

Gordon Tullock's Implicit Analytical History of Government¹

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1. Introduction

Tullock's research rarely uses the word "constitution," and so his constitutional political economy can be easily missed. Nonetheless, a broad subset of his work analyzed the origin and effects of society's grounding institutions. His work includes theories of the emergence of the state, of the functioning of legal systems, of authoritarian societies, of bureaucracy, and of democracy--the core topics of constitutional political economy. He did not, however, attempt to provide an overarching framework in which to place all of his institutional analysis or conclusions. This is another reason why his work tends to be neglected by research in constitutional political economy (CPE).

In a previous paper (Congleton 2012), I provided an overview of its main elements in more or less in the order in which Tullock wrote upon them, without attempting to place his constitutional analysis into a general framework. That paper demonstrated that there is more to Tullock's CPE than his famous book with James Buchanan. This review essay develops Tullock's implicit analytical history of governance. That history should help readers to better appreciate his

¹The perspective on Tullock's work presented here is based partly on his prolific writings and partly on numerous conversations with him in the course of several decades. This paper is substantially a refinement, reorganization, and extension of Congleton (2012).

main line of argument and its relationship to subsequent research by placing his contributions within a more unified framework.²

As a point of departure, Tullock's research takes for granted that the net benefit-maximizing model of rational decision-making can be used to analyze all manner of human behavior. That is to say, human nature is assumed to be universal and immalleable. Institutions affect the costs and benefits of the alternative confronted and thus human behavior, but not human nature. A second core assumption is the centrality of conflict in human life. In contrast to economists who are inclined to see gains to trade behind every action, Tullock tends to see conflict and anticipates both unethical behavior and violence. This is not because he lacks an economist's appreciation for gains to trade, but simply because history and law, both core interests of his, are replete with conflict. In Tullock's view, political and legal institutions emerge from conflict and pragmatism, rather than from voluntary agreement and social contract.

My attempt to reconstruct Tullock's analytical history yields a result that bears a striking resemblance to theories subsequently developed by Mancur Olson (1993, 2000), North, Wallis and Weingast (2009) and Congleton (2011), all of whom were familiar with and influenced by Tullock's research, although not necessarily all parts of it. Whether the framework developed below was in Tullock's mind all along or is an invention of this paper is left for the reader to decide. Much of it was sketched out in Tullock (1972b).

2. Tullock's General Framework: Conflict and the Role of Institutions

Take a rational individual and place him in a setting that includes other individuals in possession of scarce resources, and most economists will predict the emergence of trade. Econo-

² After the first draft of this paper was completed, I noticed that Charles Rowley (2005) undertook a similar effort in his edited volume of Tullock writing titled the *Social Dilemma*. However, it did not provide linking prose, but simply presented his work in different manner than Tullock wrote it.

mists are all familiar with the Edgeworth box, which provides a convincing illustration of mutual gains in such settings. Tullock would predict conflict.

Economics has traditionally studied the benefits of cooperation. Political science is beginning to move in that direction. Although I would not quarrel with the desirability of such studies, the fact remains that conflict is also important. **In general conflict uses resources, hence it is socially inefficient, but entering into the conflict may be individually rational for one or both parties.** ... The **social dilemma**, then, is that we would always be better off collectively if we could avoid playing this kind of negative sum game, but individuals may make gains by **forcing such a game** on the rest of us. (Tullock 1974: 2)

In settled polities, conflict is evident in the efforts of opposing special interest groups to persuade legislatures to enact particular rules and regulations and in the efforts of opposing candidates to win elective office. In less lawful or settled settings, modes of conflict include theft and fraud as well as bombs exploding and battles fought. Tullock reminds us that conflict is endemic to human existence.

Conflict is to be expected in **all situations** in which transfers or redistribution occur, and in all situations in which problems of distribution arise. In general, it is rational for individuals to invest resources to either increase the transfers that they will receive or prevent redistributions away from them. Thus, any transactions involving distribution will lead to directly opposing resource investments and so to conflict by our definition. (Tullock 1974: 6)

Insofar as losses from conflict always exist, Tullock's seems to suggest that institutions are relatively unimportant. However, this is not the case. Institutions can reduce the likelihood that conflict takes place and the kind that occurs.

There are institutions that will reduce the likelihood of being forced into such a game, but these institutions cost resources, too. . . [However] **the problem is unavoidable**—at least in the present state of knowledge. Pretending that it does not exist is likely to make us worse off than conceding its existence and **taking rational precautions.** (Tullock 1974: 2)

His normative inference is that conflict-reducing institutions should, when possible, be adopted.

Obviously, as a good social policy, **we should try to avoid having games that are likely to lead to this kind of waste.** Again, we should try to arrange that the payoff to further investment in resources is comparatively low, or, in other words, that the cost curve [of rent seeking] points sharply upward. (Tullock 1980a: 109)

Constitutional and other laws potentially can reduce conflict or replace relatively wasteful contests with less wasteful ones.

Tullock's analysis of the links between rules and conflict includes both specific institutional settings and a generalized contest success function (Tullock 1980) that provides a mathematical representation of how rules can affect efforts in contests over fixed prizes. Changes in the "rules of the game" affect the degrees and the modes of conflict.³

3. Out of Anarchy: Conflict and the Emergence of Rules and Rule Enforcement

Tullock's analysis of the origin of governance begins with Hobbesian anarchy. Tullock's escape from anarchy emerges as a consequence of conflict among unequals, rather than from forward-looking social contracts among equals. Civil law and constitutional rules are imposed by the victors of asymmetric contests to advance their own interests.

Let us make the simplest assumption of transition conditions **from the jungle** to one where there is an **enforcement apparatus.** Assume, then, a jungle in which there are some bands—like prides of lions—and that **one of these bands succeeds in destroying or enslaving all of the others, and establishes firm control.**

This control would, firstly, lead to a considerable change in the income distribution in the jungle in that **the members of the winning band would have much larger incomes and the losers would have lower incomes** (Tullock 1972b: 70).

³ This point is admittedly more emphasized in my own work than in Tullock's, but it is a direct implication of much of his research. (See, for example, Congleton [1980, 2015].) Subsequent research on rent seeking also demonstrates that the "rules of the game" (alternative contest success functions) can affect the degree of conflict in contests in which a particular prize is at stake. See Congleton, Hillman, and Konrad (2008) for an overview of that literature.

Perhaps surprisingly, Tullock suggests that the best strategy for retaining and profiting from control relies on a mixture of coercion and exchange, rather than exchange or coercion alone.

It is likely that the **strong man will have things that the weak man would want also, and the prospect of trade would arise**. In order for this trade to be possible, the weak man must feel confident that if he produces something above and beyond his normal payments to the strong man, the strong man will not simply seize it. Thus, **the strong man would, if he were sensible, have a fairly regular schedule of predation, but would be willing to make trades** on things above and beyond that regular schedule (Tullock 1972b: 67-8).

In this manner, rudimentary principles of taxation (customary protection payments) and property rights emerge as a consequence of the pragmatism (net benefit maximizing behavior) of the stronger person or group. Tradable property rights create mutual advantages create benefits for both the ruler and ruled.⁴ The ruling group will select an optimal schedule of payments which members of the subject group must make to the ruling group. This will maximize the risk-adjusted returns for the dominant group (Tullock 1972b: 69-71). In this manner an informal system of taxation and civil law gradually emerges.

Such informal system of civil law may be extended to include formal contracts and buttressed with a court system in order to further increase the returns of the ruling group.

Introduction of enforcement apparatus, would deal with this problem by **making it possible to both accumulate and to enter into credit transactions**. The enforcement apparatus could also be used to deal with the theft, stealth, and deception way of obtaining funds. ... It would be possible to distribute **the profits from the establishment** of such an enforcement apparatus in exactly the same ratio as the wealth held by the various denizens of the jungle before the apparatus as established.

⁴ Tullock (1972b) argues that the margin between taking and trade reflects the expected cost of resistance by those whose resources are being confiscated. He argues, for example, that irrationality on the part of the persons expropriated (anger), might induce them to resist or threaten to resist strongly enough that the strong (or a coalition of raiders) would leave goods and services behind that they wanted--but could more economically or safely obtain through exchange than confiscation: "The existence of this type of loss of temper then automatically creates a bargaining range" (pg. 66). This irrationality, he suggests, has survival benefits and so come to be part of a specie's genetically transmitted dispositions.

Informal and formal constraints on the behavior of government officials. Constitutional law thus emerges from a process similar to that which generated civil law.

If the ruling group proposes the use of an efficient system of drawing funds from the ruled groups, then it **must set up some way of administering these transfers and of controlling individual members of the ruling group who might wish to exceed the standard.** ... The discipline of continuous dealings would indicate that the ruling group members would have motives to, if they could, discipline each other in order to maximize the long term value of group membership. (Tullock 1972: 72)

Stable rules for dealings between the ruling group and those ruled and stable rules that constrain the behaviors of the rulers themselves are both in the interest of ruling groups. These laws are initially consequences of the continuous dealings (repeated games), but may be formalized and enforced with written rules and a court system.

Some aspects of constitutional law are simply methods for motivating sufficient production of force to retain its ability to tax. For example, the government will normally share the fruits of victory (rents) among its members, although not equally.

It would be rational for the stronger members of the winning band to permit sizable improvements in the incomes of the weaker members at the expense of nonmembers of the band, simply in order to retain the support of these weak members. **The cohesion of the new government would depend on suitable reward for all members.** (Tullock 1972: 70)

Tullock's analysis (1987: 142-5) also suggests that ruling juntas tend to evolve into dictatorships because of asymmetries in the skills and loyalties within such groups. For example, a ruling council with 5 members might have a stable three person voting block, and within that three, a stable two person inner voting block, which is dominated by one person, who in effect the dictator.

4. The Grounding Laws and Procedures of Dictatorships

Unfortunately for the rulers, the system of governance that emerges from the Hobbesian jungle is not entirely stable or without conflict. There will be occasional uprisings of the subjects (possibly a result of anger or other irrationality), there will be conflicts among the members of the ruling junta, and there will be conflicts with neighboring governments. Tullock argues the grounding laws and procedures of dictatorships are all motivated by efforts to maximize the risk adjusted returns of high office. The dictator or pivot decision maker cannot be entirely sure of his position. He or she will need the ongoing support of others to retain power and also has to overcome a variety of threats to his or her dominant position.⁵

[An existing dictator] faces **three potential sources of danger**. The first of these is the high officials of his own regime. Most dictators are overthrown by higher officials in their own regime. ... The second most frequent cause of overthrow of a dictator in recent years has been foreign intervention. Over the long sweep of history, however, foreign conquest has been the most common source of the determination of dictatorial power. ... The last, and in many ways **least likely**, way in which a dictator may be overthrown is by a genuine popular uprising. (Tullock 1987: 9-10).

Tullock focuses most of his attention on the second of these problems, because revolts and revolutions are relatively easy to overcome and overcoming external threats is mainly a military, rather than a political problem (Tullock 1987: ch. 3; 1965: 54).⁶

Preventing **overthrow by the common people is, in general, quite easy** if the ruler is only willing to repress vigorously and to offer large rewards for information about conspiracies against him. (Tullock 1987: 68)

Tullock discusses a variety of institutions (standing policies) through which dictators can decrease the probability of coup d'état by in-house rivals. These standing policies may be regarded as the in-

⁵ Any committees that remain, Tullock suggests are simply methods for maintaining control.

⁶ Tullock (1987: 53) regards the popular uprising theory to be a myth. "I regret to say that this myth is mainly myth. I don't want to swear that there have been no cases in history in which the people have risen and disposed of a tyrannical ruler, but I have never come across a clear cut case."

stitutions or natural constitutional law of authoritarian regimes, what North, Wallace and Weingast term the "natural state."

Commissions and committees of various kinds will be used to make narrow policy decisions and oversee their implementation, because they are easier to monitor. Secondary office holders will occupy their posts for short periods and be rotated among regions and offices to reduce opportunities for acquiring support among other elites. Serious rivals will be exiled or killed. Treason will be defined in a manner that punishes all threats to the dictator. Standing rewards for providing the ruler(s) with credible evidence of conspiracies will exist. Laws against treason will be aggressively enforced. (Tullock 1987: ch. 1, and Tullock 1974: ch. 7).

Dynastic systems emerge from essentially the same concern. Tullock regards dynastic secession to be an institution for reducing the risk of assassination, rather than a consequence of family bonds or customs and laws of inheritance. A standing policy that the dictator's children (as with oldest sons in Europe) inherit the throne reduces the dictator's risk of assassination because children are somewhat less likely to assassinate their parents than others, especially if they expect to inherit their father's power and wealth.

[T]he **father has greater confidence in his son** and that in turn means that the son has a much weaker motive for murdering his father than would the designated successor if the designated successor was simply a high official of the regime. (Tullock 1987: 164)

Dynastic systems also reduce the likelihood and cost of secession struggles, because the son is likely to employ many of his father's advisors.

In this manner, Tullock's analysis provides an explanation for the durable features of most autocracies. Autocracies tend to be headed by a single man or woman. They are often hereditary. They rely upon committees to make a wide variety of policy decisions, and senior officials tend to be rotated among posts and/or regions. Rules are systematically enforced, property claims are

defended, and taxes (explicit and explicit) are at approximately maximal limits. In the period before a durable autocracy emerges, the basic structure of government is more stable than are the persons holding high office. The latter are replaced through coups engineered by relatively high officials and military officers, as in African nations after independence.

Tullock's analysis also implies that there are limits to dictator's encompassing interest. Investments in infrastructure and legal system that encourage economic growth are in a dictator's interest insofar as economic growth increases the present discounted value of the profits of dictatorship. However, economic growth also increases the risk of overthrow by making his office appear more desirable.

If the risk adjusted rate of return from foreign investments is comparable, Tullock argues that a dictator will invest his resources in foreign real estate, bank accounts, and stock portfolios rather than domestic ones (1987: 117-9). Autocratic "capital flight" and the resultant poor infrastructure and legal system are Tullock's explanation for the relatively slow economic growth of most dictatorships during the twentieth century.

Other aspects of autocracy are analyzed in passing. Parliaments and advisory councils may reflect specialization and bargaining for needed support among preexisting elites. Some sharing of profits may be necessary to secure the minimal support necessary to retain power. The army is necessary to repress an occasional peasant revolt and secure the national or duchy boundaries. Both increase the probability of overthrow insofar as they create potential conspirators, thus a dictator may not want an especially well-lead parliament or army. However, on balance, both institutions make the regime more likely to retain authority and revenue flows.

With respect to democratic transitions, Tullock acknowledges that they do occasionally happen in spite of the best efforts of autocrats. He notes (although he does not emphasize) that the

existence of parliaments in a subset of dictatorships provides a possible avenue through which democratic states can emerge. A parliament may be able to overthrow a dictatorship. If the parliamentary institutions are sufficiently stable and the members are broadly elected, the result may be democracy, rather than an oligarchy (Tullock 1987: 53–68).

Another possible path to democracy occurs when a dictator wishes to retire from office. Handing authority to an elected body places the dictator at a lower risk of subsequent assassination than handing authority off to another dictator. The prudential interests of the latter are likely to call for the disposing of former dictators, who are obvious potential rivals for authority (Tullock 1987: 188-90).⁷

5. Standing Institutions for the Production of Law and Order

In both autocracies and democracies, the production of law and order are central tasks of governments. In the former, law and order are designed to maximize the fruits of office, in democracies to maximize the probability of being elected to office. Autocrats thus create and enforce laws for pragmatic, rather than ethical reasons or to advance citizen interests, *per se*. In either case, legal systems will be among the core institutions of government.

Tullock's analysis thus implies that the laws created by autocrats and democracies differ in predictable ways. Autocratic law will exhibit more inequalities, because the rulers will tend to exempt themselves and their most important allies from some of their law's provisions. Insofar as the "subjects" are the rulers in democracies, Tullock's reasoning implies that there will be more equality before the law in democracies than in authoritarian regimes. Nonetheless, equality before the law will be experienced by most subjects under both regimes, because it is consistent with the subject interests and is relatively easy to administer (Tullock 1971: ch. 2).

⁷ Congleton (2011) notes that the existence of parliaments or royal councils implies that negotiation over power and revenue sharing are likely to occur. The outcomes of these negotiations can also gradually produce democracy.

And in either case, there are advantages to relatively efficient laws and law enforcement systems.

The efficiency of the legal system is ... a function both of the definition of rights and of the means employed to invoke governmental force in support of them. A great deal of scholarly attention has been paid recently to the efficiency of various assignments of rights. Some beginnings have also been made in assessing the efficiency of different legal proceedings. What has not been done, however, is to view the **system as a whole**. . (Schwartz and Tullock 1975: 75)

For each alternative regime under consideration the costs thus minimized would be compared with the benefits in efficiency enhancement and the regime offering the greatest net benefits chosen. (Schwartz and Tullock 1975: 77)

The goals of autocrats, democrats, and utilitarians differ, but all have an interest in legal systems that avoid unnecessary costs and errors.

After laws are promulgated, violations of the law have to be systematically punished. This is by no means as straightforward as often assumed by economists. There are difficulties associated with determining exactly who has violated exactly what law, and with imposing punishments on those persons or organizations found guilty of such transgressions. There are a variety of ways in which laws can be enforced, and as in other aspects of organization, specialization can often reduce costs and errors.

The posse, of course, is a relatively inefficient mechanism. In general, we tend to turn toward specialization and division of labor. Setting up a special organization for the purpose of policing the rules would be an improvement in efficiency if some method could be designed which will prevent this special group of policemen from becoming themselves a ruling group. (Tullock 1972: 74).

The economics of law enforcement implies that governments tend to have standing procedures for detecting crimes and punishing criminals. In this manner, separate police and court systems become features of the governments of both autocratic and democratic regimes.

That formal court proceedings have been used from the dawn of civilization suggests that the benefits of increased accuracy and formality are normally sufficient to justify the additional cost for standing review procedures. Among the benefits may be public support for the legal process, more law abiding behavior, and a lower probability of illegal activity or revolt---in addition to reductions in costs associated with errors. The coercive power necessary to bring suspected criminals to court may also induce deference and awe in the minds of those who might be tempted to engage in unlawful activities or revolt.⁸

Tullock (1971a) notes that errors can occur in all phases of law enforcement. Not all criminals are caught, not all who are caught are criminals, not all of the guilty parties caught are punished, and not all innocent parties are released. Determining exactly what happened and who violated which laws is often a difficult task.⁹

The problem of determining what actually happened is one of the court's duties and the only one we are discussing now. **A historic reconstruction, which is what we are now talking about, is a difficult task** for a variety of reasons. One is that witnesses lie and in lawsuits, there usually are at least some witnesses who have a strong motive to lie. They may also simply be mistaken. Another reason is that many things which happen that are of interest to the court leave no physical traces and, indeed, may leave no traces on the minds of the parties ... different cases have different amounts of evidence of varying quality available, and ... **this evidence leads us to varying probabilities of reaching the correct decision.** (Tullock 1980b: 25–26)

Improving the accuracy of court proceedings can reduce the social cost of illegal activities by better targeting sanctions at transgressors, which tends to reduce both crimes and torts, and by encouraging greater efforts to settle out of court, tends to reduce court costs (Tullock 1980b: 73–

⁸ Once courts become part of the normal system of law enforcement, fees can be assessed for court services. Together fees and fines can be major sources of revenue for government, as they often are for local governments in the U.S.

⁹ “Most crimes are not simply the preliminary to punishment for the criminals, most people who are in prison have not had anything that we would recognize as a trial, and administrative decisions keep people in prison and (in effect) extend their sentence.” (Tullock 1971: 169)

74; Good and Tullock 1984). Such efficiency is of course of interest to authoritarians as well as democracies, insofar as prosperity tends to increase tax receipts and law-abiding behavior tends to reduce risks of assassination and overthrow.¹⁰

6. On the Institutions of Democratic Governance

Within Tullock's analytical history, law plays a relatively important role and democracy less so. Democracy is historically a relatively rare form of government. According to Tullock, it emerges from systems of autocratic government, largely through historical accidents. It is unlikely to be the product of a social contract and may not be stable in the long run.¹¹ Nonetheless, democratic governments do occasionally exist, and their internal organization needs to be analyzed to be understood. Their initial institutions would naturally reflect their authoritarian heritage, but these would likely be refined to advance the interest of the new rulers, that is to say voters.

Democracy is not simply a matter of majority rule any more than a dictatorship is a matter of one person rule. There are many standing rules and procedures to be explained. Tullock argues that

¹⁰ The mainstream U.S. literature largely takes U.S. institutions as given, as, for example, Becker (1968) or Posner (1972) do. By focusing attention on the errors that can emerge in the U.S. judicial system, Tullock induces readers to think about the fundamental tasks of law enforcement and alternative legal institutions affect judicial accuracy. With such errors in mind, Tullock (1971, 1980b) analyzes the accuracy of the existing Western institutions at determining fault or guilt. These are arguably among the most accurate (and costly) in existence. He suggests that the available evidence implies that the U.S. courts make errors in between 10% and 50% of the cases that they decide (Tullock 1980b: 33). He also attempts to assess the performance of the U.S. system of justice relative to alternative procedures for identifying criminals and other persons at fault.

Perhaps surprisingly given his legal training, Tullock argues that the system of justice used in the continental judicial system employed in Europe produces more accurate verdicts at a lower cost than the system used in the United States (Tullock 1980: ch. 6). European trials are organized directly by the judges, rather than produced by conflict between legal teams for the votes of jury members. Panels of judges assess guilt or innocence and mete out penalties. Accuracy would be further increased, he suggests, if the training of judges included a "good background in statistics, economics, ideas of administrative efficiency, etc." (Tullock 1980b: 204).

¹¹ For example, Tullock argues that the transformation of the United Kingdom into a parliamentary democracy was largely a mixture of accident and good luck, rather than systematic tendencies (Tullock 1987: 7-8).

voter self interest has predictable effects on the nature of democratic politics and the kinds of institutions that tend to be adopted.

Tullock's chapters in the *Calculus of Consent* (Buchanan and Tullock 1962) explore how alternative institutions affect voter net benefits. He assumes that voters take into account two kinds of costs when analyzing alternative institutions for democratic governance. First, collective action imposes (external) costs on persons not consulted or opposed to the actions undertaken. The extent of the external costs varies with the policy decision(s) to be made and the number (fraction) of decision-makers required to make a collective choice. For a given group of size N and class of policy decisions, Tullock argues that the maximum external cost occurs when a single person can use group resources (the power of the state) as he or she likes, that is to say dictatorship. The lowest external cost occurs when unanimous agreement is required. Given these plausible assessments of the maximum and minimum external cost of group or state action, Tullock assumes that the external cost function is monotonically decreasing in the number of votes (K) required for collective action, starting very high and falling to zero at unanimity ($K=N$).

The second cost taken into account is the cost of reaching decisions. Tullock argues that the cost of reaching group decisions on a given policy is lowest when a single person can undertake any policy and highest when unanimity is required. Tullock assumes that the decision-cost curve is monotonically increasing in the number of votes required.¹²

The total cost of alternative voting rules is simply the vertical sum of these two cost functions.

¹² Stable policy decisions evidently require institutions or disciplined coalitions of sufficient size so that the policies chosen in one period are not simply countermanded in the next instant by advocates of other policies. In Tullock's defense, it could be noted that there is far more stability under real-world institutions than implied by the literature on instability, as Tullock noted in 1981. Once above $N/2$, Tullock's intuitive geometry is more easily defended, according to some of the more optimistic strands of the cyclic majority literature that emerged in the years after *The Calculus* was published. For example, Balasko and Crès (1997) suggest that cycles tend to be rare for decision rules that require more than 53% of the votes.

The shapes of the two cost curves vary with the policies to be chosen, thus the best voting rule—that which minimizes the total cost of making collective decisions—varies among types of choices.

For a given activity, the fully rational individual at the time of constitutional choice will try to choose the decision-making rule which will minimize the present value of the expected costs that he must suffer. **He will do so by minimizing the sum of the expected external costs and the expected decision-making costs** ... [In this manner,] the individual will choose the rule which requires that K/N of the group agree when collective decisions are made. (Buchanan and Tullock 1962: 70)

Given the shape of the cost curves assumed, the cost-minimizing decision rule tends to be in the mid-range of voting rules, although not necessarily at the 50 percent point associated with majority rule.

However, no voting rule is optimal for all circumstances. Thus, if possible, different rules will be used for different types of decisions, rather than a single rule. Such a multiplicity of rules is, of course, evident in the United States and European Union. Such complexity is a natural consequence of choosing decision rules to minimize external and decision costs according to Tullock.

A similar approach is also used by voters when choosing other institutions of democratic governance. In chapter 8, Tullock notes that the external and decision costs of collective action varies with group size, and so can be used to characterize voter preferences over the community governed and over the electoral districts voted in. Larger groups can address more positive and negative externalities, but have larger decision-making costs. Group size can also affect homogeneity, which tends to affect decision costs. Decision costs are lower in more homogeneous groups than in more heterogeneous ones of equal size.

[T]he group should be extended so long as the expected costs of the spillover effects from excluded jurisdictions exceed the expected incremental costs of decision-making resulting from adding the excluded jurisdictions. Buchanan and Tullock (1962: 113)

Another aspect of constitutional choice is the organization of the government itself, as with bicameralism, federalism, and alternative degrees of decentralization. Chapter 8 also discusses optimal degrees of decentralization, and suggests that voters will in general prefer a subsidiarity principle.

If the individual can have available to him several political units organizing the same collective activity, he can take this into account in his locational decisions. **This possibility of individual choice among alternative collective units limits both the external costs imposed by collective action and the expected costs of decision-making.**

Both the decentralization and size factors suggest that, **where possible, collective activity should be organized in small rather than large political units.** Organization in large units may be justified only by the overwhelming importance of the externality that remains after localized and decentralized collectivization (Buchanan and Tullock 1962: 88)

Chapter 16 uses models worked out in earlier chapters to analyze bicameral legislatures. Decision costs within bicameral systems can vary from a little above those associated with single-chamber legislatures to much greater levels depending on the extent to which common interests are represented in the two chambers.¹³ External costs vary from those associated with near unanimity to those associated with relatively narrow majorities ($k=25\%$) depending upon the basis of representation and the heterogeneity of the interests represented. (Buchanan and Tullock 1962: 172)

[I]f the basis of representation can be made significantly different in the two houses, the institution of the bicameral legislature may prove to be an effective means of securing a substantial reduction in the expected external costs of collective action without incurring as much added decision-making costs as a more inclusive rule would involve in a single house.

¹³ If, for example, there are three types of voters and two share control of the first chamber and the other group dominates the second chamber, then only bills that advance the interests of all three groups can be adopted. Consequently, in cases in which the pivotal members of the two chambers represent different interests, bicameralism is likely to require (implicit) support levels that are substantially greater than minimal level ($1/4$) for laws to be adopted. The less uniformly voters are distributed, the more likely it is that bicameral legislatures produce policies with supermajority support.

Together, Tullock's chapters (6, 8, 10, and 16) demonstrate that the use of alternative electoral rules, basis of representation, electoral district, and governmental architecture in the United States are all consistent with voter efforts to minimize collective decision-making costs. Such choices provide an explanation for many of the core elements of the constitutional frameworks that characterizes contemporary liberal democracy. They are fundamentally grounded in voter interests.¹⁴

7. Tullock's Pessimistic Constitutional Political Economy

Analytic histories themselves have a very long and distinguished history stretching back through Blackstone, Montesquieu, Hobbes, and Aristotle. When Tullock's research is organized as such a narrative, it provides a framework that encompasses much of human history, and did so two or three decades before others working in the field of political economy began to tackle the same issues.

Tullock's constitutional political economy, however, is not an optimistic one. Conflict and coercion are endemic. Dictatorships are commonplace and escapes provided by revolution and liberal democracy are likely to be temporary and infrequent. In the Tullock schema democracy is not the end of history, but is a temporary state on the way back to autocracy. Nonetheless, they are worth preserving during the times they exist.

I should however not conceal from the reader my own feeling **that despotism is in essence the equilibrium state of human society.** This does not of course mean that I think it is a good thing. ... the feeling that democracy is not the true equilibrium state can be taken as an argument simply for guarding it more carefully in hopes that **if we guard it carefully we can keep it or at**

¹⁴The chapter also notes, almost in passing, that Riker (1962)'s famous minimum winning coalition tends not to be an efficiently sized coalition, because every coalition member can threaten to end the coalition, which drives up bargaining costs. Instead, coalitions should be larger than that minimal coalition. They suggest that marginal bargaining costs fall faster than member coalitional rewards do. The chapter also distinguishes between veto power and agenda control, ideas that would play a role in the social choice and institutionally induced equilibrium literatures in the 1970s and 1980s.

least keep it a lot longer. (Tullock 1987:189-90)

Although Tullock himself was not particularly optimistic about democracy, a bit of optimism implied by his theory of institutional choice. Insofar as institutions are adopted or modified by rational individuals, they are adopted precisely because of their anticipated effects on human behavior and net benefits. Having identified the frailty of democratic institutions, perhaps suitable institutional reforms can be adopted that will make democracy a more robust and effective form of governance than it has been in the past.

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