Austrian Economics Research Conference 2015

Mises-Institute, Auburn, Alabama, USA

2015/03/13

A Constitutional Rationale

for a

Private Law Society

Voting by number of voters

and by financing means

secures a public sector free of domination

by

Peter J. Preusse

Dear Austrians,

In distinct contrast to a society established by formal membership or by informal social interaction, any territorially defined society shows a more or less compulsive character. The exit option is constrained by the high threshold of loss of solidified *Körperzeit* (body time, as Hoppe has it), namely in its manifestations as property, wealth, linguistic, humane, and cultural identity.

So under the postulate of a categorical rational endowment of interacting humans, and given the affirmation of life, it is indispensable for a territorially defined libertarian society to have a constitution primarily safeguarding self-ownership and secondarily alienable property. It must aim at minimizing the extent of self-ownership violations. Since intersubjective comparison of utility is illegitimate, all that can be achieved is the minimization of the instances of self-ownership violations by public choice. This is put into effect first and foremost by drastically confining the public sector, that is the realm of society dealing as a whole on the grounds of public choice.

Whoever deems society’s unified appearance necessary in a certain subject matter has to present this to all its members.

So as not to confuse it with institutions existing in past and current history, such as a referendum, an initiative, a petition, a motion, or a ballot measure, this unique procedure will here be called “*Ansinnen*”. Since society as a whole is not an entity capable of acting, only an institutional representation is conceivable as the direct addressee of the *Ansinnen*,dealing on behalf of society in a properly regulated way. It is precisely this body of rules which is called constitution.

As far as I see, we still lack better ideas than majority to settle disagreements when argumentation and arbitration hit the brick wall. So, in any *Ansinnen* advanced to it the institutional representation, which will here be called “constitutional filter”, has to decide upon the mode in which this *Ansinnen* can be ruled in a generally binding majority-vote-procedure – as the lowest-level variety of uncivilized violence.

There are three potential modes of majority in voting on an *Ansinnen*: 1. majority of voters; 2. majority of financing means for public spending; and, 3. the double majority of voters and public means. Only qualified absolute majorities matter in polling by voters and by means. Abstention from voting is rated as “No”.

The weight of one’s vote in polling on the basis of financing means is defined by the volume of one’s contribution to public-sector-financing in the full past electoral period of the constitutional filter. The amounts in question can either be levied by an *Ansinnen* and are thus dedicated to a defined project or can be donated to the constitutional filter with or without appropriation.

The electoral period for members of the constitutional filter is six years.

The constituent first ballot decides upon the first three members of the filter and of course on the acceptance of the constitution itself. Every two years thereafter another three members of the constitutional filter are elected for a six-year term in periodic regular ballots. The full electoral period is completed every six years after the constituent election. The voter can elect three candidates, with one vote for each candidate.

The constituent first ballot is decided by qualified and absolute majority of voters alone, if need be in two rounds of voting. All subsequent periodic elections of members of the constitutional filter are performed in a two-stage procedure and require a double absolute and qualified majority of both voters and public financing means of each single member.

The procedure for the first stage voting, the poll, is to select those candidates with the largest sums of number-votes and means-votes minus the difference of number- to means-votes. In other words each candidate emerges from the poll with two results, namely the share of numbers and the share of means-votes, one of which being the minor and the other being the major. So what counts is the greater minor; the poll is won by those with the three greatest minors, be it high percentages with few candidates or low figures with many.

But only those zero, one, two, or three candidates are nominated members of the constitutional filter, who receive double qualified and absolute majority of voters and means-votes in a mandatory second stage of voting, the appointment.

On behalf of children before their unilateral declaration of independence their mothers, or as a substitute, fathers, perform the right to vote. Mentally challenged people are represented by their guardians.

Who is legitimized to elect members of the constitutional filter, who is entitled to poll on an *Ansinnen*? Since there is no authority to invest anyone with a citizenship or an elective franchise, the least possible organisational tool is a record of everybody’s financial contributions for each full electoral period. These accounts identify every contributor as a voter and define the weight of his financing means-vote.

Qualification for the constituent election by number of votes can be nothing but social control; no legal mechanism can make up for a bold majority of goodwill and common sense. For the first two years without the approval of financing means and without the basis data for weighting all *Ansinnen*-based public spending must rely on donations; for the rest of the first full electoral period the so far donated sums of the previous one or two thirds are the measure for the financing-means-vote.

Modalities for submitting an *Ansinnen* can be stipulated by the constitutional filter; in particular it can define minimum requirements for submission. Irrespective of the outcome all procedural costs are first covered by down payment by the submitters and later imposed to the affirmative financing-means-votes.

*Ansinnen* that neither affect nor depend on alienable property or inalienable self-ownership, that is impersonal *Ansinnen*, can be decided upon by pure majority of voters. It is hard to conceive of a clear example of impersonal *Ansinnen*. This category may include the design for flags, emblems and the like; at most it might include external relations to other societal organisations as long as these do not interfere with freedom of contract.

Those *Ansinnen* that primarily affect inalienable self-ownership without being dependent on its alienable manifestations, i.e. property, may be characterised as purely personal ones; as far as a choice of majority may be regarded as inescapable, irrespective of being categorically illegitimate, they can be decided upon by a majority of voters only. Examples of pure personal *Ansinnen* are at least as hard to conceive of but far more significant than the above mentioned impersonal *Ansinnen*; it is exactly this category that led me to phrase the Third Axiom as a new approach of developing Austrian School from value-free economics to rational ethics as presented here at the AERC two years ago and to be found on my website self-ownership.net. As an important implication it might be worth mentioning today that this approach at the same time prompts a clear notional differentiation of ethics versus morals.

Anyway, the question of interpersonal ranking of the ill-conceived “value” of self-ownership is raised in a setting as follows: a multitude is assumed to be threatened in their self-ownership by a presumed, impending, or ongoing event; it is further assumed, that the means for counteracting this threat either are already in society’s possession or are to be obtained by a second, related *Ansinnen* or by a donation: the question to be answered then, is, which indivisible counteraction is to be taken in the face of an indivisible danger to self-ownership in fact not only, considering efficiency but also preconceiving responsibility for effects of the defensive measures that are in themselves invasive on self-ownership, be it for effects on real aggressors, or on alleged aggressors, or on third-party-members, or even on the primarily threatened themselves:

Which option to choose, e.g., in case of a free society after secession being threatened by a state or some other gang willing to resort to violence? Or how about the most severe situation when a threat of mass destruction can only be answered by less than perfectly targeted preventive force which in itself bears imponderable risks of infringing on self-ownership for a vaguely defined group of own and foreign victims?

Given the material and infrastructural resources the choice is solely a question of potency on the one hand and of risk to own and foreign property initiated by the own action on the other hand. So much for the purely personal *Ansinnen*.

A greater number of *Ansinnen* may, however, primarily concern or depend on alienable property and implicitly touch upon self-ownership as the case may be. Let me name them “societal *Ansinnen*”. Their acceptance requires majority of financing means at least. Depending on the relevance for inalienable self-ownership the constitutional filter can choose to stipulate a voter’s majority in addition. This category includes, if at all, such investments non-Austrians are nowadays accustomed to regard as public goods.

Of course, in theory there is no such thing as a public good in a private law society. It is the objective of this constitutional approach to a realistic libertarian society to create a safe structure of decision-making, in the case of demand for suchlike goods as it may nevertheless arise and even find notable support, a structure that reliably prevents any societal body acting in its own right, and thus prevents public choice of its own dynamic, namely to choke off a private law society.

A permanent executive branch is explicitly not allowed for in this constitution. Rather each *Ansinnen* has to define and provide for the instruments of realisation according to its project. If an *Ansinnen* successfully inaugurated a permanent executive organ this cannot be a constitutional body within this constitution; at any time it can be not only reshuffled but also liquidated as a whole by a new *Ansinnen*.

There is no parliament with representative power. Notably, there is no legislation or regulation to be passed, proclaimed, or decreed.

There is no public and monopolistic judiciary. All finding of justice, contract enforcement, atonement, and reparation are to be found in the market.

But how to deal with the possibility of insufficient voters and means in favor of an adequate number of members of the constitutional filter? In that case, there is just no broad demand for a public sector or insufficient support for this type of a constitution. In case of lack of demand there is simply no public sector—which is far superior to an uncontrolled one, as the typical outcome of other procedures of public choice, often with sparse voter turnout and, above all, without the choice not to choose, that is, without meta-choice. Reality will gradually approve the true need of unitary action.

What is essential, what is non-essential about this constitutional concept? The electoral period of six years, e.g., is more or less arbitrary, that is, a question of practicability. More important is the rotational election of a fraction of the members of the constitutional filter, preferably a third, safeguarding a good balance of change and continuity and avoiding a bias towards either fossilization or ahistorical ignorance. Another important feature is the system’s suitability for small, as well as large, societies: the first-stage election of members of the filter works just as well for a few as for a larger number of candidates. And finally, only those candidates are selected, who first achieved the relative best results and then reached the qualified absolute majority of voters and public financing means in the second act of voting, the appointment.

As compared to these more or less technical aspects it is still more pivotal that the concept precludes the dilemma of inescapable majority rules on all issues amongst three men: by introducing the financing-means-vote, and by defining its weight by the sum of the individual’s contributions to public spending in the previous period, permanent exploitation of one stratum of society by another is ruled out, that is: There are no classes anymore.

Successful exploitation from an affluent upper stratum in the name of broad middle and lower strata would prompt the financing means-weight of voters from that upper layer to reach the veto point for the next period—or even drive them into emigration.

On the other hand, however, a domination of society by the financial elite can reliably be prevented by the requirement of majority of voters as soon as a legitimate interest of self-owners is involved.

Crucial above all, however, is the fact, that there is no public sector per se. Any amendment creating a self-reliant public sector is excluded by definition. In distinct contrast to an ever-present stationary bandit, anyone who wishes society’s unitary action in some stirring concern he may have, has to get his project legitimised in every single case and by society as a whole, i.e. by the actual majority of all concerned. According to the character of the *Ansinnen* as being a personal, impersonal, or societal *Ansinnen* this may or may not affect and depend on either self-ownership or alienable ownership. In many if not most cases it will at the same time concern the sphere of self-ownership as well as the sphere of alienable property. The constitutional filter as the very heart of this concept is the only panel to judge which categories of property are affected by each *Ansinnen*: it alone is legitimized to define the polling requirements because each single member mandatorily has to accumulate majority approval of alienable and inalienable ownership.

Explicitly, this is the only constitutional body, the only elections in society are the elections to the constitutional filter. To distill it down to a single proposition: There is no competence-competence except with the actual majority of votes and financing means.

The presented rationale needs no reference to Divine truth or eternal values. Instead it stands with the bold basics of self-ownership and private property. It was Leonardo da Vinci who coined the phrase: I prefer a tiny truth over large and lofty lies.