CONSTITUTIONAL PROCESS, MAJORITY RULES AND THE CRISIS IN BOLIVIA

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Resumen

El artículo analiza la crisis de Bolivia respecto de la elección de las reglas electorales a adoptarse durante el proceso constitucional. En primer lugar, la autora aplica la visión de Tullock y Buchanan sobre la regla de mayoría y explora las consecuencias políticas de la adopción de reglas electorales alternativas como la mayoría simple y la mayoría calificada de 2/3. En segundo lugar, la autora adopta la tesis de Buchanan de que la regla electoral determina endógenamente las alternativas de elección.

Abstract

This article approaches the Bolivian crisis with respect to the current conflict involving the choice of collective decision rules to be adopted in the constitutional process. The analysis first applies Tullock's and Downs' views on the operation of the majority rule to the Bolivian constitutional stages, and explores the political consequences resulting from the adoption, alternatively, of the simple majority or a two-thirds qualified majority. Secondly, the article adopts the Buchananian thesis, according to which the rule of collective decision endogenously determines the choice alternatives.

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Introduction

Among the most recent facts that have led to the aggravation of the crisis in Bolivia ranks the one concerning the conflict involving the choice of rules of collective decision to be adopted in the voting of their Constitution. The Bolivian Convening Law, that determines which collective decision methods are to be adopted for voting the Bill, declares that the Constitution should be voted through a qualified majority decision rule; in that case, two thirds of the valid votes are required for its approval. However, it is not specific as for the constitutional procedure details. On one side, the government supporters of MAS (short for Movement Towards Socialism, in Spanish) have been interpreting the Law as sustaining that qualified majority of two thirds only refers to the final decision, that is, for the Bill as a whole, leaving its articles to be voted according to simple majority. On the other side, the opposers from Podemos (short for Democratic and Social Power, in Spanish), take the Convening Law as specifying that each article and the final project of the Constitution should be voted through the qualified rule of two thirds, while its detailing within the ordinary legislation would be voted under the simple majority rule. Evidently the adoption of either interpretation reflects the interests of each one of the two groups: (i) government supporters - who have not reached the necessary two thirds in the Constitutional Convention in order to approve the articles according to their own will, and who want to avoid negotiations with the opposition- seek to increase their political power through the adoption of simple majority voting for the articles, and the rule of two thirds only for the final bill; (ii) the opposition, being minority in the Assembly, could be completely cast out from the decisions made through simple majority, and supports, then, the two thirds as a form of participating in the political bargain. Whatever the result, it is suitable to antecipate that the decision concerning the rules of the game should be defined ideally before its beginning. The attempt to select those rules *during the game* sounds, invariably, as political manipulation, although this was not the case in the Bolivian political scenery. In order to approach the constitutional problem concerning the choice of the rules of collective decision that has wors-

ened the crisis in Bolivia lately, two theoretical analyses are used here: (i) Tullock's *Public Choice*[1]; (ii) Downs' Economic *Theory of Democracy*. I will begin with Tullock's proposal.

Tullock and Public Choice

In his article "Problems of Majority Voting" (1959), Tullock analyzes the operation of the majority rule under two institutional restrictions: (i) without the possibility of support or vote exchange, understood as logrolling, among the voters on different issues; (ii) logrolling on different issues being admitted. Its justification is the possibility of creating a political market, whose coin is the vote, capable of ascribing a larger efficiency to the decision process since it captures the intensity of the preferences of their voters. The condition of operation of this market assumes that, if the political game includes a *continuum* of decisions concerning different issues, and if (i) each voter has different intensities of preference concerning a number of issues and, also, (ii) voters have different intensities of preference given a same issue, then, the logrolling capable of reflecting those different intensities would appear as more efficient regarding benefitting all, concerning a setting in which those intensities could not be captured. In the case of two issues x and y, if the individual A has an intense preference for x and little intense for y and individual B is little intense for x but very intense for y, then both of them would benefit from the support exchange in those two different issues, B voting with A for x, and A voting with B for y. As to political decisions, the impossibility of logrolling due to the prohibition of a political market operation, a subdimensioning of the State would follow through the State under-supply of private goods (meaning goods intended for minority groups). This is the correlate of the situation denounced by Olson for the case of the supply of public goods, but here it is a case of under supply of private goods for minority groups and intense preference concerning those goods. The admission of logrolling under the operation of the simple majority rule as voting method for collective decisions solves the problem

of political inefficiency involving the under-supply of private goods.

In other words, once logrolling is adopted, many decisions that would largely favour minority groups with intense preferences, can be approved under simple majority if those different groups exchange their support upon several issues. However a new problem is engendered which is the inverse of the previous problem: with logrolling operating under the simple majority rule, many more issues tend to be approved, causing the State overdimensioning through the over-supply of private goods (with a possible under-supply of State public goods). In the case of political decisions made by parliamentary representatives concerning projects in their jurisdictions, this problem is designated as *pork barrel legislation*, directly derived from the operation of the logrolling mechanism. How, then, does logrolling operating under a simple majority lead to over-supply? This is diagnosed as a function of the instability of the majority rule operation, brought about by the fact that no majority coalition rules over any other under this rule. More specifically, when participating in the political bargain the individual tends to do it up to the point when the marginal cost of participating in coalitions produced by it, equals the marginal benefit obtained from it. When doing these calculations, the voting individual only counts in the costs of decisions in the case when he/she is part of the winning coalition, either because he/she directly takes the benefits of the decision, or because he/she becomes an indirect beneficiary, by exchanging his/her support (vote) in this decision, which holds a little intense preference, for the support in another decision, one in which he / she is intense. However, he/she cannot foresee the information concerning costs that should result from the adverse decisions, those in which he/she doesn't belong to the majority coalition, but whose costs he/she will pay, anyway.

The terms of the problem are then defined: the instability due to the operation of the majority rule causes the problem of an over-supply of private goods, because that instability brings incomplete information to the participants in those political decisions. It follows that, even if the decision-makers are rational, the result of the collective decision is irrational. This problem is further worsened if we consider, on one side, that (i) modern

society presents high specialization level and, therefore, minority groups representing those specializations would tend to multiply, and, on the other side, that (ii) current State income is significant, creating incentives for the formation of minority groups and the adoption, by these, of a rent-seeking behavior. In this case, the inefficiency problem that the introduction of logrolling tends to cure - the under-supply of private goods by the State- is replaced by another problem of inefficiency, namely an over-supply of private goods by the State. Both are problems of collective action, in which each individual voter plays his/her best (most rational) strategy, but where the overall result is sub-optimal or irrational. Therefore, the problem arises from the incentive structures provided by the operation of simple majority rule, whether or not logrolling is admitted as an institutional restriction. From this diagnosis it is easy to blame the rule of simple majority for the development of such problems, particularly for the under-supply of private goods, as Tullock does. Furthermore, this author tends to propose the substitution of simple majority for more inclusive majority rules, qualified majorities, as a solution to this problem, with a view to including a larger number of voters in the necessary minimum coalition to approve an issue, that is, to raise the price of political decisions generating as a consequence the approval of a smaller number of issues involving the supply of private goods. By *raising the price of political decisions* I mean a raise in the costs involved in the bargain and in the formation of coalitions, which helps minimizing the over-supply problem.

Tullock's article was included in a work co-authored with James Buchanan, *The Calculus of Consent* ([1962] 1971), where the rules for collective decisions are chosen considering the trade-off between decision costs and external costs. The decision costs are a kind of transaction costs for collective decisions, and take into account the consumption of time and resources spent in the bargain and in the construction of a coalition. The external costs are relative to the adverse decisions, those in which the individual voter is not a part of the majority coalition; in other words, he/she doesn't benefit neither directly nor indirectly from the issue, but must contribute with the cost of its approval. Those costs are related to the inefficiency originated from sub-

dimensioning of the State. According to Buchanan and Tullock, the decision and external costs are inversely related to each other, concerning the inclusiveness of the rule: the more inclusive the rule, the bigger the decision costs involved in the political bargain, and the smaller the external costs, for under the rules of qualified majority the chance that an individual voter belongs to the minority coalition is smaller. On the other hand, the less inclusive the rule, the smaller the decision costs, and the bigger the external costs.

For this reason, it should be noticed that whatever the adopted rule, the total costs are minimized but never reduced to zero. Therefore, in collective decisions, costs should invariably subsist, being minimized through an optimum trade-off between decision costs and external costs. Yet, if costs work in opposite directions in terms of inclusiveness of the rules, then, whe changing one of the parameters (that is, one of the two types of costs) the other can be compensated for. And this is Tullock's proposal: if the simple majority rule operates with low bargaining costs (decision costs) leading to na over-supply of private goods, the solution is to enlarge the rule inclusiveness in order to increase the bargaining costs and, on the other hand, to decrease the cost originated from the inefficiency concerning the over-supply (external cost). The result of this correction in the collective decision rule - the replacement of a simple majority rule by a qualified majority one - is to bring the (over-) supply to a level closer to the optimum supply of private goods for minority groups, more adequately dimensioning the size of the State from the Paretian efficiency point of view. This is Tullock's proposed solution and, to a great extent, the one subscribed by the Public Choice school. His analysis, however, is challenged by another theoretical approach that supports majority (that is, the simple majority doctrine), namely Downs´ *Economic Theory of Democracy*, which we will discuss next.

Downs and the Economic Theory of Democracy

In a short article entitled "In Defense of Majority Voting", Downs justifies the defense of simple majority for being the only rule that can impute to

each individual voter the same weight, thus satisfying the aphorism "one individual, one vote"[2] Any other rule more inclusive than simple majority tends to overweight the minority group with respect to the majority group. For example, in a group of a hundred individual voters the rule of unanimity evens ninety nine of them with a single individual voter, since this one has the monopoly on his/her vote (the power of veto), being able to obstruct the will of the rest.[3] However, if we impute the same weight to each individual voter and if logrolling is vetoed, the simple majority rule is not able to capture the different intensities of preference, therefore leading to a smaller efficiency if compared to the possibility of logrolling under the operation of the same rule (although this also causes a new though smaller inefficiency).[4] According to Downs, the source of the problem is not the simple majority rule per se, once the adoption of qualified majorities can minimize the over-supply problem (although never solving it completely, as admitted by Tullock).[5]

Alternatively, as Downs diagnoses it, this source can be located in another Tullockian premise, the *seriatim assumption*. As cataloged, the operation of the voting market depends on a *continuum* of issues to be resolved under the rule of simple majority. In the Tullockian model those issues are resolved in a sequence and in an independent way: the issue x is proposed and put for voting, then, another issue y is put and voted for, later the issue z, etc. In Downs´ view it is the consideration of those issues, one by one and in an independent way, that characterizes and creates the inefficiency problem concerning the overdimensioning of the State and the over-supply of private goods for minority groups. This is so because when the issues are isolated, the individual voter should calculate only the imputed costs of the approved decisions in which he is part of the majority or winning coalition, not counting up the costs induced by the approval of decisions obtained by winning coalitions in which he does not participate, i.e., those in which he is part of the minority or losing group. Considering that no majoritarian alliance rules over any other majoritarian coalition, it is supposed that the variability in the formation of coalitions should prevail and that the individual voter doesn't have information to know beforehand how many

times he will participate in the majority coalition and how many times in the minority. The result is that their calculations tend to minimize the total amount of the costs of having approved those decisions. The solution proposed by Downs is, then, to treat the problem of incomplete information brought on by the consideration, on the part of the individual voter, of just a portion of the current costs of the bargain process. His proposal is to treat all of the issues in a single decision. According to Downs, this is the most common way of collective decision, present in the representative democracies: when the individual voters choose representatives, they are choosing government programs that include the positioning of the candidates concerning a wide package of issues. When considering a variety of issues in a single decision, according to the theoretical approach, the individual and collective rationality would match, that is, the collective action problem would be solved.

It is solved because, by making the issues interdependent when they are voted in a single decision, each individual evaluates the total cost of the package approval, considering those in which he/she is a direct beneficiary as well as those in which he/she finances private goods offered to other minority groups. Should this analysis point to a positive result for him/her, that is, their benefits overcoming their individual costs, then he/she votes for the approval of the package. Should the calculation point to larger costs than benefits for him/her, the individual voter takes up a position against this package. This procedure differs from Tullock's model of serial voting of a group of issues, for in the latter one the individual calculates the decision cost only for the cases in which he is part of majority or winning coalition, never for those circumstances in which he belongs to the minority group. In other words, by making the decisions interdependent, voting them in a single package transforms the setting of decisions with incomplete information -a case in which the decisions are made on a one by one in an independent way- into a setting of complete information with respect to the total cost of the set of decisions. In that case, logrolling is implicit, as Tullock posits:

implicit logrolling, occurs when large bodies of voters are called on to decide complex issues, such as which party shall rule, or a complex set of issues presented as a unit for a referendum vote. Here there is no formal trading of votes, but an analogous process goes on. The "entrepreneurs" who offer candidates or programs to the voter make up a complex mix of policies to attract support. In doing so, they keep firmly in mind the fact that the voter may be so interested in the outcome of some issue that he will vote for the party which supports it, although the party opposes him on other issues (1959, p. 572).

Here the trades are internal, that is, appraised and implemented by each one of the individual voters among different issues and considering the intensity of his/her preference among them. If the package of decisions includes the approval of issues in which he/she is intense and from which approval he/she would thoroughly benefit, and if the costs of approval of the issues which he is indifferent to or against doesn't overcome the amount of benefits obtained from the approval of the first issues, then he/she will vote for the package as a whole. Otherwise, he/she will vote against its approval.

Characterizing it in a more detailed manner: (i) in explicit logrolling, the one involving the effective exchange of votes in several issues voted independently and in series, the actions (the act of voting) of the individual voters are made interdependent exactly so that the exchanges of support can be implemented; (ii) in implicit logrolling, the vote concerning a package of issues voted in a single decision is derived from individual calculations that do not consider the action or the votes of others, in other words, his/her act of voting for x or y is independent of considering the voting of others, evaluating just the information available on costs and benefits concerning himself (and in this case he has complete information to carry out these calculations). In other words, in the first case, the issues are analyzed independently from one another, but the individual actions (act of voting) are interdependent, because they involve the exchange of support; in the latter, the issues are evaluated in an interdependent way, since they are voted in the same decision, but keeping the individual actions independent, because

logrolling is implicit. Thus the problems of State overdimensioning and State over-supply concerning private goods disappear when complete information on total costs of approval for the package of issues is assured through the proposition of a voting setting in which the issues are interdependent.[6]

The Constitutional Crisis in Bolivia

In the Bolivian constitutional procedure two stages are present: (i) the Bill articles are voted one by one; (ii) the Constitution is voted as a whole. Whereas in the first stage the articles are voted in a serial way and independently from one another, in the other the articles are made interdependent, and voted in a single decision. As previously stated, government supporters of *MAS* read the Convening Law as adopting the simple majority to vote the articles and the two thirds majority for the approval of the general project. The opposition members of *Podemos* adopted the inverse interpretation: a qualified majority to vote on the articles and on the general project, and a simple majority only for its details. What is the difference, in terms of results, when one of those two procedures is adopted? First, each procedure reflects the two theoretical approaches considered above, Tullock's and Downs'. In this perspective, the Convening Law interpretation as proposed by government supporters is closer to the Downsian approach that tends to impute a greater power to the majority, while the opposition's interpretation of the law is closer to the Tullockian perspective, strongly connected with the defense of minorities. This imputation makes sense, since government supporters represent and prioritize the interests of Quechuas and Aimaras indigenous who are the majority in the country (55% of the population), while the opposition represents the interests of political minorities, in particular the Bolivian elite. The justifications adopted in Downs' and Tullock's proposals are exactly the claims endorsed by each side in the Bolivian strife: government supporters want a Constitution that contemplates the interests of the majority, to be read as the inclusion of the indigenous people that have been been left out of the country's politics until today, whereas the minor-

ity defends a Constitution that doesn't leave them totally out of the political process. In the view of the minority, the substitution of a qualified majority for a simple majority in the Constituent Assembly seeks to neutralize the opposition by trying to avoid negotiating with them.

Concerning the decision process, on one side, both government supporters and the opposition have agreed that the voting of the final project of the Constitution should be made with the two thirds majority; on the other side, they diverge as for the rule to be adopted to vote the articles, simple majority for government supporters, a qualified majority for the opposition.

What could be the effects of applying a simple or a qualified majority rule in the voting of the issues? For sure, the voting market doesn't operate in the stage when the final project of the Letter is voted, once a *continuum* of issues to be voted independently no more subsists, as required by Tullock. This market is active in another stage, that in which its articles are defined in an independent and serial way. What the adoption of one of the two rules does -the simple majority or a qualified majority rule- is to *a priori* establish the bargaining power of each one of those groups, government supporters and opposition. Under simple majority, the bargaining power is completely in the hands of government supporters, who won half of the Constituent Assembly seats. If a two thirds majority is adopted, then a greater bargaining power is retained by the opposition. In both cases problems can be foreseen: (i) under a simple majority, the government supporters can vote the articles without needing to negotiate with the opposition to a large extent, leaving them almost completely out of the Constitutional Letter formulation; (ii) under a qualified majority of two thirds, the opposition wins their admission ticket to participate in the political game, and the definition of the articles has to be negotiated with them. A qualified majority, in Downs'terms, however, imputes much more power to the minority than they would have if the aphorism of political equality *one individual, one vote*[7] is to be accepted.

At this point I will make reference to Buchanan´s "Majoritarian Logic", where the theorist makes use of two classifications, the Paretian and the Majoritarian, with views to separate issues: (i) social states (dominance);

(ii) relationships between those states (superiority). Buchanan's objective is to demonstrate that collective decision rules - and majority rule is the particular type of rule he deeply studies- circumscribe or endogenously establish the choice alternatives. Comparing the choice alternatives from Paretian classification against the Majoritarian one, he verifies that the series of non-dominated social states according to majority classification is a subseries of the series of non-dominated social states according to Paretian classification. Without going into the specificities of that discussion, he signifies that some social states classified in the non-dominated Paretian series cannot be derived if we operate with majority rule in collective decision-making. And the reason is that the classification of the relationships between social states in the Paretian version differs from the Majoritarian one. In the words of the theorist:

> moves that might qualify as *majority superior* and hence approved by all members of the ruling majority, might, at the same time, be *Pareto non-superior*, whether made from an optimal or nonoptimal position in the Pareto sense (1998, p. 16).

That is, the majority rule admits and recognizes as superior movements those in which the move is from a Paretian surface social state (Paretian non-dominated series) to a non-optimal social state in the Paretian sense, but in which the majority is benefitted. It follows that the rule has the power to endogenously define the choice alternatives.

Returning to the case of Bolivia: if the simple majority rule is adopted to make decisions concerning the articles voted in a serial and independent way in the first stage of the constituent process, as government supporters want it, and once that group disposes, by themselves, of a little more than half of the seats of the assembly, they would have the power to determine the choice alternatives (the articles) without needing to negotiate with the opposition. It is exactly the possibility to participate in the determination of the choice alternatives (the articles of the Constitution) obtained from the negotiation with the majority, that the opposition is looking for, when demand-

ing that the articles should be voted through a qualified majority rule of two thirds. On the other hand such rule imputes to the opposition a power that they do not, in fact, have (in case they had such a power, the crisis concerning the constitutional process would not have been established). Although government's moderate sections accept to negotiate with the opposition, assuring them a place in the composition of the Constitution, the government's more radical wing associated with the indigenous population seems not to be willing to allow the minority elite to express themselves. Whatever is the result, without a negotiation between those two groups, by leaving one or another out of the decision process the crisis will tend to exacerbate.[8]

Another subject to be treated in the Bolivian constitutional process, and that has been a source of conflict between government supporters and the opposition, concerns the status of the Constitution, if it is *original, or derived* from the current Constitution. In the first case, the extent of proposed reforms should be much larger. On the other hand, if the Constitution is understood as *derived*, the extent of its reforms is merely marginal regarding the existing political institutions and rights of property. When interpreting the New Constitution as original, the government supporters who represent the indigenous population majority, want to further increase their bargaining power over the minority elite.

In *The Limits of Liberty* Buchanan asserts that before constitutional reforms, the *status quo* should be weighted over the changes, once these can take to the loss of the effective stability in that social state. Under this approach, when looking for unlimitedly increasing their bargaining power over the minority elite (by avoiding to negotiate with them) government supporters may spoil the social stability that still endures in the country. In this perspective, changes will succeed only if commitments between government supporters and the opposition could be reached.

NOTES

1   The theoretical approach designated Public Choice was formulated by Tullock and Buchanan. Here, however, I just use Tullock's article that was incorporated as chapter ten of Buchanan and Tullock's work, entitled *The Calculus of Consent*.

2   Also known as "Anonimity condition". See May (1952).

3   With a view to invalidating that objection, Buchanan and Tullock differentiate a positive decision from a negative one. The positive refers to the capacity to impose costs; the negative to the one that vetoes that imposition. In this sense, only the majority has power to exercise the first, and the minority, to exercise the second. As they sustain, it is a matter of two different powers: "The distinction between the power of taking action and of blocking action proposed by others is an essential one, it represents the difference between the power to impose external on others and the power to prevent external costs from being imposed" (1962, p. 259).

For this reason, according to both theorists, the unanimity rule cannot be identified with a rule that privileges the minority, because the veto power just means the power to block the imposition of costs from the part of the majority on the minority, never the possibility of the latter to impose costs on the majority.

Anyway, here we have a preponderance of the *status quo* relative to the political changes. (Or, at least, a more conservative position, that emphasizes marginal or incremental political reforms, instead of more revolutionary reforms.)

4   Without the possibility of voting exchanges, the under-supply generated with the simple majority rule means that practically no private goods will be offered on the part of the State unless it privileges, at least, the minimum majority required to pass the decision (that is, at least fifty percent plus one of the total voters). In a society preponderantly formed by specialized minority groups, this means that almost no private goods will be offered by the State.

5   Tullock states: "Requiring more than a simple majority would reduce the resources spent on roads, since more people would have to be included in each bargain, and the cost to each voter of repair to this road would consequently be increased. The larger the majority required, the more closely would the result approach a Pareto optimum" (1959, p. 577).

6   Efficiency is achieved here accepting, as condition, the equity in the interpersonal comparison of usefulness. Exactly the equity adopted by Downs as a reason to justify the valorization of the simple majority over other rules of collective decision. Tullock's proposal, on the other hand, abstains itself from doing interpersonal comparisons of usefulness, once his analysis adopts the Paretian optimality criterion, that spares such comparisons.

7   And although we adopt Tullock and Buchanan's distinction concerning the power of imposing costs, owned by the majority, and the cost obstructing power attributed to the minority, under a more inclusive collective decision rule than simple majority, the *status quo* is weighted above the possibility of wider reforms, as demanded by the Bolivian indigenous majority.

8   A probable result emerging from non-negotiation is the proposal of two constitutional projects, one proposed by government supporters and other by the opposition minority, the choice of one of them to be defined by a referendum. In case this scenario is confirmed, the Constitution will turn the political game into a zero sum game, a position contary to that one Buchanan and Tullock have been defending in their constitutional analysis. A different suggestion can be obtained in Buchanan and Tullock's *The Calculus of Consent*: an agreement between government supporters and the opposition could distinguish two classes of activities, those more sensitive ones, commonly associated with the definition of property rights, and the less sensitive ones, and define several decision-making rules for each class - a more inclusive rule for the first ones, and a simple majority rule for the latter. In this case, the reforms will be more conservatives than if a simple majority was adopted for defining all the articles, but also more revolutionaries than it would result from the adoption of two thirds qualified majority for every article and the Constitution as a whole.

The problem is that, it is exactly against the property rights that the majority formed by the government party intends to fall on. The opposition, on the other hand, seems fearful, mainly concerning the land reform matter, that, as everything indicates, is a theme in which the government wing has shown to be contrary to the negotiation.

With the nationalization of the gas, Brazil is already suffering with the contract breach on the Bolivian government's part.

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