

A NEW POLITICAL ECONOMY?

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THE POWER TO TAX: ANALYTICAL FOUNDATIONS OF A FISCAL CONSTITUTION. By *Geoffrey Brennan* and *James Buchanan*. New York: Cambridge University Press. 1980. Pp. xiv, 231. \$22.50.

The Power to Tax seeks to replace one economic orthodoxy with another. Despite their iconoclasm, Geoffrey Brennan and James Buchanan are closer to mainline public finance economists than they would like to admit. Both the dominant orthodoxy and *The Power to Tax* fail to transcend the limits of neoclassical economics as a formal theory of political economy. While their methods of evasion are different, both iconoclasts and mainliners fail to take seriously the distinctive features of modern democratic policies — elections, bureaucracy, and an ongoing effort at complex normative evaluation.

I. TAX POLICY IN A CONSTITUTIONAL MONARCHY

Before exploring these common limitations, however, it is important to sketch the outlines of the controversy as the protagonists themselves understand it. The two schools of thought differ, above all, in defining the primary audience for their work. Mainline economists imagine themselves proffering advice to a benevolent ruler interested in economic efficiency and social justice. In contrast, Brennan and Buchanan see themselves as critical observers of a government run by selfish men and women. They wish to write a fiscal constitution that effectively constrains the self-seeking behavior of politicians and bureaucrats.

Consequently, Brennan and Buchanan's formal modeling of government begins from a radically different starting point than the more familiar orthodoxy. They assume a single monopolistic ruler ("Leviathan") who tries to maximize the difference between revenue collected and money spent on public services (or in a slightly more sophisticated version, who maximizes a utility function defined over public services and surplus revenue). The ruler is a "king"

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threatened with neither revolution nor electoral defeat and constrained only by a set of binding constitutional rules. The authors are rather diffident about this particular formulation, and take care to point out that their fundamental commitment is not to the details of their model, but to a view of politicians as essentially selfish.

This basic point of view is a useful and much needed antidote to the standard perspective. Even the most sophisticated prescriptions of economic policy-makers may fail, not because they are wrong, but because they are distorted by the self-interest of politicians and bureaucrats. The central theoretical question then becomes how this selfishness ought to enter the formal analysis.¹ It is here that Brennan and Buchanan make a critical move. Because their government is a monopolistic Leviathan, they can draw heavily on an economic theory of monopoly that was never designed to confront the distinctive characteristics of democratic politics. While the model is merely a working hypothesis, Brennan and Buchanan do use it to generate some very specific conclusions. Since Leviathan seeks to maximize its net return, it wants to tax goods with inelastic supplies or demands; it thinks that broad tax bases are better than narrow ones, and it prefers taxes that can carefully discriminate between taxpayers on the basis of willingness-to-pay. In short, Leviathan wants a basic tax system that is close to the ideal advanced by the standard economist interested in minimizing the "excess burden" of taxation and in tying taxes to the benefits of public services.² Both Leviathan and

1. For related critiques, see Musgrave, *Leviathan Cometh — Or Does He?*, in TAX AND EXPENDITURE LIMITATIONS 77 (H. Ladd & T.N. Tideman eds.) (Urban Institute, COUPE Papers on Public Economics, No. 5, 1981); Oates, *Discussion of Musgrave and Brennan*, in *id.* at 139. These papers comment on Brennan, *Tax Limits and the Logic of Constitutional Restrictions*, in *id.* at 121.

2. One branch of the optimal taxation literature has been entirely unconcerned with the benefits of public services. Instead, the task is to raise a fixed amount of revenue with the least distortion to the economy, *i.e.*, with the minimum of excess burden. With elastic supplies, no income effects, and zero cross-elasticities of demand, tax rates should be set in inverse proportion to the price elasticity of demand. In a general equilibrium framework, no such straightforward results are possible because the optimal rates also depend upon cross-elasticities and income effects. However, in the special case where the utility function is directly additive, the optimal tax rate is higher, the lower the income elasticity of demand (*i.e.*, necessities should be taxed more heavily than luxuries). The relevant literature is summarized in A. ATKINSON & J. STIGLITZ, *ESSAYS IN PUBLIC ECONOMICS* 366-93 (1980).

When production exhibits nonconstant returns to scale so that inframarginal firms earn profits, then the elasticity of supply is important. *Ceteris paribus*, the tax rate should be higher on inelastically supplied goods. *See id.* at 464-68.

Another strand of public finance literature attempts to link taxes to individual benefits. Thus, in a Lindahl tax system, tax "prices" are set separately for each individual so that everyone demands the same level of services. There have also been a few attempts to characterize the optimal level of public services when lump sum nondistortionary taxes are impossible. *See id.* at 482-97, 505-12.

A final portion of the "optimal" taxation literature is concerned with the use of the tax and subsidy system for redistributive purposes. These models generally postulate one or another

the conventional economist seek tax bases that minimize citizens' ability to shift away from the tax, and both want to tailor taxes to individuals. Of course, their reasons for wanting such a system are very different. The proponent of "optimal" taxation hopes to raise revenue to minimize efficiency losses and to reflect differences in individual benefits from public goods. In contrast, Leviathan hopes to maximize revenue collections, or, in a more complex version, to maximize the difference between spending on public goods and taxes. Since Leviathan's interests are directly opposed to the interests of the bulk of the population, people who accept this selfish-despot model would seek to constrain Leviathan constitutionally. They, like Brennan and Buchanan, would want to impose constraints that ensure an *inefficient* tax system to prevent an oppressive exercise of monopoly power. This kind of fiscal constitution would specify that taxes be levied on a narrowly defined base of elastically demanded goods and that rates be uniform across goods and people.³

This neat reversal of the standard results is clever and disturbing, but it also shows that constitutional constraints of the kind proposed can have serious consequences for economic efficiency if, perchance, the ruler is not a greedy Leviathan. Indeed, one danger of the authors' constitutional theory is that it will become a self-fulfilling prophecy. A document written to give little leeway for public-spirited behavior is likely to attract few "statesmen" into politics. The only people attracted to careers as civil servants or elected representatives would be narrow opportunists who (almost by definition) would not find the constitutional constraints burdensome. Brennan and Buchanan, however, probably do not view this as a disadvantage of their constitutional approach. In fact, they worry that tax limits do not go far enough to constrain decision-makers who care about other things besides their own private creature comforts: "constraints become much less effective, and may well be evaded, if the motive force behind governmental action is 'do-goodism.' The

exogenously given social welfare function and design a tax system to fulfill this goal. I discuss this branch of the literature when I deal with Brennan and Buchanan's treatment of distributive issues. See note 10 *infra* and accompanying text.

3. See chs. 3-5. As the authors point out, the analogy between a monopolist and a Leviathan government is not exact because the government does use some proportion of its revenue to produce public services. Pp. 74-75. It is possible, therefore, that taxpayers might prefer the government to set different sales tax structures for different individuals rather than be required to set a uniform proportional tax on some good. Pp. 69-76. However, the authors point out that this case is likely to be of little practical importance since "the possibility of any enforceable and effective differentiation over quantities purchased would be limited to nonstorable commodities." P. 76.

licentious sinners we can control; the saintly ascetics may destroy us" (p. 166).

II. A REDUCTIONIST THEORY

But have Brennan and Buchanan done more than parody the admitted inadequacies of the conventional economic wisdom — replacing the benevolent despot with the selfish Leviathan? Even the naïve observer of politics recognizes a richer reality. Rather than a monolithic state, there is a multitude of political actors. Rather than pure selfishness, at least some political actors try to take normative questions seriously. These complex concerns are transformed into concrete policies by the distinctive institutions of modern representative democracy, where electoral politics coexist uneasily with bureaucratic implementation.

How have Brennan and Buchanan managed to cut through these political realities to develop their drastically simplified model? It is useful to see their construct as the product of three related reductionist arguments that narrow the focus of their inquiry.

The first and most important reductionist argument is Buchanan's effort to deny the propriety of ongoing normative evaluation in political life. Indeed, in *The Limits to Liberty*,⁴ he made explicit his desire to avoid all talk of distributive justice. Instead, property rights are to be grounded in each person's "threat advantage" under anarchy. People differ in tastes and capacities, and their threat advantages are determined by guessing what distribution would arise from violence, stealth, and cajolery in the absence of a government. For some unexplained reason, Buchanan calls this the "natural" distribution and bases his social contract on this foundation.⁵

Yet if property rights are appropriately based on private "threat advantages," why should they not also be based on public threats, the raw power of the government to do as it likes? Despite their efforts to avoid normative arguments, Brennan and Buchanan merely fail to justify their underlying normative premise. If they believe that private power is "good," or at least unchallengeable, they need a normative theory explaining why the state *ought* not to decide that some private threats are unjust. Their blindness is most evident in their failure to treat seriously the impact of concentrated private

4. J. BUCHANAN, *THE LIMITS TO LIBERTY* (1975).

5. *Id.* at 49-50. If a person's threat advantage changes over time, then the social contract should change to reflect this. *Id.* at 77.

power on government.⁶ In fact, all their modeling exercises implicitly assume perfectly competitive private markets, with no monopolistic concentration of wealth.

This perspective makes it easy for the authors to adopt a very truncated view of day-to-day government. Despite their refusal to justify normatively the “natural” distribution of property rights, their constitutional theory nonetheless tries to ensure that this distribution remains sacrosanct. Once the distribution of property has been fixed by the constitution, the only legitimate function of government is the correction of externalities and the production of goods that cannot be efficiently provided by private markets. The practical difficulty here is to design a political system that keeps the distributive issues involved in setting up property rights separate from the system of taxing and spending. It seems extremely unlikely that such a division can be maintained, especially where constitutionally protected rights depend upon the relative advantages of various people under anarchy. A system based on threat advantage seems inherently unstable. People would always be trying to improve their status to give them a perceived advantage under anarchy.

If, however, one ignores the possibility of continuing governmental instability as threat advantages are redefined, the authors’ narrow view of the function of taxation permits them to make a second reductionist move: electoral constraints have no particular legitimacy. If redistribution were a legitimate tax objective, political power could not be based only on the distribution of private property. Instead, it might seem sensible to use a relatively egalitarian voting system to decide how unequalitarian the property system ought to be. It would then be impossible to consider tax policy without taking redistribution through democratic politics seriously. In contrast, Brennan and Buchanan wish to protect the “natural” distribution of property based on threat advantage by insisting that unanimity is the ideal voting rule.⁷ This effectively limits the government to projects that will make everyone better off — all taxes are “benefit taxes” tied to each individual’s gains from particular public policies. Since, as a

6. Cf. Rae, *The Limits of Consensual Decision*, 69 AM. POL. SCI. REV. 1270, 1292, 1293-94 (1975). Rae considers J. BUCHANAN & G. TULLOCK, *THE CALCULUS OF CONSENT* (1962), along with other theories based on consent. “The doctrine [of consent] has grown subtler, but retains the mark of its birth: a single-minded attention to public power and a corresponding inattention to its alternatives.” Rae, *supra* at 1293. See generally Goldberg, *Institutional Change and the Quasi-Invisible Hand*, 17 J.L. & ECON. 461 (1974).

7. The belief that unanimity is the best voting system in an ideal world is also held by more conventional public finance economists. Thus, Musgrave, *supra* note 1, at 112, in a critique of Brennan and Buchanan’s theory, writes that “budgeting by unanimous agreement would be ideal if there were no difficulty in securing the revelation of preferences.”

practical matter, unanimity cannot be used for day-to-day political choices, Brennan and Buchanan are willing to compromise their ideal. Nevertheless, they wish to structure government to prevent redistribution through democratic politics: “[T]o the extent that the constitution lays down private property rights and laws against interference with those rights, these laws must be interpreted and enforced essentially independently of in-period politics” (p. 18).

The third reduction follows naturally. Since majoritarian judgments have no special legitimacy, it does not seem important to consider carefully how they might constrain the behavior of elected officials and bureaucrats. In fact, the authors go so far as to claim that “majoritarian rule can best be modeled as if it embodies *no effective constraint on the exercise of government powers at all*” (p. 7). Although Brennan and Buchanan do not like the possibility for redistribution inherent in majority rule, this does not mean that voting processes impose no constraints. They simply impose constraints which Brennan and Buchanan do not like.⁸ While Buchanan has stressed the importance of institutional design in other writings,⁹ *The Power to Tax* relegates such issues to the periphery.

After depriving politics of redistributive content, after denying majoritarian voting any special legitimacy, after ignoring the power of institutional constraints on politicians and bureaucrats, *The Power to Tax* is left with a stark picture of Leviathan — intent only on using taxation to rip off the citizenry. But this model can be no better than the three reductionist premises on which it is based.

III. TOWARD A NEW POLITICAL ECONOMY

The inadequacies of *The Power to Tax* should not lead one to dismiss its powerful critique of mainstream public finance. Indeed, when compared with mainstream theorists, the authors are relatively sophisticated about government. At least they self-consciously recognize that their Leviathan is an oversimplification of political reality, and make some effort to justify their reductionist premises. In contrast, conventional public finance has all too often embraced similar assumptions without finding it necessary to justify them at all. While the dominant tradition assumes a benevolent government, it is

8. Brennan and Buchanan, pp. 173-84, do discuss the advantages of a federal system with competitive state and local government, but they fail to emphasize the costs of such competition when it results in beggar-thy-neighbor policies. For a critique of multiple models of government, see Rose-Ackerman, *Beyond Tiebout: Modeling the Political Economy of Local Government* in LOCAL PROVISION OF PUBLIC SERVICES (P. Mieszkowski & G. Zodrow eds. 1982) (forthcoming).

9. See especially the second half of J. BUCHANAN & G. TULLOCK, *supra* note 6.

no more interested in complex normative arguments than Brennan and Buchanan. Instead, it attempts to assess the "optimality" of a tax by postulating the existence of an exogenously fixed "social welfare function."¹⁰ This technique makes it possible for mainstream economists to function as skilled technicians, unconcerned with the messy complexity of democratic politics. If they think about government at all, they view political and bureaucratic practices as unfortunate constraints upon a benevolent despot interested in overall efficiency, full employment, and growth — interested, in short, in listening to technically competent economic advice.¹¹

But it is possible to do better than this. While there may have been a time when philosophers themselves despaired of contributing to political argument,¹² today's error may well be overconfidence. John Rawls' work¹³ has had the most impact on normative economic analysis, probably because economists can reduce it to the simple

10. This is done in spite of the fact that a pluralistic society is unlikely to be able to agree on a social welfare function. See K. ARROW, *SOCIAL CHOICE AND INDIVIDUAL VALUES* (1951). Such research postulates a social welfare function that might, for example, be "Rawlsian," utilitarian, or egalitarian, and then examines the tax implications of this choice. See A. ATKINSON & J. STIGLITZ, *supra* note 2, at 394-423; Cooter & Helpman, *Optimal Taxation for Transfer Payments*, 88 Q.J. ECON. 656 (1974). Cooter and Helpman write: "Optimal tax rates for redistribution must be obtained through maximization of a social welfare function." *Id.* at 656. They then examine the implications for tax policy of seven alternative welfare goals. Their "democratic" welfare function merely maximizes the utility of the class of median ability, *id.* at 658, and ignores all the difficulties of majoritarian political procedures.

11. Atkinson and Stiglitz in their graduate public economics text, A. ATKINSON & J. STIGLITZ, *supra* note 2, spend only one of their eighteen lectures on theories of the state. *Id.* at 294-330. However, in their concluding lecture they do call for a return to "political economy." *Id.* at 576.

Of course, Brennan and Buchanan are not the only economists to criticize research in mainstream public finance. Early work by Downs, A. DOWNS, *AN ECONOMIC THEORY OF DEMOCRACY* (1957), has been followed in recent years by a growth in the field of public choice. For a review of the literature, see D. MUELLER, *PUBLIC CHOICE* (1979). It remains true, however, that this work has had surprisingly little impact on work by public finance economists. For one exception, see Aumann & Kurz, *Power and Taxes*, 45 *ECONOMETRICA* 1137 (1977).

In the study of public regulation and public policy, however, the political economic approach is of growing importance in developing positive theories of government behavior. See, e.g., Peltzman, *Toward a More General Theory of Regulation*, 19 *J.L. & ECON.* 211 (1976); Posner, *Theories of Economic Regulation*, 5 *BELL J. ECON. & MGMT. SCI.* 335 (1974); Stigler, *The Theory of Economic Regulation*, 2 *BELL J. ECON. & MGMT. SCI.* 3 (1971).

12. This was apparently a widely held view in the fifties and sixties. See *PHILOSOPHY, POLITICS AND SOCIETY* (P. Laslett & J. Fishkin eds. 1979). In the introduction, *id.* at 2, the editors quote Isaiah Berlin:

"No commanding work of political theory has appeared in the 20th century." So said Isaiah Berlin, writing in 1962 in the second volume of *Philosophy, Politics and Society* in answer to the question *Does Political Theory Still Exist?* He was taking up a point made six years earlier in the introduction to the first volume. The outstanding difference now, in 1978, is that Berlin's assertions no longer are true.

13. J. RAWLS, *A THEORY OF JUSTICE* (1971).

formula: "Maximize the position of the worst off class."¹⁴ Books by Robert Nozick¹⁵ and Bruce Ackerman,¹⁶ as well as a flood of more narrowly focused articles in journals like *Ethics* and *Philosophy and Public Affairs*, indicate the continuing vitality of the field. Moreover, much of this work can be used to enrich research in theoretical welfare economics and public choice. The task is to make use of these normative arguments without reducing them to conventional Bergsonian social welfare functions.¹⁷

The existence of this continuing philosophical debate makes a point that transcends the ideas of any particular political theorist. Just as philosophers do not agree on the proper distribution of wealth and power, neither will ordinary citizens. And if no *status quo* or benchmark distribution is widely accepted, procedural fairness becomes an important element of constitutional design. Even if the constitution writers do not believe that they can legitimately impose their own view of the best substantive distribution, the political procedures that they establish will have implications for the future development of property rights and the distribution of wealth.¹⁸

Our collective inability to agree on a fair distribution of property rights may well provide the strongest argument for an egalitarian distribution of voting power. By severing the distribution of votes from the distribution of property, a democratic state can symbolize the *problematic* character of any existing property distribution. The one person-one vote principle, moreover, captures what appears to be a widely held notion of fair process. Thus, one test of the legitimacy of an inegalitarian system of property rights may be its capacity to gain the ongoing support of an egalitarian political system.

As long as there is private inequality, there will be a tension between the procedural equality of an idealized political system and the substantive inequality of material resources. This makes the study of political corruption, broadly conceived, a matter of central importance: How insulated should the political system be from the private property system? Rather than making some intuitive distinc-

14. Rawls himself would, however, be unlikely to accept such an oversimplified caricature of his work.

15. R. NOZICK, *ANARCHY, STATE AND UTOPIA* (1974).

16. B. ACKERMAN, *SOCIAL JUSTICE IN THE LIBERAL STATE* (1980).

17. See Bergson, *A Reformulation of Certain Aspects of Welfare Economics*, 52 Q.J. ECON. 314 (1938); Bergson, *On the Concept of Social Welfare*, 68 Q.J. ECON. 233 (1954).

18. Interestingly, this basic point of view with its emphasis on procedure is close to Buchanan's own position except that he takes no position in favor of equality. He writes, "The 'goodness' of an outcome is evaluated on procedural criteria applied to the means of its attainment and not on substantive criteria intrinsic to such outcomes." J. BUCHANAN, *supra* note 4, at 164.

tion between outright bribery and more indirect uses of wealth to influence votes, the normative challenge is to define "corruption" by explaining why the exercise of private power can be inconsistent with fair democratic process.¹⁹ Even if one can define "corrupt" practices with the aid of such a theory, a second question remains for empirical analysis. Given a normative theory that permits a relatively small role for private wealth in politics, it is still possible that the wealthy may gain influence over time — permitting them to achieve a legislative redefinition of corruption that increasingly favors their interest. Systematic analysis of this possibility could provide a rigorous theoretical framework for the constitutional debate surrounding *Buckley v. Valeo*²⁰ and campaign finance reform.

But it is not enough to insulate political choice effectively from the inegalitarian distribution of private wealth and power. It remains to define the procedures through which the preferences of individual citizens are aggregated into political choice. Majority rule has frequently been accepted, especially by constitutional lawyers,²¹ as a self-evidently desirable, egalitarian procedure. A major contribution of social choice theory, however, has been simultaneously to illuminate and to undercut the foundations of this belief.

A landmark result in formal social choice theory gave majoritarianism conceptual support by transforming our vague normative intuitions about majority rule into a precise formulation. In 1952, K.O. May²² established a set of necessary and sufficient conditions for majority rule that have substantial normative force. May showed that majority rule was the only rule that satisfies a set of four axioms. The first two require that the voting procedure be neutral with respect to options and anonymous with respect to voters. His neutrality axiom requires that no option be favored (or disfavored) more than any other. Thus, there can be no *status quo* or benchmark position that plays a special role. Brennan and Buchanan's ideal procedure, which requires unanimous consent before a change can be made, obviously does not satisfy "neutrality." May's requirement of anonymity, in turn, implies that no voter is more favored than any other. One must be able to rename the voters with no change in the outcome. In short, these two axioms require that both options and individuals be treated symmetrically. If one believes that distribu-

19. See S. ROSE-ACKERMAN, *CORRUPTION: A STUDY IN POLITICAL ECONOMY* (1978).

20. 424 U.S. 1 (1976).

21. E.g., J. ELY, *DEMOCRACY AND DISTRUST* (1980).

22. May, *A Set of Independent, Necessary and Sufficient Conditions for Simple Majority Decision*, 20 *ECONOMETRICA* 680 (1952).

tive issues are at the heart of politics, such an egalitarian bias seems, at least *prima facie*, a fair starting point.

The two other axioms require the procedure to be “decisive” and “positively responsive.” A decisive procedure is simply one that can rank any two alternatives no matter what the preferences of the voters happen to be. For two options, *X* and *Y*, it will tell us either that *X* is socially preferred to *Y*, *Y* is preferred to *X*, or *X* and *Y* are indifferent. Notice that neither a rule requiring less than majority support nor a rule requiring more than majority support is decisive, taken by itself. Thus a rule stating that one option is socially preferred to another if at least forty percent of the people prefer the first to the second is not decisive if forty percent prefer *X* to *Y* while sixty percent prefer *Y* to *X*. Alternatively, if sixty percent support is required for passage, the rule would be unable to decide between *X* and *Y* if fifty-five percent preferred *X* and forty-five percent preferred *Y*. The sixty percent rule could be made decisive by fixing one option as a *status quo* that persists unless a new proposal obtains over sixty percent of the votes, but this added condition would violate neutrality.

“Positive responsiveness” is a strong condition, but it seems consistent with liberal democratic principles. This axiom asserts that if society is indifferent between two options, *X* and *Y*, and if *X* goes up in someone’s preference relative to *Y*, and does not fall in anyone else’s, then *X* must be socially preferred to *Y*. Basically, this condition means that the decision rule cannot have large ranges of social indifference unless most individuals are actually indifferent between many options. For example, it rules out a social choice procedure in which society declares itself to be indifferent between all efficient points.²³

May’s achievement was to show that these axioms are necessary and sufficient conditions for majority rule. Anyone who finds these axioms desirable on normative grounds must choose majority rule as the social choice procedure.²⁴

Whatever the appeal of May’s axioms, they do not guarantee the existence of a unique majority winner. When there are three or more options, majority rule may not yield a determinate outcome unless the range of individual preference patterns falls into a restrictive class. Suppose society must choose one of three options, *X*, *Y*,

23. The axiom also rules out a procedure in which *X* is socially preferred to *Y* if more than 60% of the voters prefer *X* to *Y*; *X* is indifferent to *Y* if from 40% to 60% prefer *X*; and *Y* is preferred to *X* if more than 60% prefer *Y* to *X*.

24. See A.K. SEN, COLLECTIVE CHOICE AND SOCIAL WELFARE 56-70 (1970).

and *Z*, and that it votes by majority rule on each pair to find the option that defeats all others. Then it is possible for *Y* to beat *X*, *Z* to beat *Y*, and *X* to beat *Z*. The system continuously cycles. The only way out is to fix the order of voting ahead of time and stop after three pairwise votes. The individual with the power to set the agenda then clearly has the power to determine the outcome.²⁵

This difficulty with majority rule has led analysts to consider other voting methods that avoid this problem. Each one, however, has its own anomalies and hard cases. Point voting systems, for example, in which voters allocate a fixed number of points over all options, with the high scorer winning, are subject to strategic manipulation.²⁶ In fact, recent work by Gibbard and Satterthwaite has shown that no plausible choice procedure is strategy-proof.²⁷ Rather than despairing in the face of such results, however, political economists should use them to begin a conversation with constitutional lawyers, whose discussions of majority rule have failed to take social choice theory seriously. At the very least, a clear statement of the problems of majoritarian procedures will force constitutional lawyers to re-examine their oversimplified majoritarian rhetoric. Perhaps the best way to begin this discussion is to focus on particular systems that avoid a close connection between skillful political manipulation and high levels of private wealth and power. Brennan and Buchanan do nothing to aid this process by assuming these issues out of existence.

Yet even if political economists took this step, a final task would remain. It is not enough to insulate democratic politics from the undue influence of private power. Constitutional analysis must take seriously the characteristic institutions of a modern representative, bureaucratic state. These are not details that can be conveniently

25. Voting cycles are clearly discussed in A. FELDMAN, *WELFARE ECONOMICS AND SOCIAL CHOICE* 161-77 (1980).

26. A useful discussion of the problems with alternative voting rules is found in Niemi & Riker, *The Choice of Voting Systems*, *SCI. AM.*, June 1976, at 21.

27. See A. FELDMAN, *supra* note 25, at 195-215, for a discussion and annotated bibliography. The theorem, proved separately by Gibbard and Satterthwaite, deals with social decision functions (SDFs) that associate a single social choice with each pattern of individual preferences. The theorem supposes that we want a SDF to satisfy four conditions. These conditions are

- 1) Universality, *i.e.*, any preference profile over the alternatives is admissible;
- 2) Nondictatorship, *i.e.*, no person can determine the social choice irrespective of others' preferences;
- 3) Nondegeneracy, *i.e.*, the choice rule is not completely independent of people's preferences; and
- 4) Nonmanipulability or cheatproofness, *i.e.*, no one finds it in his interest to misrepresent his preferences to gain an advantage.

Gibbard and Satterthwaite show that no SDF satisfies these four conditions.

assumed away, but are the necessary result of operating a democracy in a large country facing complex technological, economic, social, and political problems. The most fundamental difficulty is the limited time and information available to the citizenry. Authority must be delegated to others if government is to function at all efficiently. Of course, with delegation comes the potential for abuse — with a Leviathan government representing the extreme of self-interested behavior by public servants. One must ask, however, whether institutional or procedural constraints can substitute for Brennan and Buchanan's substantive constitutional limits and prohibitions. A necessary institutional check, of course, is provided by regular, contested elections. Greedy and corrupt politicians can be voted out of office when they seek re-election, but this will only happen if voters know something about the behavior of elected representatives and if corruption is viewed with disfavor. Elections would do little to ensure honest government if politicians merely used their bribe money to purchase votes.²⁸ Even in less extreme cases where elections are conducted honestly, voters may simply be ignorant of politicians' behavior. Brennan and Buchanan's vision of Leviathan reflects reality most accurately when government officials have a monopoly on information about themselves. The procedural approach would, therefore, require the constitution to guarantee the right of journalists, scholars, and ordinary citizens to find out how government is working. Indeed, it may be possible to construct plausible models in which some institutions, such as the media, have special rights to monitor government in the name of democratic values.²⁹

Ordinary citizens may be ineffective in constraining politicians, not only because of poor information, but also because of the costs of organizing for political action. Some analysts, most notably Mancur Olson,³⁰ argue that political participation will be too low because of "free riding." Citizens with limited time and energy may not find it worthwhile to organize to lobby for public goods or to monitor officials because they hope to benefit from the political action undertaken by others. As a consequence, very few individuals will participate in politics, and public services will be "undersupplied." Olson's position, however, implies that politicians will have substantial freedom of action. Therefore, if other groups besides rank and

28. For a further development of these ideas in the context of campaign financing and legislative corruption, see S. ROSE-ACKERMAN, *supra* note 19, at chs. 2-4.

29. The courts have not given the press a constitutionally privileged right to information, but a recent case did assert the public's constitutional right to information about judicial proceedings. *See Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980).

30. M. OLSON, *THE LOGIC OF COLLECTIVE ACTION* (1965).

file voters lobby for particular policies, it is possible for public services to be "oversupplied." In particular, a professional bureaucracy, charged with carrying out the laws, can have an independent policy-making role. Theories of "bureaucratic aggrandizement" claim that bureaucrats with a monopoly over information and expertise will try to generate large budgets for their agencies and will collude with elected officials for their mutual benefit.³¹

Taken together, the "free rider" and "bureaucratic aggrandizement" theories suggest a more complex judgment of governmental performance than Brennan and Buchanan's analysis permits. Rather than a Leviathan single-mindedly maximizing its own welfare, political economy can yield no *a priori* judgment about whether government will be "too large" or "too small." What is required is a series of studies of how different kinds of imperfect information and alternative organizational structures affect the composition of the budget and the scope of public regulation.³² It is only in this way that the constitutionalist can hope to control the uses of specialized knowledge that are critical in the drafting and administration of complex modern legislation.

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Brennan and Buchanan are right to call for a new political economy, but they are wrong in describing its purpose. Rather than making politics safe for private property, the aim should be to understand the distinctive character of the modern democratic state. This project has already been begun by both economists and political scientists, and *The Power to Tax* should not be allowed to determine the agenda for future discussion between political economists and constitutional lawyers.

31. See R.D. ARNOLD, CONGRESS AND THE BUREAUCRACY (1979); W. NISKANEN, BUREAUCRACY AND REPRESENTATIVE GOVERNMENT (1971); Fiorina & Noll, *Voters, Legislators and Bureaucracy: Institutional Design in the Public Sector*, 68 AM. ECON. REV. — PAPERS & PROC. 256 (1978). J. BUCHANAN, *supra* note 4, at 156-61 also raises these issues.

32. See, e.g., M. Fiorina, Group Concentration and the Delegation of Legislative Authority (Paper Prepared for the Conference on Social Science and Regulatory Policy, sponsored by the Regulation Program of the National Science Foundation, Reston, Va., Jan. 22-23, 1982).

High-level bureaucrats and elected politicians are not, however, the only public officials with monopoly power. Low-level bureaucrats who deal directly with the public or with private firms also can grant favors, apply sanctions, and generally make life easy or difficult for citizens. Regimes that grant many people petty monopoly power over various aspects of life can be oppressive even if elections are frequent and basic rights are guaranteed. Here structural reforms that introduce more competition between bureaucrats, convert more regulatory processes into market-like transactions, and permit appeals to higher levels can reduce monopoly power without restricting government's ability to act to correct private market failures and redistribute income. See S. ROSE-ACKERMAN, *supra* note 19, chs. 5-9.