

A DEWEYAN PERSPECTIVE ON THE ECONOMIC THEORY OF DEMOCRACY

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INTRODUCTION

The economic theory of democracy, otherwise known as public choice theory, applies the postulates and reasoning of economics to politics and constitutions. "The basic behavioral postulate of public choice, as for economics, is that man is an egoistic, rational, utility maximizer."¹ The basic methodological premise, as for economics, is a rigorous atomistic individualism. The basic moral stance, as for much of economics, is that this is "positive" theory, unconcerned with the goodness or badness of political actors and institutions, but only seeking to observe how incentives and institutional structures interact to produce empirical consequences.

For the functioning of democratic institutions—legislatures, administrative bodies, courts—the main predicted empirical consequence of all this individual maximization behavior by political actors—legislators, administrators, judges—is that there is massive rent-seeking going on. (Rent-seeking, in the parlance of public choice, means manipulating wealth transfers away from the unorganized public in favor of well-organized interest groups.) Public choice theorists use two different aspects of scientific methodology, which I can characterize as deductive and inductive, to study these phenomena. In deductive research, public choice theorists use formal models to derive in detail exactly how we should see all this profit-seeking do its work on various aspects of the body politic. In inductive research, they use statistical analysis of data to collate the details of how the profit-seeking postulate fits the facts of democratic institutions, their process and output.

Public choice theory presents a bleak picture for any sanguine believer in high school civics. Instead of commitment to

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1. Dennis C. Mueller, *Public Choice* 1 (Cambridge U. Press, 1979).

dialogue, deliberation, and ideals of public betterment, politicians are committed to collecting as much campaign money as possible so that they can be re-elected. In this bleak picture voting is paradoxical because it is an irrational act, economically speaking. Maybe votes are just commodities that are bought by interest groups for politicians "in exchange for higher probability of seeing a favorite bill passed."²

Whether public choice theory is a good or useful way to look at politics is disputed. As a land use teacher, I can say that the model seems to describe pretty well many of the interactions between developers and local planning and zoning officials. But if this is the truth about politics, what should we make of the ideal of deliberative self-government? What should we make of the ideal of a polity whose whole is more than the sum of its parts? Must we conclude that these ideals are merely obfuscatory rhetoric, used only because such rhetoric is welfare-maximizing for some powerful group?

I have been wondering what a Deweyan would make of public choice theory. From what we know of John Dewey's views of democracy, what is it plausible to imagine he might say if a time machine could bring him to our present? In this essay I'm going to speculate rather freely on that question. At first glance it might seem that Dewey's passionate commitment to the ideal of liberal deliberative self-government would make him dismiss public choice theory as anathema. Yet I think the question is interestingly more complex. As you will see, I imagine that Dewey would approve of the impulse to find a scientific approach to explain and predict the consequences of various features of human incentive structures and institutional design; but I also imagine he would think public choice analysis sadly mistakes the contingent nonideal situation we find ourselves in for a set of immutable laws; and I think he would find it important to consider the feedback into cultural evolution of this way of conceiving of our political process.

I. DEWEYAN DEMOCRATIC THEORY: IDEAL AND NONIDEAL

A. DEMOCRACY AS IDEAL AND METHOD

In *The Public and Its Problems*, Dewey drew a distinction between "democracy as a social idea" and "political democracy

2. Robert D. Tollison, *Public Choice and Legislation*, 74 Va. L. Rev. 339, 364 (1988).

as a system of government."³ Democracy as a social idea is a regulative ideal of self-actualization in all aspects of social life. I will call this ideal democracy. Commitment to it is a moral commitment, and Dewey often refers to it as a faith, a creed. By contrast, political democracy as a system of government is the set of institutional mechanisms by which we hope to realize the social idea. I will call this nonideal democracy, or democracy-as-we-know-it. Dewey warns that the two must not be conflated. Criticism of existing democratic government (the nonideal) does not "touch the social and moral aspirations and ideas which underlie the political forms"(the ideal).⁴ Dewey says we should clarify and deepen our apprehension of the ideal, and use this deeper understanding to "criticize and remake its political manifestations."⁵

How does Dewey define the democratic ideal? First, from the standpoint of the individual, "it consists in having a responsible share according to capacity in forming and directing the activities of the groups to which one belongs and in participating according to need in the values which the groups sustain."⁶ Second, from the standpoint of the groups, "it demands liberation of the potentialities of members of a group in harmony with the interests and goods which are common."⁷ Third, "[s]ince every individual is a member of many groups, this specification cannot be fulfilled except when different groups interact flexibly and fully in connection with other groups."⁸ This "free give-and-take" makes "fullness of integrated personality possible of achievement."⁹ Dewey disavows the traditional dichotomy between individual and social values: self-constitution is only possible within a group. Indeed, the democratic ideal is nothing other than "the idea of community life itself."¹⁰

One reason groups are essential to individual self-development is that only in groups do we possess language and engage in communication; indeed, as Dewey argued in *Experience and Nature*, only in groups can we have mind and consciousness.¹¹ Groups allow us to make progress in knowledge by preserving previously acquired wisdom and tools and by allowing new in-

3. John C. Dewey, *The Public and Its Problems* 143 (Gateway Books, 1946).

4. Id. at 143-44.

5. Id. at 144.

6. Id. at 147.

7. Id.

8. Id.

9. Id. at 148.

10. Id.

11. John C. Dewey, *Experience and Nature* (Dover Pubs., 1958).

sights and methods to be widely shared; and it is progress in knowledge which enables us to get closer to the democratic ideal of full development of human capacities. Thus there is a close connection between knowledge and democracy.¹²

A problem for democracy, then, is how to make all our various splintered interests and groups into one community in the sense requisite for progress in knowledge and full development of human capacities. It is clear at least that certain things are needed: unobstructed, genuine communication; open-ended experimental method; education and culture-creation to make these possible.¹³ So the democratic ideal entails a democratic method. Dewey argued in *Freedom and Culture* that “democratic ends demand democratic methods for their realization.”¹⁴ An “obvious requirement” if the democratic ideal is to be fulfilled is “freedom of social inquiry and of distribution of its conclusions.”¹⁵ Freedom of social inquiry in turn requires freedom of expression, and, if it is to achieve any success in adding to the store of shared knowledge, “full publicity in respect to all consequences” which concern the public.¹⁶ Precise knowledge of the factual details which are the consequences of social activity is needed, as well as willingness to try alternatives in order to alter the consequences. In other words, Dewey says, what is required is social inquiry that exactly parallels modern scientific inquiry.

Thus, an experimental or scientific method as applied to social problems is the method of democracy. Dewey refers to this method of free inquiry as the method of “organized intelligence,”¹⁷ the “procedure of organized cooperative inquiry.”¹⁸ We must use it to create a culture in which free inquiry is featured. In order to make this method part of our social life we require education in its use, and hence Dewey’s deep concern with education. The culture that is needed to produce and support the method of cooperative inquiry is humanistic culture. Thus, Dewey says, “democracy means the belief that humanistic culture *should* prevail”¹⁹ The humanist view of democracy “tells us that we need to examine every one of the phases of human activity”—culture in general, education, science, art, morals, reli-

12. Hilary Putnam, *A Reconsideration of Deweyan Democracy*, 63 S. Cal. L. Rev. 1671 (1990).

13. Dewey, *The Public and Its Problems* at ch. V (cited in note 3).

14. John C. Dewey, *Freedom and Culture* 133 (G.P. Putnam’s Sons, 1939).

15. Dewey, *The Public and Its Problems* at 166 (cited in note 3).

16. *Id.* at 167.

17. John C. Dewey, *Liberalism and Social Action* 79 (Capricorn, 1963).

18. *Id.* at 71.

19. Dewey, *Freedom and Culture* at 97 (cited in note 14).

gion, industry and politics—"to ascertain what effects it has in release, maturing and fruition of the potentialities of human nature."²⁰

B. DEMOCRACY IN PRACTICE: THE NONIDEAL

Dewey was passionately committed to the democratic ideal. But he was also a passionate critic of democracy-as-we-know-it, political democracy in practice. He viewed our institutions of government, and our society as a whole, as falling far short of the democratic ideal. Many of his criticisms seem apt today as well.

In *Liberalism and Social Action*, Dewey outlined a "crisis in liberalism," connected with "failure to develop and lay hold of an adequate conception of intelligence integrated with social movements. . . ." ²¹ This is in large part a failure of social science, which has not matured to the point where it can improve our day-to-day existence; it has not developed to parallel physical science. Whereas "every discovery in physical knowledge signified . . . a change in the processes of production," because "there are countless persons whose business it is to see that these discoveries take effect" in practical operations, there is "next to nothing of the same sort with respect to knowledge of man and human affairs."²² Thus, "[t]he prime condition of a democratically organized public is a kind of knowledge and insight which does not yet exist."²³

Cooperative experimental intelligence as applied to human affairs is the systematic exploration of how to achieve human flourishing within a culture and community. According to Dewey, our approach to education reflects the primitive state of our grasp of this method. Science is taught in school as simply another subject, where it "signifies one more opportunity for the mechanization of the material and methods of study."²⁴ In contrast,

[i]f it were treated as what it is, the method of intelligence itself in action, then the method of science would be incarnate in every branch of study and every detail of learning. Thought would be connected with the possibility of action, and every mode of action would be reviewed to see its bearing upon the habits and ideas from which it sprang.²⁵

20. Id. at 97-98.

21. Dewey, *Liberalism and Social Action* at 44 (cited in note 17).

22. Id. at 46.

23. Dewey, *The Public and Its Problems* at 166 (cited in note 3).

24. Dewey, *Liberalism and Social Action* at 47 (cited in note 17).

25. Id. at 46-47.

Partly because of our undeveloped approach to education, Dewey argued, the needed widespread cultural commitment to the scientific attitude does not exist. For the same reason, the kind of genuine communication we would need in order to understand the consequences of social action and to increase shared knowledge of the effectiveness of various social tools also does not exist.

Rapid progress in communications technology might have provided an opportunity for real cooperative interchange and augmentation of knowledge; instead, Dewey said, we have a flood of propaganda and a concomitant skepticism about voting and the process of government.²⁶ A large percentage of voters doesn't bother to vote at all, and people think their vote doesn't matter, doesn't change anything. Politics is dominated by factions (parties) run by machines. The public is unorganized and diffuse. According to Dewey, the theory that elected representatives are responsible to the electorate has broken down; it works best in describing politicians' behavior in response to local pressure groups.²⁷

Likewise our process of formation of social policies in legislation reflects our lack of grasp of the method of intelligence, which is the democratic method. According to Dewey, the democratic method exerts far less force in politics than do "the interest of individuals and parties in capturing and retaining office and power," and "the propaganda of publicity agents," and "or-

26. Because of passages like the following, I can imagine how Dewey would respond to sound bites and Ronald Reagan's style of communication—and its spectacular success. (Instead of making things better with TV, telephones, computers, and the coming videophones and interactive networks, we have made them worse.)

No intelligent observer can deny, I think, that [symbols] are often used in party politics as a substitute for realities instead of as means of contact with them. . . . That which we term education has done a good deal to generate habits that put symbols in the place of realities. The forms of popular government make necessary the elaborate use of words to influence political action. "Propaganda" is the inevitable consequence of the combination of these influences and it extends to every area of life. Words not only take the place of realities but are themselves debauched. Decline in the prestige of suffrage and of parliamentary government are intimately associated with the belief, manifest in practice even if not expressed in words, that intelligence is an individual possession to be reached by means of verbal persuasion.

Dewey, *Liberalism and Social Action* at 72 (cited in note 17).

27. It is at least suggestive that the terms of the theory [of the responsibility of elected representatives] are best met in legislation of the "pork-barrel" type. There a representative may be called to account for failure to meet local desire, or be rewarded for pertinacity and success in fulfilling its wishes. . . . The reason for the lack of personal liability to the electorate is evident. The latter is composed of rather amorphous groups. Their political ideas and beliefs are mostly in abeyance between elections.

Dewey, *The Public and Its Problems* at 121-22 (cited in note 3).

ganized pressure groups.”²⁸ “Our times,” Dewey said, are characterized by a “corrosive ‘materialism’,” which “springs from the notion, sedulously cultivated by the class in power, that the creative capacities of individuals can be evoked and developed only in a struggle for material possessions and material gain.”²⁹

Moreover, Dewey argued insistently, part of the reason for people’s preoccupation with material gain is that many of them are still wanting in the basic necessities of life. Dewey believed that the chance to make progress toward the democratic ideal will be “lost for a considerable period” if we are not willing to “socialize the forces of production . . . so that the liberty of individuals will be supported by the very structure of economic organization.”³⁰ For “liberation of the capacities of individuals for free, self-initiated expression is an essential part of the creed of liberalism” and to achieve this end, liberalism must adopt cooperative means; socialized economy is necessary.³¹ Laissez-faire individualism hindered progress toward the democratic ideal by mistaking progress in technological control over the physical environment for progress in freedom:

It failed to see that the great expansion which was occurring [in industrialization] was in fact due to release of *physical* energies; that as far as human action and human freedom is concerned, a problem, not a solution, was thereby instituted: the problem, namely, of management and direction of the new physical energies so they would contribute to realization of human possibilities.³²

In sum, the task for liberalism, the task for progress toward ideal democracy, is to apply the method of experimental intelligence, not dogma or a priori broad generalizations.³³ “[U]ntil

28. Dewey, *Liberalism and Social Action* at 47 (cited in note 17).

29. *Id.* at 89.

30. *Id.* at 88.

31. Regimentation of material and mechanical forces is the only way by which the mass of individuals can be released from regimentation and consequent suppression of their cultural possibilities. . . . Earlier liberalism regarded the separate and competing economic action of individuals as the means to social well-being as the end. We must reverse the perspective and see that socialized economy is the means of free individual development as the end.

Id. at 90.

32. Dewey, *Freedom and Culture* at 128 (cited in note 14).

33. Any monolithic theory of social action and social causation [e.g., Dewey’s interpretation of orthodox Marxism] tends to have a ready-made answer for problems that present themselves. The wholesale character of this answer prevents critical examination and discrimination of the particular facts involved in the actual problem. In consequence, it dictates a kind of all-or-none practical activity, which in the end introduces new difficulties.

Id. at 80.

the method of intelligence and experimental control is the rule in social relations and social direction," we will find "that the problem of social organization in behalf of human liberty and the flowering of human capacities is insoluble."³⁴ Like public choice theory, Dewey finds democracy-as-we-know-it to present a rather bleak picture.

II. REFLECTIONS ON APPLYING SCIENTIFIC METHOD TO DEMOCRACY

A. PUBLIC CHOICE AS SOCIAL SCIENCE

In fact, the problems Dewey observed with political democracy in its nonideal state—as he saw it in his day and as we still see it today—resonate interestingly with the postulates of public choice theory. People are acting as isolated individuals, he says, as though intelligence were entirely atomistic; this correlates with the premise of methodological individualism. People are acting from self-regarding motives, he says; this correlates with the premise of "rational" welfare-maximization. Paralleling the premises of public choice theory, Dewey argues that in fact, as things stand in practice, the public is unorganized and uncommitted, whereas interest groups wield power. Legislators are responsible to interest groups and not the public. Burgeoning communications technology, rather than making real communication possible, increases the power to win votes by advertising and packaging. Voters are skeptical, apathetic, and undereducated. The interest of politicians is in capturing and retaining office, not in engaging in deliberative democracy.

Insofar as public choice theory is an attempt to apply genuine scientific method to observing and understanding the particular facts of this situation, I am sure Dewey would approve. He would approve of the air public choice has of debunking tired old ideology with hard facts. Even if the picture is bleak, I imagine he'd say, if these are the facts, we should straightforwardly name them and disseminate them; we shouldn't take refuge in vague, self-deluding, high-minded rhetoric.

Moreover, both the deductive and inductive strands of public choice methodology might represent at least an early stage of an appropriate scientific attitude toward understanding political practice as we now know it. For such an appropriate scientific attitude, the crucial idea is to achieve a detailed, articulated understanding of the particular consequences of particular institu-

34. Dewey, *Liberalism and Social Action* at 92-93 (cited in note 17).

tional forms and incentive structures as they exist in the real world. Both inductive research (painstaking empirical observation and data recordation) and deductive research (thoughtful formalization of variables and predicted results) are appropriate in the attempt to create such a detailed understanding.

B. REIFICATION: MISTAKING CONTINGENT CONDITIONS FOR FOUNDATIONAL PREMISES

Though I believe Dewey might find the meticulous dissection of institutional workings a plus of public choice theory, I believe he would also find its tendency to reify its behavioral premises a significant minus. To repeat what I pointed out above, Dewey's observations about political democracy *in its current nonideal state* resonate interestingly with the *postulates* of public choice theory: isolated individuals acting from self-regarding motives, an organized and uncommitted public, power wielded by interest groups, politicians motivated by seeking and keeping office. A Deweyan critique of public choice theory will, I believe, start by noticing the difference in epistemic status of these behavioral observations (and that is the reason I've italicized portions of the comparative statement).

The epistemic status of Dewey's observations about political democracy-as-we-know-it is contingent and relative. The characteristic motivations and responses of political actors are mutable. They depend upon the particular historical events and circumstances that have brought us to where we are. The epistemic status of the methodological and behavioral postulates of public choice theory is, on the other hand, more foundational. For the economic analyst, these are the "laws" of human nature. They are not relative to time and place; they are independent of history and culture.³⁵

In other words, Dewey has a dynamic model of human behavior. Dewey thinks that we can change the sorry state of democracy-as-we-know-it, or at least he has faith that we can, and accordingly he argues that we must. In contrast, public choice theorists assume a static model of human behavior. On the whole, they don't think we can change the sorry state of democracy-as-we-know-it. Some think we can manipulate it to some extent to achieve relatively better policy results in this nonideal

35. On the difficulty engendered by the fact that these are postulates (presupposed) and also hypotheses (to be proved), see Frank I. Michelman, *Reflections on Professional Education, Legal Scholarship, and the Law-and-Economics Movement*, 33 J. Legal Educ. 197 (1983).

world, and some think, skeptically, that we can do no more than understand just how nonideal it is.

I believe we can be confident that a Deweyan critique of public choice theory would begin by criticizing its reification of premises, because dislodging presupposed absolutes and turning them into contingent intellectual consequences is a consistent Deweyan theme. Dewey argued in many contexts that philosophical premises taken to be absolute truths of human nature and the good are instead only the consequential reflections, in intellectual life, of the historical and cultural circumstances that gave them birth.³⁶ In this vein, Dewey set out with some care what he took to be the historical origins of the foundational premises of liberalism. The premise of atomistic rights-bearing individuals he took to be the result of the need to throw off institutional ties, especially to the church, that hindered progress:

Since it was necessary, upon the intellectual side, to find justification for the movements of revolt, and since established authority was upon the side of institutional life, the natural recourse was appeal to some inalienable sacred authority resident in the protesting individuals. Thus 'individualism' was born, a theory which endowed singular persons in isolation from any associations, except those which they deliberately formed for their own ends, with native or natural rights. The revolt against old and limiting associations was converted, intellectually, into the doctrine of independence of any and all associations.³⁷

There is nothing inherently logical or transcendently right about the philosophical doctrines of individualism, Dewey continues. Had circumstances been otherwise, had the problems facing the beginning of the industrial era been other than they were, so would our philosophical commitments have been different:

36. This is the main argument of *Reconstruction in Philosophy*. For example: The actual conditions of life in Greece, particularly in Athens, when classic European philosophy was formulated, set up a sharp division between doing and knowing, which was generalized into a complete separation of theory and "practice." It reflected, at the time, the economic organization in which "useful" work was done for the most part by slaves, leaving free men relieved from labor and "free" on that account.

John C. Dewey, *Reconstruction in Philosophy* ix-x (Beacon Press, 1948). Philosophers took this separation to be foundational rather than contingent, and presupposed rather than consequential, and so "retained the separation of theory and practice long after tools and processes derived from industrial operations had become indispensable resources in conducting the observations and experiments that are the heart of scientific knowing." *Id.* at x.

37. Dewey, *The Public and Its Problems* at 86-87 (cited in note 3).

It is now easy for the imagination to conceive circumstances under which revolts against prior governmental forms would have found its theoretical formulation in an assertion of the rights of groups, of other associations than those of a political nature. There was no logic which rendered necessary the appeal to the individual as an independent and isolated being. . . . But, as we have already remarked, the obnoxious state was closely bound up in fact and in tradition with other associations, ecclesiastic (and through its influence with the family), and economic . . . The easiest way out was to go back to the naked individual, to sweep away all associations as foreign to his nature and rights save as they proceeded from his own voluntary choice, and guaranteed his own private ends.³⁸

An analogous Deweyan critique applies to economic analysis, as represented by Bentham. Dewey admired Bentham for his view that "all organized action is to be judged by its consequences,"³⁹ for his rejection of natural rights and of "Reason [as] a remote majestic power that discloses ultimate truths,"⁴⁰ and for his fertile invention of detailed legal and administrative devices designed, in a scientific spirit, to remedy specific evils and abuses.⁴¹ Dewey calls Bentham "the first great muck-raker in the field of law."⁴² Nevertheless, it was naive to suppose that the *nature* of man, everywhere and anywhere, was that of a mercantile reckoner, just because the circumstances of the rising mercantile society brought forth these characteristics.

Dewey's judgment on Bentham and on liberalism in general turns on the usefulness—the consequences—of these ideas. And though the reformist zeal and meticulous systematic attention to consequences of Bentham and his followers had positive social consequences, so the liberals' naïveté about the foundational status of their premises was not without harmful consequences. On the plus side, Dewey says that "in spite of fundamental defects in his underlying theory of human nature,"⁴³ "[t]he history of the legal and administrative changes in Great Britain during the first half of the nineteenth century is chiefly the history of Bentham and his school."⁴⁴ This is "proof that liberalism can be a power in bringing about radical social changes," when (as Bentham did) it

38. *Id.* at 87-88. Cf. Dewey, *Liberalism and Social Action* at 40-41 (criticizing Mill for this premise) (cited in note 17).

39. Dewey, *Liberalism and Social Action* at 16 (cited in note 17).

40. *Id.* at 20.

41. *Id.* at 14.

42. *Id.*

43. *Id.* at 15.

44. *Id.*

“combine[s] capacity for bold and comprehensive social invention with detailed study of particulars and with courage in action.”⁴⁵

But, on the minus side, the ultimate consequence of liberalism’s reification of individualism was tragic. Liberals “put forward their ideas as immutable truths good at all times and places; they had no idea of historic relativity, either in general or in its application to themselves.”⁴⁶ Liberals could not recognize that their interpretations of liberty, individuality and intelligence were historically conditioned, and were relevant only to their own time. By the middle of the nineteenth century, laissez-faire liberalism, rather than being a radical reform doctrine, provided the intellectual justification of the status quo.

This intellectual justification carried over into court decisions in which judges “destroy social legislation passed in the interest of a real, instead of purely formal, liberty of contract.”⁴⁷ The decisions of the Lochner era could have been deprived of their intellectual and moral support, Dewey says, if only liberals had appreciated the historic relativity of their own interpretation of the meaning of liberty, and thus had understood that new economic and social conditions called for a new conception. “If the early liberals had put forth their special interpretation of liberty as something subject to historical relativity,” Dewey says, “they would not have frozen it into a doctrine to be applied at all times under all social circumstances.”⁴⁸ Had they not frozen it in this way, bad consequences (to be discussed shortly) might have been avoided.

I think Dewey would say that public choice theory, two generations after he wrote these words, is still clinging to reifications; and I think he would say that these reifications also tend toward bad consequences.

Public choice theory reifies a Hobbesian conception of human nature. The individual of public choice theory is the Hobbesian mechanistic self-interest maximizer in a laissez-faire market. This model was called forth by historical circumstances that no longer obtain, among them the need to undermine the divine right of kings.⁴⁹ Moreover, public choice theory also reifies the notion that all these atomistic individuals have “prefer-

45. *Id.*

46. *Id.* at 32.

47. *Id.* at 33.

48. *Id.* at 34.

49. See Don Herzog, *Happy Slaves: A Critique of Consent Theory* (U. of Chi. Press, 1989).

ences" that they are trying to satisfy, and that these "preferences" are independent of the "preferences" of others. This model may be adequate for the purest of market interactions but is obfuscatory when it comes to other kinds of human interactions. In democracy-as-we-know-it, with imperfect freedom and undeveloped intelligence, people's behavior largely follows habit and custom (as Dewey recognized) rather than the method of intelligence, and thus, in democracy-as-we-know-it, the public choice model of striving to satisfy preferences, without questioning how we came by them, may approximate social reality; but, Dewey might say, that is no reason to freeze the model and call it eternal human nature.

Finally, public choice theory also reifies the means/ends dichotomy. Economic analysis takes it to be foundational that people engage in social activities only *instrumentally*, as a means toward the end of achieving maximum satisfaction of their self-interested preferences. Again, while it may be true that under current conditions many people engage in political activities purely instrumentally with regard to their own self-interested goals, this need not necessarily be the case. Moreover, I think Dewey would also say, even in democracy-as-we-know-it, the rigid means/ends dichotomy misdescribes how people act and understand their actions. Every end is also a means to some other end; no action is purely a means, and no end is purely an end.⁵⁰

C. A DEWEYAN CRITIQUE OF NON-NORMATIVITY

Having argued that the premises of economic analysis are reifications, I believe a Deweyan critique would go on to say that these reifications are not only intellectually wrong; they may cause real pain for real people. By analogy, in Dewey's critique of the reifications of liberalism, he argued that if only liberals had not frozen their historically contingent conceptions of liberty and intelligence into immutable, transcendental laws,

they would have recognized that effective liberty is a function of the social conditions existing at any time. If they had done this, they would have known that as economic relations became dominantly controlling forces in setting the pattern of human relations, the necessity of liberty for individuals which they proclaimed will require social control of economic forces in the interest of the great mass of individuals.

50. Dewey, *Experience and Nature* (cited in note 11).

This failure of liberalism was a tragedy for human beings and for their social progress:

Because the liberals failed to make a distinction between purely formal or legal liberty and effective liberty of thought and action, the history of the last one hundred years is the history of non-fulfillment of their predictions.⁵¹

Public choice theorists (at least outside of law schools) tend to be resolutely non-normative; for the most part they do not put forth their work primarily as a basis for policy recommendations. In contrast, the point of Dewey's insistence on a scientific attitude toward understanding the consequences of various social practices and institutional designs was that only with such an understanding can we hope to be more than hit-or-miss at achieving the policy results we desire. For Dewey, policy results are the point. It is not enough to understand the world as it is; the point is to change it. Knowledge is valuable not for its own sake but for its use in improving the lives of all human beings. The reason for acquiring an accurate understanding of the world, in ever increasing detail and capabilities for control of consequences, is so that we can change the world for the better.

Thus I believe Dewey would object to the resolute non-normativity of pure public choice theory. Even retaining the reified premises of economics, one could still adopt the stance Dewey praised in Bentham: one could concentrate on using the information to improve nonideal democracy. We could use it to make new institutions, or revise old ones, *given* the premises of economic man. If the findings of public choice theorists represent scientific facts and causal linkages, it may be argued that their findings can be the backdrop of policy choices exactly as Dewey envisioned. For example, we might avoid structuring regulatory commissions in such a way that the members hold tenure at the will of one legislator. That structure tends to result in decisions in favor of whatever applicants give the most money to that legislator's campaign fund, because the legislator will fire any commissioner who doesn't behave this way.⁵² One of the big pluses of public choice theory, from this point of view, is that it can tell us which forms of institutional design ought to be avoided because they are most vulnerable to corruption.

51. Dewey, *Liberalism and Social Action* at 34-35 (cited in note 17).

52. The history of the California Coastal Commission is an example. Barbara Baird, *Blueprint for Malibu*, L.A. Times 1 (Aug. 2, 1987).

Does this mean, then, that Dewey would approve of the right-wing agenda of much law-and-economics scholarship? After all, we can hardly fail to notice that the impact of public choice theory on the legal world is not non-normative at all. Lawyers and judges who admire this kind of scholarship tend to want to consider economic regulation as rent-seeking,⁵³ and hence tend to want to implement laissez-faire markets,⁵⁴ and even tend to want to bring back *Lochner*.⁵⁵

I believe Dewey would approve of any insights public choice can give us into designing institutions to avoid corruption, given the nonideal state of democracy-as-we-know-it. Yet it seems clear he would deplore the broader law-and-economics agenda. *Lochner*-like reasoning would not seem any better to him now than it did in its first flowering. The reason he would deplore it, again, is that this agenda just deepens the reification of the outmoded conceptions of liberal individualism. Thus, I believe Dewey would want to find a way to explore scientifically how we can *change* these premises—make them less true of us—so that we can get closer to ideal democracy.

D. SCIENCE AND DEMOCRACY [TO BE CONTINUED]

Public choice theory is praiseworthy insofar as it seeks scientific facts about democracy-as-we-know-it, looking to intricate causal relationships between institutional design and political consequences, and insofar as it eschews soothing rhetoric in favor of “telling it like it is.” Public choice theory falls far short of Dewey’s vision for the method of democracy, however, because it reifies its premises, and is thus largely disabled from using its accumulated knowledge to make progress toward ideal democracy. Although we could use public choice theory to redesign institutions in light of its cynical premises (in the manner of Bentham), we can’t use it to make progress toward ideal democracy, because of the reification of its cynical premises.

53. See *Nollan v. California Coastal Comm’n*, 483 U.S. 825 (1987) (Scalia, J.). See also Mark Kelman, *Symposium on the Theory of Public Choice: On Democracy-Bashing: A Skeptical Look at the Theoretical and “Empirical” Practice of the Public Choice Movement*, 74 Va. L. Rev. 199 (1988); Margaret Jane Radin, *Symposium, Richard Epstein’s Takings: Private Property and the Power of Eminent Domain: The Consequences of Conceptualism*, 41 U. Miami L. Rev. 239 (1986).

54. Unless perhaps, the laissez-faire market doesn’t yield the ideological results they prefer; see, e.g., Vicki Been, “Exit” as a Constraint on Land Use Exactions: Rethinking the Unconstitutional Conditions Doctrine, 91 Colum. L. Rev. 473 (1991).

55. See Margaret Jane Radin, *Reinterpreting Property*, ch. VI (U. of Chi. Press, 1993).

What would a democratic theory more satisfactory to Dewey now look like? I believe it would have to incorporate all the tools of public choice theory for detailing the sad state of democracy-as-we-know-it, but in addition, it would have to have two other salient features: (1) it would not reify human nature as-we-know-it, nor any of the conceptions of human motivations as-we-know-them that drive the machinery of democracy-as-we-know-it; (2) it would try to theorize how the method of intelligence, suitably construed, can be used to push nonideal democracy toward ideal democracy.

In constructing the method of intelligence, the Deweyan scientific attitude, I believe Dewey would wish to heal the modern split between "science" and the "humanities." He would caution us, I believe, to avoid the overidentification of science with number-crunching. Dewey would not equate rationality with quantification. He would not suggest that the scientific attitude in social value choices means we should regard everything human beings value as commensurable, so that they can all be weighed in a giant cost-benefit analysis. At the same time he would also caution us, I believe, against glorifying the irrational in ethics and cultural studies. He would not give up on the idea of a knowing subject in the context of other knowing subjects, and he would not give up on the idea of progress. For a Deweyan pragmatist, deconstructive work is important, but it cannot displace reconstructive work. Both criticism (of the nonideal) and vision (of the ideal) are necessary.⁵⁶

What can be accomplished if we both reconstruct the method of intelligence and take care not to reify human nature? We will understand that human nature will change as culture changes, and, in turn, that culture will change as human nature changes. This suggests that, if we want to apply scientific knowledge and imagination to the problem in a Deweyan spirit, what we need is a modern evolutionary model—that is, a dynamic systems model designed to take account of feedback. These models are being developed in evolutionary biology and other branches of modern science. I imagine that Dewey would hope—just as he hoped with earlier scientific models—that these intellectual discoveries might also be applied to the study of culture and its complex of interlocking variables.

56. See Margaret Jane Radin and Frank I. Michelman, *Symposium: The Critique of Normativity: Commentary: Pragmatist and Postructuralist Critical Legal Practice*, 139 U. Pa. L. Rev. 1019 (1991).

At least at this point we can name the variables; it's clearer to us than it was in Dewey's time that they interlock, that they can be characterized as forming a complex feedback system. Culture and material conditions interact with each other. In particular the scientific attitude that Dewey commends needs to be created by culture; the ability to create it presupposes certain material conditions, and once we have created it, it will operate to change material conditions. The ability to create it also presupposes certain commitments and self-understandings. Culture and people's commitments and self-understandings—their "human nature," their "preferences" —also interact with each other. These self-understandings evolve in response to changes in culture; they also change the culture. Culture and the law also interact with each other. The law both expresses and works to form and evolve cultural commitments and characteristics.

People's commitments and self-understandings also interact with the law. "Preferences" bring law into being, but law also makes and changes "preferences." Because public choice defines this particular feedback loop out of existence, it is much too crude; it is retarded science at best. Dewey would want us to ask a question that public choice is not formulated to ask, because it is a question about feedback. Here's the question: If we conceive of democracy solely in terms of rent-seeking self-interested profit-maximizers ceaselessly seeking rent while trying to avoid free-riders and holdouts, what does this conceptual scheme do to our culture? What does it do to our selves?

Because these variables—law, culture, human nature, material conditions—are involved in interlocking feedback relationships, it is easy to mistake cause for effect. It's not true, for example, that law always "causes" cultural shifts, but neither is it true that law always merely is a "consequence" of culture. So Dewey's exhortation that we try to become ever more sophisticated in our understanding of consequences, if we want to improve society and democracy, is difficult to fulfill. It might be that the practice of conceiving of politics in market rhetoric is actively bringing about in us those very motivations and characteristics it presupposes and reifies. The more we suppose that government consists of politicians lining their own pockets or those of their supporters, the more it is so, perhaps. The more we conceive of all things people value as mere preferences that can be expressed in dollars and traded off against other dollar-values, the more it is so, perhaps. Presupposing a model of com-

modification in politics perhaps helps to create a commodified world.

Formal tools have been developed for studying feedback mechanisms in nature, in ecological systems and evolutionary biology. With sensitive dependence of result on initial conditions, some systems are unpredictable (“chaotic”), but large-scale reiterative feedback experiments on computers are capable of showing us which ones those are, and which ones eventually fall into a predictable pattern or range. What would an analogous experiment look like for the set of feedback variables on which ideal democracy depends? This is a question I can’t answer, but if John Dewey were here today, I believe he would be asking it.