

Institutions, Constitutions and Public Policies:
A Public Choice Overview

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Public choice is a comparative approach to the study of public policies. It is centrally concerned with comparing different ways of providing public policies to individual citizens. It is also an economic approach to the study of public policies. It uses the relatively recently devised concepts of public goods, externalities and common pools to compare how and why public policies differ. It is one of the objectives of this chapter to outline and illustrate the public choice approach to comparative policy analysis.

This chapter has also a second objective. One of the major concepts used in public choice analysis is that called "institutional arrangements," which is a term used to describe the laws (statute and common), the government regulations, and the number and type of organisations (government and private) that may be involved in providing public policies. These "institutional arrangements" are ultimately established and maintained by so-called "constitutional arrangements" that determine who may exercise governmental authority, what limits (if any) are placed on this authority, and what kinds of agreements must exist between government decision makers before laws, regulations and organizations are changed. The constitutional arrangements may all be written down in a single document, but more usually (as in Canada) they are contained within a number of documents (like the British North America Act, the Treaty of Westminster, the treaties between Native Indians and the British Crown before Canada became independent). Public choice is interested in seeing what differences both institutional arrangements and also constitutional arrangements make in providing public policies. This chapter will outline and illustrate such differences.

A third objective exists for the chapter. Unlike many other con-

tributions to the book, the public choice approach is normative in cast. It is interested in determining what kinds of institutional arrangements and constitutional arrangements work better for citizens. It argues that laws, regulations, government and private organisations, as well as constitutional arrangements that do not perform in the interests of citizens, should be reformed. The structure of government - the composition of Parliament, for example - should be modified in favour of a different structure if necessary. Institutional and constitutional arrangements that exist in Canada at this time are of no value in themselves; they are only of value if they work better than others in providing the policies that individual citizens prefer. The third objective of the chapter is to outline and illustrate the criteria used in public choice for assessing performance.

The chapter will proceed as follows. The first section describes the essential elements of the public choice approach. It discusses and illustrates the three core concepts for comparative analysis: the nature of the policies, the nature of institutional arrangements, and the nature of individual citizens as they demand and respond to policies and institutions. A schematic representation is included for ease of interpretation.

The second section describes and illustrates the major analytical units that the approach has found to be helpful in understanding the provision of public policies. These so-called analytical units encapsulate the findings and research agenda for the approach to comparative policy analysis.

The third section is explicitly concerned with constitutional arrangements. It contains a framework that classifies the major kinds of differences that constitutional arrangements can make in policy provision.

The fourth section briefly describes the kinds of criteria used in the

approach to assess the performance of the system in providing the kinds of policies that promote human welfare. And the concluding section will briefly discuss the origins and future directions of the approach, as well as contrast the approach with some of its major competitors.

I. The Core of Public Choice

The public choice approach builds its analysis of public policy upon three essential elements. These essential elements or sets of concepts are then used to reason about and to derive testable hypotheses about differing public policies. The public choice approach is thus as much about the logical reasons for why policies differ, as it is about discovering what the policies are in the first place. The student of politics is therefore counselled to read the following descriptions of the essential elements with some patience.

The three essential elements are, first, the nature of the policy or good in question. The institutional arrangements for their provision is the second element. And the nature of individuals constitutes the third element. Each will be discussed in turn.

(a) The Nature of Policies or Goods: Public choice warns us against making generalisations from the provision of one policy to the provision of another. The characteristics of the policies may differ, so that we cannot readily compare education policies with fishing policies, or energy policies with defence policies.

There are two crucial ways in which policies differ and which allow us to think and to measure differences and similarities in policies. First, we must ask - is it technologically or legally easy to exclude some citizens from enjoying or "using" or consuming a policy? It is

easy, for example, to exclude some persons from having a polio shot or from using an automobile. In contrast, it is difficult to exclude some from enjoying the benefits of national defence. Think of the technical difficulties involved if the Government of Canada were to provide defence to the residents of Ontario but exclude those living in Toronto. We must think of policies as varying in their degree of exclusivity.

Secondly, some policies are not "packageable" and available for one citizen or another to enjoy alone. There is much of the good left over for a resident of Hamilton to enjoy after the resident of Vancouver has enjoyed national defence provided by the Canadian Government. Similarly, someone can use a park, and there will be benefits left over for the next citizen. In contrast, someone can consume a loaf of bread and none of this loaf is then available for another consumer. All goods and policies vary in degree to which the good is available for others to enjoy after one person has enjoyed the good.

Table I illustrates these two dimensions of exclusivity and availability from which comparisons across public policies may be possible.

[TABLE I]

Policies or goods that would fall into Box (A) are normally labelled "private goods" and those that fall into Box (C) are normally labelled "public goods". It is important to remember that these labels do not refer to the mode of provision - private goods can be provided by the public sector and often are; public goods can be provided by either the private or public sectors. The labels refer solely to the manner in which

they are consumed or enjoyed by citizens.

Two other points are important to note before we briefly describe the next essential element in the core of public choice. Goods that would fall in Box (D) are sometimes labelled "common pools," that is, their availability is reduced by consumption but it is difficult or costly to exclude citizens from using them. A freeway from downtown to a new suburb may be used by a commuter, for example, and once his car is on the freeway less of it is available for other commuters. While tolls are sometimes used to exclude certain car owners from using the freeway (those that have lower income or those who have the opportunity to take a bus), it is quite costly to exclude car owners from the freeway. Less and less of the roadway is available to commuters as more and more cars find their way onto the road. The highway may eventually be completely congested. And the same process may occur if a second highway is built. Many natural resources are "common pools," and fishermen may exhaust a fishing stock or oil companies exhaust an oil pool unless some form of exclusion (like fish licences or production quotas) is established. Some form of exclusion must be practiced in natural resources management to ensure that use does not exceed biological or geological renewal.

The second important point is that some public policies have indirect consequences on other public policies. Logging policies for forests can have beneficial consequences for outdoor recreation in developing logging roads or increasing deer stocks. Other logging policies can, in contrast, have negative consequences on bear stocks, for example, or on soil erosion (without proper silva culture practices). Beneficial inter-dependencies are called positive externalities if they are not taken

account of by the users of a good. Interdependencies with harmful indirect consequences can yield so-called negative externalities. We should anticipate positive or negative externalities with the provision of any good. Education policies are interdependent with manpower policies, with immigration policies, with industrial policies and so on.¹

(b) The Nature of Institutional Arrangements: Public goods, private goods, common pools, and goods that generate externalities are provided to citizens under a variety of institutional arrangements. In other words, laws, regulations and organisations are important in establishing who gets what, with what consequences and for what reasons. Investigations into the nature of institutional arrangements fall into a subfield of public choice called property rights analysis.

Institutional arrangements affect "the demand side" for the provision of policies by government, by the private sector, or by both jointly. They also affect "the supply side". This division of concerns into demand considerations and supply considerations is a fundamental part of property rights analysis. Examples of first demand, and then supply considerations, will illustrate how public choice treats the concept of institutional arrangements or property rights.

Consider, first, the problem of providing a pure public good to a large number of citizens like the population of Montreal. If all the government did (at local, provincial or federal levels) was resolve disputes and maintain contracts, public goods would probably be insufficiently provided by the private sector. Citizens who want police patrols, for example, would reason that this policy would be available for their neighbours too, and that their neighbours would not be excluded from

enjoying the benefits of protection from such patrols. They might well reason also that they need not "buy" the police patrolling from a private security force, because their neighbours (who might have more money) would purchase it and they could avail themselves of the good. If everyone thought the same way, no one would contribute toward the cost of the police patrol, and the private security firm would go out of business. A different set of institutional arrangements is necessary to see that citizens are provided with a policy they want but will not contribute toward voluntarily. One change in the institutional arrangements would be for one government to impose taxes on citizens and force them to contribute money toward the cost of police patrolling. This so-called "free-rider" problem is a classic example of the ways in which institutional arrangements can affect the provision of a public good.² More precisely, the demands of citizens for a public good are not articulated (signalled) and aggregated under the existing system. Note that it is a demand side problem, and not a supply side problem; the government can turn around and contract with the same bankrupt private security firm to provide police patrolling, and it need not change arrangements on the supply side.³

A second example of demand side considerations is now generally known by the concept "rent-seeking".⁴ Consider a taxi driver who has invested in a suitable car with meter, and yet he finds that casual drivers or commuters will pick up fares at convenient times for a modest payment. He can band with other taxi drivers to pressure city hall to licence all taxis and ensure that there is a stable market. By so limiting entry into the market, he can insulate himself from the pressures of competition. He

can also resell his licence to other prospective taxi drivers. If he happens to work in Vancouver, the licence would sell for over \$30,000.⁵ In other words, the cost to the taxi-takers of having a so-called stable market is \$30,000 per licence. The real cost is even higher; the taxi cab owners will invest time and energy (opportunity or transaction costs) in banding together, lobbying city hall and ensuring that limited entry is policed. There will also be direct administrative costs on the local government for enforcing the regulation. This example illustrates how certain institutional arrangements can be constructed to establish cartels and to transfer wealth from one part of society to another. It also illustrates how institutional arrangements that are responsive to such groups (or individuals) can skew and bias the demands of all of the public. There is much evidence to indicate that Canadian society is rigged in the favour of a myriad of rent-seeking groups and individuals.⁶

A third and final example of demand side considerations, and of how differing institutional arrangements can affect the articulation and aggregation of preferences for public policies, centres on the analysis of voting rules. Differing voting rules - such as plurality rule with a limited franchise - can yield a different set of decisions compared with, say, simple majority rule with an extensive franchise. Public choice has analysed in detail a variety of voting arrangements. Take, for instance, the procedure with which bills may be voted on by a committee. If the committee votes on bills in pairs, and votes to prefer Bill A over Bill B, and then secondly to prefer Bill C over Bill A, the decision may be taken that Bill C is the winner. However, the committee never voted on the merits of Bill B versus Bill C, and Bill B might be preferred in this pairwise comparison. One conclusion that might be drawn, is that the group or

political party or chairman of the committee that sets the agenda for voting can manipulate the outcome by altering the procedure by which bills are compared and voted upon. The generic point is that the voting rules can be altered to yield differing solutions or differing patterns of demand aggregation.

Institutional arrangements can also affect the supply or production of governmental policies, just as they can affect the demands for differing policies. Government policies, whether produced directly by a government agency or contracted to an agency of another government or to a private sector organisation, require personnel, capital and land to operate. One classic example of the way that institutional arrangements can affect the supply side is in the budgeting process.⁸ If elected officials are presented with a budget from an agency that has a monopoly in producing a service, it is likely that the budget request will be larger than necessary to provide the level of service that citizens demand. The Department of National Defence may request a budget to cover the operations of the military in Canada, in N.A.T.O., in N.O.R.A.D., and so on. It asks for a budget to cover the total costs of its operations. While the Treasury Board, the Cabinet and Parliament may cut this request, they are never supplied with the necessary information about the relative costs of different levels of service. They cannot make judgements about the value of adding or subtracting a different level of operations with the costs of different levels. By equating the total value of operations with the total costs, they are asked to treat equally additional levels of operations that are more costly to produce and have less value (e.g. naval operations in the South Pacific) on the same basis as operations of a high value and relatively cheaper to

produce (e.g. domestic security). Comparing total benefits with total costs, rather than marginal benefits with marginal costs, leads to a greater level of the supply of the good. Different institutional arrangements may have to be adopted to alter the monopoly of information possessed, in this case, by the Department of National Defence.

Another way in which institutional arrangements can affect the supply of services is through the discretion granted to employees in an agency to set priorities. Traffic and road engineers, for example, in a local government, typically have considerable discretion to set priorities for road building, road widening and road maintenance. The only claim on this discretion may come from elected local officials responding to individual complaints about hazards or potholes, so priorities may be set to stress maintenance and building of arterial highways which move greater volumes of traffic per mile, leaving neighbourhood roads to be built and maintained only when funds permit. Such priorities may impact to a larger extent on older neighbourhoods with an elderly road structure rather than on newer subdivisions with roads built by subdivision developers. In turn, these older neighbourhoods may be disproportionately populated by ethnic, linguistic or class minorities. In other words, institutional arrangements affecting the supply of services may ultimately affect the equality with which different citizens are provided with different goods and services. And when such goods and services are public goods and services which are not sold on the marketplace, there may be no ready test to see whether the public prefers or rejects the priorities established through bureaucratic service delivery rules.⁹

In sum, a variety of institutional arrangements affect both the nature and degree to which individual preferences are articulated and aggregated

by public means (the demand side), as well as the nature and degree to which public policies are produced by organisations in the private and public sectors (the supply side). Not only do institutional arrangements differ according to the particular policy under consideration (discussed above), but they also operate differently depending on the nature of individuals. We now turn to examine briefly the public choice conceptions of individuals.

(c) The Nature of Individuals: Public choice analysis deals with the provision of policies that individual citizens demand, and which are supplied by one or more organisations in the private and public sectors, organisations that are composed of individuals in different positions of authority. Public choice expects that individual citizens, elected and appointed officials, businessmen and lobbyists, and so on, will have their own conceptions of how and why policies should be provided. Two aspects of this concern with individuals is important in policy analysis.

First, public choice emphasises that policies are of value if they meet the demands of individual citizens, not individuals who are employed in or by the private and public sectors. Health policies that satisfy the aspirations of doctors, nurses and hospital administrators are of no value, and may waste resources, unless they are valued by citizens as patients or future patients. Policies, and the institutional arrangements for their provision, are of instrumental value, and have no intrinsic merit.

Secondly, public choice emphasises that the demands of individuals are made within and structured by institutional arrangements. A farmer may have a demand for high levels for fire suppression as a public policy, but will normally satisfy these demands by installing fire extinguishers and lots of buckets and hoses. Institutional arrangements that would provide him with

a nearby fire hall are unlikely events. Similarly, a bureaucrat working in Indian Affairs may have limited discretion in implementing his preferences for a devolution of power to Indian bands in view of the Indian Act, its regulations, the budget available to him and so on. Individuals in any position, in other words, will have constraints and opportunities within which they can attain their preferences.

An example that illustrates both of these features of the nature of individuals receiving public policies within an on-going system of institutional arrangements is that of urban mobility. Individuals living in a particular urban neighbourhood may receive public policies and have access to private goods that are inferior to what can be attained in another neighbourhood. The natural environment, or better housing, or community ties with persons of similar life-styles, or even garbage collection services may be improved by moving to another neighbourhood. More important such advantages may be attained more easily than by voicing concerns to the local government, by challenging urban redevelopers or by readjusting life-styles and preferences. In Greater Vancouver, for example, 26% of residents report they have moved within the urban area for housing reasons alone, another 18% for environmental reasons, and a further 11% for both housing and environmental concerns.¹⁰ In short, many citizens find they can better attain their preferences by relocation and many public policies do not match neighbourhood demands.¹¹

II. The Units of Analysis

The three essential elements of public choice - the nature of the good, the nature of institutional arrangements, and the nature of individuals - are building blocks from which public policy analysis proceeds. They generate

the units of analysis that may be compared and treated empirically. The units of analysis called "provision systems" and "industries" are built in the following way.¹²

Consider a policy or good that individuals want or are being provided with. It might be fire protection, water quality management, police protection, national defence, or solid waste collection. Consider, secondly, how these goods are provided to a population living in a contiguous area, like a neighbourhood, a water basin, a city or a region. One is likely to find private enterprises, public enterprises, groups of citizens, and individual citizens all involved in providing this service. Two examples will illustrate.

Fire protection is a policy that is provided through the interaction of a number of organisations, mainly of a public enterprise character. A municipal bureaucracy usually organises and provides fire fighting equipment and personnel. Other local government departments typically enforce construction standards and building codes. Urban renewal and housing departments (often of different levels of government) may select sites for clearance or approve dwelling deterioration criteria which are associated with fire danger. The water supply, which may be organised by a local government, cooperative local government agencies, or by public utilities organised at higher levels of government, affects water pressure and hydrant location. Private households contribute to security through educating children, maintaining dwellings and purchasing insurance. Fire insurance firms provide some inspection and investigating services in conjunction with fire fighting departments. Associations of private firms, insurance underwriters, and firefighting personnel influence construction, inspection, fire personnel practices and firefighting technology. Police departments provide some

surveillance, reporting and occasional suppression services. Private firms may use, often under public regulation, water supply and sprinkling systems, as well as nightwatchmen, janitors and supplementary fire suppression groups. In other words, a multiplicity of organisations (public and private) contribute in interdependent ways to the provision of fire protection.¹³

The management of water quality is a second example. Typically river basins are used for a wide variety of purposes - navigation, storage, fisheries, boating, water supply, waste disposal, industrial and residential sites, the production of lower forms of biological life, to name a few. Some of these uses are for the production of private marketable goods, and one typically finds a large number of individual persons and a large number of locally owned, nationally owned and internationally owned private firms jointly involved in the production and/or consumption of water quality as a result. One also finds, typically, a large number of local, regional, national and international agencies of government jointly involved in the production and/or consumption of water quality, either because (1) they are involved in the production and/or consumption of private goods and services (like fish) provided by the basin; or because (2) they are involved in the regulation of the production and/or consumption of marketable goods and services; or because (3) they are involved in the production and/or consumption of public goods and services. Again, a multiplicity of organisations is typically involved in the provision of water quality management.¹⁴

The network of organisations and individuals involved in providing a public policy is termed a "provision system" in public choice analysis. "Provision systems" for a particular policy can exist across many communities,

in which case they are collectively called a "public service industry". It is these provision systems that are the units of analysis normally taken as points of comparison in public choice policy analysis. One compares, for example, the provision systems for solid waste collection in Vancouver, Toronto, Geneva or Rome. Or one compares the public service industries for natural resources in Canada, Australia and Sweden.

Two important features of these units of analysis must be stressed. First, it is theoretically possible to find only a very simple organisational network in any provision system. It is possible to find, for example, a single organisation with a monopoly in the provision of a policy, although this is unlikely given the nature of most goods and services. We return to this point in the next section of the paper.

Secondly, the units of analysis differ considerably from the units conventionally taken in many public policy analyses. By beginning with the nature of the policy in question, one typically finds the institutional arrangements (including organisations) of more than one level of government involved in providing any policy. This approach implies that it is invalid to compare the policies of national governments or of provincial governments or of local governments. Each of them may or may not be involved in articulating the demands and/or contributing to the supply of any public policy. A focus on the level of government will take only those parts of a number of provision systems this level of government is involved with, then attempt to re-aggregate these parts into a misleading collection of policies. In other words, different descriptions, analyses and conclusions will be found depending on whether one uses a "provision system" as a basic unit of analysis or whether one uses a "level of government".

To illustrate the form and kind of conclusions reached in public choice analysis of public policies, consider the provision of public safety to a residential community, like the Municipality of Oak Bay, British Columbia. Public safety like any public policy consists of a variety of activities, including crime prevention, responses to reported crimes (including investigation and apprehension), traffic regulation and control, and general public services (like crowd control and escort duty). After identifying the activities that make up the public policy, public choice analysts would then attempt to describe all of the means by which such activities are produced.¹⁵ It becomes apparent that these activities are not the exclusive prerogative of the municipal police department. Some are produced by the R.C.M.P., some by private security forces, some by institutional security forces, some by adjacent municipal police departments (because criminal activities spill over municipal boundaries), and some are co-produced by the private citizen (especially in crime reporting and crime prevention).¹⁶ This structure of producers must be expanded to include those organisations that provide (often by contract) support services to the previous list of direct suppliers; examples would include the B.C. Police Academy that trains police recruits or the R.C.M.P. Crime Laboratory. Another set of producing organisations are those that operate at the "street level" of the municipality through the decisions made by the municipal police department; examples would include the B.C. Coordinated Law Enforcement Unit (Joint Forces Operation) which has a mission to combat organised crime or the Emergency Response Team (the "SWAT" team) organised by Oak Bay and 2 adjacent municipal police departments. On the production or supply side alone, it is possible to identify over 25 producing agencies (excluding citizens) that are directly

or indirectly involved in producing public safety to a small residential municipality of 18,000 persons.

Similarly on the demand side, there is no single or simple body that articulates citizen demands about the general level and quality of public security services or responds to complaints about the major producers and its employees. Key actors would include the municipal council (which funds the municipal police department), the police board (which oversees policy), the B.C. Police Commission, the B.C. Attorney General, and a variety of elected officials at local, provincial and federal levels who can initiate and participate in policy making that affects suppliers paid by the level of government in question.

Provision systems, such as the one outlined above, appear not only complex but confusing. Studies of provision systems find, however, that there are regular patterns of relationships and interactions between producers and between producers and demand responding organisations. A multiplicity of organisations does not, in other words, imply uncoordinated and unplanned provision of services.¹⁷ Provision systems may be described as possessing a variety of degrees of horizontal and vertical integration, depending on the activity in question. Activities that are easily measurable and are capital intensive, and are in turn amenable to economics of scale in production, are for example normally vertically integrated (like crime laboratories in public security provision systems). One also would expect to find both cooperation and competition, as well as collusion and coercion, operating within provision systems.¹⁸

The twin concepts of "provision systems" and "public service industries" were devised in order to make public policy analysis better correspond with

the complexity and multifaceted nature of public policies. Given the differences in the nature of public policies (and activities), one would not expect to find similar institutional arrangements for all policies for any community. Given the differences between individuals and their preferences, one would not expect to find policies provided in comparable levels and qualities from one community to the next. And given differences between institutional arrangements, one would not expect to see individuals articulating their preferences and responding to existing advantages and disadvantages in policy provision in identical ways from community to community. One should anticipate, in other words, complexity, variety and overlapping authority and jurisdictions. The question of whether these kinds of provision systems are best, or better than alternatives, for providing public policies, is a matter to be addressed after Part III of the Chapter.¹⁹

III. Constitutional Arrangements

We have seen that public choice analysts treat the provision of public policies as necessarily complex and diverse, but that they compare public policies by identifying "provision systems" and "public service industries" as units of analysis.

Comparative studies using such concepts reveal that the institutional arrangements involved in providing public policies differ from place to place and from time to time.²⁰ This forces one to ask "Why?". At this point, public choice analysis borrows extensively from one of its other subfields - the analysis of constitutions. For it appears that the authority given to legislative bodies to pass laws, establish regulations and agencies, and set the framework within which the private sector operates, rests, in turn,

on the nature and structure of constitutional arrangements in any country.

The role of constitutional arrangements in structuring the various provision systems for public policies may be summarized and classified in the following way.

First, public institutions vary in the degree to which they share authority for the provision of goods with other public institutions and individual and corporate persons. At one extreme, one may conceptualize public institutions possessing concurrent authority with other organisations to provide goods, and with limited entry costs on additional organisations entering the provision system in question. For example, in Canada, agricultural services are subject to the concurrent authority of both the provincial and federal levels of government, and because of the international character of most agricultural markets, services are also influenced by the operations of non-domestic governments, and corporate and individual persons resident abroad. At the other extreme, it is possible to conceptualize the monopoly provision of goods, although real world instances are difficult to find. Even the classic case of military services, which in many formal constitutional documents is assigned to a national government alone, is on closer scrutiny a severely constrained instance of monopoly provision because of the international character of military markets and the relatively low entry costs on para-military and guerrilla movements. Nevertheless, it is possible to suggest that the two polar extremes for characterising the "product" market of provision systems are concurrency and monopoly.

Secondly, governments may vary in the degree to which they possess concurrent authority to regulate and produce the inputs for provision systems. Provision systems require the supply and transformation of factors of production - labour, capital and land. Labour markets in Western societies

are regulated through statute and/or common law provisions by quasi-independent administrative tribunals and courts that enjoy arms-length relationships with the executive arms of governments. The only exceptions occur in the attenuated control of labour markets granted to one or more governments for purposes of military conscription and international migration. Similarly, capital markets are rarely subject to the exclusive jurisdiction of a single government, and capital is a highly mobile factor even across international boundaries. Land as a factor of production is more often subject to the exclusive monopoly control of a single government, but all three necessary factors for the production of the products of provision systems are rarely subject to the monopoly jurisdiction of one government. Governments find that they must come to terms with institutional constraints on their ability to provide policies, on both the input and output sides of policy provision.

These two considerations - of the degree of concurrency in the product and factor markets for the provision of goods and services - allow us to draw a simple 2 x 2 matrix describing the polar extremes of the policy consequences of constitutional choice (See Table II).

[TABLE II]

Different communities of individuals will be subject to goods and services provided under different conditions approximating any of the four boxes (A, B, C and D) in the Matrix of Constitutional Possibilities. Our previous discussion implied that for most goods and services, communities will find themselves in Box C,

But it would be improbable to expect all goods and services to be constitutionally organised in the same way for all communities at all points in time. Military services, for example, often are provided in wartime under constitutional conditions approximating Box A in the Matrix. Many small geographically isolated communities often find that their so-called local government services (such as police, garbage collection, or fire protection) approximate the conditions of Box D. And much of the concern expressed by democratic theorists about the consequences of public sector unionization may be interpreted as a concern about the consequences of provision systems organised under conditions of Box B.

An important empirical question to ask about constitutional arrangements is this: how far do the processes of constitutional change afford public (and private) enterprises the opportunities to drive out rivals or potential rivals from providing goods and services? Or, how far is it possible for one government to reduce the rivalry in provision systems? An instructional example may be drawn from changes in the number and powers of local governments (both municipalities and special districts) as a result of laws passed by provincial governments in Canada, by equivalent regional governments (like U.S. States) in other countries, or by national governments in unitary political systems. When the secession and formation of new local governmental units from larger units has been prohibited, when small governments have been amalgamated, or when one local government has been permitted to annex surrounding areas, the degree of concurrency in the product markets has been reduced. As economic theory would predict, institutional changes that support monopoly provision and reduce rivalry bring increased costs to the provision of services without compensating increases (and with often decreases)

in the levels and quality of services provided in the community.²¹ These changes would not have been possible had not constitutional authority been granted to a provincial or national government.

Constitutions vary in the degree to which they facilitate the entry and exit of public institutions into different provision systems. Three examples from Western societies illustrate this feature:

- (1) Constitutional change subject to a majority vote of elected representatives, as in the United Kingdom, with the important exceptions of non-resident public and private persons subject to unanimous consent with foreign governments.
- (2) Constitutional change typically subject to a majority vote of judges as arbitrators appointed by the national government, as in the U.S.A., but again with the international exceptions noted for the United Kingdom.
- (3) Constitutional change typically subject to the unanimous consent of regional and national governments, as in Canada and Australia, again with the international exceptions.

These three examples draw our attention to two additional features of constitutional arrangements that must be considered for a full understanding of comparative policy analysis.

First, constitutional arrangements for providing goods and services include, in fact, multiple constitutions of different communities. Non-resident public and private enterprises, organised under non-domestic constitutions for any community, can enter and exit the product and/or factor markets for different provision systems. Foreign governments and multinational corporations are the names given to enterprises organised

under constitutions abroad. But domestic communities within nations may also have constitutions and domestic enterprises that interact with non-resident enterprises (public and private) organised under different constitutions. Multiple constitutions imply interconstitutional relations that must be analysed for an understanding of public policy provision.

Secondly, the arrangements for resolving differences between multiple constitutions deserve extended scrutiny and analysis. For example, the provision of goods and services in Australia and Canada cannot be understood outside the context of unanimous consent decision rules of the 7 Australian and 11 Canadian governments. In both cases, the governments operate like cartels to exclude rivals, and display the acknowledged instability of cartels as governments bargain together, playing holdout strategies and imposing high transaction costs on other governments to secure unanimous consent agreements.²²

We are now in a position to summarize the major elements in a public choice approach to comparative policy analysis. Public and private goods, common pools, and goods with externalities are provided to communities of individuals by public organisations, private organisations, groups and individuals. For each kind of good there exists a provision system. Provision systems for any good make up a public service industry. Provision systems also vary in the degree to which any public or private institution is subject to the rivalry of other enterprises. This rivalry is a function of constitutional arrangements (including interconstitutional relations). We must now discuss and illustrate how public choice analysis evaluates the performance of provision systems.

IV. The Performance of Provision Systems

The object of the public choice approach to comparative policy analysis is not simply to describe and explain public policies in different regions and countries. It is also to evaluate them. This concern stems from its interest in individual citizens. Institutional arrangements and the policies provided thereby are presumed to meet the demands of individuals, and if better institutional and constitutional arrangements can be designed they deserve to replace the existing ones.

This normative posture does beg the question of the criteria to be used to judge whether provision systems, or indeed entire industry structures, are operating better than alternatives that may be established. Public choice analysts have shifted their criteria over time in the light of newer theoretical investigations. It may be useful to review briefly the two kinds of criteria used in earlier studies (and which, incidentally, are used extensively in pure economics) before specifying the criterion of assessment given primacy in later works.

(a) Criteria Based on Individual Utilities: The policies provided by any provision system could be judged by whether they increase the satisfactions or preferences of individual citizens. The private sector may fail or be inadequate to provide preferred goods and services at prices that consumer-citizens are prepared to pay, and changes in institutional arrangements may be necessary to provide public-type goods that are closer to the preferred quantities, qualities and prices of citizens. Pollution may be generated, for example, as a negative externality from an industrial process, and under certain institutional arrangements, it may be difficult for certain citizens to band together to bargain effectively with the

polluter. A change in institutional arrangements, such as making the polluter legally liable for damages in the face of class action suits, may lead to greater "global efficiency" or satisfy the preferences of those damaged by the externality. The problem with such a simple preference based or utility based criterion is that we assume that the value of damages to those experiencing pollution is commensurate with the benefits accruing to the polluter from an absence of pollution controls. We may be comparing the proverbial orange to the proverbial apple. We may not be able to simply add up the benefits and add up the costs of providing policies in different ways, and assume that when the ratio of benefits to costs are greatest, then that particular policy output is the one to adopt. We would need to smuggle into Our analysis an additional criterion besides that of preference satisfaction in order to make judgements. The list seems endless - should it be to satisfy a majority of citizens (but what if the policy included incarceration of a sizeable minority?); should it be to satisfy each one individual (but what if the one were a child abuser?); should it be to satisfy those with intense preferences (make war at any costs because some feel strongly for military adventures?). Clearly, criteria based solely on citizen satisfactions are inadequate.

The tradition still enjoys considerable popularity in Canada, however, particularly in governmental circles. Benefit-cost analyses, cost-effectiveness studies, and program-planning-budget methods appear to be logical techniques by which governments can choose between a variety of programs, all of which have legitimate claims upon public treasuries.²³ But the techniques all involve choices about what benefits and costs should be calculated, what effectiveness measures should be developed, what goals and objectives government agencies should pursue, and what trade-offs between

competing programs should be made. Elected officials may neither have the information nor the self-interest to require the information about citizen preferences; the demand side problems cannot be solved by such techniques.

(b) The Criterion of Pareto Optimality: Economists and public choice theorists have long recognized the problems of simple preference satisfaction, whether of citizens and/or officials, as a criterion to judge policy performance. One of the more popular substitutes was posed by the Italian Economist, Pareto. Pareto formulated the criterion that if a policy change would make at least one person better off and no one worse off, then that change should be effected. The criterion was derived from examining how, in the private market, buyers and sellers would exchange goods in a voluntary manner to satisfy their preferences. If any seller or any buyer did not like the price at which a good was offered for sale, he or she could voluntarily reject the offer. It is, in effect, an "any-person rule" criterion, as it requires the willing or voluntary consent of all parties to an agreement prior to the agreement being implemented.

In one sense, the criterion is a useful one. Take, for instance, the issue of whether a local government should not only provide but also produce services like fire, policing, solid waste collection, libraries and recreation and so on. It can choose between tax-financed municipal production, tax-financed franchised private production, tax-financed franchised public production by an agency of another government, user charge-financed production under any of the three above alternative modes of production, or even user charge-financed fully competitive private production (privatisation). The Municipality of Surrey, British Columbia, has chosen the second option,

that of a tax-financed franchised private production, while a comparable municipality in the same region, that of Burnaby, has chosen the first option, tax-financed municipal production. The cost per household of garbage collection and disposal in Surrey is approximately 82% of that in Burnaby. This suggests that the residents of Burnaby would all be better off, and a Pareto Optimal change attained, were Burnaby Council to contract out the service.²⁴

It is not very useful in most circumstances however. When governments provide public goods by taxing citizens, and when these citizens have different demands for the level, quality and tax price they are willing to pay for a service, it is highly unlikely that everyone would be satisfied with the terms at which the good is provided. Some people may be made worse off if the government, for example, reduces the level of educational services, and other people may be made worse off if the government increases the level of educational services (and no alternatives like mobility to another community or private schools are feasible). In other words, the criterion cannot be applied to the provision of public goods unless one assumes that all of the beneficiaries and taxpayers have similar preferences.

(c) Criteria Based on Institutional Fairness: Public choice theorists have shifted their focus of attention from the benefits and costs incurred by individuals from the provision of policies in different ways, to the institutional and constitutional arrangements which affect policy performance.²⁵ The reasoning is that if most policies will make some people better off and another set of people worse off, then the rules or institutional arrangements for policy provision should form the locus of evaluative criteria. If individuals perceive the institutional and constitutional arrangements as

being fair to them as well as to others, then the policy outputs or policy changes can be evaluated as fair.

Most of the reasoning focuses on the equality that each individual has to alter the terms and conditions of policy provision. Do individuals, for example, have equal access to regulatory bodies of government or to the law courts to bargain with a producer of externalities? Are individuals treated equally when their votes for representatives are counted in constituting a legislative assembly?

This notion of institutional fairness as equality in setting and amending institutional arrangements is not without its critics. It is usually defended as being the criterion that any one person would choose if he or she were uncertain about their position in society in the future. It would ensure that any one would have the long run capacity to be of influence. Critics point out that many persons would opt for their present position even if they could not predict social and political conditions into the future. They also point out that the criterion may conflict with the concept of personal liberty in that it may prescribe individual actions (like selling oneself into slavery to provide income for one's family) that individuals feel should take top priority.

Despite such controversies, this newer thrust to policy evaluation is a radical departure from previous norms. Institutional arrangements and constitutional arrangements that exclude the public or skew decision-making to the advantage of those with the will and resources to win, can now be considered as potentially inefficient in a broad global sense. The challenge is not only to explain who wins and who loses, but to develop new norms to assess the place of the individual in the organisation of the state.

V. Conclusion

Public choice offers a different approach to policy analysis. It does not treat policy and decision-making in government as the same for all public policies; the nature of the good places constraints and opportunities on collective action. It does not, secondly, treat institutional and constitutional arrangements as a given; institutional and constitutional arrangements can have independent and important effects on policy provision and on citizen demands. It does not, thirdly, treat citizen or governmental official interests as the same; diversity in preferences among individuals is expected in any community and state. What public choice does do is fashion a new approach out of the nature of the good, the design of institutional and constitutional arrangements, and the preferences of individuals. This new approach centres on provision systems and public service industries as basic units of analysis, and then describes and evaluates how provision systems and public service industries perform in different communities.

The approach is an economic one, and it shares many of the conclusions found by Marxist and neo-Marxist political economy. It would agree, for instance, that many governmental officials possess common preferences and ideologies with corporate and organised interests. But the reasons it advances for such conclusions, and its prescriptions for reform differ. One anticipates institutional and constitutional weaknesses and failures in many communities. The thrust is to reassert the primacy of individual liberties and preferences in the face of such weaknesses and failures.

The challenge for students of this approach is to extend the scope of investigations particularly in Canada. This is a time in which serious

reconsiderations are being made of constitutional arrangements, of federal-provincial-local relationships, of the role of the public in resource and other policy arenas, of the place of organised communities of interest (indigenous peoples, women, French Canadians, linguistic minorities) in the structures of governments, as well as of the scope of the private and public sectors. Public choice, which is essentially liberalism with new economic tools, has much to offer in these debates.

Footnotes

1. There is a large literature on the characteristics of public goods, common pools and externalities. Most has developed since Samuelson's formal analysis in the mid 1950's, and the basic analytics can now be found in most modern public finance texts. A clear non-technical introduction is Robert L. Bish's, The Public Economy of Metropolitan Areas, Markham Press, 1971, Chap. 2.
2. The classic work on the "free-rider problem" in politics is Mancur Olson's The Logic of Collective Action, Harvard University Press, 1965. Recent modifications of the theory have specified the conditions under which wealth, influence and intensity of preferences, as well as mere size of group, can induce this form of strategic behaviour known as "free-riding". For an example of this recent work see John B. Chamberlin, "A Collective Goods Model of Pluralist Political Systems," Public Choice, Vol. 33, 1980, pps. 97-113.
3. This analytical distinction between demand and supply considerations, and its importance for reassessing how public goods can and should be provided to heterogeneous communities within urban areas, was first discussed at length in Vincent Ostrom, Charles M. Tiebout and Robert Warren, "The Organisation of Government in Metropolitan Areas," American Political Science Review, Vol. 55, 1961, pps. 831-42. It should be noted that many traditional political science and economics models still assume that the government (or level of government) that aggregates the demands for goods and services also must produce or supply these goods themselves. For a critique of such models in understanding federalism, see M.H. Sproule-Jones, Public Choice and

Federalism in Australia and Canada, Australian National University Press, 1975.

4. The concept "rent-seeking" was first coined by Anne O. Krueger in her article "The Political Economy of the Rent-Seeking Society," American Economic Review, Vol. 64, 1974, pps. 291-303. Many leading and recent articles on the topic are collected in the anthology, Toward a Theory of the Rent-Seeking Society, edited by James M. Buchanan, Robert D. Tollison and Gordon Tullock, Texas A and M University Press, 1980.
5. G.B. Reschenthaler, "Regulatory Failure and Competition," Canadian Public Administration, Vol. 19, 1976, p. 476.
6. For an overview see W.T. Stanbury (ed.), Studies on Regulation in Canada, Butterworth, 1978. For evidence on urban property markets, and the climate of local government activity, see Michael Goldberg and Peter Harwood, Zoning, The Fraser Institute, 1980, as well as the more radical-popular literature such as James Lorimer, The Real World of City Politics, James Lewis and Samuel, 1970; Donald Gutstein, Vancouver City, Lorimer, 1975; and James Lorimer, The Developers, Lorimer, 1978.
7. An excellent recent introduction to this subfield, sometimes known as social choice theory, will be found in Robert Abrams, Foundations of Political Analysis, Columbia University Press, 1980. A more advanced overview is Charles R. Plott, "Axiomatic Social Choice Theory: An Overview and Interpretation," American Journal of Political Science, Vol. 20, 1976, pps. 511-96. Readers should also consult J. Nicholas Tideman and Gordon Tullock, "A New and Superior Process for Making Social Choices," Journal of Political Economy, Vol. 84, 1976, pps. 1145-1159,

for a concise introduction to the large recent literature on the "Clarke-tax" method of overcoming free-riding in large groups.

8. This example is known in the literature as the Niskanen hypothesis after the thesis found in William A. Niskanen, Bureaucracy and Representative Government, Aldine-Atherton Press, 1971. Modifications and elaborations of the thesis have been made since the publication of Niskanen's book, a survey of which will be found in William Orzechowski, "Economic Models of Bureaucracy: Surveys, Extensions and Evidence," in Thomas E. Borcheding (ed.), Budgets and Bureaucrats, Duke University Press, 1977. For work that integrates the Niskanen hypothesis with demand side considerations, see especially Robert J. MacKay and Carolyn L. Weaver, "On the Mutuality of Interests Between Bureaucracies and High Demand Review Committees," Public Choice, Vol. 34, 1979, pps. 481-91.
9. The literature on bureaucratic service delivery rules and their consequences on the supply and distribution of services is both recent and large. A recent overview can be found in Bryan D. Jones, et al, "Service Delivery Rules and the Distribution of Local Government Services," Journal of Politics, Vol. 48, 1978, pps. 332-368. Major works in the field include Robert Lineberry, Equality and Urban Policy, Sage, 1977, and Michael Lipsky, Street Level Bureaucracy, Russell Sage Foundation, 1980. Systematic studies in Canada are few in number, but useful insights can be obtained from James Lorimer, The Real World of City Politics, James, Lewis and Samuel, 1970, especially Chaps. 5 and 6.
10. Unpublished data as part of survey designed to measure citizen preferences or environmental intangibles. See Mark Sproule-Jones, "The Social Appropriateness of Water Quality Management," Canadian Public Administration,

Vol. 21, 1978, pps. 176-94.

11. The study of urban mobility by public choice analysts dates from the seminal article by Charles M. Tiebout, "A Pure Theory of Local Expenditures," Journal of Political Economy, Vol. 64, 1956, pps. 416-24. The subsequent literature is extremely large, two of the more important studies being John M. Orbell and Toru Uno, "A Theory of Neighbourhood Problem Solving," American Political Science Review, Vol. 66, 1972, pps. 471-89; and David F. Bradford and Wallace E. Oates, "Suburban Exploitation of Central Cities and Governmental Structure" in Harold M. Hochman and George E. Peterson (eds.), Redistribution Through Public Choice, Columbia University Press, 1974, Ch. 3. A recent survey article is Richard J. Cebula, "Voting with One's Feet," Regional Science and Urban Economics, Vol. 10, 1980, pps. 91-107. A recent reassessment of the extent of urban mobility in Canadian cities is that of Barry Wellman and Barry Leighton, "Networks, Neighbourhoods and Communities," Urban Affairs Quarterly, Vol. 14, 1979, pps. 363-90.
12. This re-conceptualisation of the organisational arrangements for providing public policies was first suggested in Vincent Ostrom and Elinor Ostrom, "A Behavioural Approach to the Study of Intergovernmental Relations," Annals of the American Academy of Political and Social Science, Vol. 359, 165, pps. 137-46. Five recent books that have developed the concepts of "industry" and "provision systems" (or comparable terms) are Sidney Somenblum, John J. Kirlin and John C. Ries, How Cities Provide Services, Ballinger Press, 1977; Eugene S. Savas, The Organisation and Efficiency of Solid Waste Collection, D.C. Heath,

- 1978; Elinor Ostrom, Roger B. Parks and Gordon P. Whitaker, Patterns of Metropolitan Policing, Ballinger Press, 1978; Roger B. Parks, Assessing the Influence of Organisation on Performance, Ph.D. Thesis, Indiana University, 1979; Mark Sproule-Jones, The Real World of Pollution Control, Westwater Research Centre, University of British Columbia, 1981.
13. Phillip M. Gregg, "Units and Levels of Analysis," Publius, Vol. 4, 1974, pps. 59-86.
 14. Mark Sproule-Jones, "Coordination and the Management of Estuarine Water Quality," Public Choice, Vol. 33, 1978, pps. 41-53.
 15. Note again that production (or supply) is not the same as provision (or demand aggregation).
 16. Co-production of public policies by citizens is generally ignored both by administrative studies and by studies of citizen participation. See Gordon P. Whitaker, "Co-Production: Citizen Participation in Service Delivery," Public Administration Review, Vol. 40, 1980, pps. 240-46; Mark Sproule-Jones, "Urban Bads and the Structure of Institutional Arrangements" in K.G. Denike (ed.), Managing Urban Settlements: Can Our Governmental Structures Cope?, Centre for Human Settlements, University of British Columbia, 1980, pps. 2-10.
 17. Mark Sproule-Jones, The Real World of Pollution Control.
 18. Robert L. Bish, "Intergovernmental Relations in the United States," in Kenneth Hanf and Fritz W. Scharpf (eds.), Interorganizational Policy Making, Sage Publications, Modern Politics Series, Vol. 1, 1978, pps. 19-36.
 19. Part IV below. The diversity, variety and complexity is best termed

as "polycentricity" (see Ostrom, Tiebout and Warren, "The Organization of Government in Metropolitan Areas"). It should be distinguished from "pluralism" which is normally reserved for socio-political diversities, varieties and complexities irrespective of institutional arrangements and the nature of policies.

20. Apart from the citations noted in footnote 12, three useful summaries of the findings on urban public policies are Robert L. Bish and Vincent Ostrom, Understanding Urban Government, American Enterprise Institute, 1973; Elinor Ostrom (ed.), The Delivery of Urban Services, Urban Affairs Annual Review, Vol. 10, Sage, 1976; Vincent Ostrom and Frances Pennell Bish (eds.), Comparing Urban Service Delivery Systems, Urban Affairs Annual Review, Vol. 11, Sage, 1977.
21. For a lucid, non-technical introduction to this argument, see Robert L. Bish and Robert Warren, "Size and Monopoly Problems in Urban Government Services," Urban Affairs Quarterly, Vol. 8, 1972, pps. 97-122. Some of the best evidence for the argument comes from the United States and from Sweden. See especially, Dolores T. Martin and Richard E. Wagner, "The Institutional Framework for Municipal Incorporation", Journal of Law and Economics, Vol. 21, 1978, pps. 409-26; Robert B. Hawkins, Self Government by District, Hoover Institute Press, 1976; Jorgen Westerstahl, Decision-Making Systems in 36 Swedish Communes, University of Gothenberg, 1974; and Bengt Owe Birgersson, "The Service Paradox: Citizen Assessment of Urban Services in 36 Swedish Communes," in Vincent Ostrom and Frances Pennell Bish (eds.), Comparing Urban Service Delivery Systems, pps. 243-68. There are similar indications that in Canada and in Britain, the larger local governmental units have failed to adequately articulate and aggregate citizen preferences. For introductions, see respectively, Lionel D. Feldman, Ontario 1945-73:

- The Municipal Dynamic, Ontario Economic Council, 1974; and L.J. Sharpe, "The Failure of Local Government Modernization in Britain," Canadian Public Administration, Vol. 24, 1981, pps. 92-115.
22. The situation will likely change in Canada if a new Constitution Act is passed by the Westminster Parliament. See M.H. Sproule-Jones, Public Choice and Federalism in Australia and Canada, for a description and explanation of federal-provincial bargaining and its public policy consequences.
23. See the Chapter "The Impact of Program Evaluation on Policy Decisions" in this volume.
24. This is preliminary data made available by Jim McDavid. It should be noted that public choice analysis evaluates the issues of privatisation and nationalisation in an empirical fashion. Contracting out to private producers can, for instance, be more expensive in certain circumstances, particularly if the producers can "rig" the market. It should also be re-emphasised that user charges are inappropriate financing mechanisms for pure public goods. A useful introduction to their applicability is Richard M. Bird, Charging for Public Services, Canadian Tax Foundation, 1976.
25. The classics in the field are James M. Buchanan and Gordon Tullock, The Calculus of Consent, University of Michigan Press, 1962; John A. Rawls, A Theory of Justice, Harvard University Press, 1971; Vincent Ostrom, The Intellectual Crisis in American Public Administration, University of Alabama Press, 1973; Robert Nozick, Anarchy, State and Utopia, Basic Books, 1974; Frederick A. Hayek, Law, Legislation and Liberties, 3 volumes, University of Chicago Press, 1973, 1976, 1979.

TABLE I: The Main Characteristics of Policies

		<u>Availability</u>	
		Low Availability	High Availability
<u>Exclusion</u>	Low Costs of Exclusion	(A) e.g. polio shot	(B) e.g. park
	High Costs of Exclusion	(D) e.g. fishery	(C) e.g. national defence

TABLE II: Policy Consequences of Constitutional Choice

		<u>Product Market</u>	
		Monopoly Provision	Concurrent
<u>Factor Market</u>	Monopoly Provision	A	B
	Concurrent Provision	D	C