

Chapter 17

Constitutional Political Economy¹

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Constitutional and Non-Constitutional Economics

There is a categorical distinction to be made between constitutional economics and non-constitutional, or ordinary, economics—a distinction in the ultimate behavioral object of analytical attention. In one sense, all of economics is about choice, and about the varying and complex institutional arrangements within which individuals make choices among alternatives. In ordinary or orthodox economics, no matter how simple or how complex, analysis is concentrated on choices made *within* constraints that are, themselves, imposed exogenously on the person or persons charged with making the choice. The constraints that restrict the set of feasible choice options may be imposed by nature, by history, by a sequence of past choices, by other persons, by laws and institutional arrangements, or even by custom and convention. In the elementary textbook formulation of demand theory, for example, the individual consumer-purchaser confronts a range of goods available at a set of prices, but is restricted by the size of the budget. This budget is not within the choice set of the consumer-purchaser during the period of choice under scrutiny. Indeed, it would seem unnatural or bizarre, within the mind-set fostered by ordinary economics, to consider or limit the set of available choice options. Within this mind-set, the utility of the chooser is always maximized by allowing for choices over the whole range allowed by the exogenously determined constraints.

It is precisely at this critical point that constitutional economics, in its most inclusive definition, departs from the conventional framework of analysis. Constitutional economics directs analytical attention to the *choice among constraints*. Once stated in this fashion, economists will recognize that there is relatively little in their established canon that will assist in analyzing choices of this sort. To orthodox economists, only the elementary reality of scarcity makes choice necessary; without

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scarcity there would be no need to choose. And it would appear to be both methodologically and descriptively absurd to introduce the artificial creation of scarcity as an object for behavioral analysis. Such bedrock conservatism presumably explains much of ordinary economists' inattention and disinterest in constitutional questions, at all levels.

If we move beyond the models of orthodox economics, however, even while remaining at the level of individual behavior, we observe that individuals do, in fact, choose their own constraints, at least to a degree and within some limits. Within recent decades, a few innovative thinkers from economics and other social sciences have commenced to study the choice processes that are involved here (Elster, 1979; Schelling, 1978; Thaler and Shefrin, 1981). The *economics of self-control* has reached the status of a respectable, if minor, research program, which may be destined to become more important in this era of emphasis on diet, exercise, health, and the environment. We must surely be sufficiently catholic to allow analysis in this *individual constitutional economics* to qualify for inclusion in the domain.

As they carry on within their own guaranteed private spaces, however, individuals would presumably subject themselves to a relatively small set of prior constraints. Individuals basically *trust themselves* to choose rationally when confronted with the externally imposed constraints that are dictated in their historically emergent conditions. If the choice among constraints, in all its complexity, is limited to the economics of self-control, or stated conversely, to the economics of temptation, there might be little to be gained in delineating a constitutional economics enterprise.

It is essential to acknowledge, near the outset of discussion, that individuals choose to impose constraints or limits on their own behavior primarily, even if not exclusively, as a part of an *exchange* in which the restrictions on their own actions are sacrificed in return for the benefits that are anticipated from the reciprocally extended restrictions on the actions of others with whom they interact along the boundaries of private spaces and within the confines of acknowledged public spaces. That is to say, a domain of constitutional economics would exist even if individuals, in their private spaces, chose never to impose constraints on their own behavior. Note that by interpreting the individual's choice of a generalized constraint that restricts the actions both of others and himself as a part of a reciprocal exchange, we have moved toward the familiar domain of orthodox economics. So interpreted, the individual who joins in a collective decision to impose a generally applied constitutional rule is not, at base, acting differently from observed behavior in a setting that involves giving up one desired good, apples, for another desired good, oranges. In the latter example, we can, without violating the meaning of words, say that the individual chooses to constrain or to limit the potential consumption of apples in exchange for the expanded opportunity to consume oranges. Expressed in this way, all that is required is that we classify the restrictions on others' actions as *good* in the individual's preference function along with the more natural classification or restrictions on his own actions as *bad*.

In this simplistic and individualistic perspective, the choice of a reciprocally binding constraint by individuals who are related one to another in an anticipated

set of interactions becomes fully analogous to trade in ordinary goods and services, and, so treated, becomes quite different from the choice of a self-imposed constraint in the much more difficult economics of self-control, briefly discussed above. Note, in particular, however, that the analysis of individual choice behavior is necessarily shifted from the subject realm of the private to the public or political. The analysis becomes *political economy* almost by definition. *Constitutional economics* morphs into *constitutional political economy*.

Why have the practitioners of orthodox economics seemed so reluctant to extend analysis to include the reciprocal exchange of liberties that are central to the domain of constitutional political economy? In part, such reluctance stems from the artificial splitting between the academic disciplines of economics and political science late in the nineteenth century. Economists have been content to confine their attention to market relationships. I can advance several other and related reasons. Economists, along with their peers in the other social sciences as well as other academic disciplines, have had no difficulty, through the ages, in implicitly classifying restrictions on some of the activities of some persons in the body politic to be *good*. But the classification procedure has been quite different from the subjective evaluations presumed to be embodied in individuals' preference functions. The non-constrained voluntary behavior is not classified to be *bad* because an individual simply dis-prefers such behavior in the ordinary way. Some such behavior is deemed to be bad, and hence its rectification to be good, on the basis of an externally derived criterion of *goodness* or *truth*. The attributes or qualities of goodness and/or badness applied to actions of persons are treated as if they are intrinsically public, in the Samuelsonian taxonomic sense. An action cannot, properly, be adjudged to be good by one person without an implied generalization of such judgment to other persons. In this conceptualization, persons must, ideally, be brought into agreement on some ultimate classification of actions through a process that resembles scientific discourse. Agreement does not emerge from a trading process where different interests are essentially compromised, with each party reckoning to enjoy some benefits while suffering some sacrifice of preferred position.

In some respects, it is surprising that economists have "jumped out" of their own analytical framework so readily when they consider the possible imposition of generalized constraints on behavior. They have expressed little curiosity in deriving justification for such constraints from a calculus of individual interests. Economists have, instead, been willing intellectual captives of idealistic political philosophers, and they have readily embraced variants of the Platonic and Helenian mind-sets. Amartya Sen's (1970) usage of the term *meddlesome preferences*, by sharp contrast with such terms as *merit goods* and *merit wants*, tends to focus analysis back toward a straightforward calculus of interest and away from non-individualistic attributes of either goods or actions.

A second, and related, reason for economists' general failure to use the exchange setting when they consider the possible imposition of generalized constraints on individual behavior lies in the methodological dominance of the maximization paradigm. In the latter, *the economic problem* is defined as one of allocating scarce means (resources) among alternative ends. Choice is made necessary by the scarcity

of means, and that which is desired (utility) is maximized when like units of resources yield equivalent returns in all uses to which they are put. In this elementary formulation, emphasis is almost exclusively placed on the choices that are made within the scarcity constraints that are, themselves, presumed to be beyond the scope for chooser selection. There is little or no attention paid to the identification of the choosing unit in this abstracted definition, and this feature allows for a relatively unnoticed transference of analysis from individual choice to *social*, *political*, or *collective* choice on the basis of some implicit presumption that collectivities choose analogously to individuals.

This shift from individual to supra-individual choice was supported, and indirectly justified, by the emergence of macro-aggregation and macroeconomic theory and policy during the early decades of the post-Robbins half century. Target levels of macro-aggregates (national product, rate of growth, levels of employment) were established to be objectively *good* and to serve as guideposts for choices to be made by collective entities (governments) subject only to the constraints imposed by natural scarcities and technological limits. By some implicit extension of the model for individual choice behavior, constrained only by external forces, governments came to be viewed romantically and were deemed capable of achieving the *good*, as defined for them by the economists and other social philosophers. Microeconomists had long been ready at hand to proffer policy advice to governments concerning ways and means to promote greater overall economy efficiency.

A third reason for economists' general failure to extend their analytical apparatus to the derivation of institutional constitutional structure is to be found in their presumption that structural constraints are not, themselves, subject to deliberative choice, and, hence, to change. Economists have not neglected to recognize the relevance of institutional rules in affecting patterns of human behavior. Property rights economics, in particular (Alchian, 1977), has opened up a research program that concentrates attention directly on the effects of alternative structures. For the most part, however, the emphasis here is on existing arrangements rather than on the comparative analysis involved in extension to structures that might be designed and implemented.

Constitutional political economy differs from non-constitutional or orthodox economics along each of the dimensions that may be inferred from the reasons for neglect detailed above. Analysis is consistently individualistic, in the several senses that are relevant. The derivation of institutional constraints is based on a calculus of individual interests, which, in turn, requires the introduction and use of an exchange paradigm as opposed to the idealists' search for the unique *good*. Furthermore, there is no extension of the choice calculus from the individual to collectivities, as such. Collective *choice* is factored down into the participatory behavior of individual members. Finally, emphasis is centered directly on the selection of rules, or institutions, that will, in turn, limit the behavior of the persons who operate within them. Institutions, defined broadly, are variables subject to deliberative evaluation and to explicit choice (Buchanan and Tullock, 1962).

As noted, at one extreme, constitutional analysis may be applied to the individual in total isolation, who may act solely in private space. At the other extreme, constitutional analysis is applied to the whole set of persons who make up the

membership of the polity. This subcategory of research emphasis is the most familiar, since the very word *constitutional* tends to convey political connotations. The derivation of constraints on government does, indeed, occupy much of our attention. But the inclusive domain of constitutional economics also includes the derivation and analysis of and justificatory argument for rules that constrain both individual and collective behavior in a wide array of membership groupings, larger than the one-unit limit but smaller than the all-inclusive limit of the whole polity. Clubs, trade unions, corporations, parties, universities, associations—these, and many more, exist and operate under constitutions that are amenable to scientific inquiry.

Constitutional *Economics* and Constitutional *Politics*

In Section 1, I have attempted to distinguish between *constitutional* and *non-constitutional* economics or political economy. I propose, in this section, to distinguish between constitutional *economics* and constitutional *politics*, as the latter term may be generally and widely interpreted. As I have noted, most constitutional inquiry and analysis is concentrated at the level of the politically organized collectivity and is, in this sense, political. The distinction to be emphasized, however, is one of perspective rather than one that relates directly to either form of organization or to the type of activity. If an exchange rather than a maximizing paradigm is taken to be descriptive of the inclusive research program for the discipline, then *economics* involves inquiry into *cooperative* arrangements for human interaction, extending from the simplest of two-person, two-good trading processes through the most complex quasi-constitutional arrangements for multinational organizations. As noted in the first section, orthodox economics has rarely been extended to noncommercial or political activity, as such, but the exchange perspective readily allows this step to be taken.

The cooperative perspective, however, must be categorically distinguished from the contrasting *conflictual* perspective, which has been applied, almost automatically, to all political interactions, whether or not these are classified as constitutional. It will be useful here to examine the differences between the cooperative and the conflictual perspectives more carefully. The very term *politics* tends to conjure up a mental image of potential conflict among those persons who are members of the politically organized community. This conflict may be interpreted to be analogous to scientific disputes, in which separate participants or groups seek to convince one another of the *truth* of their advanced propositions. The age-old tradition of idealism in political philosophy conceives of all of politics in this light and, as noted earlier, the dominance of this model of politics has tended to discourage economists from political extensions of the exchange or cooperative paradigm. But, even if the teleological interpretation is rejected, politics may seem, by its very nature, to involve conflict between and among individuals and groups within a polity.

From the institutionally determined characteristics of collective decisions, the characteristics that dictate mutual exclusivity among the alternatives for selection (only one candidate can be electorally chosen) imply some ultimate division of the

membership into two subsets, *winner*s and *loser*s. This perspective almost directly suggests that politics is primarily, if not exclusively, a distributional game or enterprise—a process that involves transfers of value (utility) among and between separately identified coalitions of persons.

Note that the predominance of the distributional elements in the conflictual model of politics need not imply that the game be zero sum, although this limiting case may be useful for some analytical purposes. Conflictual politics may be positive, zero, or negative sum, as gains and losses are somehow aggregated over all participants (members). And this seems to be the natural model for analyzing politics so long as rules for reaching collective decisions require less than full agreement. If a majority, whether simple or qualified, is allowed to be decisive and impose its will on a majority, then the observed opposition of the minority to the alternative preferred by the majority can be taken to indicate that members of the minority expect to suffer utility losses, at least in a lost opportunity sense. In this model of conflictual politics, which appears to be descriptive of ordinary political activity, there seems to be no direct way of introducing a cooperative interpretation. A necessary condition for cooperation in social interaction is the prospect for positive expected gains by all parties, or, in the gainer—loser terminology, the prospect that there be no net losers. At a first descriptive cut, this condition seems to be foreign to the whole political enterprise.

It is precisely at this point, however, that constitutional politics, or politics at the constitutional level of choices among alternative sets of basic rules or constraints, rescues the cooperative model, at least in some potential explanatory and normative sense. As it operates and as we observe it to operate, ordinary politics may remain conflictual, in the manner noted above, while participation in the inclusive political game that defines the rules for ordinary politics may embody positively valued prospects for all members of the polity. In other words, constitutional politics does lend itself to examination in a cooperative analytical framework, while ordinary politics continues to lend itself to analysis that employs conflict models of interaction.

Generalized agreement on constitutional rules that allow for the reaching of ordinary collective decisions by means that do not require general agreement is surely possible, as is empirically demonstrated in the context of almost all organizations. The analytical-scientific inquiry that involves comparisons of the working properties of alternative sets of rules along with the examination of processes through which agreement on rules may be attained defines the domain of primary concern. The usage of the terminology *constitutional political economy* rather than the somewhat more accurate *constitutional politics* is prompted by the linkage in scientific heritage between *economics* and *cooperation*, by the inference of the appropriateness of the exchange as opposed to the conflict paradigm.

The Intellectual Traditions of Constitutional Political Economy

In sections 17.1 and 17.2, I have attempted to set the research program in constitutional political economy apart from ongoing programs within the interrelated and more inclusive disciplines of economics and political science. It would

be totally misleading, however, to infer from my discussion that this research program has emerged full blown, as if divorced from any traditions of intellectual inquiry. As I have noted, constitutional political economy did indeed blossom only in the second half of the century. But the program was not based either on a new scientific discovery, at least as usually defined, or on a new set of analytical tools. Constitutional political economy is best interpreted as a re-emphasis, a revival, a rediscovery of basic elements of earlier intellectual traditions that have been put aside, neglected, and sometimes forgotten in the social sciences and social philosophy. These traditions are those of classical political economy and contractarian political philosophy.

Classical political economy, represented especially in the works of Adam Smith (1776), was directed toward offering an explanation and understanding of how an economy (set of markets) would work without detailed political interventions and control. Smith's aim was to demonstrate that the *wealth* of the nation would be larger under a regime of minimal politicization than under the alternative closely controlled mercantilist regime. And the whole thrust of the argument was to the effect that all groups in the economy and especially the laboring classes, could be expected to share in the benefits promised upon the shift in regimes. The emphasis was on the generalization of expected gains over all persons and classes. The suggested change in the structure, or basic rules, that depoliticization involves was, therefore, within the feasible limits of potential agreement by all parties. The normative focus, again especially in Adam Smith, was not explicitly distributional. Only with Marxian extensions of Ricardo's abstract analysis did interclass conflict enter into classical attention.

It is also important to recognize that the Smithean emphasis was not allocational in the modern economists' meaning of this term. The analysis was not designed to show that economic resources would be more effectively allocated to higher valued uses under a market than under a politicized regime, as measured by some external and objective standard of value. The aim was, instead, to show that the market order would allocate resources such that the evaluations (preferences) of individuals would be more fully satisfied, *regardless of what these evaluations might be*. In terms of his familiar example of the butcher, Smith's lesson was to show that self-interest in the marketplace works to supply meat for supper, provided that meat is what consumers want. There is no implication here that self-interest in the marketplace works to supply meat because meat is valuable in some nutritional sense as defined by experts.

So interpreted, therefore, Adam Smith's enterprise falls squarely within the domain of constitutional political economy. In a strictly positive sense, his analysis described both how the existing regime worked and how an alternative regime might work. And, since the alternative seemed to generate more wealth to all parties, as measured by their own standards, the normative extension of the positive analysis was quite straightforward. In this extension, the object upon which collective attention must be placed is the set of rules or constraints within which persons behave in their capacities as consumers-buyers and producers-sellers. The laws and institutions that define the economic-political order become the variables subject to possible adjustment and reform.

I have selected elements from the tradition of classical political economy that seem to provide precursory foundations for the modern research program in constitutional political economy. My treatment would surely be accused of bias, however, if I failed to indicate the presence of considerable ambiguity and confusion in the philosophical underpinnings of the classical economics enterprise. An interpretation of that enterprise in terms of classical utilitarianism would be quite different from my own; this alternative interpretation would stress quite separate elements of the tradition. The interpersonal comparability and aggregate measurability of utility were not explicitly rejected by the classical economists and, in a selected reading, these may be attributed, as presumptions, to their analyses. In this case, the whole enterprise becomes precursory to the maximizing rather than to the exchange paradigm in economics, with both allocational and distributional implications, and with a wholly different avenue for moving from the individual to the collective levels of choice. The categorical distinction between choices among rules and choices within rules all but disappears in the utilitarian configuration.

The elements of Adam Smith's intellectual enterprise become directly precursory to the research program in constitutional economics only when these elements are imbedded within the tradition of contractarian political philosophy, the tradition that was developed prior to but became competitive with and quite different from classical utilitarianism. From the seventeenth century, from the works of Althusius, Hobbes, Spinoza, and Locke in particular, attempts were made to ground justificatory argument for state coercion on agreement by those individuals who are subject to coercion. This intellectual tradition invented the autonomous individual by shucking off the communitarian cocoon. The assignment to the individual of a capacity for rational independent choice, as such, allowed a *science* of economics and politics to emerge—a *science* that embodied a legitimatizing explanation for the emergence of and existence of the state. In agreeing to be governed, explicitly or implicitly, the individual exchanges his own liberty with others who similarly give up liberties in exchange for the benefits offered by a regime characterized by behavioral limits.

The contractarian logic leaves open any specification of the range and scope for consent-based coercive authority. The early contractarians, and notably Hobbes, had no understanding of the efficacy of market order as it might function under the umbrella of the protective or minimal state. This understanding was provided only in the eighteenth century and was fully articulated only in the great work of Adam Smith. Classical political economy, as appended to the contractarian intellectual foundations, allowed the development of a scientifically based analysis aimed at comparing alternative structures of political-legal order—analysis that could introduce and use principles of rational choice behavior of individuals and without resort to supra-individualistic norms. Utilitarianism also rejected all supra-individual norms, as such, and grounded all norms in a calculus of pleasure and pain. Nonetheless, this Benthamite intrusion created ambiguity in the efforts to add up utilities over persons. In this way, the contractarian justification derived from conceptual agreement was obscured, and the way was opened for a non-transcendental utilitarian supersession of individualistic norms. The contractarian philosophical basis upon

which classical political economy should have been exclusively developed was, at least partially, undermined and neglected for almost two centuries, only to be rediscovered in the research program of constitutional economics.

The Hard Core and Its Critics

Throughout this article I have referred to constitutional political economy as a *research program*, thereby deliberately using the Lakatosian classification. In this scheme, there exist elements in the hard core of the program that are rarely, if ever, challenged by those scholars who work inside the intellectual tradition defined by the program. These central elements are taken as presuppositions, as relatively absolute absolutes, and, as such, they become, themselves, the constraints (the constitution) within which the scientific discourse is conducted. External intellectual challenges to the whole enterprise tend to be directed at these elements in the core of the program. The ongoing research within the constraints can, of course, proceed without concern for these external criticisms, but practitioners need to be aware of the core-imposed limits on the persuasive potential of the internalized analytical exercise.

For constitutional political economy, the foundational position is summarized in *methodological individualism*. Unless those who would be participants in the scientific dialogue are willing to locate the exercise in the choice calculus of individuals, *qua* individuals, there can be no departure from the starting gate. The autonomous individual is a *sine qua non* for any initiation of serious inquiry in the research program. Individual autonomy, as a defining quality, does not, however, imply that the individual chooses and acts as if he or she exists in isolation from and apart from the community or communities of other persons with whom he or she may be variously associated. Any form of community or association of individuals may reflect some sharing of values, and, further, any individual's formation of values may be influenced by the values of those with whom he or she is variously associated in communities. The communitarian challenge to methodological individualism must go beyond the claim that individuals influence one another reciprocally through presence in communities. The challenge must make the stronger claim that individuation, the separation of the individual from community, is not conceptually possible, that it becomes meaningless to think of potential divergence between and among individual interests in a community. Stated in this way, it is evident that methodological individualism, as a presupposition of inquiry, characterizes almost all research programs in economics and political science; constitutional economics does not depart from its more inclusive disciplinary bases in this respect.

The communitarian critique does not often appear in such blatant guise. For constitutional political economy, in particular, the critique apparently leaves the individualistic postulates unchallenged, while either implicitly or explicitly asserting the existence of some supra-individualistic source of evaluation. Individual

evaluations are superseded by those emergent from God, natural law, right reason, or the state. This more subtle stance rejects methodological individualism, not on the claim that individuation is impossible, or that individual evaluations may not differ within a community, but rather on the claim that it is normatively improper to derive collective action from individual evaluations. To the communitarian who posits the existence of some supra-individualistic value scale, the whole analysis that builds on a base of an individualistic calculus can only be useful as an input in schemes of control and manipulation designed to align individualized preferences with those orderings dictated by the overarching norms for the community.

Concomitant with methodological individualism as a component of the hard core is the postulate of rational choice—a postulate that is shared over all research programs in economics. The autonomous individual is also presumed to be capable of choosing among alternatives in a sufficiently orderly manner as to allow a quality of rationality to be attributed to observed behavior. For constitutional economics, the capacity for rational choice is extended to include a capacity to choose among constraints, both individually and collectively applied, within which subsequent choices may be made.

Rationality implies that choices may be analyzed as if an ordering of alternatives exists, arrayed in accordance with some scalar of *preferredness*. We may, but need not, use the term utility to designate that which the individual calls upon to make up the ordinal ranking. At the analytical level, there is no need that the ranking correspond with any array of the choice alternatives that may be objectively measurable by some outside observer. The test for individual rationality in choice does require, however, the minimal step of classifying alternatives into *goods* and *bads*. The central rationality precept states only that the individual chooses more rather than less of *goods*, and less rather than more of *bads*. There is no requirement that rationality dictates choice in accordance with the individual's economic interest, as this might be measured by some outside observer of behavior.

The individualistic postulate allows the interests or preferences of individuals to differ, one from another. And the rationality postulate does not restrict these interests beyond the classificatory step noted. *Homo economicus*, the individual who populates the models of empirical economics, may, but need not, describe the individual whose choice calculus is analyzed in constitutional political economy. When selecting among alternative constitutional constraints, however, the individual is required to make some predictions about the behavior of others than himself. And, in such a setting, there is a powerful argument that suggests the appropriateness of something akin to the *Homo economicus* postulate for behavior (Brennan and Buchanan, 1985).

I have briefly discussed the individualistic and the rationality presuppositions for the research program. These elements are not controversial, and they would be listed as components of the hard core both by practitioners and critics of constitutional economics. A less obvious element that is, however, equally fundamental involves the generalization of the individualistic and the rationality postulates to *all* persons in the political community. All individuals must be presumed capable to make rational choices among alternatives in accordance with individually

autonomous value scales. And this generalization does not allow derivation of collective action, whether or not directed toward choices among constraints, from individual evaluations on anything other than an *equal weighting*. To introduce a weighting scheme through which the evaluation of some persons in the community are deemed more important than other persons would require resort to some supra-individualistic source, which is, of course, ruled out by adherence to the individualistic postulate. In this sense the whole of the constitutional economics research program rests squarely on a *democratic* foundation.

Perception, Vision, and Faith

Nietzsche used the metaphor of viewing the world of reality through differing windows (Kaufman, 1950, p. 61), and Ortega y Gasset went so far as to define ultimate reality itself as a perspective (Ortega y Gasset, 1961, p. 45). In a sense, any research program involves a way of looking at, and thereby imposing an order on, that which is perceived. This characterization applies particularly to any program in social science, where the ultimate object of inquiry is behavior in a social interaction process. I have on several occasions referred to the *constitutional perspective*, which I have acknowledged to be different from other perspectives that might be used in examining and evaluating the interaction of individuals in social and/or political settings. This elementary fact that perspectives differ, or may differ, raises difficult issues in epistemology that cannot be ignored.

Consider, first, perception at its simplest level. Presumably, individuals are sufficiently alike, one to another, biologically that we see, hear, taste, smell, and feel physical phenomena similarly, if not identically. We all see a wall as a barrier to movement, and no one of us makes an attempt to walk through walls. Someone who failed to perceive a wall as the others of us would be classified to be abnormal in at least one of the basic perceptual senses. As phenomena come to be increasingly complex, however, individuals may come to differ in their perceptions, despite the fact that, biologically, they continue to possess the same perceptual apparatus. Elementary sense perception must be accompanied by imaginative constructions that require some mental processing before a basis for evaluation, and ultimately for action, can be established.

As phenomena increase in complexity, the imaginative elements in perception increase relative to those that emerge directly from the senses. In this progression from the simple to the complex, the similarity in perceptions among persons must decrease. What may be called the *natural* way of observing phenomena fades away at some point along the spectrum. Individuals may then be brought into agreement on that which they observe only by entry into some sort of association of shared values or norms, which members, either explicitly or implicitly, choose. This statement may seem contradictory when first made; it may seem to state that persons choose how they see reality. But the statement becomes less challenging to ordinary notions when we replace *see* with *think about*.

I have been accused of committing the naturalistic fallacy, in some of my own works, of failing to respect properly *the fact—value, positive—normative* distinction, and, hence, of deriving the *ought* from the *is*, at least implicitly. I submit, however, that my critics mount such charges only because of their own confusion about the nature of perception of complex phenomena. If there exists no *natural* way of observing reality, some evaluation and choosing process is a necessary complement to the imaginative step that allows apparent chaos to be converted into order. We select the *is* that defines the hard core of our research program, and this holds true whether or not we are professional scientists. Within this *is*, we can adhere strictly to the precepts laid down for positive analysis. But the normative implications that may be drawn are, indeed, derivative from the chosen perceptive framework, and could not, or would not, be otherwise available.

Constitutional political economy is a domain of inquiry and discourse among scientists who choose to perceive social interaction as a set of complex relationships, both actual and potential, among autonomous persons, each of whom is capable of making rational choices. The domain, as such, cannot be extended to include inquiry by those who choose to perceive social interaction differently. There is simply no common basis for scientific argument, and ultimately agreement, with those who choose to perceive social interaction either in purely conflictual or purely idealistic visions. These visions are, indeed, alternative ‘windows’ on the world, and the process through which individuals choose among such windows remains mysterious. How can empirical evidence be made convincing when such evidence must, itself, be perceived from only one vantage point at a time? The naivete of modern empirical economists in this respect verges on absurdity.

When all is said and done, *constitutional political economy* must be acknowledged to rest upon a pre-commitment to, or a faith in, man’s cooperative potential. Persons are neither bees in hives, carnivorous beasts in a jungle, nor angels in God’s heaven. They are independent units of consciousness, capable of assigning values to alternatives, and capable of choosing and acting in accordance with these values. It is both physically necessary and beneficial that they live together, in many and varying associations and communities. But to do so, they must live by rules that they can also choose.

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