

UNIVERSAL RESIDENT SUFFRAGE:
A LIBERAL DEFENSE

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I want to accept Bob Ellickson's invitation to debate one of his middle-level legal policy proposals—specifically, that for reversal of the nationwide edict that now imposes on all local governments a rule of universal resident suffrage. As befits the occasion, I allow this middle-level engagement to draw me on to some cosmic, if murky, musings about the public/private distinction. I have tried to rest my critique of Ellickson's argument on unexceptionably liberal grounds. Towards the end, as the murk descends, I do try to step outside liberal thought momentarily so as to offer a descriptive statement about it—thus trying, I guess, to catch my own shadow. I don't know whether Bob Ellickson will approve either that effort or the descriptive suggestion it yields; but then it's liberalism, not Ellickson, that I want to defend—specifically, against the suggestion that liberalism in any way militates against a national mandate of universal suffrage at the local as well as the national level.

Ellickson argues against a national constitutional rule (imposed by the Supreme Court in the name of equal protection) requiring inclusion of renters in municipal electorates on an equal-vote-per-person basis. More precisely, he urges that this rule would be a clear economic mistake if the world in actuality conformed to the perfect competition assumptions of the Tiebout model. I assume throughout these comments that the Tiebout conditions in fact prevail. Ellickson's argument, then, seems to fall naturally into two parts, one focusing on allocative efficiency, the other on distribution of wealth. Slightly bowdlerized, it goes this way: *First*, if we think the only proper aim of political processes is efficiency in resource allocation, and we are opposed to political redistribution, then (i) processes should be designed so as to register intensity as well as direction of policy preferences, and therefore (ii) persons lacking a concrete stake in local political decisions should have no voice in making them; and since (iii) renters may well lack such a stake, then it should be permissible to exclude them from municipal electorates. *Second*, even supposing that redistribution is a proper objective for political processes in general, there is still

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no good reason to admit renters to the municipal franchise, it being, under the Tiebout conditions, impossible to redistribute in favor of renters by giving them the municipal franchise, since whatever expected gain in favorable municipal policies would accrue to renters by virtue of having the vote would be washed out by an equivalent rise in the equilibrium price of rental housing in town.

It seems to me there are several problems in these arguments, which I'll take up in a somewhat arbitrary order.

First problem: Ellickson takes it as axiomatic that equal per capita distribution of voting power is a scheme having built-in redistributive (soak-the-rich) tendencies, so that if you wanted to avoid political redistribution of pre-political shares of total community wealth, you would distribute voting power proportionally to those shares. There is a question, which I leave for later, about whether, or how, one can talk intelligibly about anything being redistributed by the working out of a constituted political process. That question for the moment aside, the claim that equal voting power distribution is a soak-the-rich scheme ignores the possibility that the rich, facing looser budget constraints than the poor, can leverage their greater disposable wealth into political influence that would tend to make the system go for soak-the-poor policies. For all anyone can tell a priori, the Robin Hood tendencies of equal per capita voting power just offset the rich-get-richer tendencies of political influence buying. (It might be said in response that the power of wealth to influence political outcomes is an obvious aspect of the wealth itself, so its exercise in predictable ways shouldn't be regarded as redistributive. Fine. I agree with that argument. It denies that the power of wealth is pre-political rather than politically involved, and by the same token admits that any Robin Hood tendency in equal per capita voting power is itself a part of the constituted wealth distribution. To this matter we shall return.)

Second problem: Ellickson's argument that renters often shouldn't be included in municipal electorates depends on his claim that renters often lack much of an economic stake in the substance of community policies. The strength of this claim depends on the frequency of a certain pattern of distribution of policy preferences among renters, that is, the frequency with which renters prove to be a monolithic political interest group, having preferences respecting local government policy that are much more uniform than individually diverse within the renter group.

An example will illustrate. Suppose that in a given municipality there are both homeowners and renters—and, in a randomly crosscutting dichotomy, there are both “younger” residents (renters and homeowners) for whom well-financed public schools are the preemptive budgetary priority, and “older” residents (renters and homeowners) whose priorities run instead to police patrols, dial-a-bus, and meals-on-wheels. A priori, there is no reason to imagine that this municipality’s budgetary allocations among these competing claims will have any particular effect on the height or shape of the total demand curve for rental housing in town, or, therefore, on the offering price of the town’s marginal renter (who may, depending on which way municipal policy goes, turn out to be either an “older” or a “younger” demander).

Under these seemingly realistic conditions, any *individual* renter will have a standard economic stake in having his or her vote counted, no different from a typical homeowner’s stake. Any renter’s vote may help tilt the resultant vector of municipal political decision in a direction favorable to *that* renter’s interests; and, as we have just seen, there is no reason, in the general case, to assume anything about how the political outcome will affect the market-clearing price for local rental housing. (It won’t help to rejoin that renters might, even so, be indifferent to the issue of renter franchise, because they can see that their conflicting votes will tend to some degree to offset each other and so, to that degree, they might as well be virtually represented by their “older” and “younger” homeowner allies. However good or bad that argument is, it would be just as good or bad if invoked as a reason for disfranchising homeowners and letting them be virtually represented by renters.)

Is this just a quibble about factual realities that doubtless vary across jurisdictions, adequately covered by Ellickson’s concession that a particular, special renter—like Lee Trevino—may in fact have some consumer’s surplus at stake in local political decisions, and his argument that the answer to the renter-franchise question should be allowed to vary accordingly? It seems to me that more than a quibble is involved. Especially in light of considerations yet to be discussed, the constitutional rule of universal resident franchise should be regarded as settled unless one discovers a *serious* likelihood of misfit to local conditions. Ellickson’s perception of such a likelihood depends on a readiness to perceive renters as a politically monolithic class—that is, to take the economic status of being a renter as either an *indicium* or a

determinant of a person's most urgent local public policy concerns. To one who resisted such a class-bound view of political experience, it wouldn't naturally occur to talk of incidence and capitalization effects neutralizing the local policy stakes of a group identified as "renters."

This situation presents a problem of method in liberal constitutional argument, because the question of renter monolithicity is (at least in the present state of empirical knowledge) as much one of political morality as of fact. The question can be put as follows: When what is to be decided is the political rights of some set of persons, aren't they owed the fullest possible concern as *individuals* having their own interests and concerns, presumptively diverse and potentially conflicting? The danger here is that of steering liberal political economy off towards syndicalism—assigning political rights on the basis of group or class interests asayed through necessarily crude methods of economic determinism.

Third problem: Even if we concede, *arguendo*, that the monolithic view of renter politics is the right one, that is, that all renters tend to hold the same priorities for local public policy, it doesn't follow that renters are economically indifferent to the *change* in national constitutional law that Bob Ellickson is urging. All that then follows is that if each municipality in an ideal Tieboutian open system were to decide for itself whether to admit renters to the electorate, then no municipality *by itself* could successfully transfer wealth to or from its renters by giving or denying them the vote. (The clearest illustration is the case in which, at a moment when renters are not allowed to vote anywhere, municipality *M* admits them to the electorate. On ideal Tieboutian assumptions, whatever *ex ante* gain in fiscal residues accrues to renters in *M* by virtue of having the vote will be washed out by an equivalent rise in the market-clearing rental price of housing in *M*.)

That, however, isn't the issue Ellickson has chosen to tackle. His interesting claim isn't that in an on-going decentralized system of local self-determination regarding renter franchise, renters would be economically indifferent to how any single municipality decided. It is, rather, that no economic purpose is served by maintaining a nationwide rule requiring municipal franchise for renters everywhere. But as to that question, the Tiebout analysis has nothing to say; and Ellickson's answer to it seems to be just wrong. The *country* can be regarded as a *closed* system, into and out of which there is not enough economically induced migration to

matter. As Ellickson's paper clearly recognizes, in a closed system voting power distribution is tantamount to—is a mode of—wealth distribution. But then it follows almost trivially that a shift from the current nationwide rule requiring renter franchise everywhere, to a rule of local self-determination of that matter, would constitute a redistribution of wealth away from the country's renters as an economic class (insofar as it is proper to regard renters as being an economic class at all).

At work here is a fundamental principle, consistent recognition of which would avoid two other problems I shall soon mention. Ellickson repeatedly argues as though a person's "economic stake" in a broadly competent political process were something that could be observed and measured separately from the question of voting-power distribution itself, so that the latter could be set "efficiently" (or equitably) with reference to the former. That, we have just noticed, is wrong. The fundamental analytical principle appears to be that a person's constituted share of the voting power (in a broadly competent political regime) is itself an integral aspect of that person's wealth. So when constitutions set voting power shares, they also set wealth shares. In short, there is in practice no such thing as pre-political wealth.

Fourth problem: *Pace* Ellickson, it seems impossible to improve a municipal voting system's sensitivity to, or ability to register efficiently, the intensities of individuals' preferences, by fiddling with the distribution of voting power within that system. The fundamental principle shows why. The system's voting-power distribution is itself a determinant of each participant's expected stake in its outcomes; and that distribution cannot, then, be inefficiently related to itself. Again, an illustration may help. Suppose a person, *P*, has no property or income subject to local taxation (*P*, say, is a penniless mendicant), but somehow has just got control of a vote-bloc comprising one-third of the total municipal vote (the local charter, for some reason, has just been amended to give one-third of the votes to *P*). It certainly isn't the case that the *ex ante* value of *P*'s political position is now zero. In principle, one can calculate that value (that is, the value of the bribes *P* can expect to get in exchange for his vote, or of the pro-*P* public policies whose enactment *P* can expect to obtain by log-rolling) if one knows the total wealth periodically subject to regulation and distribution by local political decision and has possession of the right game-theoretic apparatus. Moreover, holding constant *P*'s voting-power share, one can manipulate decision

rules, agenda-setting and parliamentary rules, and voting procedures (quasi-auctions, etc.) so that *P* and others can register their preferences (including the intensity dimension) more or less effectively, leading to more or less efficient allocative outcomes. For example, it seems that the political system would operate more efficiently if *P* and all other vote-holders could sell their votes for cash rather than be restricted to cumbersome barter (log-rolling). These other decision rules, not the initial distribution of voting power (i.e., of wealth *ex ante*), determine how efficiently voters can *spend* their vote wealths by translating them into policy.

Fifth problem: Bob Ellickson suggests that what motivates the one-person/one-vote doctrine must be an impulse for redistribution. As will be clear, I certainly agree that the doctrine is (economically speaking) concerned with distribution. What I deny is that the distribution with which it is concerned is *re-*. Since any political constitution, whatever one you choose, is constitutive of a distributional order (i.e., the fundamental principle), there is no simple descriptive sense in which any political constitution can be *redistributive*. Of course, any given constitution may be *redistributive vis-à-vis* some other particular one regarded as prior in some sense. Thus one who sees the *Avery* rule as *redistributive* in intention must have in mind some supposedly prior distributional order.

One possibility would be a Lockean, natural-right, private-property-freedom-of-contract, market order in which government's role is strictly limited to that of policeman and, perhaps, correcter of market failure. Insofar as such an order occupied a prior, privileged position in thought, the democratic-majoritarian constitution would, indeed, appear to be *redistributive*. And certainly it is a mark of "the liberal" in political argument to begin with some conception of a privileged or pre-political set of natural-right positions, in which individual self-possession is an essential premise, relative to which a political constitution can then be examined and judged for *redistributive* properties. Equally a mark of liberal political thought, however, is a Hobbesian perception that in human social life there is no naturally privileged order, but only the certainty of *some* emergent structure of social coercion and restraint, explicit or implicit, some structure in which the strong restrain the weak, the rulers the ruled, the police the deviant, or whatever; a perception, as well, that the actually prevailing structure, or order, is always and inevitably an open contingency of *social* determination, formal or informal; and a

perception that a constitution, then, is just a rule for distributing "voice" through which individuals may have their says in the social determinations of the structure of coercion and restraint, insofar as those determinations happen to occur through organized deliberation and choice. The democratic, universal-suffrage implications of this latter view are, and long have been, plain and powerful. They perfectly well explain and justify the national constitutional rule of universal resident suffrage in all general-purpose political units; and nothing in Bob Ellickson's argument even begins to meet them.

There are, then, these two quintessentially liberal perspectives on politics—corresponding to what Paul Brest this morning called the "natural right" and the "positivist" perspectives. They have, I suggest, the following interesting relation to the public/private distinction: In the natural-right perspective, all concerns are seen as ultimately, properly private, and none public except contingently and secondarily—the government as instrumentality of private interest. In the positivist perspective, all concerns are seen as ultimately, actually public or social, and none private except contingently and secondarily, by sufferance of social convention.

How can both perspectives essentially characterize liberalism? Tempting is the answer that the natural-right perspective, in which the private subsumes the public, is a "subjective" one; while the positivist perspective, in which the public subsumes the private, is an "objective" one. Subjectively, I am certain that the only locus of value and choice is the individual, and that I am not thou; objectively, I am certain that we are all in this together. Is that not a liberal state of mind?

What is *not* true of liberalism, I submit, is that the natural-right, private-oriented perspective—the "subjective" one, if you find that characterization apt—is *the* normative one for morals or politics. Liberalism's moral and political norms are not quite expressible in the competitive vocabulary of private *versus* public, or subjective *versus* objective. Liberalism's normative vocabulary consists, rather, of notions like person, right, freedom, will, reason, and law—all of which have both their subjective and objective, private and public aspects. "Person" connotes individuality and also membership in a Kingdom of Ends; rights are interpersonal claims to respect as individuals; freedom is both private and negative, the absence of arbitrary restraint, and public and positive, participation in the *res publica*; will is both particular and

general; the free will is the one that chooses, individually and subjectively, to conform itself to objective reason and right; and the true law, the law of freedom, is the law that both is universal and that one gives to oneself. No doubt the rhetoric is eighteenth-century, but all its themes survive, I'm glad to say, in liberal thought. One may speculate that the persistence in liberal thought of impulses of both types—the subjective-private and the objective-public—guarantees that for doctrinal puzzles like state action no final liberal solution is possible.

Paul Brest said this morning: "It does seem clear that you can't have it both ways." To me, it seems no less clear that both ways is the only way you can have it—that you can't have it, supposing you would *want* it, just one way or the other.