

## Response to Comments



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REACTION ESSAY

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### **Introduction**

My initial paper, taken in combination with the solicited comments, indicates the difficulties faced in any effort to commence meaningful dialogue on constitutional change. Almost any specific proposal that may be advanced becomes immediately subject to nitpicking criticism of details, thereby shifting attention away from the broader principle that motivates the whole exercise. In such situations, my natural tendency is to back off engagement on details and to return the discussion to bedrock. And I do this here, perhaps despite the hopes of the editor and despite my earlier claims to specificity.

Within such a fortress, my position becomes much less vulnerable, or so it seems to me. I start from a set of presuppositions that are surely broadly acceptable. Few serious observers are sufficiently Panglossian to judge the United States political order to be working well, and certainly not to the extent that improvement is beyond the possible. A more questionable presupposition is that constitutions matter, that the structural parameters within which politics takes place affect the pattern of outcomes emergent from that politics. As noted at the start of my initial paper, prospects for improvement are best addressed at the level of constitutional structure. My title “Responsibility, Generality, and Natural Liberty” summarizes my own evaluative judgment on elements of this structure that should command attention.

All details aside, who can question the necessary balance of the fiscal account? The opportunity costs of resources that are devoted to putative collective purposes are measured by the value these resources might produce in other employments. The ultimate incidence of collective action, whether temporal or distributional, is determined by the interactive behavior of those persons who act in constitutionally assigned roles. A balanced-budget requirement, in almost any variant, would bring an element of order into the

chaotic fiscal process. And, importantly, any prior discussion of such a requirement would influence public attitudes, independent of whether or not constitutional change is actually made, and also would modify the possible efficacy of such a rule once in place.

As to my second suggestion that political action be constrained by some requirement of generality in application, the rhetoric itself is critically important, even more so than in the first case. Rent-seeking, inclusively defined, uses up an increasingly large share of the nation's potential value, almost all of which is aimed, in one way or another, at modifying the pattern of political outcomes so as to secure differentially favored treatment for defined groups. As coalitional rotation insures near universality, however, free-rider logic points toward negative-sum sequences of results. How can one special interest gain discriminatorily so long as all interests aim to do the same?

Of course, major issues of application and implementation must arise in attempts to impose any formalized requirements for political nondiscrimination or generality. And here I acknowledge that, along this dimension, the role for the judiciary might be expanded. But a judiciary that searches for criteria of nondiscriminatory political action seems preferable to judicial acquiescence in the legislative financing of bridges to nowhere. At the least, those who seek to legitimize overt departures from the generality norm might be forced to do more than mouth slogans about some nonexistent national interest.

My third suggestion was, as I acknowledged, the most provocative. I advanced it from the sense that the regulatory power granted to government in the original Constitution has been extended beyond all meaningful limits, and especially during the course of the twentieth century. The collectivistic regulatory thrust into the liberties of persons to enter into voluntary exchanges owes its origins to the dual fatal conceits that, somehow, those empowered with political authority not only know what is best for the whole membership of the polity but, armed with this superior knowledge, will act toward the achievement of its dictates. The epistemological presumption here is, of course, inconsistent with the whole idea of natural liberty, and the incentive incompatibility simply jumps at us now, after having been ignored for so long.

Yet there are generally desired limits on the liberties of persons to enter

exchanges. How can these liberties be regulated collectively without omnipresent political overreaching? Once again, the constitutional rhetoric might serve a useful role. To declare, *carte blanche*, that regulatory intrusion into liberties of exchange lies beyond constitutional limits would require that particularized exceptions be subjected to strict scrutiny.

One substantive suggestion that warrants notice emerges from the responses: Niskanen's proposal to repeal the Seventeenth Amendment, concerning the direct election of members of the Senate. Personally, I should heartily endorse this proposal. Further, I acknowledge that my threefold listing did not incorporate the federal basis of our whole constitutional structure, which is or should be a bedrock principle.

Niskanen's proposal has the dual advantage of being quite specific (and thereby immune to the criticism-in-the-small that plagues discussion of more general constitutional norms), while, at the same time, evocative of a basic philosophical issue, namely, the division of sovereignty between levels of governance. By comparison, however, with the three suggestions in my initial paper, Niskanen's call for the indirect empowerment of the states seems to be more remote from any sense of public prejudice and understanding. In partial defense of my listing, I should argue that there remains a residue of understanding that government should live within its means, that persons should be treated equally, and that government should not interfere with our liberties. These attitudes seem to be different in kind from those that motivated Robert E. Lee to choose to lead the Army of Northern Virginia rather than the Army of the Potomac. In this century, federalism, as a principle of political order, may simply be too abstract to command much public attention, as the European experience over recent decades has demonstrated.