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COMMENT ON BAKER, "DIRECT DEMOCRACY AND
DISCRIMINATION: A PUBLIC CHOICE
PERSPECTIVE"

WILLIAM H. RIKER*

On the whole, I agree with Professor Baker's purpose and conclusion. I do, however, disagree with one feature of her argument and, indeed, of the arguments of her chosen opponents, Eule and Bell. This disagreement leads me to urge a slight modification of her conclusions.

In listing the differences between representative and plebiscitary institutions, she and her opponents omit what seems to me a difference at least as important as any they do list, namely, the control of the agenda in the two legislative systems. The difference is quite clear: In a referendum, the agenda is set, almost always and almost entirely, by the author of the initiative, while, in the representative system, the agenda is set by a combination of the legislature's majority party (or a committee of it), back benchers who in one way or another insert themselves in the agenda-setting process, and the pre-existing legislative rules.

Holding tastes constant, agendas do, to a considerable degree, determine outcomes. This is why legislators angrily and craftily dispute about agendas, although ordinary citizens usually think the subject arcane and trivial.¹ It is precisely these matters, which legislators know to be determinative, that the initiative system turns over to whomever in the general public takes the trouble to grab for them. It would be strange indeed if this difference in the location of agenda-setting authority did not make some difference in the content of outcomes.

To appreciate the complications of agendas, I offer an example of a

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1. For discussions of the problems of agenda setting in legislatures, see WILLIAM H. RIKER, *LIBERALISM AGAINST POPULISM: A CONFRONTATION BETWEEN THE THEORY OF DEMOCRACY AND THE THEORY OF SOCIAL CHOICE* 169-95 (1989); WILLIAM H. RIKER, *THE ART OF POLITICAL MANIPULATION* 1-17, 34-51, 78-141 (1986). For the fundamental works on agenda setting, see Richard D. McKelvey, *Intransitivities in Multi-dimensional Voting Models and Some Implications for Agenda Control*, 12 J. ECON. THEORY 472 (1976); Richard D. McKelvey, *General Conditions for Intransitivities in Formal Voting Models*, 47 *ECONOMETRICA* 1085 (1979); Michael E. Levine & Charles R. Plott, *Agenda Influence and Its Implications*, 63 *VA. L. REV.* 561 (1977); Charles R. Plott & Michael E. Levine, *A Model of Agenda Influence on Committee Decisions*, 68 *AM. ECON. REV.* 146 (1978). For the basic works on agenda-setting in referenda, see Thomas Romer & Howard Rosenthal, *Bureaucrats versus Voters: On the Political Economy of Resource Allocation by Direct Democracy*, 93 *Q.J. ECON.* 563 (1979); Thomas Romer & Howard Rosenthal, *Political Resource Allocation, Controlled Agendas, and the Status Quo*, 33 *PUB. CHOICE* 27 (1978).

set of motions in a cycle. By reason of McKelvey's chaos theorem, we know that, on any subject with two or more dimensions, the set of infinite possibilities for alternative motions is always cyclical.² So a cyclical example is characteristic of most moderately complicated subjects of legislation, whether dealt with by representative or plebiscitary institutions. In the most abstract case, with three alternatives and three persons (or factions) using simple majority rule on a binary agenda, the social choice, given the cycle, depends entirely on the agenda. In Figure 1, I have shown that, with the forward cycle, the three possible agendas for three alternatives each result in a victory for the alternative not in the initial binary choice. Consequently, given the cycle, which one of the three alternatives wins depends entirely on which agenda is used.

FIGURE 1 ABSTRACT AGENDAS

<p>ALTERNATIVES: a, b, c</p> <p>Preference Orders (forward cycle)</p> <ol style="list-style-type: none"> 1. abc 2. bca 3. cab 	<p>PERSONS: 1, 2, 3</p> <p>Social Outcome of Preference Orders by Majority Rule</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">a vs. b</td> <td style="text-align: center;">b vs. c</td> <td style="text-align: center;">c vs. a</td> </tr> <tr> <td style="text-align: center;">1,3 2</td> <td style="text-align: center;">1,2 3</td> <td style="text-align: center;">2,3 1</td> </tr> </table> <p style="text-align: center;">So: abca</p>	a vs. b	b vs. c	c vs. a	1,3 2	1,2 3	2,3 1
a vs. b	b vs. c	c vs. a					
1,3 2	1,2 3	2,3 1					
<p>Agendas with binary votes for elimination</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center; width: 33%;"> a vs. b ↓ a vs. c ↓ winner </td> <td style="text-align: center; width: 33%;"> a vs. c ↓ c vs. b ↓ winner </td> <td style="text-align: center; width: 33%;"> b vs. c ↓ b vs. a ↓ winner </td> </tr> </table>		a vs. b ↓ a vs. c ↓ winner	a vs. c ↓ c vs. b ↓ winner	b vs. c ↓ b vs. a ↓ winner			
a vs. b ↓ a vs. c ↓ winner	a vs. c ↓ c vs. b ↓ winner	b vs. c ↓ b vs. a ↓ winner					

If we now complicate this example with rules about the construction of the agenda, it is apparent that they help to fix the outcome. In Figure 2, I have identified one of the motions as the status quo. (In Anglo-American parliamentary procedure, agendas usually provide that the status quo, if one exists, enter the agenda last. The rationale is that the body should first perfect that which is intended to displace the status quo. Except in unusual cases (e.g., perfect information), the later a motion enters the voting, the better its opportunity to win. So Anglo-American procedure conservatively, and in my opinion, properly gives an advantage to the status quo.) With the motion C now identified as SQ,

2. See generally McKelvey, *supra* note 1.

the parliamentary agenda over three alternatives is thus fixed: initially A and B must meet, then the winner meets SQ.

FIGURE 2 AGENDAS WITH AND WITHOUT A RULE FOR PERFECTION



Suppose, with C still fixed as SQ, that some initiating interest group makes the decision on which motion is to face the status quo in a referendum. If the group chooses A, then SQ triumphs. But there is no need for the group to choose A because there is no existing rule about the perfection of alternatives to the status quo. The interest group may choose B, in which case B triumphs. So in this simple three alternative case, in a representative assembly, where there is a rule about perfection of alternatives, the status quo wins for certain, while in a plebiscite, with informed and capable proposers, some substantive displacement of the status quo may win, even though the majority prefers the status quo to some other substantive motion.

In general, the same advantage for manipulation resides in the initiator of a plebiscite, regardless of the number of alternatives and motions. It is true that opponents of a referendum may introduce other alternative referenda. This turns the procedure from binary to n-ary and the outcome may be expected to vary. While this situation is not well understood, I believe it often advantages the status quo insofar as the voters interpret the situation correctly, that is, if they see that they should vote for only one of the alternative proposals. If so, then the substantive winner, if it exists, must not only beat the status quo but also every other proposal. This gives the status quo a better chance. But if the voters do not correctly interpret the situation, they may pass two contradictory substantive motions, an outcome that is difficult to interpret.

To summarize, the crucial difference between agenda setting in the two institutions is that the parliamentary procedure allows all the motions that any member wishes to bring out to enter the voting at some point and reserves the most advantageous position for the status quo, while the plebiscitary procedure allows the first pressure group to take the opportunity to get a substantial advantage over latecomers and the status quo.

Let us now give the agendas of Figures 1 and 2 some names relevant to the subject of Professor Baker's paper. Let SQ mean "continued busing," let B mean "an absolute end to busing," and let A mean "continued busing but only for a new set of magnet schools." Let a racial minority group order: SQAB, money savers order: BSQA, and school improvers order: ABSQ. Then, as shown in Figure 3, the racial minority gets its best outcome in the representative system and its worst outcome in a plebiscite system.

FIGURE 3 A SUBSTANTIVE INTERPRETATION OF AGENDA IN FIGURES 1 AND 2

PREFERENCE ORDERS	ALTERNATIVES
Minority: Sq ab	a: continued busing, but only for a new set of magnet schools
Money Savers: b Sq a	b: busing eliminated
School Improvers: abSq	Sq: continued busing
Assembly Winner: Sq	Plebiscite Winner: b

Of course, all this is pretty abstract. It assumes that participants know others' preference orders; it assumes that opponents of the status quo are clever enough to invent a motion that beats the status quo even though it loses to other potential alternatives; it assumes that defenders of the status quo or of alternative motions allow the opponents of the status quo to seize the initiative and do nothing to attempt to win it back; etc., etc. But these are not terribly difficult assumptions to satisfy in the real world. Indeed, the fact that Eule and Bell wrote their essays seems to me to indicate that they intuitively understood this, though they apparently did not write about it. So I think there is some reasonably solid ground for the assertion that minorities have a better chance under a representative system.

Does this new grounding also imply that courts ought to review plebiscitary legislation more carefully than representational legislation? I think not. But it does, I think, give courts a new way of scrutinizing plebiscitary legislation in applying the equal protection doctrine. The fact that legislation comes through the plebiscitary process gives clues to the identification of the group disadvantaged by the challenged legislation. Presumably courts are at least as capable as journalists in identifying the sponsors or agenda-makers for plebiscitary legislation and this is a good test of whom the legislation advantages. This is not a due process test of the plebiscitary process, but it is an enhancement of the equal protection test.