

Chapter 4

Politicians and the Constitution

Democracy implies government by the people, as opposed to government by a particular person or by some subset of the population. However, if we define “the people” literally, democracy would mean government by everyone, including the children and mentally handicapped. Every real democracy limits participation to *normal adults*, although there are differences regarding what is normal and at what age one becomes an adult.

In saying that democracy is government *by* normal adults, we imply that there is some way that “the people” can cause their individual, separate wills to take effect in the actions that we call governmental. If I say “I planted a tree,” I mean that I performed the behavior that we call “tree planting” and I imply that I made a conscious decision to perform it. If I say that “the government planted a tree,” I mean that some government official performed the behavior and that the official made a conscious decision. When I also say that the government is democratic, I mean that the official was acting “in conjunction with the people’s *collective decision*.” But the term “collective decision” is a metaphor. Decisions can only be made by individuals. When we use this metaphor, we mean that the people use some procedure for transforming their separate decisions into a single decision that is carried out by an agent. The term “collective decision” signals our minds to think about the procedure.

The history of democracy contains a wide variety of collective decision-making procedures. The members of a small village might

Collective decision-making procedure: a procedure for transforming the separate decisions of the members of a collective into a single decision.

use a procedure consisting of the following three rules. First, any village member can *introduce* a proposed decision, or *bill*, only if he obtains the approval of five percent of the eligible voters. A bill describes an action that an elected agent is commanded to take. A member introduces a bill by announcing it to other members. Second, a specific meeting time is set and a vote is taken on whether to pass or reject the bill. If a majority who attend the meeting vote in favor, the bill will pass. Third, after the passage of the bill, the government agent is commanded to take the action specified in the bill.

In a large national democracy, the procedure used to aggregate people's decisions is ordinarily specified in a written constitution. Almost every national democracy in the world today has one. An exception is England, whose constitution is based on tradition. A written constitution usually states the rules by which the most important government agents are elected, their duties, and the penalties for not carrying out their duties properly. It also tells how voters and/or elected representatives can introduce and pass bills.

We can compare a written constitution with laws. Laws can also be used to specify rules, duties, etc. However, *laws can be easily changed*. Constitutional change, or amendment, is more difficult. For example, changes in laws may require a simple 50+% majority of a legislative assembly, while changes in the constitution may require a two-thirds or three-fourths majority.¹

All of the democracies that exist today were originally established by a small elite who possessed a monopoly over force. The Japanese democracy was imposed by a foreign military force after a war. The U.S. democracy, as a union of otherwise separate states, is one of the few that were established democratically. Its written constitution was drafted by a small group of literate revolutionaries. But it did not ultimately become

¹In the U.S., at the national level of government, an ordinary law can be changed with a simple 50+% majority in both houses of Congress plus presidential approval. Congress can override a presidential veto with a two-thirds majority in each house. To amend the constitution, however, either a two-thirds majority of both houses or a two-thirds majority of the state legislatures must propose the amendment; and three-fourths of the states must ratify, either through their state legislatures or through a convention.

official until it was approved by elected officials in each of the thirteen colonies. In order to get this approval, the writers had to make ten amendments, which came to be known as the Bill of Rights.² Although the U.S. democracy was established more democratically than others, it is still true that only a small percentage of the people gave their input. In most colonies only male property owners were permitted to vote.

If we want to know why a specific country has a constitutional democracy, we must study its unique history, including its wars and civil strife. Although economists can certainly help in the interpretation of history, their specialty is exchange. They study voluntary agreements under the assumption of peaceful exchange. The economist is skilled at answering the following question about a democracy. “If individuals in a market economy wanted to set up a government to produce ‘public goods’ or to correct for some other market failure, what kinds of articles would they want their constitution to have?” In other words, what kind of *contract* would they want to submit themselves to? Answering this question will not allow us to understand everything about democracies and constitutions. But it can help us in three ways. First, in cases where the founders were genuinely interested in public goods, it can help us understand part of an actual democratic constitution. Second, in cases where an initial constitution was amended with the aim of promoting the supply of public goods, it can help us understand the amendments and the resulting institutions and interactions. Finally, it can help people in both the newer and older democracies understand whether and how peaceful constitutional change may contribute to the production of wealth by means of public goods.

Part 1 of this chapter explores the idea proposed by Public Choice theorists that a democratic constitution should be regarded as a means of accomplishing ends or, more specifically, as a contract. Part 2 describes the problem of choosing agents to help make and to carry out the collective decisions. It goes on to show how various constitutional provisions aid in this task. Part 3 introduces two kinds of costs that members of a collective would anticipate when making a constitutional contract: (a) costs associated with the possibility that collective decisions may go against their interest and (b) costs associated with the abuse of power by hired agents. How the people could constitutionally avoid or reduce such costs is the subject of Chapter Five.

²See Leonard Levy (1999: Chapter 1).