

# Gordon Tullock's Implicit Analytical History of Government

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**Abstract.** Gordon Tullock wrote widely on the emergence and effects of political and legal institutions. Although he did not provide an analytical narrative, perse, his work provides explanations for the emergence of the state, civil law, constitutional law, and democracy. When his work is organized as a historical narrative, it becomes clear that conflict, rather than trade or cooperation, are at the core of Tullock's approach to constitutional political economy.

## 1. Introduction

Gordon Tullock was a prolific social scientist, whose research fills thousands of pages of academic journals and books, and thus connections between the various pieces can be easily overlooked. There is a unified approach based on the rationality hypothesis, which is counter-intuitive, indeed implausible, to most non-economists. The rationality hypothesis asserts that individual decisions are consequences of choices and that choices reflect assessments of the net benefits of the available alternatives. Most economists explore the implications of this hypothesis for activities in markets. They demonstrate that gains to trade can exist among such rational individuals because of differences in endowments and preferences. Such gains to trade, it is argued, explain the existence of complex networks of exchange that economists refer to as markets. Gordon Tullock, in contrast, tends to focus on the conflict associated with settings of scarcity. Tullock notes that when individuals attempt to obtain more wealth or more authority for themselves, they often do so in a manner that reduces the welfare of others. In contrast to economists who are inclined to see gains to trade behind

every action, Tullock tends to see conflict.

He 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 narrow self-interest, rather than from gains to trade realized via social contract or benevolence. The institutions that emerge subsequently affect the costs and benefits of the alternatives confronted by individuals interacting under those institutions and thereby human behavior.

This paper uses a subset of Tullock's research to develop his implicit analytical history.<sup>1</sup> There are several reasons for doing so. First, it provides a useful window into Tullock's constitutional political economy, which he never took the time to articulate and tends to be under appreciated by the literature. Second, the narrative developed demonstrates that Tullock's world view is broader and more interconnected than might be evident from a sampling of his far-ranging research. Tullock's numerous books and papers are mostly written as stand-alone pieces, with little explicit effort to connect one paper or book with the next. Third, the narrative developed bears a striking resemblance to and anticipates the theories subsequently developed by Mancur Olson (1993, 2000), Acemoglu and Robinson (2005),

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<sup>1</sup> In other reviews of Tullock's research, I have provided a more complete overview of his political economy which extends beyond the CPE research program Congleton (2004, 2012). The present volume, of course, provides much additional overviews of his work as a whole and of his particular research programs. Whether or not Tullock himself thought in terms of the analytical narrative developed below is not important. It is clear that the ideas sprang from one mind and reflected a single world view. The effort to articulate that world view is useful because of Tullock's profound impact on the fields of public choice, law and economics, and constitutional political economy. The narrative developed may also stimulate additional analysis of Tullock's CPE and also stimulate others to develop richer perspectives on the effects and origins of constitutions.

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.<sup>2</sup>

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

Tullock's theory of the emergence of governance is sketched out in Tullock (1972b). Tullock's analysis of the origin of governance begins with Hobbesian anarchy. However, Tullock's escape from anarchy emerges from 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).

Perhaps surprisingly, Tullock suggests that the best strategy for retaining and profiting from control includes both 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

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<sup>2</sup> Analytical narratives have recently become commonplace among economists and political scientists. There are many antecedents of course. For example, Hobbes (1651) and Montesquieu (1748) are among the most important precursors of this analytical, as opposed to historical, approach to political theory. Aristotle (350 BCE) arguably started this tradition with his short overviews of the likely path of economic and political developments before writing emerged. Tullock's theory of the emergence of governance is closer to Montesquieu's than to Hobbes in that it includes central roles for both group rules and violence.

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).

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. The ruling group selects a schedule of taxation that maximizes risk-adjusted long run returns for the ruling group (Tullock 1972b: 69-71). Tradable property rights are created to realize mutual gains to trade that may remain, given the schedule of appropriation. Both informal systems of taxation and civil law thus emerge gradually as the ruling group learns how to maximize the net benefits of control.<sup>3</sup>

Through time informal systems of civil law are extended to include enforcement of formal contracts and buttressed with a court system in order to further increase the returns of the ruling group.

Introduction of [an] 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.

Legal systems are thus among the first institutions of governance.

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<sup>3</sup> Tullock (1972b) argues that the margin between taking and trade reflects the expected cost of resistance by those whose resources are being confiscated. He acknowledges, however, 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. Some forms of "irrationality" can be rational strategies for living in society.

A rudimentary form of constitutional law, perhaps surprisingly, emerges from a similar process.

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)

Standing procedures also systematically distribute the fruits of power (rents) among members of the ruling group, although not equally. The distributional rules create incentives of those holding positions of authority to cooperate with each other.

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)

Autocrats thus create and enforce constitutional laws for pragmatic, rather than ethical reasons or to advance citizen interests, per se. The rules of governance reduce conflict and thereby increase the net returns to those in power. The rules enable the production of sufficient force (and loyalty) to collect taxes and retain authority.

### **3. The Grounding Laws and Procedures of Authoritarian Regimes**

In subsequent work, Tullock (1987: 142-5) argues that ruling juntas tend to evolve into dictatorships because of asymmetries in the skills and loyalties within ruling groups. For example, a ruling council with 5 members might have a stable three person voting bloc, and

within that three, a stable two person inner voting bloc, which is dominated by one person, who is in effect the dictator—the pivotal decision maker of that government.

Unfortunately for such rulers, the autocratic governance that emerges from the Hobbesian jungle is not entirely stable or without conflict. The dictator (pivotal decision maker) cannot be entirely sure of his or her position. He or she requires the ongoing support of others to retain power and also has to overcome a variety of threats to his or her dominant position.

[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).

The standing procedures of authoritarian regimes emerge as methods for retaining and maximizing the returns from power.

Tullock focuses most of his attention on the second of these problems, because he believes that revolts and revolutions are relatively easy to overcome and overcoming external threats is a military, rather than a political problem (Tullock 1987: ch. 3; 1965: 54).<sup>4</sup>

**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)

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<sup>4</sup> 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.” In contrast, there is a good deal of evidence that coups occur; see, for example, Biennen and van de Walle (1989).

Tullock discusses a variety of standing procedures through which dictators can decrease the probability of coup d'état by in-house rivals. These characterize the 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. Treason will be defined in a manner that punishes all threats to the dictator. Standing rewards will exist for those providing the ruler(s) with creditable evidence of conspiracies. (Tullock 1987: ch. 1, and Tullock 1974: ch. 7).

Dynastic systems emerge to address similar concerns. Tullock regards dynastic secession to be an institution for reducing the risk of assassination, rather than a consequence of family bonds, social biology, or 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 and coalitions.<sup>5</sup>

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<sup>5</sup> This explanation contrasts with that provided, for example, by Bagehot (1872) who attributes dynastic forms to family and the typical dominance of the oldest man in families. Bagehot also believes

Tullock's analysis thus provides an explanation for the emergence of autocracy and for many of the durable features of governance. Autocracies are commonplace in history. They 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 implicit) are at approximately maximal limits.

Particular dictators may be replaced through coups by other relatively high officials and military officers, but the basic form and routines of authoritarian governance continue. The basic structure of government is more stable than are the persons holding high office, because of the common interests and problems confronted by all such office holders.

Tullock also argues that a dictator's encompassing interest tends to be more limited than subsequently argued by Olson (2000). Investments in infrastructure and legal system that encourage economic growth are in a dictator's interest only insofar as the subsequent economic growth increases the expected present discounted value of the net benefits of dictatorship. However, economic growth often increases the risk of overthrow by making the highest office more desirable. If the risk adjusted rate of return from foreign investments is comparable or higher than that for domestic investments, Tullock argues that dictator will invest their 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

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that conflict is important, but focuses for the most part on conflicts between and among governments.



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. Some sharing of autocratic rents may be necessary to secure the minimal support necessary to retain power. Parliaments and advisory councils may reflect specialization and bargaining for needed support among preexisting elites. An army is necessary to repress an occasional peasant revolt and secure the national or duchy boundaries. Such institutions unfortunately also increase the probability of overthrow insofar as they create potential elite conspirators; thus, a dictator may not want an especially well-lead parliament or army. However, on balance, these institutions make the regime more likely to retain authority and so increase expected net revenue flows (adjusted for risk).

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. The leaders of parliament, when supported by the military, 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). The emergence of the German republic in 1919 under its Weimar constitution may serve as an instance of such a transition.

Another possible path to democracy occurs when a dictator wishes to retire from office. Shifting 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).<sup>6</sup>

#### 4. The Production of Law and Order

Tullock's analysis implies that the both autocrats and elected officials have interests in 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 and elected officials differ, however, and so there will be differences among the legal systems adopted.

For example, 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, Tullock argues that equality before the law will be experienced by most subjects under both regimes, wherever it is not inconsistent with ruler interests, because it is relatively easy to administer (Tullock 1971a: ch. 2).

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 a variety

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<sup>6</sup> Congleton (2011) notes that the existence of parliaments or royal councils implies that negotiation over power and revenue sharing are likely to occur. Such negotiations provide another transition path to democracy.

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).

Governments tend to have separate procedures for detecting crimes, arresting criminals, determining guilt, and punishing criminals. Tullock suggests that such specialized and fragmented system may have initially emerged as a method of reducing coups, although it also tended to increase the efficiency with which laws are enforced. That formal court proceedings have been used from the dawn of civilization suggests that the benefits of increased accuracy and reductions in the probability of coups are sufficient to justify the additional cost of more complex and formal legal systems.

The benefits include more law abiding behavior, and a lower probability of illegal activities, including revolts and coup attempts. The formality and coercive authority associated with bringing suspected criminals to court may also induce awe and deference in the minds of those who might be tempted to engage in unlawful activities or revolt. Together these reduce the cost of retaining authority and in some cases generate a sense of legitimacy.<sup>7</sup>

In his analysis of Western legal systems, Tullock, unlike Posner (1973), emphasizes the

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<sup>7</sup> 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.

difficulty of enforcing laws. 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.<sup>8</sup>

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: 73–74, 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. Law-abiding behavior also tends to reduce risks of assassination and overthrow. Accuracy in court proceedings may also reduce resistance to authority and promote loyalty to the regime through effects on the perceived likelihood that the law violators will be punished and fairness of the legal process.<sup>9</sup>

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<sup>8</sup> “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 1971a: 169)

<sup>9</sup> 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

## 5. 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 not the product of a social contract and may not be stable in the long run.<sup>10</sup>

Nonetheless, democratic governments do occasionally exist, and their internal organization needs to be analyzed to be understood. Moreover, as the government type under which Tullock grew up and lived, it naturally attracted more of his attention than its improbability would merit within his constitutional political economy. According to Tullock's theory of the emergence of government, democratic institutions would tend to reflect their authoritarian heritage, although at least a subset of the standing procedures and institutions would be modified to advance the interest of the new rulers, which is to say voters.

Tullock's chapters in the *Calculus of Consent* (Buchanan and Tullock 1962) explore how

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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 (1971a, 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).

<sup>10</sup> 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).

alternative institutions affect voter net benefits. Tullock assumes that voters focus on 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.<sup>11</sup>

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

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<sup>11</sup> 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.

functions. The shapes of the two cost curves vary with the policies to be chosen, thus the best voting rule--that which minimizes the expected 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. According to Tullock, such complexity is not a historical accident or the product of path-dependency, but a natural consequence of choosing decision rules to minimize external and decision costs for different kinds of policy decisions.

A similar approach would also be 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)

Other aspects of constitutional choice concern the architecture of the government and the associated distribution of policy-making authority, as with bicameralism, federalism, and alternative degrees of decentralization. Chapter 8 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.<sup>12</sup> External costs vary from those associated with near unanimity to those associated with relatively narrow majorities ( $k=25$  percent) depending upon the basis of representation and the heterogeneity of the interests represented.

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<sup>12</sup> 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



[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. (Buchanan and Tullock 1962: 172)

Insofar as the novel features of democratic governance should be considered reforms of older autocratic systems of governance, all should fundamentally be grounded in voter interests. 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 in particular areas of policy. Voter net benefits thus provide an explanation for most of the core elements of the constitutional frameworks that characterizes contemporary liberal democracy.<sup>13</sup>

## **6. 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. Economists are all familiar with the Edgeworth box, which provides a convincing illustration of mutual gains in such settings. Tullock predicts conflict.

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represent different interests, bicameralism is likely to require (implicit) support levels that are substantially greater than minimal level ( $\frac{1}{4}$ ) for laws to be adopted. The less uniformly voters are distributed, the more likely it is that bicameral legislatures produce policies with supermajority support.

<sup>13</sup> The 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.

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 analysis 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 be adopted when possible and cost effective.

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 the resources devoted to 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 both the degree and the modes of conflict.<sup>14</sup>

## 7. Tullock's Pessimistic Constitutional Political Economy

When Tullock's research is organized into an historical 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 subjects. Tullock's constitutional political economy, however, is not an optimistic one. Conflict and coercion are endemic. Dictatorships are commonplace and escapes provided by rare liberal democracies 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, democracies 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

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<sup>14</sup> This point is 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.

it more carefully in hopes that **if we guard it carefully we can keep it or at least keep it a lot longer.** (Tullock 1987:189-90)

Although Tullock was not particularly optimistic about democracy, a bit of optimism is implied by his and Buchanan's theory of institutional choice and his implicit theory of institutionally induced incentives. Insofar as institutions are adopted and modified by rational individuals, they are chosen because of their anticipated effects on human behavior and net benefits. Democracies of the twentieth century may thus be a more robust and effective form of governance than in the past. Unfortunately that is not necessarily the case, because according to Tullock (1959, 1967) and much survey evidence, voters tend to be rationally ignorant about many relevant policy issues and so somewhat prone to error.<sup>15</sup>

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<sup>15</sup> The problem of rational ignorance was noted by Anthony Downs (1957) in one of the classic works in public choice. He argued that voter tended to overestimate the cost of government services and under estimate its benefits. Tullock (1967) in contrast argues that voter tend to underestimate the cost of government services and over-estimate their benefits, bringing more of life under the control of government than truly optimal. For an analysis of how democracies may overcome at least part of the problem of rational ignorance, see Congleton (2007).

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