legislate. In the next chapter, we explore the constitutional implications of this public choice scholarship, and in so doing perhaps provide some useful perspective on many of the remaining essays in this volume.

[2] *Berman v. Parker* (348 U.S. 26; 1954) at 32 (citations omitted).

[3] See Richard Epstein (1985 and Chapter 9 of this volume) and Bernard Siegan (1980) for details on this point. Perhaps the most blatent evidence of the judiciary's failure to uphold the rights of private property owners against legislative action is *Hawaii Housing Authority v. Midkiff* (467 U.S. 229; 1984). In that case, the court permitted the State of Hawaii to use the power of eminent domain to take land and apartments from their owners and in turn to sell them to the previous tenants.

[4] See Padover (1953, pp. 46-47).

Economic Attributes of Good Government

Many economists, as well as other scholars, have written on what they think constitutes the desirable scope of government. Despite the many specific differences that a detailed comparison of those scholars would reveal, there would also be substantial agreement that there are two primary economic functions of government: to maintain order and to provide public goods. These functions correspond to what James Buchanan (1975) conceptualizes as the protective and the productive states.The protective state refers to government's maintenance of a framework of security and order, and entails the enforcement of rules against theft, fraud, and the like. Government is assigned a monopoly on the use of violence which is to be used to protect citizens from each other and from outsiders. Thus, the protective state seeks to prevent individuals from harming one another and to maintain an infrastructure of rules within which people can interact with one another. The crucial ingredients of the latter include the enforcement of contracts and avoidance of restrictions, regulations, and differential taxes which restrain exchange.

Thomas Jefferson believed that such a protective state was the *sine qua non* of good government. In a letter to Andrew Jackson, Jefferson wrote:

> A wise and frugal government, which shall restrain men from injuring one another, which shall leave them otherwise free to regulate their own pursuits of industry and improvements, and shall not take from the mouth of labor the bread it has earned. . . This is the sum of good government.

Beyond the maintenance of order governments might also be able to enhance the wealth of their members through undertaking productive activities that cannot be organized efficiently through market transactions. This activity of the productive state is captured by Abraham Lincoln's famous dictum to the effect that the legitimate object of government is to do those things that people cannot do at all, or very well, acting in their separate and individual capacities. The theory of public goods explains why there are certain types of activities that cannot easily be provided through market transactions, principally because it is difficult, if not impossible, to restrict consumption to those who pay for the service. It is relatively easy for a painter to restrict his services to those who pay him, and so the painting of houses can be organized efficiently through market transactions. But it would be quite difficult, if not downright impossible, for someone who builds a dam to control flooding to withhold flood protection from those who do not pay. In the presence of such public goods, governments have the potential for adding to the wealth of a nation—though, as we shall explain below, that potential will not automatically be realized, but rather will be realized only to the extent that constitutional arrangements are appropriate to the task.

The Economic Competence of Government

Just because it is possible to conceptualize government normatively as fulfilling the requirements of the protective and the productive states, it does not follow that actual governments perform as those models describe. The actual conduct of government may deviate, perhaps sharply, from that characterized by the conceptual models. To say what government should do, does not itself imply that this is what governments actually will do.

For various reasons government may lack the competence required to fulfill its protective and productive functions. The problem of the state's lack of competence was expressed by George Stigler: "We can get on a bus labelled Economic Reform, but we don't know where it will take us" (1975, p. 24). The bus might not take us to its announced destination because the driver doesn't know how to get there. Alternatively, it might not take us there because the driver doesn't want to go there, regardless of the announced destination. The competence of the state may be insufficient to the fulfillment of its protective and productive tasks because it lacks the necessary *knowledge* or because it lacks the necessary *incentive*. Between these two components of the competence question, incentive has so far received the greater attention by public choice scholars. The central point of departure taken by these scholars is that the incentives contained within a particular system of government will determine whether or not government's power to tax, spend, and regulate is used as envisioned by the normative justifications.

Public choice scholars seek to explain how political processes actually work. They do not view government as some organic entity that always makes decisions in the public interest. Nor do they view it as a mechanism that automatically corrects the failings of the market process. Rather they view government as an alternative method of social organization—as an institutional process through which individuals collectively make choices and carry out activities.

In a democratic setting, individual preferences will influence the outcomes of collective decisions. Just as differences in market structures influence market outcomes, so too, differences in the structure of the political process will influence collective outcomes. Public choice scholars seek to understand the linkage between institutional arrangements—including alternative decision-making rules, political structures, and constitutional constraints—and collective choices or outcomes. To do this requires the development of a logically consistent theory linking individual behavior to collective action, analyzing the implications of the theory, and

testing the implications against events in the real world.[5]

Central Elements of Public Choice Theory

Public choice analysis is to governments what economic analysis is to markets. In both cases, outcomes will reflect the choices of individuals and the incentive structure which influences those choices. In the political arena, the major players are voters, politicians, and bureaucrats. It is useful to visualize the political process as a complex set of interrelationships among members of these three groups. Like consumers in the market, voters use their electoral support, money, and other political resources to express their demand for legislation. Like business enterpreneurs, politicians are suppliers: they design and shape legislation. Finally, just as managers and employers are assigned the details of the production process in the market, bureaucrats perform this task in the public sector.

The Self-Interest Postulate

Economists have used the self-interest postulate to develop theories which enhance our understanding of how markets work. Public choice represents an extension of this postulate to politics. The self-interest postulate implies that incentives matter—that they influence personal choices in a predictable manner. If something becomes more costly, people will choose less of it. If something becomes valued more highly, people will choose more of it. The likelihood an option will be chosen by an individual is inversely related to its personal cost and is directly related to the expected personal benefits.

Since there is no evidence that entrance into a voting booth or participation in the political process causes a personality transformation, there is sound reason to believe that the motivation of participants in the market and political processes is similar. The voter who selects among political alternatives is the same person who selects among market alternatives. If Jones is influenced by expected personal benefits and costs when he makes choices in the department store, it makes sense that he will be similarly influenced by personal benefits and costs when he makes choices in the voting booth. Likewise, the men and women working in government as politicians and bureaucrats are pretty much like their counterparts in the private sector. If pursuit of such rewards as personal wealth, power, and prestige motivates people in the marketplace, there is every reason to believe that these same elements will motivate them in the political arena.

Contrary to the charges of some, the self-interest postulate does not imply

[5] For a thorough survey of this scholarship, see William Mitchell (1983).

that either market or political decision-makers are greedy materialists who care only about themselves. People act for a variety of reasons, some selfish and some humanitarian. The self-interest postulate implies that the choices of both the humanitarian and the egocentric change in a systematic way in response to changes in personal costs and benefits. Both types of people will be more likely to support a policy that generates benefits for others (for example: farmers, the poor, or the elderly) when the personal cost of doing so is low. Similarly, both the humanitarian and the egocentric will be more likely to discover and act upon opportunities to reduce costs the higher the personal gain from doing so.

Furthermore, the motivation for an action is not always a good indicator of its result. It is an error to suppose that actions motivated by self-interest necessarily conflict with the general interests of society. As Adam Smith noted more than two centuries ago, self-interested individuals directed by market prices tend to promote the general welfare even though they neither intend nor are aware of the extent to which they are doing so. Likewise, within government the extent to which the individual pursuit of self-interest is congruent with the general welfare depends on various features of governmental institutions. One of the primary objectives of public choice scholarship is to enhance our ability to differentiate between institutional arrangements that bring individual self-interest and the general welfare into harmony and institutional arrangements that leave them in conflict.

The Politician-Supplier

The economic theorist postulates that the pursuit of profit is the primary stimulus shaping the behavior of market suppliers. The public choice theorist postulates that pursuit of votes is the primary stimulus shaping the behavior of political suppliers. In varying degrees, such factors as pursuit of the public interest, compassion for the poor, and the achievement of fame, wealth, and power may influence the behavior of politicians. But regardless of ultimate motivation, the ability of a politician to achieve his objectives is sorely dependent upon his ability to get elected and reelected. Just as profits are the life-blood of the market entrepreneur, votes are the life-blood of the politician. Predictably, political suppliers will seek to promote an image and stake out positions on issues which will enhance their chances of electoral success.

Political competition more or less forces politicians to pay attention to how their actions influence their electoral prospects. If a politician refuses to support policies that are vote-getters, perhaps because he thinks the policies are counterproductive or morally wrong, he runs an increased risk of being replaced by a competitor who pays closer attention to the acquisition of votes. Thus, political competition presents even the most public-spirited politician with a strong incentive to make decisions in light of

elctoral considerations. Just as neglect of economic profit is the route to market oblivion, neglect of potential votes is the route to political oblivion. The easiest way to win votes, both in the political arena and in the market place, is to give—or at least appear to give—constitutents what they want. A politician who ignores the views of his or her constituents is as rare as a market entrepreneur selling bikinis in the Arctic.

However, while vote-seeking politicians have a strong incentive to support policies that enhance their electoral prospects, this does not mean that they will always support the views of the majority on a specific issue. In some cases a candidate may gain more votes among an intensely active minority, willing to vote for or against candidates on the basis of this one issue, than he would gain from a dispassionate majority that is rationally uninformed on the issue. This is particularly likely to happen when, as is often the case, most voters know very little about many of the items that comprise the bundle of views the politician is offering.

Politicians must also have an eye for how their actions will influence their campaign coffers. Money is the power source of politics. While votes win elections, voters must be convinced to "want" a candidate. In senatorial, congressional, and other elections involving a large electorate, the positive attributes (for example, honesty, compassion, and effectiveness) of a candidate must be projected to the voters. Various voting groups must be informed that the candidate agrees with them on key issues. Money, staff, and expertise will be required to purchase media time and promote the candidate among the voters. But this does not mean that politicians will always be scrounging for money. Political markets are two sided. Through their ability to enact or reject legislation, politicians can influence peoples' wealth in substantial ways. As we shall explore later, those who are so affected will seek out the policitians—there will be little need for politicians to go hunting for money, although some such efforts will always be rational.

The Voter-Consumer

Just as consumers use dollar votes to demand market goods, voter-consumers use electoral support, lobbying, political contributions and organizational skills to demand political goods. There are, however, some significant differences in the settings of consumer choice and voter choice, differences that affect outcomes in the two sectors.

How does a voter decide which candidate to support? Many elements may enter into this decision. The television image, perceived honesty, communication skills and experience of alternative candidates may, in varying degrees, influence the choices of voters. However, the self-interest postulate indicates that voters, like market consumers will ask, "What can you do for me and how much will it cost?" The greater the voter's perceived net personal gain from a particular candidate's platform the more likely it is that the voter will favor that candidate. In contrast, the greater the perceived net economic cost imposed on the voter by the positions of a candidate, the less inclined the voter will be to support the candidate. Other things equal, voters will tend to support those candidates whom they believe will provide them the most political goods, services, and transfer benefits *net of personal costs.*

While voters and consumers both choose the option they regard as superior to the option they regard as inferior, there are substantial differences in range of choices available to consumers and voters. Consumers in the marketplace are in a position to make marginal adjustments and choose among virtually an infinite combination of goods from many different suppliers. Consumers can buy jeans made by Levi Strauss or Jordache; computers made by IBM or Kaypro; automobiles made by Ford or Nissan; to say nothing of the many other possible options. Consumers can pick-and-choose among competing suppliers, putting together in the process a bundle of goods that best suits their needs.

It is very different in collective choice. Voters cannot undertake the collective choice analogue of choosing one supplier for jeans, another for tomato soup, and yet another for toothpaste. They cannot choose one candidate's proposed offering on social security, a second candidate's offering on foreign policy, and yet a third candidate's offering on public assistance programs. Rather, voters must choose among the bundles of issues that the different candidates represent; there is no ability to pick-and-choose particular items from among the bundle offered by the different candidates. This *bundle purchase nature* of representative democracy substantially reduces the ability of voters to register their preferences on specific issues. It also increases the ability of government to extract taxes. It is well recognized by economists that tie-in sales or full-line forcing allows a monopolist to collect more revenue from the same output than would be possible from selling the various items individually. This revenue impact of service bundling holds for governments as well, as Wagner and Weber (1975) explain.

The Political Process and Resource Allocation

The political process can be visualized as a complex set of interrelationships among voter-consumers and politician-suppliers, who direct the actions of bureaucratic producers. Insight into the operation of the political process can be gained by comparing and contrasting it with market allocation. While persons who engage in the political process and market exchange are likely to be similarly motivated—self-interest influences behavior in both sectors—the structure of incentives and constraints on behavior differ under the two institutional arrangements. The primary

insights of public choice theory reflect the analysis of how these differences influence social outcomes and the efficiency of resource use.

The Rational Ignorance Effect

Consider the incentive of individuals to acquire knowledge relevant to market and political choices. In the market, the purchaser is able to act upon additional information derived from shopping. For example, if additional shopping leads to a $2,000 savings, say on the purchase of furnishings, the market consumer could pocket the $2,000 saved—though, of course, he or she would have to bear the cost of the added shopping. In a comparable collective-choice setting, approval of the majority of voters would be required before the more economical furnishings could be purchased. Therefore, a voter could not benefit from the cost-reducing information unless he could convince a majority of voters to support the same choice. Since it will be costly to convince others to alter their choices, the net return from shopping is clearly lower when choices are made collectively.

It is similar in politics. Competing candidates are like competing stores. A consumer who investigates the offerings of competing stores to find a better deal can act directly on that knowledge. But a voter who investigates the offerings of the competing candidates can do practically nothing to act on that knowledge. He can vote on the basis of his knowledge. But citizens recognize that there is only a minuscule chance that their vote will be decisive. Since one vote is not going to decide who is elected, why should an individual study the issues and research the positions of alternative candidates? After all, the outcome will be unaffected, whether an individual voter makes an informed choice or simply chooses on the basis of current knowledge and vague impressions. Given this incentive structure, voters have little reason to invest the time and energy that would be required to cast a well informed vote. Under these circumstances, it is sensible (rational) for voters to remain uninformed on many issues—a phenomenon that has come to be called "rational ignorance" since first articulated by Anthony Downs (1957).

In failing to expend personal resources in an effort to cast an informed vote, the voter is merely exercising good judgment as to how his or her time and effort will yield the most benefits. There is a parallel between the voter's failure to acquire political knowledge and a farmer's inattention to the factors that determine the weather. Weather is probably the most important factor determining the income of an individual farmer. Still, it makes no sense for a farmer to invest time and resources attempting to understand meteorology. An improved knowledge of how weather systems work will seldom enable a farmer to avoid their adverse effects. It is the same with voters. A voter stands to gain little from the acquisition of additional information about a wide range of issues that are decided in the political arena. Since the resolution of these issues is, like the weather, out of the voter's hands, the voter has little incentive to become more informed.

Because of weak incentives to gather information, most voters simply rely on information that is supplied to them freely by candidates and the mass media. Conversations with friends and information acquired at work, from newspapers, from TV news, and from political advertising are especially important because the voter has so little incentive to spend personal time and effort gathering information. It is not surprising, then, that few voters are able to accurately identify their congressional representatives, much less identify and understand their position on issues like minimum wage legislation, tariffs, and agricultural price supports. The scanty information voters acquire merely indicates that they are responding rationally to economic incentives.

Shortsightedness In Government

The theory of property rights can be applied to enhance our understanding of how market and political processes handle the allocation of resources over time. When considering the allocation of resources across time periods, economic efficiency requires that we take account of future costs and benefits, appropriately discounted for the fact that the present value of a dollar in the future is worth less than a dollar today. When private owners possess exclusive and transferable ownership rights, they are forced to consider the present value consequences of actions that affect future costs and benefits. For example, someone who owns a farm might reduce current expenses by neglecting terrace grading that would reduce future erosion. However, the farmer cannot avoid bearing the consequences of the erosion that results. If he keeps the land, his future income will be lower. And if he sells the land, its sales price will be lower because the lower productivity of the eroded land makes that land less valuable to others.

Private investors expand their wealth by undertaking projects that generate future income of greater present value than costs, even when all or most of the costs come during the current period. For example, a tree farmer will plant and maintain trees even though those trees may not be harvested for 20, 30, or even 50 years. Of course, with the passage of time, the value of the farmer's trees will rise to reflect the increasing present value of the expected harvest-time income. Private property rights also provide resource owners with an incentive to conserve for the future. If scarcity and strong demand are expected to push up the price of a resource at an annual rate in excess of the interest rate, self-interest dictates that private owners conserve the resource for the future. When private property rights are present, prices and interest rates tie the future with the present and provide decision-makers with the information and incentive to see that

resources are properly cared for and used efficiently (Gwartney and Stroup 1987, pp. 655-57).

How does the political process handle benefits and costs across time periods? What happens *prior* to the next election is of crucial importance to incumbent politicians. Since issues of public policy are usually complex, it is often difficult for voters to anticipate *future* benefits and costs accurately. Moreover, principles of rational ignorance suggest there is little payoff from doing so in any case. Instead, voters tend to rely on current conditions. To the voter, the best indicator of how well the incumbent has done may be the state of affairs close to election day. Policies that look good around election day will thus enhance the image of incumbents, even if those policies are likely to have substantial negative side effects after the election. On the other hand, policies that generate pre-election costs in order to provide long-term gains that emerge only after the next election reduce the reelection prospects of incumbents. As a result, the political process is biased toward the adoption of shortsighted policies and against the selection of sound long-range policies, when they involve observable costs prior to the next election.

Essentially, legislators have a property right to benefits (for example, improvements in the economy) that accrue *prior* to the next election, but they lack a clear property right to gains subsequent to the election. Unlike their market counterparts, politicians are unable to benefit from wise decisions that provide payoffs primarily in the future. As a result, politicians tend to exaggerate the importance of policy impacts prior to the next election and discount heavily their post-election consequences. Positive results must be observable by election day. After all, long-range policies that improve the status of the economy 6 or 12 months after the next election may well work to the benefit of a competitor one fails to defeat on election day.

Dwight Lee and Richard McKenzie (1987, p. 131) nicely summarize the myopic nature of the political process:

> Politicians . . . are in much the same position as the buffalo hunters of the 1870s. Each knew that all would be better off in the long run if everyone reduced his slaughter of the buffalo. But in the absence of private ownership, each also knew that the buffalo he did not shoot today would be shot by someone else tomorrow. Individual buffalo hunters found themselves in a situation in which there was little to gain, but much to lose, from taking a long-term perspective and exercising restraint in the extermination of the buffalo. Political decision-makers find themselves in a situation in which there is little to gain, but much to lose, by refraining from placing short)term demands on the economy that will, in the long run, exterminate much of our productive capacity.

This shortsightedness characteristic often leads to a conflict between good politics and sound economics. Policies can enhance the election prospects of politicians when the short-term results differ substantially from the effects over a longer time period. Unfortunately, this is often the case with economic issues. Examples abound. Financing government by monetary expansion is likely to stimulate employment and output in the short-run, even though inflation, uncertainty, and instability are side-effects observable in the long run. Borrowing to finance short-term programs that benefit coveted voting blocks is attractive even though the long-term result will be higher real interest rates, less capital formation, and higher future taxes. Rent controls tend to reduce rental housing prices in the short-term, even though housing shortages, black markets, and a deterioration in housing quality are the long run result. In each case, the more positive short-term effects increase the political attractiveness of policies that are generally detrimental in the long run.

Bureaucracy and Economic Waste

The day-to-day functions of government are performed by bureaus, which derive the major component of their revenues from the periodic appropriations of the legislature rather than from the direct sale of output to consumers. In effect, the legislative body supplies the bureau with a budget along with instructions for dealing with it's assigned tasks. The function of the bureau is to transform the budget into public services.

How will bureau managers and employees operate? If bureaucrats are pretty much like the rest of us—neither more nor less virtuous or self-interested, it is useful as a first approximation to view them as seeking to maximize the size of their bureau's budget (Niskanen 1971). A larger budget will enhance the opportunities and resources available at all levels. As the bureau expands, the power, prestige, salary and other benefits to bureau managers will generally increase. At the middle and lower levels of employment, a larger budget and bureau expansion will offer additional job security and possibilities for promotion. Larger budgets are also likely to generate additional funds for office space, furniture, travel, and other resources which improve the work environment of bureaucrats. Almost every bureaucrat can expect to gain something from the growth of his bureau; it is surely a rare bureaucrat who would lose as the result of budgetary expansion.

Therefore, the people who staff a bureau can be expected to develop and unite behind a strategy designed to increase the size of the bureau's budget. Interestingly, this is true even if, as is often the case, the bureaucrats have a burning desire to serve the mission of the bureau. Employees are often attracted to a bureau precisely because they want to promote the interest of the bureau's major clients. In addition, the bureau has a strong incentive to satisfy its clients since they are often an important source of political clout. Thus, it is not surprising that bureaus sometime become,

in effect, a lobbying agency for interests they serve. For example, the Department of Agriculture is generally an advocate for farmers. Similarly, the Department of Defense tends to represent military suppliers and defense contractors. In budget matters the self-interest of the bureau and that of its client are parallel. Both want to enlarge the budget allocations of the bureau.

Political competition would seem to provide legislators with incentive to curb inefficient performance by public sector suppliers. Legislators who promote the efficient operation of government bureaus might seem likely to reduce their vulnerability to a challenge by potential competitors. However, there are four major reasons why it will be extremely difficult for a legislative body to control the budget of a bureau and promote operational efficiency, particularly when the bureau is a monopoly supplier. First, bureaus do not have an easily identifiable "bottom line", analogous to the net income of a corporation, that might be used to judge the bureau's performance. Neither do they produce an easily quantifible output which might be used to calculate per unit costs. The absence of a well-defined index of performance provides managers in the public sector with considerably more leeway to gloss over inefficiency and pursue personal objectives than is available to their counterparts in the market sector.

Second, the major source of information with regard to the bureau's performance invariably comes from a biased source—the bureau itself. While the managers of the bureau know far more about the costs of alternative outputs than anyone else, they also have a strong incentive to satisfy goals other than the minimizing of cost. A hospital administrator wants the most elaborate equipment. A university wants the finest computer. A fire chief wants the most advanced, showy fire truck. Predictably, the bureau will supply the legislative body with information indicating that it is stretched to the limit, supplying an immensely valuable service at a rock bottom cost. Dire predictions for the fate of the bureau's clients (or for society as a whole) will be projected if the bureau's budget is not increased. Of course, legislators know that bureau chiefs follow this strategy. Nonetheless, since they generally lack solid evidence capable of contradicting the bureau's cost estimates, legislators will find it difficult to restrain the bureau.

Third, legislative control is complicated because inefficient performance does not lead to the termination of an activity in the public sector. If a private business incurs costs in excess of the value of the service it provides, bankruptcy will eventually bring the operation to a halt. The public sector lacks a parallel process for controlling inefficiency and halting unsuccessful experiments. In fact, failure to meet objectives often generates pressure for larger appropriations in the public sector. If the crime rate is rising, the crime prevention agencies will lobby for additional funds. If the illegitimacy rate is soaring, the welfare industry will demand more funds for Aid For Dependent Children. If the Department of Defense is beset with cost overruns, you can bet that supplemental appropriations will be requested.

Fourth, bureaucrats and their clients often form a powerful coalition pressing for enlargement of the bureau. Since bureau employees and clients are highly concentrated, their interests are likely to be politically more effective than those of widely dispersed taxpayers, as we explain below. Of course, interest groups served by the bureau can be expected to be at the forefront of those advocating an expansion in the bureau's budget. In addition, the bureaucrats themselves may be a political force with which to reckon. Thus, the demand of persons *supplying* bureau services will supplement the demand of those *receiving* services from the bureau. Together these forces will tend to result in overproduction of bureau output (Niskanen 1971).

Beyond these reasons why it would be difficult for a legislative body to promote efficiency within the bureaus it oversees, it is questionable how strongly interested the legislature would be in bureau efficiency. To a substantial degree, oversight committees are comprised of those legislators who have high demands for the services of the bureaus they oversee. Agricultural committees, for instance, are likely to be staffed by legislators from rural areas; banking from urban areas with strong concentrations of financial institutions. As a result, oversight committees are more likely to favor larger budgets for the functions they oversee than the rest of the legislature.

In summary, economic analysis indicates that bureaucrats confront a perverse incentive structure that will lead to both high per unit costs and a rate of output for which the marginal value of the bureau's output is less than its cost. It is important to note that the fault lies with the organizational structure and not with the character of public sector employees. On the whole there is no reason to think that government employees are less competent, lazier, or less committed to their work than other workers. Nonetheless, given the incentive structure under which they toil, bureaucratic inefficiency is a predictable result.

Can anything be done to improve the situation? The nature of the problem does suggest a solution. Monopoly is at the core of bureaucratic inefficiency. Since bureau suppliers are generally monopolists, legislative monitors do not have alternative suppliers to provide a basis for evaluating their cost effectiveness. Both decentralization and contracting out offer an alternative to bureau production (Bish, Chapter 16 of this volume). Both would provide legislative bodies with a competitive supplier and additional information on costs which in turn could be used to improve the monitoring of remaining bureau suppliers.

The real world evidence is consistent with our analysis of public sector efficiency. The experience of Scottsdale, Arizona indicates that contracting of fire prevention services results in costs approximately 50 percent less than communities of similar size that rely on municipal production (Ahlbrandt 1973). A study by E. S. Savas of Columbia University of refuse collection in 260 cities found that cities contracting out the collection of garbage to private firms provide the service at less than two-thirds of the cost of municipal government production (Savas 1982). A more recent study by Robert Bish found that "competitive provision" of garbage collection in Canada cut costs by approximately 50 percent (Bish 1986). Just as competition works in the private sector, there is both theoretical reason and empirical evidence indicating that it also works in the public sector.

Fiscal Discrimination and Majoritarian Democracy

In the market, a consumer who wants to obtain a commodity must be willing to pay the price. The beneficiaries of market goods and services generally bear the cost of their provision. However, in the public sector, the persons bearing the cost of the activity are not always the primary or even the secondary beneficiaries.

In an earlier era, constitutional limitations effectively restrained fiscal discrimination—that is, policies which were designed to benefit various sub-groups of the population at the expense of their fellow citizens. As we discussed earlier, these constitutional limitations have eroded with the passage of time. The United States has gradually moved from a limited constitutional government with enumerated powers to a government with virtually unconstrained authority to tax, spend, and regulate—except for limitations imposed by the majoritarian political process.

Public choice theory indicates that various problems emerge from a majoritarian process that permits government to be used as an instrument to bestow fiscal favors on some while discriminating against others. This section explains the nature of these problems and indicates why they emerge naturally from an unconstrained majoritarian political process.

Fiscal Discrimination and Legislative Majorities

The simplest form of fiscal discrimination which permits one segment of society to gain at the expense of another is the use of government by a winning majority to enrich itself at the expense of a losing minority. The theory of external costs of traditional microeconomic analysis enhances our understanding of this issue. When external costs are present in a market, economic analysis indicates that excessive output can result because the parties to the transaction need not take into account the costs they impose on others. With majority rule, the same forces are present in the political arena. When a majority (either directly or through the legislative process) decides on a particular policy, the minority must accept the policy and help pay for its cost. The democratic process puts the majority in a position to send at least part of the bill to the minority. Suppose your uncle was willing to pay 49 percent of anything you purchased. You would tend to spend more on housing, clothes, food, and transportation than if you alone were paying the bill. It is the same with the budgetary choices of majorities. Since the majoritarian process does not force the majority to consider the costs it imposes on the nonconsenting minority, the majority supports wastefully large government as a by-product.

This proposition about overly-large budgets is not affected by recognition that people who win on one issue lose on others, with the income effects of winning and losing approximately offsetting one another. Someone who wins on subsidized education may lose on auto import quotas or restrictions on agricultural output. Even though the income effects of the various transfers may aggregate to zero, the substitution effects will bring about economic waste and excessive government. Furthermore, but relatedly, it is individually rational to pursue fully the opportunities available when in a winning majority, regardless of the losses that result when in the losing minority. After all, failure to exploit opportunities for gain when in the majority will merely confer benefits on others in the form a lower tax bill.

Expansion of output into the counterproductive range is also an expected result when the benefits of a project are clearly recognizable and the costs are partially concealed and difficult for voters to identify. In fact, vote-seeking politicians have an incentive to design programs and financing methods with precisely these characteristics.[6] Projects that provide highly visible benefits (for example, income transfers, low-cost housing or "cheap" irrigation) are highly attractive to politicians. In contrast, politicians will search for financing methods that conceal the cost of government and lead voters to believe that someone else is paying the bill. Viewed from this perspective, extensive use of debt-financing, indirect taxes, money creation, and unfunded retirement programs is a predictable result. As Senator Robert Dole put it, "Taxing is much like plucking a goose. It is the art of getting the greatest number of feathers with the least amount of hissing" (*Wall Street Journal*, December 16, 1983). When benefits are highly visible and the costs largely invisible, government programs will appear more attractive than is in fact the case. Adoption of inefficient programs and over-expansion of government is a side effect of the pressure on politicians to exaggerate the benefits and conceal the cost of government programs.

[6] Sellers in the market sector have an incentive to follow this same strategy. However, the one-to-one link between payment and receipt of goods in the market sector reduces the ability of suppliers to convince buyers that someone else is paying the bill.

Fiscal Discrimination and the Predominance of Special Interest Legislation

A special interest issue is one that generates substantial personal benefits for a small number of constituents while imposing a small individual cost on a large number of other voters.[7] A few people benefit a great deal while almost everyone else loses a little bit. A majoritarian system of representative democracy is biased toward the adoption of special interest policies, even when those policies reduce the size of the economic pie. This can be seen by comparing the political gains a vote-seeking politician can expect by supporting the intense, concentrated interest of the few rather than the weak, diffused interest of the many. For the recipients of the concentrated benefits, the personal stake involved is substantial. Since the outcome of the issue is of such personal importance, the concentrated beneficiaries have a strong incentive to inform themselves and their allies and to let candidates (and legislators) know how strongly they feel about the issue. Many special interest voters will vote for or against politicians almost exclusively on the basis of whether they are supportive of their views. Special interests will also use financial contributions and other forms of assistance, to support politicians who are receptive to their views and oppose those who are not.

In contrast, consider the political payoff a representative could expect if he is supportive of the majority—the ordinary taxpayer if you like. Voters who have only a small personal cost imposed on them by the special interest policy will not care much about the issue. Most likely they will be rationally uninformed because the time and energy necessary to examine the issue and figure out its impact will be more costly than it is worth, particularly if the issue is fairly complex. Even if the members of the majority are informed on the issue, they will not feel very strong about it because it exerts little impact on their personal welfare. In addition, the bundle-purchase nature of the political process makes it virtually impossible for voters to register effectively their opposition on the specific issue, independent of other issues.

If you were a vote-seeking politician, what position would you take on special interest issues? Clearly, little would be gained if you supported the largely uninformed, disinterested majority. Support of their interests would not enhance your chances of getting elected. An astute politician who wants to succeed politically is strongly motivated to support narrow but intense over broad but diffuse interests. Those with intense interests are capable

[7] In some cases there may be well organized, intense interests on both sides of an issue. The analysis of this section applies to cases where the special interests are on only one-side of the issue.

of providing additional votes, campaign workers, and perhaps most importantly, financial contributions. In turn, the resources supplied by the special interests can be used to buy media time and take other steps to win the support of other voters.

Special interest policies are particularly attractive when they can be packaged in a manner that will make it difficult for even alert voters to recognize the cost imposed on them. The more complex the policy under question, the more difficult it is for the average voter to figure out how he or she is affected. There is an incentive for politicians to make special interest issues very complex. The special interest group will most assuredly figure out that it stands to gain from a given proposal, but the typical voter will find it difficult to determine the seemingly complex proposal's actual impact (Tullock 1966).

Special interest groups do not need to be large in order to be effective. In fact, a special interest group can be handicapped by being too numerous, and at least up to a point, it can benefit from being small in size (Becker 1981 and 1985). The smaller the interest group, the greater the leverage it has on the majority. For example, if an interest group makes up 10 percent of the population, it will cost the remaining 90 percent an average of $100 each to provide a subsidy of $900 to members of the interest group. However, if the interest group is only 1 percent of the population, the same $900 subsidy will cost other voters only about $9. Thus, the smaller the interest group, the less it costs the rest of the population to provide the interest group with a subsidy of any specified amount. Of course, the lower cost will reduce the likelihood of opposition from voters in general.

The case of agriculture subsidies illustrates the importance of this leverage effect as the size of an interest group declines. When farmers were 10 percent of the U.S. population, it would have been extremely costly to provide them with transfers equal to one-half of their income. However, when farmers are less than 2 percent of the population (as is now the case), such a transfer level can be accomplished (and was in the mid 1980s) without a substantial increase in taxes (or in the price of food products). Viewed in this light, it is not surprising that the share of farm income derived from subsidy programs has *risen* as the size of the farm population has *declined*.

Why don't the taxpayers harmed by the transfers form a coalition and throw out representatives who support such transfers to special interests? There is some incentive to do this, but it is largely ineffective because the cost of coalition formation is much lower for interest groups than for widely dispersed taxpayers. Of course, when benefits are spread among members, each individual member has an incentive to free ride, to let others expend the necessary time and money to obtain the benefits. However, free riding is easier to control among tightly knit groups like business, professional, and labor organizations or when subsidies can be obtained which primarily benefit members who contribute. Unfortunately, taxpayers are a widely dispersed group. An individual's gain from opposing any specific special interest issue will be small. Thus, the free rider problem is more serious among taxpayers, leading to organizational costs that are generally prohibitive. Stated another way, coalitions in favor of concentrated benefits are far more efficient that those opposed to the resultant higher taxes.

What evidence is there that the power of special interest generates counterproductive policies in a democratic setting? Consider the case of the roughly 11,000 sugar farmers in the United States. The cost of producing sugar in the U.S. is three or four times higher than production costs in many other countries, particularly in the Caribbean. Nonetheless, Congress has instituted import restrictions and price supports which have pushed the U.S. price above 20 cents per pound compared to the 7 cents price on the world market. As of 1986 the average U.S. resident paid approximately $6 more for sugar each year than would otherwise have been the case, while the 11,000 sugar farmers gained $1.5 billion in gross income, approximately $130,000 per farm.[8] Of course, the average "rationally ignorant" voter is unaware that sugar farmers are among the leading contributors to politicians who exert a key impact on agricultural policy. As a nation we are poorer, because we could buy sugar cheaper than we can raise it. Nonetheless, the continuation of the program indicates that the current policy toward the sugar industry is "good politics" even if it is "bad economics".

The special interest effect helps explain the presence of other counterproductive legislation. Recent legislation paying dairy farmers to slaughter their herds and leave the industry was an effort to increase dairy prices and the incomes of dairy farmers, not to promote the general welfare. Tariffs and quotas on steel, automobiles, and textiles are designed to promote the interests of these industries, and not the citizenry in general. Regulations mandating that Alaskan oil be transported by the high cost American maritime industry reflect the industry's political clout, not its economic efficiency. Acreage restrictions and price supports on feed grains, tobacco, and peanuts generate waste and promote the adoption of inefficient production methods. Nonetheless, they survive in the political marketplace because agricultural pressure groups support such policies, while most others are largely disinterested and uninformed.

[8] Since domestic producers have higher production costs, their net gain is far less than the differential between the domestic and world price paid by the American consumer. In this case, as in most others, production inefficiency accompanying the transfer erodes most of the intended benefits.

Federally funded irrigation projects, subsidized grazing rights, loans at subsidized interest rates, subsidies to airports—the list goes on and on. Policy in each of these areas is rooted to the special interest effect, not sound economic doctrine. While each individually imposes only a small drag on our economy, in the aggregate they substantially diminish our standard of living.

Rent-Seeking, Political Plunder, and Economic Waste

Rent-seeking is a term used by economists to describe actions taken by individuals and groups to alter public policy in order to gain personal advantage at the expense of others.[9] The incentive to engage in rent-seeking activities is directly proportional to the ease with which the political process can be used for personal (or interest group) gain at the expense of others. When the effective law of the land makes it difficult to take the property of others or force others to pay for projects favored by you and your interest group, rent-seeking is unattractive (Epstein 1985). Under such circumstances, the benefits of rent-seeking are relatively low and few resources flow into rent-seeking activities. In contrast, when government fails to allocate the tax cost (through user fees or similar forms of financing) of its projects to the primary beneficiaries or when it becomes heavily involved in tax-transfer activities, the payoff to rent-seeking expands. Stated another way, when government becomes more heavily involved in providing benefits to some people at the expense of others, individuals and groups will invest more resources into efforts designed to shape political outcomes to their advantage.

The rent-seeking activities, which are a natural by-product of discriminatory fiscal action by the government, generate economic waste. Resources that would otherwise be used to create wealth and generate income are wasted fighting over slices of a shrinking economic pie. People will spend more time organizing and lobbying politicians and less time producing goods and services. The employment of lobbyists, expert witnesses, lawyers, accountants, and other political specialists capable of influencing public policy and/or the size of one's tax bill will expand. In contrast, engineers, architects, physical scientists, craft workers, machine operators and other workers involved in the creation of goods and services will decline as a share of the labor force (Gwartney and Stroup 1982). In response to rent-seeking by others, individuals will take defensive actions in an effort to protect their wealth. People will not stand still while they are fleeced. Of course, those defensive actions also consume valuable resources.

[9] The pioneering work on rent-seeking was done by Tullock (1967) and Krueger (1974). For additional information on this topic, also see Buchanan, Tollison, and Tullock (1981).

As Gordon Tullock (1967) and Terry Anderson and Peter J. Hill (1980, pp. 6-7) have pointed out, in terms of its impact on resource use, rent-seeking is similar to theft. Both rent-seeking and theft are efforts to gain income by taking from others, rather than by helping others in exchange for income. Improved prospects for personal gain via either rent-seeking or theft will expand the size of the redistributive sector and attract resources away from production. Just as an increase in the incidence of theft causes individuals to purchase more burglar alarms, safety deposit boxes, locks, dogs, and firearms, an increase in rent-seeking will lead to more defensive actions designed to resist transfers. Both rent-seeking and theft lead to negative sum activity and the social waste of resources.

In recent years, government has become more heavily involved in redistributive activities. Unsurprisingly, the growth of the redistributive sector has been accompanied by an increase in the flow of resources into lobbying—the most obvious form of rent-seeking activities. Between 1976 and 1983 the number of lobbyists registered with the federal government rose from 3,420 to 6,500, and increase of 90 percent in 7 years. As recently as 1979, New York had twice as many national trade associations as Washington. D.C. By 1983 the number of trade associations located in Washington, D.C. exceeded those located in New York by nearly 20 percent. A recent study found that 65 percent of the chief executive officers of the top 200 Fortune firms are in Washington on business at least once every two weeks, up from 15 percent a decade ago (Boaz 1983). When the political process makes transfers more likely, an increase in rent-seeking is a natural by-product.

Fiscal Non-Discrimination and The U.S. Constitution

Article I, Section 8 of the U.S. Constitution stands in contrast with the discriminatory fiscal activities and special interest politics that characterize modern majoritarian governments. That clause sets forth the general budgetary power of the federal government by proscribing:

> The Congress shall have Power to lay and collect, Taxes, Duties, Imposts and Excise, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.

As Article I, Section 8 stands, the budgetary powers of Congress are tightly constrained. Spending programs must be of *common* and *general* benefit, and may not be of special benefit only to subsets of people. Similarly, the taxes necessary to finance those spending programs must be levied in a *uniform* manner, so taxes may not be used to discriminate against some people for the benefit of others.

Public choice analysis indicates the wisdom of these constitutional provisions. If the uniformity clause were adhered to, it would prevent the taxing power of government from being used directly as an instrument of plunder, such as would happen if A, B, and C were to tell D and E that the tax burden was theirs to bear. The uniformity specification would require all five to pay taxes. In this respect it is perhaps worth noting that the top 50 percent of taxpayers currently pay about 93 percent of all federal income taxes. And if the larger number of tax exempt voters were taken into account, it would doubtless be the case that the top 50 percent of voters, arrayed by taxes paid, pay close to 100 percent of the federal income tax.

But even if all five were required to pay taxes, the majoritarian political process might allow A, B, and C (or even powerful minority interests) to appropriate general tax revenues for their own personal benefit, and thereby circumvent the protection offered by the uniformity requirement. However, expenditures for the benefit of particular subsets of the population are also prohibited by the requirement that federal spending is limited by the restriction that it be for the *common* defense and *general* welfare.

Of course, today the constitutional adjectives limiting the taxing and spending powers of Congress are ignored. As several of the authors in this book note, for all practical purposes Congress is now free to use public funds to advance the welfare of whichever *particular* groups it selects for favorable treatment.[10] Similarly, as Gale Norton points out (see Chapter 12) neither are there any effective constitutional restraints limiting the ability of Congress to impose taxes in a discriminatory manner.

But suppose this was not the case—suppose the restrictions of Article I, Section 8 were effective. With such a requirement of non-discrimination in taxing and spending, democratic political processes could turn out to be relatively efficient as well as respectful of personal liberty and private property. The development of programs which benefitted most people, if not everyone, would be accentuated. Federal programs that were efficient—those providing general benefits greater than the general taxes required for their finance—would tend to be favored by most all voters (and therefore most all legislators). Correspondingly, inefficient programs which were more costly than the accompanying benefits would tend to be rejected by most all voters. If the federal government got involved in proposals designed to benefit specific interests, it would have to finance

[10] For example, see Epstein (Chapters 9 and 14), Aranson (Chapter 13), Higgs (Chapter 17), and Lee and McKenzie (Chapter 18).

them with user fees rather than taxes.[11] Of course, state and local governments might undertake special interest projects, but at these levels it would be much easier to escape any oppressive action by government. If discriminatory fiscal activities were precluded, as intended by the constitutional provisions calling for uniformity, commonality, and generality, the political process would yield outcomes similar to those that would emerge from exchanges based on mutual agreement.[12]

Public Choice, Majoritarian Pathologies, and the Case for Constitutional Government

Public choice explains why various pathologies emerge from majoritarian government. To speak of pathology requires, of course, some normative standard to serve as a basis for comparison. Clearly, within the American constitutional framework, that standard is something more than simply whatever emerges from democratic processes. The standard against which it is possible to speak of pathology within the American constitutional framework is the Lockean standard of individual self-ownership. People's rights of person and property are normatively prior to government. Hence, government is not a source of rights, but is only a reflection of people's use of their rights, as exemplified by the principles of the protective and productive states. The task of government is, within the American constitutional order, twofold: (1) to promote the security of individual rights and (2) to provide those services that people cannot provide for themselves through ordinary market processes.

In other words, within the American context, mutual agreement is the standard of comparison. Therefore, behavior that oppresses some for the benefit of others is pathological. If two people encounter a third on the street and demand the third person's money, that is a violation of the third person's rights and it is the task of the protective state to prohibit such conduct. But it is no different if the three people constitute a government, with the two taxing the third person for their benefit. Nonetheless, as public choice theory illustrates, the unconstrained majoritarian political process yields outcomes of precisely this nature.

[11] An important feature of user fees is their ability to reveal to public sector decision-makers evidence on how much citizens really value a project. If user fees are sufficient to cover the cost of the government-provided good or service, this is strong evidence that the project is worthwhile. The converse is also true. If users are unwilling to pay for the cost of a government-provided activity, this is powerful evidence that the activity should be curtailed because it is not valued as much as the alternative use of the resource.

[12] See W. H. Hutt (1966) for an analysis of the general equivalence of fiscal non-discrimination and unanimity as a characteristic of the political process.

As the authors of *The Federalist* clearly indicate, the framers of the U.S. Constitution feared the pathologies of majoritarian governments. The authors of these essays both explained the pathologies of majoritarian government and argued that the Constitution they were supporting would hold them in check. Modern public choice theory indicates that checking democratic pathologies is an even more difficult task than Madison, Hamilton, and Jay envisoned. Nonetheless, the central thrust of public choice theory is congruent with that of *The Federalist*: people are essentially the same when they act publicly as when they act privately, self-interest is dominant throughout human affairs, and good government is much more a matter of having rightly constructed institutions that channel self-interest in valuable directions than it is a matter of exhorting people to deny their basic nature when acting publicly.

The intellectual folly of our Age is the view that majoritarian democracy is a sufficient condition for the preservation of a free society based on the consent of the governed. Today, Americans seem to have confidence in majoritarian democracy, but that confidence runs counter to the lessons of history. Generalizing from his study of democracy in ancient Greece, Alexander Tytler, the 18th century Scot historian concluded:

> A democracy cannot exist as a permanent form of government. It can only exist until a majority of voters discover that they can vote themselves largess out of the public treasury. From that moment on, the majority always votes for the candidate who promises them the most benefits from the public treasury, with the result being that democracy always collapses over a loose fiscal policy.[13]

The use of democratic government as an instrument of plunder is as much rooted in human nature as is theft more broadly construed. While there is surely scope for the man of the cloth in any effort to control theft or plunder, it would be foolish to rely exclusively on such efforts. Incentives must also be changed. The man of violence must restrain and punish thieves and thereby reduce the incentive to engage in theivery. It is the same with democratic government. The cultivation of civic virtues is important. But the man of the cloth cannot do the job alone. Incentives within government must also be constructed properly. This is the task of appropriate constitutional construction, as the founders of our constitutional order noted and as the growing body of public choice scholarship is showing afresh.

[13] As quoted in Niskanen (1978), p. 159.

References

Ahlbrandt, Roger. "Efficiency in the Provision of Fire Services." *Public Choice* 16 (1973): 1-15.

Anderson, Terry L. and Hill, Peter J. *The Birth of the Transfer Society.* Stanford: Hoover Institution Press, 1980.

Becker, Gary S. "A Theory of Competition Among Pressure Groups for Political Influence." *Quarterly Journal of Economics* 98 (August 1983): 373-400.

Becker, Gary S. "Public Policies, Pressure Groups, and Dead Weight Costs." *Journal of Public Economics* 28 (December 1985): 329-47.

Bish, Robert. "Improving Productivity in the Government Sector." In *Response to Economic Change*, pp. 203-37. Edited by David Laidler. Toronto: University of Toronto Press, 1986.

Boaz, David. "Spend Money to Make Money." *Wall Street Journal* (13 November 1983) Op-ed.

Buchanan, James M. and Gordon Tullock. *The Calculus of Consent.* Ann Arbor: University of Michigan Press, 1962.

Buchanan, James M. *The Limits of Liberty.* Chicago: University of Chicago Press, 1975.

Buchanan, James M. *The Economics of Politics.* London: The Institute of Economic Affairs, 1978.

Buchanan, James M., Robert D. Tollison, and Gordon Tullock. *Toward a Theory of the Rent-Seeking Society.* College Station: Texas A & M University Press, 1981.

Dietze, Gottfried. *The Federalist: A Classic on Federalism and Free Government.* Baltimore: John Hopkins University Press, 1980.

Downs, Anthony. *An Economic Theory of Democracy.* New York: Harper and Bros., 1957.

Epstein, Richard A. *Takings: Private Property and the Power of Eminent Domain.* Cambridge: Harvard University Press, 1985.

Gwartney, James D. and Stroup, Richard L. "Cooperation or Conniving: How Public Sector Rules Shape Decisions." *Journal of Labor Research* 3 (Summer 1982): 247-57.

Gwartney, James D. and Stroup, Richard L. *Economics: Private and Public Choice.* San Diego: Harcourt, Brace, and Jovanovich, 1987.

Hutt, William H. "Unanimity Versus Non-Discrimination (as Criteria for Constitutional Validity)." *South African Journal of Economics* 34 (June 1966): 133-47.

Krueger, Anne O. "The Political Economy of the Rent-Seeking Society." *American Economic Review* 15 (June 1974): 291-303.

Lee, Dwight R. and McKenzie, Richard B. *Regulating Government: A Preface to Constitutional Economics.* Lexington, Mass.: Lexington Books, 1987.

Mitchell, William C. "Fiscal Behavior of the Modern Democratic State: Public Choice Perspectives and Contributions." In *Political Economy: Recent Views*, pp. 69-114. Edited by L. Wade. Los Angeles: Sage, 1983.

Niskanen, William A. *Bureaucracy and Representative Government.* New York: Aldine-Atherton, 1971.

Niskanen, William A. "The Prospect for Liberal Democracy." In *Fiscal Responsibility in Constitutional Democracy*, pp. 157-74. Edited by James M. Buchanan and Richard E. Wagner. Leiden: Martinus Nijhoff, 1978.

Ostrom, Vincent. *The Political Theory of a Compound Republic.* Fairfax, VA: Center for Study of Public Choice, George Mason University, 1971.

Padover, Saul K. *The Forging of American Federalism: Selected Writings of James Madison.* New York: Harper and Row, 1953.

Savas, E. S. *Privatizing the Public Sector: How to Shrink Government.* Chatham, New Jersey: Chatham House Publishers, 1982.

Siegan, Bernard H. *Economic Liberties and the Constitution.* Chicago: University of Chicago Press, 1980.

Stigler, George J. *The Citizen and the State.* Chicago: University of Chicago Press, 1975.

Tullock, Gordon. *Toward a Mathematics of Politics.* Ann Arbor: University of Michigan Press, 1966.

Tullock, Gordon. "The Welfare Cost of Tariffs, Monopolies, and Theft." *Economic Inquiry* (June 1967): 224-32.

Wagner, Richard E. and Weber, Warren E. "Competition, Monopoly, and the Organization of Government in Metropolitan Areas." *Journal of Law and Economics* 18 (December 1975): 661-84.

2

PUBLIC CHOICE AND CONSTITUTIONAL ORDER

Richard E. Wagner and James D. Gwartney

> The great desideratum in Government is, so to modify the sovereignty as that it may be sufficiently neutral between different parts of the Society to control one part from invading the rights of another, and at the same time sufficiently controlled itself, from setting up an interest adverse to that of the entire society.
>
> —James Madison, letter to Thomas Jefferson
> —October 24, 1787

Introduction

In the same year (1776) the Founding Fathers proclaimed in the *Declaration of Independence* that governments derive "their just powers from the consent of the governed," Adam Smith described in the *Wealth of Nations* how the inhabitants of a free society could also be more prosperous than those who lived in a restricted, mercantilistic society. These two documents laid the foundation for limited constitutional government and a free market economy, the primary mechanisms of social cooperation based on mutual agreement rather than force—on the natural rights of individuals rather than interests of governments. The subsequent unfolding of the American experiment with limited government and a market-directed economy resoundingly illustrated the merits of these arrangements—they lead to both economic prosperity and personal liberty.But in recent decades our constitutional limits on governmental power have been rent asunder again and again.[1] A government virtually without limits, save those inherent in the majoritarian political process, has emerged. Reflecting the lack of restraint on the powers of government, public sector spending has expanded from less than 10 percent of Gross National Product (GNP) in the 1920s to

[1] See, for instance, Anderson and Hill (1980), Siegan (1980), Norton (1985), and Epstein (1985).