

Constitutional Political Economy¹

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Introduction

The phrase ‘constitutional political economy’ has, no doubt, appeared in the literature in a variety of contexts over many years, but for our purposes the key uses of the phrase as the label for a distinctive research program developed from the use of ‘constitutional economics’ over the period following the publication of *The Calculus of Consent* (Buchanan and Tullock 1962) and became firmly established in the sub-title of *The Reason of Rules* (Brennan and Buchanan 1985), and as the name of the journal launched in 1990.²

The most obvious distinction that identifies constitutional political economy (hereafter, CPE) from political economy more generally defined is that between the analysis of constitutional rules and the analysis of policy formulation and behavior under those rules. CPE is dedicated to the analysis of constitutional and institutional rules, where this includes both the study of the operating characteristics of alternative rules or sets of rules and the questions arising from the design and reform of constitutional rules. Of course, this distinction should not be taken to imply that the constitutional perspective can be fully separated from the study of behavior under constitutional rules. The implications of any particular rules for expected behavior will be a major factor to be accounted for in any

¹ To be published in William F Shughart, Laura Razzolini, and Michael Reksulak, *The Elgar Companion to Public Choice, Second Edition* (2013).

² For an influential early use of ‘constitutional economics’, see McKenzie (1984). The first issue of the journal *Constitutional Political Economy* included Buchanan’s (1990) “The Domain of Constitutional Economics”. More recent essays offering overviews are “Constitutional Political Economy” (Voigt 2004), “Constitutional Economics I” (Farina 2005) and “Constitutional Economics II” (Van den Hauwe 2005).

discussion of the design and evaluation of rules. Nevertheless, the shift of focus from behavior-under-rules to the design of rules is a key element of CPE.

But it is by no means the only key element, and nor is it the case that CPE is necessarily best viewed as a constant and unchanging approach over time or across practitioners. This chapter attempts to provide a rather more detailed statement of the essential core of CPE and to discuss two debates within CPE that both illustrate the variety within CPE and reflect some of the deeper differences in relation to fundamental issues in political economy.

CPE – the core

At the most basic level we might identify three distinctive features which, taken together, define the core structure of CPE: we might label them constitutionalism, individualism, and contractualism. I will briefly discuss each in turn.³

Constitutionalism captures the complex of ideas associated with the thought that the authority of a government is both derived from and limited by a constitution, so that the various acts of government and, in particular, the act of law-making, are seen as governed and regulated by a higher, constitutional law. Any constitutionalist must place special weight on the distinction between the constitution which governs and regulates politics, and politics which operates within the constitution. Of course, this rough formulation of constitutionalism raises more questions than it answers; most obviously, what is the source of the constitution and its legitimating force? Answers to such further questions may come in a variety of forms and still be consistent with a commitment to constitutionalism. The variety of constitutionalism that underpins CPE might be termed democratic constitutionalism, in that it builds on both individualist and contractarian ideas (to be discussed below) to provide descriptive as well as normative content for the basic constitutionalist position.

Whatever the details, the constitutionalist position of CPE distinguishes it quite sharply from the pre-existing economic orthodoxy which focused analytic attention almost entirely at the level of policies, rather than the political institutions and constitutions within which those policies are generated. In this respect, CPE derives from a clear critique of the

³ For related discussion of these elements see Brennan and Hamlin (1995).

approach adopted by traditional welfare economics so that while it is now a commonplace to describe CPE (or public choice analysis more generally) as the application of economics to politics, it is important to recall that public choice and CPE owe their origins as much to a critique of economics as they do to an expansion of the range of application of economic analysis.

Individualism is the aspect of CPE that draws most directly on the economic approach, although even here it is used to develop a rather different normative stance. It is important first to stress the distinction between methodological individualism and normative individualism. Although CPE is committed to both, they are quite distinct. In the methodological context, the emphasis on individualism simply insists that the ultimate explanation of social phenomena must relate to individuals. Methodological individualism, in the relevantly mild form, does not deny that non-individual entities play salient roles in social life; it merely insists that a full explanation of that salience must ultimately refer to individuals. It may be convenient to speak of a government acting in a certain way, or of a collective, such as a trade union or NGO, deciding on some matter, but when we speak in this way we are merely employing a shorthand for a deeper analysis in which individuals playing particular roles within the government, trade union or NGO interact to produce the observed behavior.⁴

There may seem to be a tension between this individualist position and a simple reading of constitutionalism, which appears to grant independent explanatory and normative power to the constitution, even though it certainly is not an individual. But this tension is no more than apparent within the CPE approach, since the deeper analysis of the constitution provided within CPE grounds it by reference to individuals, both in terms of explanation and in terms of normative authority. Before turning to the normative aspect, we might dwell a little longer on the descriptive or explanatory aspect of the relationship between individuals and political institutions and constitutions.

CPE takes as one of its inputs a mild form of methodological individualism, and produces as one of its outputs a focus on political institutions and constitutions. That is, it generates a variety of institutionalism from an individualistic starting point. This may seem

⁴ Formally, methodological individualism of the sort identified here does not require that all collective or social phenomena are capable of being reduced to the individual level, but only that collective or social phenomena supervene on the individual level. See, e.g., Currie (1984) and List and Pettit (2006).

paradoxical to some, but there is no paradox here. The constitutionalist element of CPE points to the distinction between rules and actions under the rules.⁵ So that, in any political situation at any moment in time, the rules act to constrain, regulate or otherwise inform action. Given the rules, individuals will act in accordance with their motivations (whatever they might be), so that the outcome of their various actions (which may include some breaking of the rules) will be seen as the equilibrium under the particular set of rules of the game. On the face of it this seems to combine the forces of agency and structure, granting structural rules an autonomous role in determining social outcomes. But this depends on the further analysis of the source of the rules, and CPE analysis identifies that source with prior individual behavior; either directly in terms of the explicit design of rules via some sort of constitutional decision making, or indirectly through some more evolutionary process (see, e.g., Wärneryd 1990). In this way, rules and constitutions are seen as the embodiment of prior choices and behavior by individuals, so that while rules have an impersonal proximate influence on political outcomes, this is ultimately revealed to be an indirect form of individual agency rather than any acceptance of structural autonomy.⁶

We may now turn to normative individualism. The essential idea here is that all values are personal in the sense that for something to be of value it must be of value to someone. While this position rules out values that are fully independent of individual values, it certainly does not commit to any narrow notion of individual self-interest, or economic preferences, as being the only value to be recognized. An individual may hold any set of values, however altruistic, other-regarding or social they may be, and, to the extent that they are held by individuals, these values will be recognized by the normative individualist. All that is ruled out is the ascription of value where no individual values have been expressed; in this sense, normative individualism might be thought of as a form of global anti-paternalism.

But normative individualism of this rather general sort does not provide a sufficient account of the normative commitments of CPE; it is only in combination with a form of contractarianism that normative individualism is given the specific content that is

⁵ This aspect of CPE is explored at length in Brennan and Buchanan (1985).

⁶ The balance between agency and the autonomy of constitutional rules, or between constructivist and non-constructivist accounts of constitutions, is one of the key distinguishing features between CPE in the tradition of Buchanan and more Hayekian accounts of social order. See, for example, Hayek (1960), Buchanan (1975) and Vanberg (1994).

characteristic of CPE and which contrasts with the more utilitarian or social-welfare orientation of traditional welfare economics, which is clearly also within the normative individualism camp.

The individualist/contractarian position is one in which the agreement of relevant individuals is taken as the key to identifying opportunities for increases in overall social value. Individuals will typically pursue a range of values so that their agreement to any particular proposal will normally involve an internal trade-off over different values, and the nature of such individual trade-offs may differ from individual to individual. But the central idea of the contractarianism associated with the CPE tradition is that only the individual is in a position to make appropriate trade-offs, and agreement is, in principle, the only reliable indicator of all-things-considered or net value to the individual.

This, then, is the source of two further key elements of the CPE approach – the idea of politics as exchange, and the normative status of unanimity.⁷ The idea of politics as exchange sits in contrast to the idea of politics as choice: politics as exchange sees politics (at both the constitutional and in-period levels) as essentially concerned with interactions between individuals in search of mutual benefit, while politics as choice sees it as the making of choices by authoritative bodies acting independently (whether those bodies are individuals, as in the case of a citizen choosing how to vote, or collectives such as a government choosing a policy). While the distinction between exchange and choice is somewhat subtle (since choices and exchanges will often go together) the difference in perspective is significant. And once the idea of exchange is given center stage, it is clear that voluntary exchange requires unanimity among the parties to the exchange, and that this unanimity is the hallmark of value-enhancing exchange.

Contrast the CPE focus on individual values, exchange and unanimity with the traditional welfare economics focus on individual utility, social welfare and Pareto optimality. Even if the traditional welfare economist is a normative individualist, so that the only arguments in the social welfare function are individual values, by constructing a metric of social welfare there tends to be a focus on aggregate choice rather than exchange; and while Pareto optimality and unanimity will be closely related in ideal circumstances, their different perspectives will come apart in more practical situations.

⁷ See, for example, Buchanan (1975, pp. 50–5) and the Wicksellian references provided therein, and chapter 2 of Brennan and Buchanan (1985).

The final points to be stressed in this brief review of the basics of the CPE approach relate to the role of rationality and the idea of the ‘veil of insignificance’ (Kliemt 1986). Given the basic commitment to individualism some specification of individual motivation is clearly required to make CPE operational, and this takes the form of the assumption of individual rationality in the classic sense that an individual is rational to the extent that she acts to maximally satisfy her desires given her information and beliefs. There are two fundamental points to emphasize here. The first is the idea of motivational symmetry involving a single integrated model of individual behavior across all economic, social and political domains. CPE, and public choice theory more broadly, insists that it is inappropriate to assume that the basic motivation of individuals shifts significantly as the individual moves from narrowly economic contexts to public or political contexts; or that some dramatic and systematic change in motivation applies to individuals who operate in political rather than economic arenas (see, e.g., Brennan and Buchanan 1985, pp. 46–51). The idea of motivational symmetry should not be taken to imply that individuals actually behave identically in all settings, but rather than differences in behavior are to be explained by reference to specific aspects of the relevant institutional settings, rather than by stipulating a fundamental shift in the internal motivations of the individual. In other words, if political behavior is to differ from economic behavior, this must arise as a matter of analysis and argument rather than by simply asserting that the relevant individuals are motivated differently.

But this insistence on motivational symmetry still leaves open the question of how to specify individual motivation, and here it is clear that in the early CPE literature the specification of choice was that of a relatively narrow specification of self-interested rationality familiar from the model of *homo economicus*. I would suggest two main reasons for this specification: first, and most obviously, a major part of the thrust of early public choice and CPE analysis was to offer a broadly positive analysis of behavior within political institutions that sat on all fours with the standard economic analysis of behavior within market institutions. Adopting the standard economic view of preferences and the utility maximizing conception of individual rationality provided both access to a wide range of techniques and results developed in the economics and game-theoretic literatures and direct comparability as between the political and economic domains.

Alongside this argument for adopting the *homo economicus* specification, there was also an attempt at a direct methodological justification (ibid., pp. 51–4). There were two

strands to this argument: first, that it was important to show that political cooperation could develop even where individual interests often were in conflict; and, second, that it was important to show that political institutions could be robust against individuals who were not assumed to be automatically compliant.⁸ While these points are well taken, it is by no means clear that they imply that the *homo economicus specification* is to be preferred to all others, since it is certainly possible to specify individual motivations in such a way as to ensure an appropriate degree of inter-individual conflict and eliminate automatic compliance without adopting a narrowly self-interested conception of rationality.

As we will see, there have been significant attempts to broaden the understanding of individual motivation within the CPE approach, but it should be stressed that these attempts still operate within the general framework of individual rationality, and still take seriously the value of motivational symmetry between economic and political domains.

Given an assumption of individual rationality (whatever the detailed content of that assumption) and motivational symmetry, how does the distinction between in-period politics and constitutional politics operate to provide normative support for constitutional rather than policy choice? In one sense this is the clear central issue for CPE. If individuals act rationally (perhaps self-interestedly) in their day-to-day political activities, surely the idea of motivational symmetry implies that they will act equally rationally (and equally self-interestedly) in making constitutional choices. And if this is so, how can we believe that the constitution generated from such behavior carries any significant normative weight in justifying, rather than merely explaining, the political structures and processes with constitutional credentials?⁹

The basic CPE line of argument here revolves around the claim that there is sufficient difference between the constitutional choice situation and the day-to-day politics setting to provide relevantly normative support for the constitutional over the merely political. And the relevant difference provides a ‘veil of insignificance’ which acts in a manner similar to that associated with the Rawlsian ‘veil of ignorance’ (Rawls 1971, Sec. 24). Essentially, when facing a constitutional choice, for example, the choice between alternative voting rules, the

⁸ These arguments, as with much in the CPE tradition, reflect a broadly Madisonian perspective (Hamilton et al. [1787–88] 2008).

⁹ This line of criticism suggesting that the normative ambitions of CPE are undermined even if its positive ambitions are met is developed in Hardin (1990, pp. 35ff) and Christiano (2004). See also Brennan and Hamlin (2009).

individual is placed in a setting in which she cannot accurately distinguish the impact of the alternatives under consideration on her own interests, despite the fact that she may be able to identify the alternatives as having very different general properties. This is simply because in considering a constitutional rule, the individual must expect the chosen rule to operate over many particular cases, and over an extended period of time. Given that the individual does not know which cases will fall under the rule, or how those cases may impinge on her interests, it will be virtually impossible to choose the rule that best serves her interests. The argument then continues by suggesting that, in these circumstances, the individual will rationally view the constitutional choice at hand from the perspective of the general properties of the alternative rules on offer, and so reach a decision that is largely independent of personal interests and more dependent on the judgment regarding the ability of the rules under consideration to serve the interests of citizens in general, whatever their particular interests might be.

Now, of course, the 'veil of insignificance' is not argued to fully transform self-interested political choice into disinterested constitutional choice; but it is argued to work in that direction. And this is important both in generating a normative presumption in favor of constitutionalism, and in providing a reason to expect a greater degree of agreement in the realm of constitutional choice than in the realm of day-to-day politics.

In considering the argument for the 'veil of insignificance' we might note several critical points. First, do we accept that the nature of rules implies that it will be difficult for any individual to identify the constitutional rules that can be expected to serve their personal interests? And, second, even if we accept this point, do we agree that this will imply that constitutional choices will be more disinterested and focus on more general benefits to citizens at large? I will consider these points in turn.

On the first issue, it is not too difficult to think of potential counterexamples. For instance, if an individual knows her own general economic and social position (in relation to, for example, education, religion and wealth) it may not be too difficult to work out that some potential constitutional arrangements will serve individuals of that general type even if they do so at the expense of individuals of other types. Equally, if an individual feels himself or herself relatively advantaged by the status quo political arrangements, that individual will have a clear incentive to support constitutional arrangements that limit the pace or extent of political change. In this way, it seems that the 'veil of insignificance' is too

transparent to do the work required of it. But this is, perhaps, too hasty a conclusion. Notice that these claimed counterexamples are actually examples that work within the ambit of the CPE argument, by shifting the focus of attention from the specific personal interests of the individual to the more general interests of a class or type of individuals with which the individual identifies (the educated, the religious, the advantaged, or whatever). One might add that any individual may be expected to identify with a number of groups, classes or types and, to the extent that the generalized interests of these groups differ, this will add further force to the claim that the individual's view of his or her interests will be attenuated. On these grounds, it seems reasonable to conclude that the CPE argument that the veil of insignificance tends to reduce the focus on personal interests and shift the focus to the interests of broader groups succeeds at least to some extent. But only to some extent; there will be limitations in terms of the nature of the groups that are identified behind the veil.

Turning to the second issue, can we accept that this movement to a position behind the veil implies more disinterested constitutional choices that approximate the underlying normative contractarian ideal? Compare the discussion on the veil of insignificance with the classic public choice discussion of the paradox of voting (see, e.g., Aldrich 1993). In the case of the paradox of voting the standard argument is that the insignificance of the individual voter in the context of a large-scale majoritarian election will effectively undermine the incentive to participate, and also undermine the incentive to become informed on the issue at hand. In this way, the standard discussion suggests that insignificance leads to rational ignorance and low voter turnout. Contrast this with the argument at the constitutional level, where insignificance is argued to produce disinterested and normatively salient participation. How can we reconcile these two lines of argument? Importantly, the details of the insignificance are rather different in the two cases; in the standard voting case the problem is the normal public good problem caused by large numbers of voters and the resultant very low probability of any individual vote being decisive. There is no assumption that it is difficult for any individual to take a view on which of the policy options is actually in their interests; it is just that the act of voting is disengaged from the calculus of interest by the mechanics of the voting process. In the constitutional case, this large numbers problem will, presumably, also arise; but the aspect of insignificance that is novel and additional is the distinction between a specific policy and a general rule. And it is this novel dimension of

insignificance that is doing the work. But this work must be done in the context of the more standard form of insignificance.

Owing to the interaction between these two forms of insignificance, we might conclude that there are two forces at work: one pulling in the direction of rational ignorance and disengagement, the other in the direction of relatively disinterested engagement. The overall effect of these two forces is difficult to judge in principle, but the point here is that there may be no need to make a sweeping judgment; it depends on exactly what comparison is being made. If we take the ideal case of purely private decision making as our basis for comparison, and stipulate that in such cases there is no veil of ignorance of either type then it is reasonably clear that the basic voting case provides the most problematic comparison, while the constitutional case provides an intermediate instance in which some aspects of the disengagement associated with voting may be moderated. In this way, if the relevant comparison is between everyday politics and constitutional politics, it seems reasonable to argue, as the CPE tradition does, that the constitutional setting will provide at least some greater cause for optimism in relation to engagement. But this is a rather tentative conclusion, and one which raises the issue of the exact nature of the engagement, as we shall see.

I have suggested that the core of CPE is built around commitments to forms of constitutionalism, individualism and contractarianism which provide the base on which CPE constructs a distinctive position associated with the view of politics as exchange, the normative status of the idea of unanimity, the importance of the assumption of motivational symmetry, an interpretation of individual rationality, and the role of the veil of insignificance in generating a normatively salient distinction between the consideration of constitutional rules and simple policies. In the remainder of this chapter I will turn to consider some of the variety within CPE, both in terms of its development over time and in terms of alternative positions taken.

There can be little doubt that the origins of CPE are deeply influenced by American traditions and contexts, and one of the notable developments in CPE relates to its geographic spread and the need for a theory to accommodate the wider understanding of constitutionalism required in this more varied setting. A similar point may be made in relation to history rather than geography. CPE began with a focus on modern, developed democracies, but has broadened its scope to be at least somewhat concerned with the use

of the analytic approach associated with CPE to issues from earlier periods.¹⁰ But here I want to focus not on the geographic and historical extensions to the application of CPE, but rather on some of the more significant theoretical issues within CPE.

CPE – marginal and total approaches

In a recent paper, Brennan and Eusepi (2011) argue that there is a distinction to be made between two understandings of the CPE project, even when understood in terms of the work of James Buchanan. This distinction, is between the CPE of *The Calculus of Consent* and the CPE of *The Limits of Liberty*, and may be summarized in terms of the distinction between marginal and total approaches to the theory of political institutions introduced in *The Calculus of Consent* (Buchanan and Tullock 1962, pp. 318-9). The marginal approach starts from a given set of political arrangements – a given constitution – and considers only minor or modest changes in those institutions, so that it is clearly intended as an analysis of constitutional reform rather than wholesale constitutional design. Indeed, since the process of constitutional reform is normally itself governed by elements of the prevailing constitution, one can see the marginal approach to constitutional reform as an analysis that operates within a specified constitutional process and so is governed by rules already in place. By contrast, the total approach asks much broader question as to the origins of a constitution and the de novo design and justification of the full set of constitutional arrangements. Buchanan writing in *The Calculus of Consent* explicitly places CPE in the marginal camp, while the Buchanan of *The Limits of Liberty* places CPE in the total camp.

As Brennan and Eusepi point out, the distinction is important not just for CPE's range of application but also for the nature of the normative argument presented within CPE. On the marginal view, justification is based at least in part on the pre-existing order. In simple terms, the relevant constitutional reform is legitimized by the very constitution that is being reformed, and so there is no need to generate either political institutions or normative arguments from the ground up, as it were. In this way, the process of constitutional reform is rather closer to the process of policy choice or law making than might have been thought by reference to the strength of CPE's distinction between these activities, in that

¹⁰ Restricting references to the recent contents of the journal *Constitutional Political Economy* provides examples of application to Taiwan, Greece, Kenya, Spain, the former Soviet Republics, and to the Hanseatic League, post-1806 Prussia, medieval England and ancient Athens.

constitutional reform itself, like policy-making and law-making, is largely governed by, and justified by, the over-arching constitution. But what justifies the overarching constitution? That is the fundamental normative question facing the total approach.

An alternative way of making this point is also explored by Brennan and Eusepi. If CPE is understood in terms of the analysis of the emergence and justification of rules, much of the work has been on the demand side, concerned with showing why and how individuals will benefit from general rules even where those rules constrain them. But CPE must also be concerned with the basic supply of rules; that is, the deep questions of the feasibility of rules, and the extent that this question can be addressed within the CPE framework.

There can be little doubt that CPE has contributed significantly to the debate of the feasibility of rules, but there can certainly be debate over the current state of that debate. We can identify a position in which the rationally constructivist account of the formation of rules is limited essentially to social situations which may be described as coordination games (see, e.g., Hardin 2003). The key characteristic being that rules in such games are both agreeable *ex ante* and self-enforcing *ex post*, in the sense that individuals have strong incentives to both put the rule in place and to obey the rule once it is in place. But CPE sets itself a more ambitious task than the constitutional government of coordination games. Indeed, the standard game form at the heart of the CPE depiction of politics is the multi-person prisoner's dilemma game, rather than the coordination game, and here while there is reason to suppose that a rule may be agreeable *ex ante*, there is no clear analysis supporting the view that such a rule would be obeyed once in place.¹¹

Of course, there are many ways in which the prisoner's dilemma may be modified to escape the problem of enforcement, perhaps the most obvious being the indefinite repetition of the game which will allow a strategy of cooperation to emerge as a potential equilibrium, but the essential feature of all of these modifications are that they transform the underlying prisoner's dilemma game into a form of coordination game so that the desired equilibria becomes self-enforcing.

This brief discussion of the prisoner's dilemma case indicates both the fundamental difficulty of overcoming the essential problem of enforcement, and the fact that the restriction to co-operation games may not be quite as restrictive as might first have

¹¹ A further issue relates to the role of the status quo in both constitutional and political choice and the potential status quo bias, see Brennan and Hamlin (2004), Buchanan (2004).

appeared. But the most basic target of Buchanan's *The Limits of Liberty*, as indicated by its subtitle: *Between Anarchy and Leviathan*, is to argue for the feasibility of a constitutional order that involves a degree of enforced order while avoiding the full rigors of Hobbes's all-powerful Leviathan; and to argue that such a constitutional settlement is accessible to rational individuals.

This line of discussion points to the connection between CPE and one of the deepest questions in political philosophy. Since the CPE approach makes clear use of the idea of rationality in posing this question it is appropriate that I now turn to a debate on the interpretation of rationality.

CPE – the instrumental and the expressive

As already noted, the early CPE literature, and the continuing mainstream contributions to it adopt the *homo economicus* assumption of relatively narrow self interest as its substantive theory of rationality, and it is this understanding of rationality that informs the debate, summarized above, on the feasibility of rules and the possibility of enforcement. But more recently there has emerged a revisionist view of the appropriate treatment of individual motivation within CPE and public choice theory more generally, and one key part of this revisionist view is the idea of expressive rationality.¹²

The basic idea of expressive political behavior arose in the context of the paradox of voting, briefly discussed above. Once it is accepted that the purely instrumentally rational individual – that is an individual who is motivated entirely by reference to the anticipated effects that their action will have on final outcomes – will face no incentive to participate in an election in which her vote has a vanishingly small probability of being decisive. Hence, the question of how it can be rational to vote arises. And the obvious thought is that there must be some perceived value to the act of voting itself that does not depend on the outcome of the election. Such a value is expressive in the sense that simply registering your preferences via the vote is sufficient to generate it. Once this thought is in place, it is natural to extend the application of the expressive idea beyond the realm of voting in large scale elections and recognize that a wide variety of political behavior may be associated with expressive (as well as instrumental) benefits and costs.

¹² On expressive rationality, see Brennan and Lomasky (1993), Schuessler (2000), Hillman (2010), Hamlin and Jennings (2011). On the implications for CPE, see Brennan and Hamlin (2000, 2002, 2008).

Recognizing the potential relevance of expressive considerations raises a number of issues. The first relates to the basic idea of motivational symmetry discussed above. Care must be taken to see that there is no breach of motivational symmetry. Individuals are argued to have both expressive and instrumental interests and values, and this basic motivational structure is invariant. Nevertheless, different circumstances and, in particular, different institutional settings will tend to render different aspects of the basic motivational structure salient, and so behavior may differ quite markedly as between different settings. This point then relates directly to the issue on the veil of insignificance in its constitutional setting. Recall that the theme of the veil of insignificance argument is that under the circumstances of the design or reform of constitutional rules, the individual will be unable to see their own (instrumental) interests, and that this may allow them to adopt a more general interest in selecting a rule that serves a wider interest. The idea of expressive values provides an intermediate step in this argument – as in the argument on the paradox of voting – by indicating that the rational individual in these circumstances will recognize that their instrumental interests are disengaged by the idea of insignificance, but that this does not necessarily lessen their expressive interest.

The idea of expressive interests also provides a potential connection to the positive analysis of normative motivations. It is an unfortunate feature of the standard *homo economicus* model of motivation that it denies the possibility that any individual is motivated, however weakly, by directly normative concerns while at the same time holding that there is a relevant overarching normative criterion. In the traditional Paretian welfare economics literature, for example, while society is modeled as valuing Pareto optimality, no individual values it, in the sense that no individual is motivated, however weakly or conditionally, by a concern for Pareto optimality. By broadening the scope of individual motivations to include expressive as well as instrumental considerations, we gain the possibility of introducing both normative motivations and of furthering an analysis of the circumstances in which they may be more or less salient.

The concept of motivational heterogeneity that goes with the introduction of expressive motivations and the recognition that individuals will differ in their expressive concerns and dispositions also opens up the analysis of a further class of institutional arrangements. To the extent that CPE adopts the *homo economicus* assumption it limits itself to the study of the class of institutional arrangements that operate by the use of

incentives – both rewards and punishments. But as soon as we recognize a wider range of motivations, and the interpersonal heterogeneity of motivations, we open up institutional arrangements that rely not on incentives, but on selection or other social mechanisms that are difficult to render in the language of narrowly self-interested rational individuals (see Brennan and Hamlin 2000; Besley 2005, 2006).

Finally, we may attempt to make explicit the link between the expressive rationality idea and the fundamental problem of enforcement and political obligation introduced in the previous section. As we saw there, the challenge is to find a basis for a political constitution that lies between anarchy and leviathan and which is accessible to rational individuals. Clearly the difficulty of this challenge depends crucially on the interpretation of rationality, and the introduction of the idea of expressive considerations within the field of rationality provides at least the possibility of addressing the challenge in new and interesting ways.

Final Comments

In this brief chapter, I have attempted to both sketch the general or core nature of CPE as a research program –and to identify two of the deeper, more philosophical, debates within CPE. There is of course, much that I have not covered. I have deliberately not attempted to identify the various contributions made within the CPE literature to our understanding of political institutions, such as federalism, the separation of powers, bicameralism, alternative voting methods and so on; or to our understanding of the process of constitutional reform as it applies in developed, developing and transitional societies.

In many ways these contributions are the bread and butter of CPE, but I have taken the more abstract, more theoretical approach of trying to characterize (caricature, perhaps) CPE as a whole and to stress that while it is often seen as a rather narrowly economic approach to the analysis of political institutions and constitutions, it also serves to connect aspects of the economic approach to some of the fundamental issues in both political philosophy and political psychology. While CPE does not hold all the answers to the issue involved in specifying the political motivations of individuals, or of analyzing the operating characteristics of alternative constitutional arrangements, or of providing a fully convincing account of the normative status of particular examples of them, it does at least offer a relatively flexible framework in which these questions can be explored.

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