

NOTICE - Warning Concerning Copyright Restrictions.

The copyright law of the United States (**Title 17, United States Code**) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of Copyright Law.

The Federalist Papers
and the
New Institutionalism

Edited by

Bernard Grofman
University of California, Irvine

and

Donald Wittman
University of California, Santa Cruz

AGATHON PRESS
New York

The *Federalist Papers* and the New Institutionalism: An Overview

Bernard Grofman

By the *new institutionalism*, I mean analyses using tools derived from microeconomics, game theory, and social choice of the effects of decision-making rules and institutional structures on outcomes.¹ Central to the new institutionalism is the idea that preferences can only be understood in the context of the institutionally generated incentives and institutionally available options that structure choice (see, e.g., Schwartz, this volume; Fink and Riker, this volume). In particular, in John Ferejohn's apt phrase, preferences for outcomes condition preferences for institutions.

I see six major foci of work on the new institutionalism, of which five are exemplified by at least one chapter in this volume: efficiency and transaction costs (Wittman); stability (Miller and Hammond); coordination (Hardin); distribution of power or other resources (Brams; Chamberlin; and Schwartz); and representation (Cain and Jones; Chappell and Keech; Page and Shapiro; and, in a one special sense of that term, *agency*, Schwartz).²

The sixth focus, procedural fairness, refers to criteria by which rules for preference aggregation and group decision-making might be judged: for example, consistency, and responsiveness to change in voter preferences. In its contemporary form it springs from the seminal work of Arrow (1963). A comprehensive, though rather technical, review is found in Schwartz (1986); a less technical but now somewhat dated review is found in Plott (1976). (See also Sen, 1970.)

As economists use the term *efficiency* (also called *Pareto optimality*) they refer to a distribution of resources from which no further gains can be made by trade. In other words, an outcome is efficient if no

one can be made better off without at the same time making at least one person worse off.³ A great deal of work has been done in law and economics asserting the efficiency of common law practices, especially those in *torts* (see, e.g., Posner, 1981). Another sizable body of literature takes off from the work of Coase (1960), on the one hand, and Buchanan and Tullock (1962), on the other. The former deals with allocations in a fictionless environment; the latter emphasizes the importance of transaction costs. In this volume, Wittman draws on the transaction costs literature and on hypotheses from the *Federalist Papers* to look at inter-actor bargaining among sectors within the government.

As the term *stability* is customarily used in the social choice literature, it refers to an equilibrium outcome which cannot be overturned by any majority coalition of actors. There is a considerable literature—originating with Condorcet (1785) and continuing with Black (1958) and Arrow (1963), down to more recent work by scholars such as Plott (1967), Kramer (1977), McKelvey (1976, 1979), Schofield (1978), Shepsle (1979), and Shepsle and Weingast (1984)—which looks at conditions under which stability can be expected.⁴ In this volume, Miller and Hammond reexamine bicameralism from the perspective of its contributions to stability.

The idea of *coordination* refers to the ability of a disparate set of individuals to choose actions which are mutually complementary and which result in net gains for each in the long run. The most familiar example is the agreement to observe the rules of the road. While it is essentially arbitrary whether cars should drive on the right or the left, it is very helpful to everyone, to put it mildly, if everyone picks the same side. Other examples include the coordinating role of customs such as conversational “turn-taking” and agreements such as the Geneva Convention for the treatment of prisoners of war or binding arbitration procedures for labor-management dispute resolution (Wittman, 1982). Research on regulation falls into this area.

The problem of coordination is closely related to the problem of “collective action” (Olson, 1965; Hardin, 1982a), where, as in the prisoner’s dilemma game, what is in the interests of each individual to do may lead to outcomes that no individual wants. Agreed-upon rules, and sanctions for their violation, allow for efficient outcomes in situations where the outcomes are determined by the choices of more than one actor. In this volume, Hardin argues that agreement upon a constitution can be thought of as a solution to the coordination problem which does not require an external sanction for its enforcement. The status quo is anchored by the transaction costs involved in

creating an alternative regime. Moreover, rather than merely being the solution to a particular prisoner's dilemma game, a constitution specifies rules for the resolution of virtually all collective choice problems both at the time of its adoption and in the future.

The general problem of the effect of decision procedures on resource distribution (or redistribution) is one widely considered in economics. The term *power*, as customarily used in the game theory literature, however, has a quite precise meaning. It refers to the ability of actors to exercise a decisive vote. An actor is decisive if changing his or her vote (or preference) changes the outcome. Most game-theoretic measures of power treat an actor's power as the percentage of situations in which that actor can be expected to be decisive.⁵ An important issue from the new institutionalist perspective is the way in which institutional arrangements (such as voting rules) affect the relative power of different actors. In this volume, Brams addresses the relative power of the two chambers of Congress, a question discussed in the *Federalist* nos. 58 and 63. Brams also looks at the relative power of Congress vis-à-vis the President.

Representation has had two closely related usages in the public choice literature. In the law and economics literature, it refers to "principal-agent" relationships, where a key issue is how incentives for the agent may lead to choices that diverge from the desires or interests of the principal. On the other hand, in the political science literature, it usually refers to the concordance between the choices made by a representative and the preferences of his or her constituents. Here, the most important early work is that of Downs (1957). However, in the political science literature, just which voter or voters correspond to the "principal" is not clear. Sometimes the principal is taken to be the "median voter."

There has been a renewed interest in political science in the idea of representation in both senses of that term (see, e.g., Sugden, 1984; McCubbins and Schwartz, 1984; Feld and Grofman, 1986; Greenberg and Shepsle, 1987), but only some of this interest is traceable to a public choice influence (see, e.g., Grofman, 1975; Lingle, 1981; Grofman et al. 1982; Polsby, 1983; Lijphart, 1981; Lijphart and Grofman, 1984; Grofman and Lijphart, 1986).

A number of authors in this volume look at issues of representation both from the perspective of James Madison and from a contemporary public-choice perspective. Cain and Jones, for example, describe in detail the basic elements of a Madisonian theory of representation. They see it as involving a balancing of conflicting desiderata, for example, responsiveness versus deliberation, majority rule versus

unanimity, and representation of individuals versus representation of interests; Chappell and Keech pay particular attention to one aspect of the constitutional compromises, the differing term lengths in the two chambers. Page and Shapiro deal with the rootedness of public opinion and its vulnerability to sudden public whims and passions. Schwartz looks at principal-agent relationships between Congress and federal bureaucrats. The themes in these chapters are all to be found in *The Federalist Papers*, even though the terminology in the *Federalist* is usually different from that of contemporary usage.

The Founding Fathers were, I believe, the greatest (if not the first) political engineers—believers in a “new science of politics” (Ranney, 1976). According to Daniel Patrick Moynihan (1987, p. 22), the fundamental question in *The Federalist Papers* was not about the merits or demerits of ratification but about political science: “Could a government be founded on scientific principles?” Scholars in the public choice tradition, too, see themselves as practitioners of a “new science of politics,” one rooted in principles of individual rationality.

The chapters in the first section of this volume seek to specify the similarities and differences between the Madisonian approach to institutional design and those of the “new institutionalists.” In the next two sections, the authors apply contemporary analytic tools to the issues of institutional design discussed in *The Federalist Papers*, for example, bicameralism, term length, and judicial power. The last section of this volume deals with the dispute over the ratification of the U.S. Constitution and the way in which preferences for outcomes conditioned preferences for institutions. Given the connections we seek to make between the ideas of *The Federalist Papers* and those of contemporary theorists of the new institutionalism, this seems an apt topic with which to conclude our volume.

Notes

1. There are several other usages of the term the *new institutionalism*, including Marxist, historical, and evolutionary (see Langlois, 1986, and Grofman, 1987). Moreover, the “new institutionalism” inspired by public choice theory is not the only source for the current revival of interest in the study of institutions. In the area of representation, there is growing concern about choice of electoral scheme (e.g., at-large versus single-member district, or plurality versus PR). See, for examples Grofman et al. (1982); Lijphart and Grofman (1984); and Grofman and Lijphart (1986).
2. A seventh (rather specialized) focus has been on mechanisms which will provide incentives to individuals to reveal their true preferences (and to avoid shirking). A useful introduction to this literature on “demand revelation” is the special Spring 1977 issue of *Public Choice* edited by Nicholas Tideman.

3. For many economists, Pareto efficiency is the only normative standard that is appropriate for economists to use in reaching policy judgments. This view is controversial among noneconomists (see Rhoads, 1985).
4. For a nontechnical introduction to this literature, see Feld and Grofman (1987). Also see Grofman and Uhlener (1985) and Schofield, Grofman, and Feld (1988).
5. For a useful and relatively nontechnical introduction, see Brams (1975). See also Barry (1980a,b), and the volume edited by Holler (1981).

Part I

The Madisonian Vision and the Theory of Public Choice: Comparisons and Contrasts

Introduction

In these opening chapters, a number of authors who have done work associated with the "public choice" tradition in political science compare and contrast the views of the public choice school and modern empirical democratic theory with the views expressed in *The Federalist Papers* (especially by Madison) about institutional design.

Schwartz sees an almost perfect identity between public choice ideas and those of Madison. According to Schwartz, the three elements they have in common are (1) the recognition of the importance of institutional detail; (2) an emphasis on the nature of institutionally generated incentives to individual behavior; and (3) an explanation of outcomes in terms of a "balance" or "equilibrium" of "countervailing interests."

Chappell and Keech see *The Federalist Papers* as "in many respects forerunners of modern social choice theory." However, they suggest that the *Federalist* contains a wider vision of representative government than the focus in contemporary social theory on mechanisms for aggregating individual preferences. Chappell and Keech attribute to the authors of the *Federalist* views more consistent with those of Elster (1983, p. 35): "the core of the political process is the public and rational discussion about the common good, not the isolated act of voting according to private preferences." Chappell and Keech suggest that the standard public choice model is limited by its failure to distinguish among types of preferences and its failure to allow for the possibility of rational persuasion.

Cain and Jones, similarly, distinguish the views of *The Federalist Papers* and those of contemporary public-choice theorists on a number of grounds. According to Cain and Jones, "Madison did not think that a representative democracy could succeed in an environment of unbridled self-interest." Moreover, according to Cain and Jones, "Madison's approach to institutional design was experimental, empirical, and circumstantial, not deductive and theoretical."¹ In contrast, Schwartz downplays the significance of these differences.² Schwartz also rebuts the claim that the methodological individualism characteristic of the public choice approach and the frequent references to self-interest in that literature imply a narrow view of behavior as exclusively selfishly motivated.

Page, like Keech, emphasizes the importance attached by the authors of the *Federalist* to the need to "refine and enlarge the public views" by deliberation, and to the need to control transient passions and temporary errors and delusions with devices such as six-year senatorial terms. Page's chapter is the most empirical of the four in this section. He presents evidence that "opinion changes are not extremely frequent; when they occur they are not very big; and opinion seldom fluctuates in one direction and then another." Page suggests that, in contemporary society, the Founders' concern about designing representative institutions that would guard against the whims and passions of the public may be less relevant. Page, however, emphasizes that "the public's policy preferences presumably respond to new information from news events, analyses and interpretations, scholarly research, and political rhetoric. . . . This opens up the possibility . . . of demagoguery, manipulation of opinion, systematic biases in information, [and] false consciousness."³

Bernard Grofman

Notes

1. Views similar to those of Cain and Jones and Chappell and Keech have been expressed even more assertively by one noted political theorist, a defender of Madison, who finds the public choice approach of limited value in understanding how representative institutions can be expected to function. According to Harvey Mansfield, Jr. (1987, p. 4), "The Constitution . . . relies on what can be expected in human behavior rather than exhorting to deeds that can only be wished for. But what can be expected is not the worst or even the lowest common denominator: it is a modicum of virtue in the people and outstanding virtue in a few, both of these cooperating with, and under the direction of, an insistence on liberty that can be found in every human being and cultivated in a free people."

2. My own views are far closer to those of Cain and Jones and Chappell and Keech than to those of Schwartz. The Constitution is avowedly an experiment (as we are told on the first page of the *Federalist*; see also Ranney, 1976, p. 141). The authors of the *Federalist* rely heavily on the lessons of history to understand the possibility and limits of institutional reforms; they lack the *a priorist* dogmatism of many economists and political scientists who work in the public choice tradition. While realistic about human behavior, the authors of the *Federalist* recognize the need for civic attachments and "the capacity of mankind for self-government" (no. 39).
3. Keech's chapter makes a similar point.