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How Better Rules Make Better Politics**

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Same Players, Different Game: How Better Rules Make Better Politics

by

James M. Buchanan

I. Introduction

If players are roughly equal in talents, a football match is “better” if there are equal numbers on the two opposing teams than if one team has double the number of players on the other. The players themselves are not different in the two cases, but the judgment about the “efficiency” of the game depends strictly on the presence or absence of a rule that dictates equal numbers on each side. These statements seem obvious, even trite, in application to ordinary, everyday games that we observe. By generalizing these statements, we can say that in any setting of human interaction, the results depend on the rules within which persons engage, one with another, and, if these results can be evaluated on some scalar of preferability, so can the rules themselves. Just as there are “better” and “worse” outcomes, there are “better” and “worse” sets of rules that generate patterns of these outcomes.

The question of interest is: If the statements made above seem so self-evident, particularly in application to ordinary games, but also when generalized, why have philosophers, analysts, and theorists of politics been so reluctant to carry them over to this important realm of human interaction? Why has so much effort been devoted to discussions about how to make politicians themselves be “better” and how to discover and put in office “better” politicians in the first place, largely to the neglect of attention to the possible efficacy of “better” rules?

Strictly speaking, of course, and despite the sometimes usefulness of the metaphor, politics is not a game that is constructed for the enjoyment of players and/or spectators. Nor is politics properly described as a conflict between coalitions on opposing sides. Politics, inclusively considered, is the institutionalized means through which members of a community seek to achieve objectives that are shared among the whole citizenry. However, no one could challenge the proposition that the results or outcomes of political processes depend on the

institutional-constitutional rules that constrain the behavior of the separate individual actors, whether as principals or agents. That is to say, political outcomes, or more accurately, patterns of outcomes, are rule-dependent.

Attention to the rules, to the structure of politics itself, would seem to be in order. Why, then, the comparative neglect of these rules, throughout the history of political discourse? One answer to this question might be grounded in the presupposition that, while the relationship between rules and outcomes might be granted, the basic structure is not subject to change, and, therefore, not worthy of serious examination. If the basic means through which political decisions are made is invariant, as if set in stone, the only means of improving on outcomes might seem to be that of modifying the behavior of those who operate within these limits. The history of political order lends some credence to this presupposition, since most of recorded human experience has been described by governance concentrated in monolithic rulers, whose authority is unchallenged. Even as reference is shifted to modern Western polities, the relative inattention to the basic structure of rules may stem from some implicit notion to the effect that such a structure emerges only through a lengthy process of evolutionary change, and that efforts at explicit reform in this structure are misguided. F. A. Hayek, and especially in some of his later writings, came close to this position in some of his criticisms of “constructivism,” although he, somewhat inconsistently, did offer specific suggestions for constitutional reform.

If patterns of political outcomes are acknowledged to be rule dependent, and if rules that describe the inclusive political process are themselves considered to be variables, subject to change by deliberative reform, more attention to the causal chains of relationships between rules and outcomes is surely warranted. At the level of scientific inquiry, a whole subject-matter area is opened up, one that, while not totally “new,” has only come to be well identified in the last half-century. The scientific analysis of how constitutional rules work, in some comparative sense, to modify predicted patterns of political outcomes is categorically different from the more familiar analysis of how differing policies, politically put in place, work to modify target objectives such as economic growth, employment, and liberty.

In this lecture, I can do little more than summarize, in admittedly sketchy fashion, a whole area of inquiry. I shall first try to outline in broad terms the elements of political structure that clearly influence the outcomes of the process. I look, briefly, at separation of authority, at federalism, at interpolity competition, at legislative supremacy, at unqualified and

qualified majority voting rules, at rights-based limits on political authority, and, finally, at generality, treated as a constraint on the exercise of political authority.

The mixing of these distinct elements will describe the constitution of any organized polity, and this constitution will, in its turn, influence the pattern of collective outcomes that may be observed. The disparate success of differing political communities in achieving objectives that seem to be commonly shared may be primarily due to the mix of elements in the basic structure of rules, and not to the differences as among the political players.

II. Separation of Powers

A basic characteristic of political structure is defined by the concentration or absence of political authority itself. If this authority, or sovereignty, is assigned to a single unit, whether formally or in a practical sense, political action taken on behalf of the inclusive collectivity is facilitated as compared with the structure that embodies separated or divided authority. Whether concentration or separation of political authority is deemed to be a desirable or undesirable feature of the basic rules depends, in part, on whether or not collective action, at the margin of its extension, is deemed to be limited or overextended. We need not make such a judgment here; we need only acknowledge that the degree to which political authority is or is not concentrated will affect patterns of political outcomes.

There is a fundamental difference in this respect between the ideas that inform the United States political structure, on the one hand, and other Western democracies on the other. Influenced profoundly by Montesquieu, the United States Constitution, from its beginnings, has incorporated the principle of separation of powers, with a division of authority between the executive, legislative, and judicial branches of governance, each of which acts, variously, as a countervailing check and balance against possible excesses by the other branches. By contrast, and with some mitigation in some countries, European constitutions embody the principle of legislative or parliamentary supremacy, with authority much more concentrated than in the United States. Further, within the legislative structure itself, the more important two-house division further divides political authority.

The differing patterns of results attributable to these fundamental differences in structure are readily discernible. The European welfare states are more extensive than the American, in part owing to the relatively unlimited working of majoritarian parliamentary

democracy, while at the same time , there is perhaps less special interest or “pork-barrel” spending than in the United States, itself reflective of divided, rather than unitary, authority.

The European Union is now in a process of constitutional emergence, and the next few decades will be critical in determining the effective structure of political authority. The proposed constitution does increase the powers of the legislative arm of governance, and an independent judiciary is well on the way to becoming a force. However, parliamentary supremacy, in the historical British sense, does not seem likely to describe Europe in the foreseeable future.

III. Federalism and Interpolity Competition

Separation of powers, in the strict sense as discussed above, applies to the possible concentration of political authority within a single organized polity. Another important avenue through which political authority may be dispersed involves the vertical separation between the central and the subordinate units, between the Federal government and the states in the United States, or between the European Union and the separate nation-states in Europe. Arguments in favor of federalism, as an organizing principle for governance, are much the same as those advanced in support of the separation of powers within a single unit. The range and scope of the political authority of the central government is limited to the degree that political action can be relegated and decision-making authority devolved to the differently organized smaller units in the inclusive jurisdiction.

The much-discussed principle of subsidiarity invokes efficiency criteria in support of the matching of interest and competence under federal structures. A more important feature of federalism is the necessary introduction of interjurisdictional competition as among the several units within the larger political entity. Discipline is imposed on the exercise of political authority within any single unit by the presence of comparable units, whose political performance may be readily monitored, and, further, whose markets are open to migration of resources and to sales or purchases of products. This feature carries over even in a setting described by separate political units, regardless of whether or not these units are organized internally on federal principles, and the feature becomes more important as globalization proceeds.

The political structure of any polity is in part described by the degree to which this polity is open to competition with other comparable units. The relative performance of any single political entity in achieving its declared goals is now easily measured—measurement which, in itself, imposes discipline on political agents. Further, to the extent that resources, especially financial capital, and goods are able to shift among separated political units, the decision makers in these units are constrained in any departures from efficiency-enhancing actions, almost regardless of the internal electoral competition among differing coalitions. Increased globalization, interpreted as increased interpolity competitiveness, works for the international order more or less in the same way that federalism works for the domestic political order. In both cases, political agents are forced, by the nature of their positions, to behave differently than they would behave in the absence of the external constraints.

IV. Legislative Supremacy: Qualified Majority Voting

The elements of political structure—these rules—discussed in the preceding two sections will, of course, influence the pattern of outcomes of the collective decision-making process through the predicted effects on the incentives faced by political agents. However, within the parameters defined by these basic organizational rules, outcomes may still vary widely as unconstrained or constrained by the rules through which collective decisions are made. Historically, as Western nations emerged from monarchy toward democratic regimes, there came to be a widespread association between legislative or parliamentary supremacy and majoritarian voting processes within the exercise of this supremacy. As parliaments were seen to have wrested authority from monarchs, the electoral feedbacks were considered as sufficient protection against possible excesses of majorities in the legislative body. Little or no specific attention was paid to the prospects for constraining the operation of majority-voting rules within parliaments.

The neglect of serious analysis of voting rules prior to the public choice revolution in the last half century is explained, in large part, by the dominance of idealism in political theory. If political agents charged with authority are conceived as searching for the “good” for the whole collectivity, the voting rule, as such, in their assemblies does not assume major importance. More than a century ago (1896), the great Swedish economist, Knut Wicksell, pointed out, what now seems so obvious, that political representatives are responsive to the

desires of their constituents rather than to some higher calling, and that, if they were not so responsive they would scarcely survive in electoral competition. If this elementary principle is acknowledged, it follows that majority coalitions in legislative assemblies will initiate collective action that will be aimed to benefit the constituencies of these coalition members, at the possible expense of constituencies of minority coalition members. That is to say, the natural working of majority rule is described by discrimination in favor of majority interests and against the interests of the minority.

There is nothing in the operation of majority voting in legislative assemblies that insures either economic efficiency or justice in the generation of decisions made for the whole citizenry. Wicksell suggested that his fellow economists and others who might seek reform in politics should drop any presumption that political agents are naturally benevolent and thereby any hope that admonition to agents would generate more favorable outcomes. He specifically called attention to the incentives confronted by political agents, and he emphasized that these incentives can be changed only by changing the rules.

Wicksell centered his attention on the majority-voting rule, and he proposed that this rule be replaced by one that requires agreement on the part of more than a simple legislative majority. In the limit, only a rule of unanimity could guarantee against differential exploitation of some interests, and the unanimity rule can serve as the benchmark against which alternatives rules are evaluated. Again, however, when incentives in the legislative bargaining processes are considered, the unanimity rule is eliminated as a practicable alternative. Recognizing this, Wicksell proposed the adoption of a super- or qualified-majority rule for voting in legislative assemblies, perhaps one that requires the agreement of five-sixths of the membership.

It is clear that a change in voting rules from simple majority to a more inclusive super-majority, whether this be two-thirds, three-fourths, or five-sixths, would modify the incentives for legislators and would reduce the potential for the enactment of inefficient policies. And, in some jurisdictions in some countries, qualified majority approval has traditionally been required for specific types of legislation. For example, some American states require super-majorities for proposals for tax-rate increases. But, on balance, the association between majority voting, as such, and “democracy” has remained so strong in public attitudes that Wicksell’s suggestions have been largely ignored, despite the cogency of his arguments.

V. Legislative Majorities and Constitutional Rights

A more familiar institutional means through which the potential authority of legislative majorities has been controlled involves the constitutional specification of limits beyond which ordinary legislative action may not go. The provisions here normally take the form of delineation of rights that are reserved to persons or groups and that are protected against collective-political action, regardless of the decision structure in effect. Constitutions almost everywhere contain strictures akin to the United States “Bill of Rights,” which protect citizens in the exercise of certain defined activities. In the United States, these activities are speech, press, association, and religion, as variously interpreted and extended by judicial rulings.

In the United States experience, but also elsewhere, there has been a somewhat artificial separation between so-called “human rights” and “economic rights” in the constitutional limitations on majoritarian authority. Legislatures have been effectively prevented from imposing controls on persons’ freedom to speak or to associate, but not from imposing controls on persons’ freedom to engage in voluntary economic exchanges. This anomaly has come to be so deeply embedded in American legal conventions and traditions, as well as in public understandings, as to make extension of constitutional limits to economic rights unlikely to command serious attention. Comparable attitudes describe the legal-political experiences of other Western polities, although I am personally unfamiliar with these experiences in detail.

A concern of note involves the danger that over-zealous constitution makers may include as protected “rights” of citizens, claims that are not fully within the competence of legislative agents, such as, for example, “rights” to employment. The emerging Constitution of the European Union, and perhaps especially as proposed in the convention, stands in danger of including too many such provisions.

VI. Procedural Limits: The Rule of Law

The constitutional specification and enforcement of certain activities that are immune from political control, no matter how such control is selected, act to constrain parliamentary majorities in a substantive sense. Within the areas left outside these limits, however, political agents who make up membership in majority coalitions remain unconstrained in the pursuit of

the discriminatory interests of their constituents. Even in this pursuit, however, these agents are constrained nonsubstantively, or procedurally, by long-standing legal traditions, which may or may not be specifically designated in the effective constitution.

Governments, at least in principle, cannot arbitrarily discriminate among citizens or groups of citizens. The constitutional democracies of Western nations embody “the rule of law,” which is a meaningful precept, even if widely abused and also widely misinterpreted. Stripped to its essentials, the rule of law embodies the principle that each and every citizen has an equal voice in the decision processes of the inclusive collectivity, implying universal franchise and electoral rotation. Further, each and every citizen is to be subjected to the same law, the same rules of the game, with no exceptions, even for those who serve as political agents.

There has been, however, a failure to extend the rule of law in legal traditions and conventions to economic activities in much the same way that economic rights have remained outside constitutional protection, as noted previously. Legislative majorities may not, for example, discriminate against persons or groups based on any of many descriptive characteristics, such as race, ethnicity, religion, gender, sexual preference, or lifestyle. Such majorities, or their designated bureaucratic agents, may, however, discriminate against persons and groups that are specifically defined by economic characteristics. Political controls may be differentially imposed on members of particular occupational, professional, industrial, locational, behavioral, and consuming groups. Such groups may be singled out for differential taxation or for differential subsidization from tax revenues.

VII. Toward Nondiscriminatory Democracy

The failure to extend the rule of law and constitutionally protected spheres of rights to voluntary economic relationships among persons and groups is perhaps the most serious defect in the basic institutional structure of Western polities. This failure is responsible for the observed mix of piecemeal political interferences with the workings of markets—a mix that seems amenable to no plausible explanatory logic other than the interplay of special interests powerful enough to influence policy. Further, it may be argued, perhaps more controversially, that the discriminatory interferences in the economy allow the aggregate size of the collective

or governmental sector, relative to the nongovernmental sector, to have become larger than it otherwise need be.

The behavior of political agents who represent the varying constituencies in legislative assemblies is predictably concentrated in attempts to secure political action that differentially favors the separate interests represented, or, conversely, in attempts to ward off threatened differential exploitation, for example, by the levy of targeted taxation. Given the basic structure that allows political action to be discriminatory in its effects, political agents cannot be expected to behave differently from the way they are observed to behave. This Wicksell lesson remains as valid in the early twenty-first century as in the late nineteenth century when he taught it.

If this fundamental diagnosis is accurate, the avenue toward improvement should be clear. The rules of politics should be changed so as to insure that discrimination is not possible; politics should be constrained by a principle akin to the rule of law. This structural change would, if accomplished, allow political agents to select among policy alternatives, each of which meets criteria for nondiscrimination. There would remain disagreement over particular political choices, and majority-voting rules may still be used to select among the set of nondiscriminatory options. What is to be ruled out-of-bounds in such reform is the opportunity for members of particular groups to secure benefits at the expenses of others in the inclusive collectivity. Political agents, representatives in legislative roles, would be forced, by the nature of the incentives faced, to discuss genuine “public interest” alternatives.

In a video interview that I conducted with F. A. Hayek in October 1978, he made the following statement:

[The First Amendment] ought to read, “Congress shall make no law authorizing government to take any discriminatory measures of coercion.” I think that would make all the other rights unnecessary, and it creates the sort of conditions I would want to see.

In our jointly-authored book, *Politics By Principle, Not Interest: Toward Nondiscriminatory Democracy*, first published in 1998 (Buchanan and Congleton), Roger Congleton and I used this citation from Hayek as the frontispiece citation for the whole book. The basic argument of the book was that which I have outlined above. If some equivalent to

the rule of law could be extended to apply to the workings of majoritarian politics, many of the excesses observed in modern democracies would be eliminated, and not by changing the players in the political game but by changing the rules of this game so that commonly shared interests are better served.

The book contains many applications of this proposed change in the rules. Strict adherence to the principle of generality in politics would require, for example, that, if extended to any single industry, tariff or quota protection also be extended and on equal terms to all industries. For instance, President Bush would not have been able to levy differential rates of duty on steel imports. Legislators from steel-producing states would not have had incentives to invest effort in securing such treatment. Tax structures would necessarily become more simple, since the same rate would have to be applied across-the-board on all sources or uses of tax base. Flat rate or proportional taxes on all incomes would broadly meet the generality norm. And, on the transfer side of the budget account, payments would have to be made in demogrants, equally available to all persons. Differences among separate constituency groups would, of course, still arise, even under full operationality of the generality precept. But the alternatives would all “lie along the diagonal” in the imagined game theoretic matrix; each possible alternative would in itself embody generality in treatment for all members of the relevant collectivity.

“Same Players, Different Game: How Better Rules Make Better Politics.” This title was intended to be descriptive of the content of this lecture. The central message of the lecture, as indeed it is also for the whole public choice and constitutional economics research program, is that scientists, as analysts of politics, should spend more time in inquiry about the workings of differing rules and less on efforts to modify the behavior of those in the roles of political agents. Changing the rules is perhaps much easier than changing the character of the players.

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