The very logic of majority rule implies unequal treatment or discrimination. If left unconstrained, majority coalitions will promote the interests of their own members at the expense of other persons. This book focuses on the effects of applying a *generality* constraint on the political process. Under this requirement, majorities would be prohibited constitutionally from treating different persons and groups differently. The generality principle is familiar in application to law; legal systems incorporate the ideal that all persons are to be treated equally. In summary, this book extends the generality norm to politics.

Several defenses of equal treatment or generality are developed and applied. These include the familiar intuition that invokes fairness. But the primary argument here is centered on political efficiency, which is increased when governments are constrained to treat persons or groups generally rather than differentially. The political efficiency defense of the generality constraint is based on a public choice analysis of the implication of majoritarian discrimination.

Politics by principle, not interest

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Toward nondiscriminatory democracy

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[The First Amendment] ought to read, "Congress shall make no law authorizing government to take any discriminatory measures of coercion." I think that would make all the other rights unnecessary, and it creates the sort of conditions I would want to see.

– Friedrich A. Hayek in a videotaped interview with James M. Buchanan, 28 October 1978

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Preface

"Politics by principle" is that which modern politics is not. What we observe is "politics by interest," whether in the form of explicitly discriminatory treatment (rewarding or punishing) of particular groupings of citizens or of some elitist–*dirigiste* classification of citizens into the deserving and nondeserving on the basis of a presumed superior wisdom about what is really "good" for us all. The proper principle for politics is that of generalization or generality. This standard is met when political actions apply to all persons independently of membership in a dominant coalition or an effective interest group. The generality principle is violated to the extent that political action is overtly discriminatory in the sense that the effects, positive or negative, depend on personalized identification. The generality norm finds its post-Enlightenment philosophical foundation in Kant's normative precept for a personalized ethics and its institutional embodiment in the idealized rule of law that does, indeed, set out widely agreed upon criteria for the evaluation of legal structures.

In one sense, it is surprising that the generalization principle has not been applied directly to politics. But except in those settings in which politically driven action impinges upon the generality precept promoted in law, there has been little recognition of the potential relevance of the generalization norm. Such failure or oversight has been due, in large part, to the residual dominance of a romanticized and idealized vision of "the state" – an entity that remains benevolent toward its citizens while providing citizens with opportunity for full self-realization. In this vision, any principle must act to constrain the collective–political enterprise and may prevent the state from "doing good," as defined in its own omniscient discovery.

Why has the generality principle been understood to be critically important in the working of the law but relatively less significant for politics? Perhaps the recognition that "the law" must be applied in a decentralized institutional setting has partially forestalled a romanticism comparable to that which has motivated politics. Many separate judges could scarcely be deemed omnisciently benevolent to an extent necessary to generate a coherent structure of law, without which social order cannot emerge. As it develops, and as it is widely observed, law must incorporate some variant of a generalization norm; unequal treatment of like cases violates law in its basic definitional sense. By contrast, romanticized politics remains monolithic; the "good" is defined uniquely by the collective agency of the state. There need be no ultimate dispute among competing authorities.

The idealistic vision of politics has been challenged seriously, both in theory and in practice over the course of the decades after World War II. And the challenges have succeeded in bringing politics and politicians out of the obscurantist haze that characterized post-Hegelian mentality. Both in the academy and on the street, politics and politicians are now exposed to a skepticism that is reminiscent of the late eighteenth century – the period during which the constitutional principles for the politics of

classical liberal order were laid down. The modern shift in public attitudes toward politics and politicians has not, however, been accompanied by a reinvigoration of constitutional discourse, aimed at imposing limits on the extended range of state activity that the two-century dominance of the romantic vision allowed to occur. There has as yet come to be no widespread understanding that a nonmonolithic, nonbenevolent, and nonomniscient politics requires an anchor in principle, lest it remain subject to the capricious forces of rotating coalitional interests.

This book is an enterprise of constitutional argument – one that is normative only to the extent that it remains informed throughout by the single principle of generality. There is no effort to lay down precise guidelines for what should and should not be done by politics. The critical distinction is procedural rather that substantive. Politics by principle constrains agents and agencies of governance to act nondiscriminatorily, to treat all persons and groups of persons alike, and to refrain from behavior that is, in its nature, selective. Within the limits of such constraints, politics may do much or little, and it may do what is done in varying ways.

We argue that our politics may be made "better" in the evaluation of all participants, if political action can be constrained constitutionally so as to meet more closely the generality norm. We acknowledge that this normative stance is based on our own positive analysis of how the politics that we observe actually works. The basic public choice model of politics that informs our whole discussion need not be accepted by all observers–analysts, and, further, differing normative inferences may be drawn, even from a commonly shared analysis.

We advance no claim of synthesis. Our scholarship is limited to what we claim to be consistent application of an internally coherent perspective to complex phenomena of social interaction. We make no effort to extend the discussion to include either detailed consideration or criticism of alternative perspectives that are acknowledged to exist. This disclaimer seems especially important for the inquiry that we undertake in this book.

In particular, we defend our willingness to publish this book against possible charges that we neglect major lines of inquiry, both precursory and parallel to our own, and notably in legal philosophy, both old and modern. The generality norm – its history, its development in application, its current standing – has long been central in the discourse of legal scholars and jurists. We acknowledge our illiteracy in front of this whole body of scholarship, but we accompany this acknowledgement by a reminder that there are advantages of specialization in intellectual–philosophical inquiry as well as in more mundane activity. As political economists, we could, at best, remain dilettantes in legal philosophy. Is it not best to reduce somewhat the sweep of our persuasive potential and to enter our admittedly restricted set of insights into the lists alongside others that may be advanced by those whose perspectives and scientific credentials differ?

When all is said and done, how is synthesis achieved? Is it not possible that synthesis emerges more or less spontaneously as the insights offered by several perspectives are advanced? Perhaps each of the blind men, having himself first described his personal experiential encounter with the reality of the elephant, arrives at some accurate comprehension of the whole beast as he integrates the accounts of others with his own. Perhaps no overarching synthesizer need arise at all.

This book has gone through a relatively long gestation period. Elements of the analytical argument were developed by Professor Buchanan in both lecture presentations and published materials as early as 1993 (Buchanan, 1993a). Extended and more technical versions of central portions of the argument were presented at the meeting of the European Public Choice Society in Valencia, Spain, in early 1994 and published in 1995 (Buchanan, 1995a). This paper closely parallels the analysis of Chapter 3, but it is more specifically organized as a basic criticism of public choice theory.

The book is jointly authored, and it is always appropriate to attempt some attribution of responsibility to the separate contributors. Professor Buchanan initially developed the central argument, as referenced earlier, and he is primarily responsible both for the introductory Chapter 1 and for the analytical chapters in Part Two. Professor Congleton joined the enterprise when prospects for a book-length presentation were initially discussed, and his primary responsibility may be identified in several of the application chapters in Part Three. More specifically, Professor Congleton prepared initial versions of Chapters 6, 10, 12, and 13 and is also a major contributor to Chapter 11. Professor Buchanan wrote the early drafts for Chapters 7, 8, and 9 as well as Chapter 11. He is also primarily responsible for the concluding Chapter 14.

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