

The Future of Democracy

Essays of The Tampere Club

by

Ernesto Garzón Valdés

James Buchanan

Guillermo O'Donnell

Michael Baumann

Hassan Hanafi

Hidé Ishiguro

Francisco Laporta

Ruth Zimmerling

Reinhard Zintl

Raimo Väyrynen

ISBN 951-96715-5-2

Cover design and lay out by Peter Bange

Printed by Otavan Kirjapaino Oy, Keuruu 2003

Kustannus Oy Aamulehti 2003

racy 6, 3: 101-111.

Schmitter, Philippe. 1994. "Dangers and Dilemmas of Democracy". *Journal of Democracy* 5, 2: 57-74.

Schumpeter, Joseph. 1975 [1942]. *Capitalism, Socialism, and Democracy*. New York: Harper.

Sen, Amartya. 1993. "Capability and Well-Being". Pp. 30-53 in *The Quality of Life*, eds. Martha Nussbaum and Amartya Sen. Oxford: Clarendon Press.

Shapiro, Ian. 1996. *Democracy's Place*. Ithaca: Cornell University Press.

Skinner, Quentin. 1984. "The Idea of Negative Liberty: Philosophical and Historical Perspectives". Pp. 193-211 in *Philosophy in History. Essays on the Historiography of Philosophy*, eds. Richard Rorty et. al. Cambridge: Cambridge University Press.

Taylor, Charles. 1993. "What's Wrong with Negative Liberty." in *The Idea of Freedom*, ed. Alan Ryan. New York: Oxford University Press.

Weingast, Barry. 1997. "The Political Foundations of Democracy and the Rule of Law". *American Political Science Review* 91, 2: 245-263.

Welzel, Christian and Ronald Inglehart. 1999. "Analyzing Democratic Change and Stability: A Human Development Theory of Democracy". *Wissenschaftszentrum Berlin and University of Michigan*.

Majority without morality? —why democratic decisions demand ethical principles¹

by Michael Baurmann

Economizing on virtue

VIRTUE AND MORALITY ARE SCARCE GOODS. It is therefore expedient to be sparing with them. This does not only apply to the relationship between single individuals. As the Scottish moral philosophers have taught us, we should also take the principle of "economizing on virtue" as a guideline for the creation of social institutions. The market serves as a paradigmatic example of an arena where the participant's virtues and morals are largely dispensable and yet, where the result of their actions serves everyone's interest and, thereby, the public welfare. Institutions of this kind relieve individuals of the burden of moral duties and reduce the need for moral norms as well as investments to enforce them.

The classical authors of the Scottish Enlightenment were optimistic that this principle could also be transferred to political institutions (cf. Hirschman 1987, p.79ff.). It even seemed possible within the difficult realm of state power, to invent institutions through which an "invisible hand" would aggregate the general pursuit of individual interests to a common good. This prospect was particularly attractive, as one could discard the – possibly futile – Platonian task of controlling the personal ambition of state rulers by instructing them in virtuousness and morality. If, instead, there were ways of shaping the institutional framework of political action so that it would be to the rulers' own advantage to take care of their subjects and the common weal,

MICHAEL BAURMANN is Professor of Sociology, University of Düsseldorf, Germany.

then trust in politics would become independent of an uncertain trust in the character of the politicians. In this case the particularly difficult task of instigating moral norms for politicians would be superfluous.

The hope of being able to rely on the "morality" of the political institutions rather than on the morality of the politicians still plays a prominent role in modern political science and social theory, and, moreover, in public opinion too. Especially the modern constitutional state with its institutionalized possibility of voting politicians out of office, the protection of basic rights, as well as the ingenious system of the separation of powers and "checks and balances" seems to be the perfect example of a system which, by means of cleverly constructed mechanisms, prevents state rulers from misusing their power for their own private aims.

In the following, however, I would like to argue the case that the principle of "economizing on virtue" has its limits, especially at the core of democratic decision-making, and that here the moral motivation of individuals cannot simply be replaced by the incentives of the institutional framework. I will rather try to make it plausible that we, as members of a democracy, can considerably improve our perspectives if we not only guarantee compliance with the formal rules of the democratic process, but also ensure commitment to substantial ethical principles.

Unanimity and majority

WHILE THE CLASSICS AND TRADITIONAL political theory are focused more on the institutional control of the political leaders, public choice theory above all deals with the process of collective decision-making itself (cf. the overview in Mueller 1989). The market serves as a benchmark. On the market, individual exchange guarantees that the rational and utility-maximizing action of all participants improves their situation and insofar promotes common interests. The question now arises as to whether one might design political choice as an institution of "collective exchange", so that here too, just as in the marketplace, the utility-maximizing action of the participants would produce a good in their common interest – without the actors consciously intending to reach this result or, through moral demands, having to be expressly motivated to do so.

Public choice theory has an essentially simple and, at first sight, convinc-

ing answer to this question (cf. Buchanan/Tullock 1962). If a bilateral exchange is to the mutual benefit of individuals, being rational and self-interested actors they will agree to such a transaction of their own free will. It thus follows that a collective decision within a group of rational and self-interested individuals will likewise guarantee the promotion of their common interests, if all parties agree to such a decision voluntarily. From the perspective of such an exchange-paradigm of politics it becomes clear why democratic procedures based on a rule of unanimity play a key role in public choice theory, and why it would be desirable from this perspective to approximate this ideal as far as possible (cf. Buchanan/Tullock 1962, p.85ff.). The result produced by a unanimous decision is thus not to be seen as a good, because it could be assessed independently of the decision-making process, but just as in the case of individual exchange, the result is a good, because in the procedure the preferences of all parties are taken into account and accordingly they will all benefit.²

Now, it is certainly clear that democratic procedures in reality often fail to come anywhere near the ideal of unanimity and, for various fundamental as well as pragmatic reasons, can hardly be generally expected to do so. Instead of the rule of unanimity the majority principle prevails. A democratic decision under this principle is binding even if not reached unanimously but with a – more often than not – simple majority. Such a process of majority voting can no longer be understood analogous to the market model of voluntary exchange and agreement among all participants. On the contrary, it expressly institutionalizes the possibility of disregarding the interests and opinions of a whole group of people, namely the members of the minority, and yet to reach a valid collective choice.³

By expanding its conception, public choice theory has tried to integrate majority rule into the exchange-paradigm of politics thereby adhering to a purely proceduralistic understanding of collective choice (cf. Buchanan/Tullock 1962, p.119ff.; Mueller 1989, p.58ff.). This would mean that majority votes are not evaluated according to an external standard either, but should remain exclusively an instrument for expressing the individual preferences of the voters as genuinely as possible – even if the interests of all parties cannot be aggregated in the result. However, the interests of all parties should remain the basis for a decision, whether or not majority rule is introduced at all for certain domains. Unanimity as an ultimate criterion of evaluation is transferred to the constitutional level, thereby working on the assumption that in

view of the uncertainty of future developments the chances of an agreement on constitutional decisions will increase – and that this also holds true for an agreement on majority rule.

The plausibility of this conception is dependent on twofold evidence: first, it must be shown that, and under which conditions, it can serve the interests of individuals to consent on a constitutional level to the introduction of majority rule for certain domains. Second, it must be demonstrated that the parties involved would accept the principle of "economizing on virtue" under these conditions and agree to an institution of majority rule under which the voters could decide solely according to their personal interests and preferences. In other words, they would have to be convinced that in this respect unconstrained majority rule represents an institution in which an "invisible hand" conjures up a good for the benefit of all and everyone out of individual utility-maximizing. Only if these two points are successfully proved, will the optimistic view of political institutions prevail as being generally capable of directing the forces of self-interest into channels which are compatible with public welfare – including the institution of majoritarian democracy. Proving these two points, however, under the premise of the exchange-paradigm does not seem that easy, as we are dealing with the introduction of an institution, which itself no longer corresponds to the idea of an all-encompassing exchange. It is therefore necessary to demonstrate that under unconstrained majority rule a quite different mechanism than that of collective exchange among all parties becomes effective, which is also able to produce a result in the public interest.

Changing majorities instead of collective exchange

IT IS IN NO WAY CLEAR from the outset that it is in the interest of individuals in general to vote for the introduction of majority rule if they have to decide between different collective choice mechanisms. To have good reason to do so, they must expect to profit from it. And evidently that does not go without saying. If certain persons cannot rely on belonging to the majority all the time, they have to reckon with political decisions being reached under majority rule which are contrary to their own preferences. This applies even more so if unconstrained majority rule is up for discussion and the participants will not be confronted with moral claims. In this case it must be as-

sumed that they will maximize their own personal advantages not only *ex ante* on a constitutional level but likewise *ex post*, and as members of a majority even at the expense of the minority.

Consequently, general consent to unconstrained majority rule is only to be reached if the collective choices under such an institution serve the interests of all parties even when exercised exclusively according to the preferences of the members of the prevailing majority. This does not rule out the possibility for a member of a minority that a deterioration of his situation may occur in some cases. In the long run, however, the expected benefits must be seen as compensating the losses. Only if such a balance seems realistic for all participants, can an agreement be reached on the introduction of unconstrained majority voting.

A possibility of achieving a long-term balance of gains and losses under unconstrained majority rule consists in the fact that majority coalitions do not remain stable, but change regularly. Under these conditions, everyone who has to bow to a majority decision can count on asserting his preferences in other decisions in the foreseeable future. The chances of a unanimous vote in favour of implementing majority rule would thus be increased if the parties could expect changing-majorities, and assume that they will, with almost equal probability, be now in the majority, now in the minority⁴ – the instability of cycling majorities, otherwise often seen as a problem, appears in this perspective to be quite a desirable phenomenon.⁵

However, even regularly rotating majority coalitions do not alone suffice to bring about a general consent to majority rule, as they in themselves are no guarantee that the losses which a member of a minority suffers will be compensated or exceeded by the gains which he can expect as a member of a majority. In how far this is the case depends on the kind of options which are on offer in majoritarian politics. Therefore, in order to be able to estimate the effects of changing majorities, an exemplary model must be developed of the possible alternatives which are typically the subject of political majority decisions.⁶

The majority dilemma

FOR THIS PURPOSE, I would first like to adopt some insights from an analysis of authors who are certainly beyond suspicion of rash criticism of a pub-

lic choice approach and its attempts at justifying the principle of majority rule. In their book *Politics by principle, not interest* (1998) James M. Buchanan and Roger D. Congleton themselves undermine the hope that a democracy by pure majority rule will, by itself, produce a positive outcome for all. They make clear that such optimism rests on assumptions about the nature of the

The principle of "economizing on virtue" has its limits, especially at the core of democratic decision-making, and that here the moral motivation of individuals cannot simply be replaced by the incentives of the institutional framework.

realm of political decisions which are hardly realistic.

Realistic assumptions as to the kind of decisions to be expected under unconstrained majority politics should not concentrate on varying scenarios in the production and allocation of public goods. In such decisions it is more a question of distribution of net-gains than substantial redistribution. But especially the redistribution potential of majority rule, by which even mere problems of allocation threaten to be transformed into problems of redistribution, must be at the focus of interest when it is a matter of the basic justification of such an institution.

Matrix 1 presents a first simple model of some possible alternatives which could be the subject of collective choice. Cells I, II and III stand for the social states which can be brought about by such choices, Cell IV is the status quo. The differ-

ent states are defined by the payoffs to two representative actors A and B. The first number measures the payoff to A, the second number to B.⁷ A and B are each members of groups which can be in the majority or in the minority. A and B also exemplify those actors who have to decide at a constitutional level about the introduction of a rule of collective choice.

Matrix 1

		B	
		I	II
A		1,1	-1,3
		III	IV
		3,-1	0,0

According to Matrix 1 three options are open to collective choices: in the case of Cell I the outcome is an equal distribution of the benefits resulting from political action, in Cells II and III, in contrast to the symmetrical payoffs in Cell I, one group triples its payoffs at the expense of the other group, which has to accept a deterioration even vis-à-vis the status quo.

Let us assume that unanimity rule is operative. In this case A and B (or rather their groups) will agree on choosing the symmetrical payoffs in Cell I. A and B will not agree to a decision which leaves them worse off than the status quo – as in Cell II or III –, but will agree to a decision in favour of Cell I, leaving them both better off than without any political action in the status quo.

If, however, the collective choices are made under unconstrained majority rule where the members of the majority choose the alternative which best serves their interests, neither A nor B as members of a majority coalition will be satisfied with choosing Cell I and thus symmetrical payoffs. They also have the possibility of reaching a better result for themselves and their group by choosing Cell II or III – whereby the fact that the minority will be worse off, will be irrelevant to them.

Can A and B consent to majority rule on a constitutional level, in view of this constellation of options and on the assumption of regularly changing majorities? They can consent to such a principle because, compared to the status quo, their expected payoff will be positive even under unconstrained majority rule. The gains which they may hope for as members of a majority coalition are higher than the losses they have to fear as members of a minority. In the special case of Matrix 1 the expected payoffs to the participants

would even be as high as those under unanimity rule. All of them can hope that unconstrained majority rule will lead to the same outcome for them on a long-term basis.

Within this kind of constellation, therefore, it can be stated that unconstrained majority politics just as choices under unanimity rule ensure a general enhancement of welfare with an "invisible hand". Even if the members of majority coalitions only express their own preferences to attain the best possible results for themselves, they will, in the long run, produce an overall result which is in the interest of all parties. Thus the prerequisite is also fulfilled for a general consent to unconstrained majority rule on the constitutional level. Each and everyone can expect *ex ante* that he or she will profit *ex post* from putting such an institution into practice.

It cannot, however, be assumed that Matrix 1 conveys an appropriate picture of the relevant distributional effects which can result from democratic majority politics. The world will very rarely be ordered in such a way that it will guarantee a harmony between the possible gains and losses from any political choices under majority rule. In this respect Matrix 2 seems to come closer to reality (cf. Buchanan/Congleton 1992, p.23)

In this matrix the possibility is accounted for that burdens which are imposed on one group for the benefit of another group can outweigh the gains which arise for the beneficiaries. In contrast to an equal distribution, one of the groups in Cell II or III only can improve by 1 at the expense of the other group, which itself gets a worse deal by 2. Politics cannot only be a zero-sum game but also a negative-sum game. This, however, would not change the fact that majority coalitions would choose options II or III under uncon-

Matrix 2

		B	
		I	II
A	I	1,1	-1,2
	III	2,-1	0,0

strained majority rule. These options maximize the payoffs for their members and dominate the status quo or an equal distribution of benefits.

Although, in this case, the potential gains for the majority prove to be less than in the constellation which is depicted in Matrix 1, A and B would, nevertheless, still have a good reason to approve of introducing unconstrained majority rule. Their expected payoff is still positive in the case of cycling majorities as compared to the status quo. Their profits as members of a majority are still greater than the losses which they have to bear as members of a minority. In this case, of course, the expected payoffs would not be as high as those under unanimity rule. Even in the long run, unconstrained majority rule would not lead to the same outcome as unanimous decisions.

Nonetheless, it holds true even of this constellation that unconstrained majority rule at least approximates unanimity rule, with an "invisible hand" providing a result which is in everyone's interest. If unanimous choices are not feasible, it is still justified to assume a general approval of majority rule on the level of constitutional choice. The participants can still expect to profit from the practice under unconstrained majority rule as a whole.

Yet it is to be doubted even now that we already have an adequate model for the possible distributional effects of majoritarian democracy. Matrix 2 still conveys too optimistic a picture. In reality constellations such as the following have to be reckoned with (cf. Buchanan/Congleton 1998, p.24ff.). In Cells II and III this matrix considers the fact that possibly even moderate gains for one group can only be achieved at excess costs for another group. For example, cases in which a redistribution in favour of already privileged persons deprives other persons of essential resources. But the fact that fur-

Matrix 3

		B	
		I	II
A	I	1,1	-3,2
	III	2,-3	0,0

ther advantages can only be gained by exploiting the minority would not stop a majority only aiming at maximum payoffs for their members. From their perspective options II or III are still better than the status quo or a symmetrical distribution of benefits. In fact, from the point of view of the majority's interests these options do not differ from options II and III in Matrix 2: the payoffs to the members of the majority are exactly the same in both cases. However, even if improvements should only turn out to be minimal and there is a considerable change for the worse on the losing side, a majority acting solely in its self-interest has no reason to forego even merely marginal gains.

But here is an important difference at the level of constitutional choice. Whereas in Matrix 2 all participants would ex ante support unconstrained majority rule because of profiting as a whole from such an institution, in Matrix 3 it is the opposite. If a "tyranny of the majority" is possible, *no one* can agree to majority rule on a constitutional level, as *everyone* can expect to be worse off compared with the status quo in the case of cycling majorities. The gains for a member of a majority coalition through redistribution and exploitation of the minority, could no longer compensate for the losses which one would have to suffer as a member of an exploited minority.

Under such conditions the institution of majority rule would lead to a dilemma. By choosing the option which is most in their interest every time, the participants would bring about a situation in which everyone is worse off than in the status quo or in the case of an equal distribution of payoffs. Here no "invisible hand" is at work miraculously aggregating the individual vices to collective benefits. On the contrary, the persistent pursuit of individual interests would inevitably produce a collective bad.

It is not just a coincidence that the distributory structures in Matrix 3 actually represent a central empirical constellation. Under majority rule options with redistributory effects are not simply exogenous. The problematic nature of majority rule has precisely to do with the fact that the possibilities of a majority exploiting a minority are endogenously created by the institution of unconstrained majority rule itself – quite independently of whether there are other viable alternatives or not (cf. Mueller 1989, pp.58f., 62, 106f.). If a majority can impose its preferences on the minority at will, there will be a great incentive to form coalitions with redistributive aims and to change the empirical options in such a way as to make a profitable exploitation of the minority feasible. On account of a permanent "redefinition" of the political

agenda in favour of the majority an unconstrained majoritarian democracy threatens to produce systematic redistribution of the kind shown in Matrix 3. Thus, this model does not depict a contingent case but complies with the inherent logic of unconstrained majority rule (cf. Buchanan/Congleton 1998, pp.21f., 26, 55).

In view of the fact that majorities acting purely strategically can constantly create opportunities to exploit minorities for relatively slight advantages, the principle of majority decision cannot as such claim any special legitimacy. It does not conceal any mechanism which of its own accord leads to socially desirable results (cf. Buchanan/Tullock 1962, p.169). Therefore, neither can one look upon majority rule as being a procedure (the second best after unanimity) which achieves a neutral aggregation of individual preferences, nor can it be associated with the classical idea of democratic self-government. Attempts to interpret it in this way only disguise the fact that unconstrained majority rule is in reality an institution in which inevitably the temptation is inherent to systematically exploit the minority and which, in the long run, is in danger of causing damage to all parties – if it does not end up in the permanent tyranny of a stable majority: that is the classical pessimistic prognosis in our days reiterated especially by Anthony de Jasay (cf. 1991; 1999).

The tragedy of the – politicized – commons

IF UNCONSTRAINED MAJORITY rule is not consensual and so not legitimizable, if unanimity rule presents no alternative and maintaining the status quo seems to be unsatisfactory, then only the possibility of institutionalizing *constrained* majority rule is left for consideration. Which kinds of constraints are feasible? To answer this question one has to extend the model of the set of alternatives available to collective choice. It should be extended in such a way as to include the relevant additional options which are only realizable under *constrained* majority rule. At this point considerations part company with Buchanan's and Congleton's analysis which concentrates on the difference between unconstrained majority choices and majority choices in compliance with the principle of equality. Here further variants of constrained majority rule will be discussed. Under them the realization of options which Buchanan and Congleton have disregarded now becomes possible.

In this matrix, too, different exemplary structures of distribution are to be covered. To begin with, this will be illustrated with the help of a simple but classic example (cf. Hardin 1968).

Supposing the initial state IX, the status quo, is one in which a common is being used jointly by ten farmers. Each farmer possesses ten cows, which

Matrix 4

		B		
A	I	II	III	
	-1,-1	-10,6	-1,5	
	IV	V	VI	
	6,-10	1,1	1,2	
	VII	VIII	IX	
	5,-1	2,1	0,0	

are enough to make a living and which the pasture can cope with without overgrazing. Through additional annual investments in the care and quality of the common, the yield could be increased, i.e. the common could feed a larger number of cows. To achieve this, a collective decision would have to be taken every year on the amount to be invested, the sharing of costs and the distribution of the right of use.

Let us assume, furthermore, that a principle of unanimity for these annual decisions is not practicable because of prohibitive negotiating costs (the farmers take almost their whole time for running their farms) and that only the introduction of simple majority rule would be a possibility. The following options as defined by Matrix 4 would then be on offer to the majority each year – assuming that the majority always consists of six farmers:

I: The right of access is the same for everyone, the cultivation measures are, however, suboptimal, so that the quality of the common even deteri-

orates vis-à-vis the status quo: in this year each farmer must give up one cow.

V: The quality of the pasture improves due to suitable measures and it can now feed a maximum of 116 cows. But because the rights of access are still equally distributed, each farmer can only keep one additional cow (a total of 110 cows, the capacity of the pasture not yet being exhausted).

VI/VIII: The same measures are taken as in case V, but the majority allows its members to put two additional cows out to pasture, whereas the members of the minority have to continue with one additional cow (116 cows in all, the capacity of the pasture being exhausted).

III/VII: More intensive cultivation increases the capacity of the common to a total of 126 cows. These measures, however, demand a considerable amount of hard work which is equal to the time and energy involved in looking after four cows. The four farmers belonging to the minority are forced to give up one cow each and to use the time gained by this for the cultivation of the pasture. They are now worse off than in the status quo, whereas each farmer in the majority coalition can keep five additional cows, thus improving his position considerably.

II/IV: The majority decides on abandoning all cultivation measures (so the capacity of the pasture remains at 100 cows), but grants its own members a privilege at the expense of the minority: each farmer in the majority coalition is allowed to put six additional cows out to pasture, whereas the farmers in the minority are forced to sell even their last cow out of necessity to secure their subsistence level.

This illustration should once again make it plausible that the options in Matrix 4 are not just arbitrarily constructed cases. It is, on the contrary, typical of the potential distributive effects of political decisions, *firstly*, that the members of a group as a whole can profit equally and to the same degree from such decisions, *secondly*, that an unequal distribution is often possible without anyone being worse off than in the case of equal distribution, *thirdly*, that a relatively small sacrifice by one group is often capable of improving the situation of another group considerably, and *fourthly*, that even a mere

marginal improvement for one group at the expense of others can result in a serious deterioration of the situation of the disadvantaged group.

What would be the consequences of introducing unconstrained majority rule in view of such options? Could the farmers all expect to profit from collective choices under such an institution in the long run i.e. will they be able to keep more cows in future than in the status quo? Only if this applies, would the farmers unanimously consent to an introduction of unconstrained majority rule.

In this case, too, the assumption is that regularly cycling majorities can be expected. The farmers thus presuppose *ex ante* that, in future, they will alternate regularly between being members of the majority and members of the minority. Their attitude towards introducing majority rule will depend on the outcome for them of these alternating memberships. This outcome again depends on the kind of choices the prevailing majority will take.

This is easy to judge under unconstrained majority rule. The majority will then always choose the option which provides the maximum payoffs for its own members, irrespective of the consequences for the minority. So if A's group has the majority, it will choose Cell IV, and if B's group has the majority, it will decide in favour of Cell II. Thus, similar to the case of Matrix 3, in view of the given possibilities the option of pure redistribution would be chosen, in which the exploitation of the minority by the majority takes place: the majority will not give up one additional cow even if the number of cows owned by the members of the minority is drastically reduced.

However, on the assumption of regularly changing majorities, both A and B can count on situations in which they are in the role of the exploited alternating with situations in which they, as the exploiters, will gain a maximum profit. Nonetheless, even with these prospects they would have no incentive to agree to unconstrained majority rule. They will – just as the parties in the case of Matrix 3 – rather prefer the state in Cell IX, in which there are no possibilities of a collective choice and, thus, the status quo is maintained. The reason for this being that A and B cannot expect an improvement of their position even in the case of changing majorities. Their loss in the minority position will be greater than the benefit which they can realize as members of the majority. Each farmer must reckon with a loss of cows in the long run, thus worsening his position compared to the initial situation in which he could secure his living standard. By introducing majority decision, the farmers would create an institution which would do them more harm

than good. The tragedy of the commons would, of necessity, repeat itself in their attempt at political self-government. Instead of contributing to an improved quality of a common pool, it would only lead to a redistribution of existing resources.⁸

Which alternatives are still open? Generally refraining from introducing collective choice and thereby maintaining the status quo would be unsatisfactory in view of the principally available options. If the members of the community could achieve other states than II and IV from the domain of potentialities, a distinct improvement of their situation would be conceivable. Under unconstrained majority rule, however, these states are actually not attainable.

Constitutional limitations on majority decisions?

WHAT RESULTS WOULD MAJORITY rule produce if options II and IV were virtually no longer on offer? Under this condition a majority coalition which includes A would choose Cell VII and a majority coalition with B Cell III. The quality of the pasture would then be distinctly improved, the farmers in the minority, however, having to bear the main brunt of the improvement. If these two options were no longer on offer either, the respective majorities would choose VI or VII. If these possibilities were barred too, there would, in the end, only remain Cell V with an equal distribution of additional outputs, which each majority would prefer to I or IX.

These three variants of virtually limited majority rule share one important characteristic which distinguishes them from a situation in which options II and IV are still open. If these variants likewise result in cycling majorities, all parties will be better off in the long run than if they try to maintain the status quo – even in the case of unchanged selfish voting-behaviour. They can all expect their advantages from collective choices to be greater in total than the assets they dispose of in the status quo. This even applies to the "losers" in the states III and VII, because other than in the states II and IV, the loss they suffer as members of the minority is smaller than the gain which they can realize as members of a majority coalition.

Which actual possibilities are there then for the participants to institutionalize majority rule in such a way that a decision in favour of options such as II and IV with mutual exploitation will be prevented, and instead, alter-

natives will be chosen which lead to an improvement of the situation for all parties?

From the point of view of the participants, the undesirable result occurs if majority rule is operative, an unrestricted domain of options exists in the sense of Matrix 4, and the option is always chosen which maximizes the majority's payoffs. So, assuming that there is no alternative to the institution of (simple) majority rule, it only remains either to restrict the domain of options effectively or to change the voting behaviour itself.

Can an effective restriction on the domain of options be attained in the reality of politics? If one could indeed ensure that "dangerous" alternatives with a structure as in Cells II and IV would not come up for decision in the first place, the institution of majority voting would have been improved decisively and could even continue to adhere to the principle of "economizing on virtue". Even purely selfish actors would then contribute to the well-being of all by their voting behaviour.

One can refer to the constitutions of existing democracies to find support for this idea. Diverse forms of constitutionally entrenched protection of minorities, above all the statutory declaration of property rights can be interpreted as attempts to bar political options by which certain individuals or groups would be greatly disadvantaged for the benefit of other individuals or groups. Basic rights protect important goods for every citizen even when their damage or removal would provide the majority with a considerable advantage. Would it not be possible to prevent the "illegitimate" expropriation of the farmers in Cells II and IV in this way?

Now it is certainly correct that excessive forms of exploitation and discrimination can be prevented by constitutionally entrenched principles and rights and that such precautions can be of benefit to all citizens in the long run. Nonetheless, it seems to be an illusion that with this instrument all options, as exemplified by the distributional structures in Cells II and IV, can evade political decision. It is not just a matter of verifiable violations of basic rights or other fundamental claims, as for example in the case of an expropriation of goods or direct interference with possessions. There is a vast number of political measures and decisions which have considerable distributive consequences without, however, assuming the character of blatant dispossession (cf. Tullock 1959). A tyranny of the majority can also be practised as a tyranny of pinpricks: taxes for the embellishment of opera houses or the financing of free university places can represent a considerable bur-

den for many citizens while, at the same time, merely guaranteeing additional privileges for the beneficiaries. The danger that, under majority rule, a continuum of more or less undramatic individual decisions add up to a sum with considerable redistributive effects cannot, in the end, be prevented by creating constitutional restrictions.

Moral individuals instead of "moral" institutions

IF A CONSTITUTIONALLY ENTRENCHED restriction of options amenable to majority-voting is not realizable to the extent wished for, there only remain constraints focusing on voting behaviour itself. The objective must be that the members of the majority do not base their vote solely on maximizing their own advantages, but also take other criteria into account.

Choosing Matrix 4 as an underlying model for the relevant alternatives, these criteria would have to result in the exclusion of options II and IV and lead to the selection of options III, VII, V, VI or VIII. As the examples provided in the matrix are representative of a whole set of options which are viable under majority rule, the criteria sought for would need to be formulated as universal principles in which these sets are characterised comprehensively in a general manner.

Such principles can easily be formulated. All options which are preferable ex ante to II and IV from the perspective of A and B represent well-known *ethical principles*: option V represents the *principle of equality*, options VI and VIII the *Pareto-principle*⁹ and options III and VII the *utilitarian principle*.¹⁰ If the voting behaviour of the parties is based on the principle of equality, they will as members of the majority vote for V. If they follow the Pareto-principle, they will decide in favour of VI or VIII and where their decisions are made according to the utilitarian principle, they will choose options III or VII. In relation to all other concrete alternatives, they will take their respective decisions in line with these principles.

In regard to Matrix 4 with its symmetrical options, such principle-oriented voting behaviour can be interpreted to mean that the members of the respective majorities are not expected to treat their interests in a completely neutral manner – so that, for example, the majority coalition around B would be compelled to vote for option VII. It is only to be expected that the majority will pursue their interests within certain moral boundaries – so that

the majority around B would choose option III instead of II. In this case, the majority would not make sacrifices in favour of the minority, they would, however, enforce such a sacrifice by the minority only where it was morally justifiable.¹¹ The participants would hence not be expected to exhibit moral heroism, but merely a certain – but not completely negligible – restraint in the pursuit of their own interests.

We can draw our first conclusions: majority rule as such is thus lacking as an institution and requires the complementation by ethical norms and principles which impact directly on the behaviour of individuals. All parties would have to reach the fundamental agreement *ex ante* that their long-term interests can only be secured by the institution of majority rule, when and if their voting behaviour is submitted to certain moral constraints – whereas the

equality principle, the Pareto-principle and the principle of utilitarianism equally promise a generally positive outcome compared to the status quo and unconstrained majority rule.

Instead of *replacing* individual moral orientation with the incentives of an institutional framework, the institution of majoritarian choice *creates* an increased demand for morality and moral behavioural norms. Here we are not dealing with an evaluation of majority rule and its results according to external

criteria, but solely with its acceptability to the participating actors. And for the explanation of their attitudes no other factors are being implicated than their individual preferences and utility expectations. Hence one does not have to add "morals", in order to get "morals".

What may seem unsatisfactory to a moral philosopher is particularly attractive from the point of view of a social theorist, as he does not have to rely on pre-existing moral motives when explaining the evolution of morality. In the realm of collective choice a genuine demand for morality can be explained in reference to the rational and "amoral" pursuit of interests. Especially where the actors do not pursue any other goal than the most optimal

realization of their individual needs and wishes, they have to develop a preference for moral constraints on behaviour – and, as far as it is they themselves who will act and decide under majority rule, they have to develop a preference for moral constraints on their *own* behaviour.

Even in a strictly "naturalistic" theoretical programme, which – at least on the ultimate level – does not want to accept any other evaluation than voluntary consensus as a result of a rational pursuit of interests, a fundamental need for morality has thus to be admitted: because the existence of certain moral principles is in the interest of the participants themselves. Morals hence arise from interests, and institutions, which are exclusively based on the interests of their members, can themselves produce decisions in favour of morality. Politics by interest in the institutionalization of the constitutional framework hence automatically lead to a wish for politics by morality, as far as the post-constitutional practice within this framework is concerned.

Does it have to be utilitarianism?

FROM THE INTERESTS OF THE participants there arises not only a preference for the limitation of majority decisions through certain ethical principles, but, moreover, it appears evident that one of the principles is *prima facie* superior to all the others. A utilitarian principle appears preferable to the Pareto- or equality principle, as the expectations arising from the use of the utilitarian principle are more promising than in the case of the other principles. In a certain way, this is self-evident, when utilitarianism is considered as a demand for the maximization of average utility. Hence, *ceteris paribus*, no principle can exist which, in the face of equally distributed chances and risks, would fare better.

John Rawls doubted, however, that rational actors in an *ex ante* situation – behind a "veil of ignorance" – would opt for a utilitarian principle. His main argument is based on the assumption that in a situation of uncertainty, one would decide according to the maximin rule and choose the alternative which, in the worst case, would promise the best prospects. Political decisions taken along utilitarian criteria could, in contrast, end up with the restriction of fundamental freedoms of individual citizens where this is in the interest of the majority. The loss of such liberties would be contrary to the

Majority rule as such is thus lacking as an institution and requires the complementation by ethical norms and principles which impact directly on the behaviour of individuals.

basic interest of each human being to lead a self-determined life in pursuit of personal aims. According to the maximin rule, it is hence advisable to reject utilitarianism and opt for a system of inviolable fundamental freedoms which would principally protect everyone from such dangers (cf. Rawls 1971, p. 150ff.).

Rawls' plea to follow a maximin rule behind a "veil of ignorance" is fundamentally questionable (cf. Arrow 1973; Harasanyi 1975). It is, however, especially misplaced if it is possible to assign certain probabilities to future developments. Under such a precondition, the maximin rule, even according to Rawls' own convictions, could no longer be advanced against a choice of utilitarian criteria.

Rawls justifies his negative position towards utilitarianism, however, with a further consideration. He argues that the use of utilitarian principles could lead to a dangerous societal instability. Even if on a constitutional level all the parties had good reason to agree to a utilitarian principle, such an agreement would not be sustainable for those disadvantaged as a result of the practical use of the principle. The participants in constitutional decisions should only opt for such institutions which they could still accept post-constitutionally in future independent of the position they would find themselves in (cf. Rawls 1971, p. 175ff.).

This argument by Rawls has independent weight (even if it may possibly need to be extended: cf. Baurmann 2002a). At least in respect of serious violations of personal liberties and other fundamental interests, which in certain exceptional situations could be justified according to utilitarian principles, it has to be expected that a consensus existing on these principles *ex ante* would be annulled *ex post*. In such a case a constitution would have been created, which would not be self-enforcing as a fundamental institution of society and which would carry the seed of self-destruction within itself.

But from this it by no means follows that the participants would have to distance themselves totally from utilitarian principles as the basis for collective decisions. It is not compulsory to accord such decisions unlimited scope. The possibility of a restriction of the domain of political choice by means of constitutional restraints has already been mentioned in connection with unconstrained majority rule. The scepticism outlined there refers to the unrealistic hope that such restrictions could constitute a generally effective bulwark against any form of overburdening minorities with disproportionate costs. Here, on the other hand, we are addressing excessive interference with

fundamental freedoms and a violation of basic interests with potentially irreversible consequences. Such dangers can, however, indeed be addressed successfully through a system of securely entrenched legal rights – as is *de facto* the case in the constitutions of the majority of democracies.

The guarantee of fundamental freedoms through constitutional rights does certainly not mean that no relevant domain for political decisions – and equally no potential use for utilitarian principles – remains. However, Rawls refuses utilitarian maxims even for this area beyond guaranteed legal rights and, following the difference principle, pleads for a criterion, which solely focuses on the improvement of the most disadvantaged (cf. Rawls 1971, p. 177ff.). Also in this regard, he relies, in addition to the maximin rule, on the stability argument. Because even when interference with fundamental freedoms is no longer admissible, decisions can be reached along utilitarian principles which can not be accepted by the involved parties (p. 178). In particular, there exists the risk, "that some should forgo advantages for the sake of the greater good of the whole" – and that possibly "over the whole course" of their lives (p. 177f.). Also in such cases an *ex ante* decision in favour of utilitarian principles would not be sustainable *ex post*. Thus the participants would have to opt not only for a system of inviolable fundamental freedoms but also for the difference principle.¹²

Rawls does not, however, attempt to justify his fears that utilitarian principles would first and foremost demand of certain groups constantly to forgo advantages for the sake of the common good.¹³ A progressive income tax to restore a desolate public education system appears *prima facie* equally plausible if seen from a utilitarian point of view as a reduction in social welfare to disencumber the state budget. Rawls' contention appears dubitable with respect to two aspects. First of all, he presupposes that one would generally be dealing with the same groups of "losers" according to utilitarian principles: but in fact these groups are not pre-determined, but re-form themselves according to different welfare dimensions. Secondly, he neglects the possibility of changing majorities which can vote for those options which would benefit themselves the most within the limited field of justifiable utilitarian choices.

If, hence, the assumption is realistic that it will often be differing groups who will benefit from utilitarian principles, and if one can further assume regularly changing majorities, then utilitarian criteria employed within a domain limited by legally entrenched property rights will lead to decisions

which best fulfil the interests of all parties, not only *ex ante* but also *ex post*. The expectations which arise on a constitutional level in relation to a majority rule constrained by utilitarian criteria will actually be realized over the short or long-term. A constitutional decision in favour of majority rule would thus also remain stable post-constitutionally. There is no reason for any of the parties to regret their decision on the basis of their experience.

Dealing with Rawls' objections underlines, however, the importance of a precondition on which the whole line of argumentation for constrained majority rule depends: the assumption that actors have a good reason to agree to this kind of institution relies fundamentally on the expectation of changing majority coalitions. If certain actors expect to belong to a stable majority with a sufficiently high degree of probability, it will no longer be rational for them to agree to a constraint on majority decisions by ethical principles.

In order to judge the true extent of this condition properly, the issue must be seen in a wider context. In the context of an isolated assessment of majority rule within a certain domain, the assumption of changing majorities may indeed often be unrealistic. If, however, the importance of majority rule for collective choice is considered in society at large – not only for the Federal Parliament, but also for referenda, State legislatures, local politics, parties, trade-unions, stock corporations, clubs or institutions of self-government – then the picture changes. It is increasingly unlikely that certain individuals will always or even predominantly belong to the majority in all the relevant areas in which they would have to submit to collective choices. Even if they achieve membership in durable majority coalitions in some institutions, they will generally prefer collective choice principles, which will also take into account the interests of the minority. The disadvantages which they have to consider when exercising restraint as members of a stable majority are then made up by the fact that they themselves are treated in a moderate fashion as holders of a minority position in other institutions.

Preferences for morality and moral behaviour

THE PRESUMPTION THAT MEMBERS of a group would draw up a constitution which would prescribe majority rule for their future collective choices is certainly not absurd. But if the same actors are, moreover, of the conviction that their future voting behaviour should be subject to certain ethical principles,

then it is by no means equally evident, how they can realize this wish.

It should be clear, however, that even if these are the same actors who decide about their institutions on a constitutional level and later act under these institutions, the problem is not solved. The fact that these actors have incentives *ex ante* to agree to ethical principles, does not change their incentives *ex post* as members of a majority coalition to decide solely according to their self-interest. Their general interest in morality is initially of a "constitutional" nature. When deciding concrete cases as members of a majority coalition, their particular interests re-emerge as dominant.

How can the parties hence achieve the successful realization of their wish for the efficacy of certain ethical principles in their future collective choices? There are principally three possibilities: 1. through the anticipation of long-term consequences; 2. through the entrenchment of ethical principles in the constitution; 3. through the intrinsic motivation for moral behaviour.

In the first case, the parties would speculate that the fact of a regular iteration of collective decisions under majority rule alone would produce sufficient incentives to restrain the majority in order to prevent future revenge by other majorities. A majority could, for example, offer votes in exchange to avoid a minority position in the choice of strongly preferred alternatives (cf. on such "logrolling": Buchanan/Tullock 1962, p.131ff.). One would hence hope that as the iteration of bilateral exchanges can lead to an equilibrium of reciprocal co-operation between the parties, so the iteration of choices under majority rule could prevent mutual exploitation. A constitutional agreement on certain ethical principles would, in this respect, not be superfluous. Such a fixation would ensure that in face of differing candidates for such principles, a decision is taken and a stable convergence within the behavioural strategies is made possible (cf. Binmore 1994, p.41f.).

Under this condition the "invisible hand" would again fulfil the main task and even purely selfish actors would forgo an unhindered strategy of exploitation. Following their own interests, they would have to consider the effects of their behaviour on the future behaviour of other parties. Decisions under a majority rule would no longer be seen as isolated acts but as part of a reciprocal process. An "invisible hand" in this case would require only minimal support, in that a decision in favour of a certain moral principle would have to be taken.

It is certainly not impossible for constraints on majority rule to be realized in this way. If one considers the example of the ten farmers with their

common, in their small and close-knit community, who are faced with a clearly defined problem on an annual basis, then it seems indeed not implausible that the anticipation of newly emerging majority coalitions in the following year could influence their calculation and that it hence could be a rational strategy to forgo the unrestrained exploitation of the minority and to use the votes as potential trading objects.

Assuming the existence of a great number of parties, however, as is typical in a modern society, who as members of numerous collective actors and changing coalitions have to take renewed decisions about novel problems and constellations, then one can hardly rely on the efficacy of reciprocity and on the success of a conditional co-operative strategy.¹⁴ In any case, under such

conditions one could, at most, sporadically hope for an "invisible hand", and a stable equilibrium of reciprocal exploitation is at least as likely as is the possibility of continuing co-operation. Parties who live in such conditions would be grossly negligent if they relied solely on spontaneous powers to secure their long-term interests. "Economizing on virtue" would resemble more a blind faith than a realistic assessment of factual incentive structures.

The second possibility of binding majority decisions efficiently to ethical principles would consist in expressly including the desired principles, as well as majority rule

and basic property rights, in the constitution. As binding constitutional principles – e.g. in the sense of a demand for the compatibility of legislation with the "common good" – they would have to be legally entrenched.

Does this way seem promising? Is it imaginable, for example, that an independent constitutional court could regularly and effectively examine whether political decisions are indeed compatible with utilitarian criteria – i.e. whether they actually and evidently further the "common good"? Would

we only be dealing with one further competence for an institution which controls legislative functions in a manifold manner already today?

The suggestion to entrench utilitarian or other ethical principles as the basis for majority decisions in the constitution can, however, not be understood to mean that just another constitutional article is innocently added to the pre-existing ones. Normally, constitutional principles in a democratic state have first and foremost the function of restricting the domain of collective decisions through the use of liberty rights or to stipulate certain goals through the employment of positive claims. With such measures the autonomy of the democratically legitimate authorities is curbed, but not eliminated. There remains a considerable scope for political action.

If, however, a principle is included in the constitution which would oblige the legislature to act and decide in promotion of the "common good", then there are two possibilities: either the principle embodies a general appeal which would not – or only in exceptional circumstances where there is extreme abuse of power – be considered legally enforceable. In this case such a principle could not guarantee the desired moral quality of collective decisions. The factual scope for decisions would, as before, remain too great.

Or the principle is taken seriously, i.e. the authorised organ would indeed examine regularly whether the respective political decisions are indeed constitutional or not. Herewith one would, however, practically eliminate the majority's capacity for action, as then every single one of their decisions would be provisional upon a complete substantive examination. In this case we are not dealing with principles which only exclude certain decisions, but with principles which contain substantial criteria for all forms of political choice. Factually, a democratic procedure would hence be abolished and the political power would be transferred to an organ which is not democratically legitimated. Consequently, if one wants to remain within the framework of democratic procedures and of a democratic legitimization of the political authorities, then the efficacy of ethical principles for collective choices cannot be guaranteed through an entrenchment of such principles in the constitution.

An ethical constraint on majority rule can, therefore, only have a chance of success, if the participating individuals possess sufficient intrinsic motivation to obey moral norms and principles. The constitutional interest in morality has to reflect an internal commitment to morality. There is no total replacement for the willingness of the respective majority to voluntarily

An ethical constraint on majority rule can, therefore, only have a chance of success, if the participating individuals possess sufficient intrinsic motivation to obey moral norms and principles.

consider certain ethical principles in making choices – neither through the iteration of democratic voting nor through the entrenchment of morality in a constitution.

In other words: if the members of a group when taking constitutional decisions cannot assume that in their group there exists a sufficiently great number of individuals who are driven by a sufficiently strong moral motivation, then they have no good reason to introduce majority rule for collective choices. Otherwise they would run the risk that the post-constitutional practice would contradict their fundamental interests, as their desire for a moral constraint on majority decisions would remain purely illusory. In a nutshell, this conclusion means that majoritarian democracy can only be a public good in a moral community. Democracy without morality bears the risk of becoming a public bad. Democratic institutions are not an effective substitute for the morality of individuals. For its compatibility with the common interests of the individuals democracy itself depends on the morality of these individuals.

It cannot be considered here under which empirical conditions within a group or society one can really count on a sufficient distribution of morality and virtue amongst its citizens and politicians for a functioning of democracy and whether and to what extent such hope is realistic (cf. e.g. Baurmann 1996; 2001; 2002b; Baurmann/Lahno 2002; Güth/Klimt 1994; 2000). Here it was solely important initially to illustrate the fundamental demand of a democracy for moral norms and principles and for an intrinsic motivation and commitment to these norms and principles.¹⁵

Legitimacy without procedure

IF THE PRECEDING ANALYSIS is correct, the view of democratic procedure is changing:

1. The process of democratic choice can no longer be interpreted as purely "procedural" as if the legitimacy of the result ensues from the procedure itself. There are substantial ethical criteria for an evaluation of democratic decisions independent of procedure.
2. The parties in democratic procedures have to decide according to reasons and arguments and not (only) to incentives and preferences. They

have to consider which solution the application of ethical principles would lead to, and not (only) the question of which solution would be in the interest of their group.

3. The democratic procedure does not (only) serve the revealing and aggregation of preferences, but (also) the articulation and aggregation of arguments and convictions. Democratic discourse is therefore not only a matter of bargaining and compromise, but also of the search for truth and evidence.

In short: not democratic choice as such guarantees morally preferable results, but only the intrinsic motivation of the parties to find a morally preferable solution. Morality is not a product, but the basis for democracy.

1 I would like to thank Margaret Birbeck and Jan Dörfel for their translation. My thanks also go to Frank Dietrich and Hartmut Kliemt for their important hints and sceptical comments.

2 This sounds similar to views which are propounded in a discourse theory of democracy (cf. Habermas 1992, p.135ff.). Representatives of the public choice approach have on occasion seen this similarly (cf. Buchanan/Congleton 1998, p.4). However, this is a misinterpretation. From the perspective of public choice theory, unanimity should guarantee that all parties will benefit on the basis of given individual preferences. Consensus in the perspective of discourse theory should, by contrast, ensure the right application of a principle of universalisation. In practical discourse finding an agreement is a matter of "epistemic reasons" (cf. Habermas 1996) and not of disclosing and articulating individual interests. The criterion of unanimity which both theories claim to be fundamental, has an entirely different function in each case.

3 Similarly majority rule clearly contradicts the principle of consensus in a discourse theory of democracy. A very individual interpretation of majority decisions is required to consider such a decision as constituting a "mere interruption in a continuous discussion" (Habermas 1992, p.220) considering the fact that its distinctive feature is its binding force in view of dissensus (for a detailed critique of the discourse theoretical

interpretation of majority rule cf. Engländer 2002, p.127ff.).

4 It is not decisive whether they can make well-founded assumptions on this equal distribution or suppose it in a situation of uncertainty.

5 "Thus, implicit in the arguments supporting majority rule we see the assumption that no stable majority coalition forms to tyrannize over the minority." (Mueller 1989, p.107)

6 Whereby I will concentrate only on simple majority voting in the following.

7 For purposes of simplicity, the objective payoffs will be treated as interpersonally comparable utility indicators. The problems of an interpersonal comparison of utility cannot be discussed here, cf. Harsanyi 1976; Binmore 1994, p.259ff.; 1998, p.168ff.

8 A more optimistic view of the self-government of common pools is, of course, found in Ostrom 1990.

9 With slight modifications of the examples, the difference principle could equally have been considered.

10 In order to simplify the analysis, it is presupposed that A and B are the sole members of the groups which are affected by the collective decisions. Otherwise, in applying the utilitarian principle, the sizes of the groups would have to be considered. It is to be kept in mind (cf. footnote 7), that the objective payoffs are to be taken as indicators of interpersonally comparable utilities.

11 If one presupposes, however, that all parties would always decide on wholly moral grounds, then the majority around B would generally be willing to vote for options such as VII. Under this precondition, Matrix 4 could be interpreted in a way that the different options are no longer viable alternatives at the same point in time, but situations which occur in a successive manner to the different participants, i.e. at one time A would be in a situation such as VII, at another instance B would be in a situation like III. The acceptance of an ethical principle as the basis for collective choice would then no longer be dependent on the expectation of regularly changing majorities, but on the expectation of regularly changing situations or roles.

12 This argument in favour of the difference principle – with rejection of the maximin rule at the same time – has been adopted by Ken Binmore: cf. 1994, p.53, 315ff.; 1998, p.433: "We have to accept that contingent social contracts which offer an advantage to one of the players at the expense of the other are not viable."

13 Rawls further ignores (as does Binmore, cf. 1994, p.317) the problem of how the compliance could be ensured of those, who – in the application of the difference principle – have to forgo possibly considerable advantages in order to marginally improve the situation of the disadvantaged (cf. Arrow 1973; Harsanyi 1975). The difference principle in particular only improves the lot of a single group in the end.

14 Along the same lines cf. Buchanan/Congleton 1998, p.28; Bernholz 1978; Mueller 1989, p.93.

15 The arguments and results in this article could fruitfully be combined with the theory of expressive voting (Brennan/Lomasky 1993) and new approaches in the theory of representative democracy which rehabilitate the role of trust in politics (Brennan/Hamlin 2000).

Bibliography

Arrow, K. J. (1973), Some Ordinalist-Utilitarian Notes on Rawls's Theory of Justice, in: *The Journal of Philosophy* 70, pp.245-263.

Baurmann, M. (1996), *Der Markt der Tugend – Recht und Moral in der liberalen Gesellschaft*, Tübingen (2. editon 2000).

Baurmann, M. (2001), Freiheit und Tugend. Moralische Bedarfsdeckung durch die unsichtbare Hand?, in: M. Prisching (Hrsg.), *Postmoderne Tugenden? Ihre Verortung im kulturellen Leben der Gegenwart*, Wien, pp.109-141.

Baurmann, M. (2002a), Rationing Yes, Politics No. For a Right-based Approach in Rationing Medical Goods, in: F. Breyer/H. Kliemt/F. Thiele (Hrsg.), *Rationing in Medicine. Ethical, Legal and Practical Aspects*, Berlin u.a., pp.95-104.

Baurmann, M (2002b), *The Market of Virtue. Morality and Commitment in a Liberal Society*, The Hague.

Baurmann, M / Lahno, B. (2002), *Vertrauen, Kooperation und große Zahlen*, in: R. Schmalz-Bruns / R. Zintl (Hrsg.), *Politisches Vertrauen. Soziale Grundlagen reflexiver Kooperation*, Baden-Baden, pp.191-220.

Binmore, K. (1994), *Game Theory and the Social Contract. Volume I: Playing Fair*, Cambridge-London.

Binmore, K. (1994), *Game Theory and the Social Contract. Volume II: Just Playing*, Cambridge-London.

Brennan, G. / Lomansky, L. (1993), *Democracy and Decision*, Cambridge.

Brennan, G. / Hamlin, A. (2000), *Democratic Devices and Desires*, Cambridge.

Buchanan, J.M. / Tullock, G. (1962), *The Calculus of Consent*, Ann Arbor.

Buchanan, J.M. / Congleton, R.D. (1998), *Politics by Principle, Not Interest*, Cambridge.

Bernholz, P. (1978), *On the Stability of Logrolling Outcomes in Stochastic Games*, in: *Public Choice* 33, pp.65-82.

Engländer, A. (2002), *Diskurs als Rechtsquelle? Zur Kritik der Diskurstheorie des Rechts*, Tübingen.

Güth, W. / Kliemt, H. (1994), *Competition or Co-operation: On the Evolutionary Economics of Trust, Exploitation and Moral Attitudes*, in: *Metroeconomica* 45, S.155-187.

Güth, W. / Kliemt, H. (2000), *Evolutionary Stable Co-operative Commitments*, in: *Theory and Decision* 49, pp.197-221.

Habermas, J. (1992), *Faktizität und Geltung. Beiträge zur Diskurstheorie der Rechts und des demokratischen Rechtsstaats*, Frankfurt.

Habermas, J (1996), *Eine genealogische Betrachtung zum kognitiven Gehalt der Moral*, in: ders., *Die Einbeziehung des Anderen. Studien zur politischen Theorie*,

Frankfurt, S. 11-64.

Hirschman, A. O. (1987), *Leidenschaften und Interessen. Politische Begründungen des Kapitalismus vor seinem Sieg*, Frankfurt.

Hardin, G. (1968), *The Tragedy of the Commons*, in: *Science* 162, pp.1243-1248.

Harsanyi, J. C. (1975), *Can the Maximin Principle Serve as a Basis for Morality? A Critique of John Rawls's Theory*, in: *The American Political Science Review* LXIX, pp.594-606.

Harsanyi, J. C. (1976), *Cardinal Welfare, Individualistic Ethics, and Interpersonal Comparisons of Utility*, in: ders., *Essays on Ethics, Social Behavior, and Scientific Explanation*, Dordrecht-Boston, pp.6-23.

Jasay, A. de (1991), *Zur Möglichkeit begrenzter Staatsgewalt*, in: G. Radnitzky/H. Bouillon (Hrsg.), *Ordnungstheorie und Ordnungspolitik*, Berlin, pp. 77-104.

Jasay, A. de (1999), *The State*, Indianapolis.

Mueller, D. C. (1989), *Public Choice II*, Cambridge.

Ostrom, E. (1990), *Governing the Commons. The Evolution of Institutions for Collective Action*, Cambridge

Rawls, J. (1971), *A Theory of Justice*, London

Tullock, G. (1959), *Some Problems of Majority Voting*, in: *Journal of Political Economy* 67, pp.571-579.