

### **XL. Introduction.**

- A.** The analysis to this point has largely taken political institutions as given. That is to say, it has been assumed that voting rules, the bureaucracy, laws limiting the scope of government policies, and the consequent plethora of politically active interest groups have all been taken to be exogenous.
- B.** On the other hand, we have implicitly done a bit of constitutional political economy insofar as one could interpret the various sections of the course as examinations of consequences of *different forms of governance*.
- The pure election models could be interpreted as polities where all matters of importance are determined by referendum (or at least by contractually bound representatives) and where interest group activities were illegal or very circumscribed.
    - Issues regarding the existence of electoral equilibria and/or how those equilibria might be affected by different voters, cultures, institutions and voting rules are all topics of Constitutional Political Economy.
    - Recall Weingast and Shepsle's institutionally induced equilibrium paper.
  - One could interpret the Becker model and the bureaucracy models as ones where political institutions allowed or solicited input from various organizations and groups regarding policies that were of special interest to them.
  - The combined model would thus be an intermediate case, where both elections and politically active groups play a role in the development of public policies.
  - The positive consequences of these institutions, as well as the normative implications of the operation of these institutions are all topics in what has been called Constitutional Political Economy
- C.** The field is both very old and very new.
- Aristotle's *Politics* spends considerable time analyzing the relative performance of alternative methods of organizing government (democracy, oligarchies, and monarchies).
  - Obviously, Madison and the other contributors to the American constitution and subsequent constitutions elsewhere have all wrestled with the relative merits (from various points of view) of alternative methods of organizing government.
  - Modern analytical analysis began with Buchanan and Tullock's *Calculus of Consent* (1962) where they explicitly attempt to analyze the logical foundations of constitutional democracy. Subsequent work by Buchanan was largely focused on further economic, political, and philosophical analysis of what he calls the "constitutional" perspective.
  - Many other public choice/rational politics analyses of constitutional issues have taken place during the periods following the *Calculus of Consent*. (See for example the syllabus for a sample of these.) In 1990 the journal of *Constitutional Political Economy* was begun by the Center for Study of Public Choice. It is now published by Kluwer.

- Most recently, Dennis Mueller has written a book that also engages explicitly in constitutional analysis: *Constitutional Democracy* (1996).
- D.** Interest in the properties of alternative constitutions or alternative collections of economic and political rules has intensified partly as a result of the demise of the Soviet Union and the consequent democratization of much of Africa and South America. In Europe there has been an active debate over the proper constitutions for a "European Union." Obviously, *CPE* is for these societies a pressing practical concern not an abstract exercise of interest only to political philosophers.

### **XLI. Normative CPE Approaches**

- A.** The central normative question addressed in CPE requires assessing the *relative* merits of alternative institutions.
- Characterizing "efficient" or "good" or "effective" institutions clearly required both a positive analysis of the manner in which particular types of government may be expected to operate, and some normative theory to assess the relative merits of the outcomes (processes, etc.) likely to obtain from those governments.
  - The former is partly can be addressed with a positive economic and public choice analysis of the operation of specific governmental institutions. Many of the tools and procedures used in previous parts of the course can be used for this purpose.
  - The normative analysis is not as straightforward because people are more likely to disagree about how to "measure" the desirability of a particular form of government than about the real consequences of such governments.
  - For example: (i) Should one mainly focus on the process used to make policy choices, or on the consequences of those choices. (ii) Should one focus on the effects of these policies or processes under best, average, or worse case scenarios? (iii) Should one focus on the consequences on the poorest, richest, median, mean or all persons affected by governmental policies? (iv) Who counts and who does not? Should international externalities be considered?
  - Clearly one can apply essentially the same tools and methods that we used to evaluate particular public policies to the examine the relative value of institutions
- B.** Paretian
- Clearly, one can use the Pareto norms to assess the relative merits of actual or hypothetical institutions. Institution A is Pareto Superior to Institutions B *iff* at least one person prefers institution A to Institution B and no one strictly prefers B to A. If there are no hypothetical or real institutions that are Pareto superior to A, then A is a Pareto efficient or optimal institution
  - The same problems that we have with the Pareto criteria for policy are obviously present here as well. There may be "too many" Pareto Efficient institutional arrangements. For both a dictatorship and a democracy might be regarded as Pareto optimal because the dictator will be made worse off by a move to democracy, and

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the median voter made worse off by a move from democracy to dictatorship. (Is every institution Pareto efficient?)

- C. Contractarian (pseudo Paretian)** The contractarian approach(es) are very closely related to the Pareto norms. Essentially they are looking for institutions that could or could have been adopted voluntarily by those subject to those institutions or rules. That is to say, an institution is desirable if it is (or could have been) the result of a Pareto superior move. On the other hand, the notion of a voluntary contract differs slightly from that of a Pareto superior move insofar as every one has to agree that they will be at least as well off after accepting the contract, before a contract can be signed. (A Pareto superior move can be "retrospective" in that after a possibly involuntary contract takes place, the results are observed to make some better off and no one worse off.)
- i. To a contractarian, agreement is the only index that we have to decide whether a policy or institution is a good one. (They resist making inter-personal comparisons of utility.)
  - ii. Explicit contracts: clearly any case where the direct participants in a government all sign a contract that establishes a government satisfies the contractarian norm. This would be true for example of the British Magna Carta and the Mayflower Compact might count as examples of this, but not the American Constitution insofar as many affected persons were opposed to it. (The latter was unanimously accepted by the states but by no state's voter's.)
  - iii. Implicit contracts: many other governments may be regarded to be the result of implicit contracts. The contracts may be implicit in two senses of the word. First they may be implicit because the details of the obligations are not spelled out (this is the usage in economics). Second they may be implicit insofar as many affected parties who did not sign the contract feel bound by it and would have signed if offered the chance. (The current American Constitution probably almost qualifies as an implicit contract in both these senses of the word. People would not agree that it was the best constitution that could be drafted, but that it was better than nothing.)
  - iv. The veils of ignorance and/or uncertainty: Several persons who are regarded as modern social contractarians: Rawls, Buchanan, and Harsanyi; have argued that individuals would be more inclined to agree about a constitution (and/or other fundamental laws of the land) if they had to make a decision in a setting where they did not know the direct consequences of those institutions for themselves.
    - a. Under the Rawlsian veil, the typical individual is assumed not to be able to predict "who" he will be in the ensuing society. So the participant at the hypothetical constitutional convention has to imagine himself in each of the wide variety of positions that might arise. In the end, Rawls argues that individuals will focus on the welfare of the worst-off person in society and attempt to maximize the value of that position. (A *maxi-min* strategy.)

## PUBLIC CHOICE II

- b. A real veil of uncertainty assumed in the theories of Buchanan and Tullock in in Harsanyi. Here uncertainty about the personal consequences of the institutions being considered causes individuals to take a wider account of the possible implications of the institutions (consider their own personal circumstances if they are rich or poor, lucky or unlucky, etc.) in a manner which yields a choice calculus similar in many ways to that developed and made famous by Rawls. B&T and H both regard the outcome to be one where expected values or at least expected (average) utility is maximized.
  - v. Virginia School origins of constitutional analysis are clear insofar as the first analytical work of any depth was developed by Buchanan and Tullock who were the leaders of the "Virginia school" for most of its existence. (The calculus of Consent was written at UVa in the late 50's and 60's, the Center for Study of Public Choice center was created at VPI in 1969/70 about ten years later when both Buchanan and Tullock moved there from UVa (via Rice and UCLA). Of course they and the Center both moved to GMU in 1983/4.) Buchanan's Nobel prize was essentially for Constitutional Political Economy although other contributions are mentioned.
  - vi. Rediscovery by the "new" north-eastern PC literature: Bagwatti, Dixit
- D.** Utilitarian calculus can also be used to evaluate the relative merits of institutions. Often this is easier, but the calculus of the "veil" of ignorance is actually very similar to a Benthamite social welfare function

## XLII. Positive CPE questions

- A.** Democracy versus Dictatorship
- B.** Voting Rules
- C.** Constraining Democratic Choices
- D.** Federalism: How Decentralized Should Government Be

## XLIII. Some Empirical CPE results

- A.** On state and local public finance: Crain and Miller
- B.** On international growth rates: Grier and Tullock