"The Danger of Deplorable Reactions"

W. H. Hutt on Liberalism, Populism, and the Constitutional Political Economy of Racism

PHILLIP W. MAGNESS, ART CARDEN, AND ILIA MURTAZASHVILI

> In a democratic society perhaps the most vital nondiscrimination principle which has to be entrenched is that majorities shall have no power to enrich themselves through government at the expense of minorities.
>
> —W. H. Hutt, "South Africa's Salvation in Classical Liberalism" (1965)

The British economist W. H. Hutt spent most of his career at the University of Cape Town in South Africa before retiring in 1965 and moving to the United States. In 1964, he published *The Economics of the Colour Bar* with the London-based Institute of Economic Affairs, and upon his arrival in the United States he spoke on many college campuses about the problems of racism and the transformation of racist institutions. In this essay, we explore Hutt's constitutional

Phillip W. Magness is senior research fellow of the American Institute for Economic Research. **Art Carden** is professor of economics in the Brock School of Business at Samford University. **Ilia Murtazashvili** is associate professor of public policy in the Graduate School of Public and International Affairs at the University of Pittsburgh. The authors acknowledge the generous support of the Institute for Humane Studies' Hayek Fund for Scholars.

The Independent Review, v. 26, n. 4, Spring 2022, ISSN 1086–1653, Copyright © 2022, pp. 533–552.

political economy and address the tension between his unapologetic, vocal opposition to apartheid and his proposal for an income-weighted franchise during South Africa's transition to democracy. Hutt's desire to shield liberal institutions from the populist pressures that had undermined liberal, democratic institutions in other postcolonial governments motivated his proposal for a weighted franchise.[1]

Perhaps most significantly, Hutt thought that sudden, universal enfranchisement during the transitional period could make black Africans worse off if it empowered a populist strongman. He proposed a stable democratic constitutional system with "ironclad" property-rights protections as prerequisites before extending the franchise. Hutt didn't oppose democracy per se or even a widely shared franchise, but he was very skeptical of "one person, one vote" during the transition period. Majoritarianism, he thought, could not be relied on to protect civil and economic liberties in the absence of explicit constitutional safeguards for other democratic institutions. In this regard, Hutt's antipopulism anticipated the destabilization of nascent democracies that has afflicted many African countries in the postcolonial era, particularly where populist demagogues have used land-redistribution policies to reward political allies and penalize political enemies. Hutt understood that restraining democratic majorities in the short term could improve prospects for a prosperous liberal democratic order in the long term.

Hutt opposed racial discrimination, which he "regard[ed] as the worst social evil of the contemporary era" (1968, 12). Despite this view, though, he was no starry-eyed idealist when it came to democratization in postcolonial Africa. Hutt argued on theoretical grounds that democratic majorities, if left unchecked, could exploit political minorities. He also had empirical reasons for this argument. Experiments in African populism—Tanzania, for example—had already had mixed results.

Hutt stated the point in his essay on James Buchanan and Gordon Tullock's *The Calculus of Consent:* "The whole *raison d'etre* of a constitution is to prevent officials, or elected rulers, or certain sections of the electorate who have exceptional voting strength, from using the machinery of the State to obtain some privilege—some differential advantage; and when we fix our attention on the problem of what a constitution *ought* to be, we are, as the authors themselves put it, viewing the State as 'an artifact,' something which can be fashioned to fulfil desired purposes, or refashioned to fulfil intended purposes better" ([1966] 1975b, 16, emphasis in original).

Our inquiry sheds light on several important issues. First, there is "the violence trap," as explained by Gary Cox, Douglass North, and Barry Weingast (2019). When the de facto distribution of power does not match the de jure distribution of power, a society undergoing institutional change can descend into violence. The long-run solution to the problem might be implicit or even explicit payments to or exemptions

1. See Van Staden (2019) for a summary of racist institutions and the liberal tradition in South Africa. Brian Dollery (1990) offers a public-choice approach to apartheid. Peter Lewin (2000) discusses Hutt's analysis of apartheid.

from prosecution for existing elites. The notion offends our intuitions about justice; however, speedy and secure transitions to a more efficient set of property rights curb future injustice and promote economic growth. To the extent that perfect justice and perhaps even vengeance delay or reduce economic growth and a peaceful political transition, they come at very steep prices.

Hutt's proposed solution (property protection and a qualified franchise) contrasts with other transition-period approaches that have had questionable consequences. One alternate approach is immunity from prosecution, such as was provided to Chilean dictator Augusto Pinochet and his military men. Pinochet's regime, which lasted from 1973 to 1990, provided autonomy from pressure groups that allowed the Chicago Boys to implement economic liberalization, privatization, and strongly anti-inflationary macroeconomic policy—policies that Milton Friedman thought surprising not because they worked (which he expected) but because a junta allowed them and because those same policies provided pressure for democracy as the economy improved. Pinochet and his generals avoided prosecution due to immunity deals, but starting in 1999 Chilean judges began ordering arrests of military men, and Pinochet himself was arrested, with subsequent legal battles over immunity. These deals presume that chaos is worse than democracy and that immunity from crimes is a necessary evil, though the means of avoiding chaos—immunity—differs from Hutt's private-property protection, which is less controversial than providing cover to an autocrat who routinely "disappeared" those who opposed him.

Hutt's universal public protection of property also contrasts with the way many transitional economies attempted to navigate away from communism. Former bureaucrats and party insiders were potential threats during transition after the fall of the Soviet Union. Their power also contributed to inequities, as manifested most clearly in the rise of the oligarchs. Private-protection rackets emerged. Russian oligarchs controlled much of the property, preferring protection for themselves but weak property protection for others (Sonin 2003). According to Sergei Guriev and Andrei Rachinsky (2005), some oligarchs came to power in the loans-for-shares scenario, where government-appointed bankers ran auctions of the state's assets in exchange for a loan to the federal government it did not intend to repay. Auctioneers excluded outside bidders, awarded the stakes to themselves, and thus consolidated support for Boris Yeltsin's reelection campaign in 1996. Many of the older oligarchs were Soviet-era *nomenklatura* who before the transition had managed their respective enterprises or worked for the government, converting de facto control into ownership. At the same time, younger entrepreneurs built their initial wealth during Mikhail Gorbachev's partial reforms and used their capital to buy ownership in private auctions. Russian reformers accepted rent seeking to provide property protection for the few, with harmful long-run consequences for property protection for all, and the oligarchs were directly responsible for the rapid rise in racketeering and hence private-property protection by small businesses (Frye 2002).

Second, we consider Hutt himself. Hutt introduced "consumers' sovereignty" to economics, defended liberal institutions, criticized labor unions, and supported vigorous antitrust enforcement to ensure consumers' sovereignty. He was also a reformer and a realist who tempered his vision of a good society by weighing trade-offs and seeking acceptable compromises rather than seeking to dismantle structures of oppression and assuming that what replaces them will be better. "It is significant that Hutt defined competition as a process, not as a structure," writes John Egger (1994, 113), which brings to the forefront Hutt's insistence on constitutional protections that preserve the competitive process.

The solution to a multiracial society's constitutional problem, Hutt thought, was to flatten the hierarchy and specify a priori that no group—majority or minority—could use the state to take advantage of another group. Notably, he argued, outlawing private and public coercion would enable citizens to solve problems by agreement and discussion:

> Now among the discriminations imposed by or tolerated by the State, those which appear to conflict most seriously with the principles of freedom are based on race, colour or creed. For a host of psycho-sociological reasons, races (or other groups) possessing political power tend to exploit any race or class which lacks that power. But had the State in South Africa been restrained from discriminating on the grounds of race or colour, and had it prevented such discriminations as have been enforced through the private use of coercive power, problems for which many think it is now hopeless to expect a peaceful settlement could, we suggest, have solved themselves gradually—as they arose. ([1966] 1975a, 55)

Together, these insights help us understand societies in transition from an intolerable status quo. Hutt faulted the South African government and white labor unions for black Africans' low social and economic positions. Hutt was concerned that in South Africa and its neighbor Rhodesia the left-wing populists' cure—often manifesting as a postcolonial socialist experiment—would be worse than the disease. Specifically, he was skeptical of the benefits of replacing rule by a white elite, admittedly engaged in intolerable racial oppression, with a populist autocrat seeking to reshape society along revolutionary socialist lines under a false pretext of black majority rule.

Robert Mugabe's illiberalism illustrates Hutt's argument. From 1983 to 1987, Mugabe's Zimbabwe African National Union–Patriotic Front (ZANU-PF) perpetrated the Gukurahundi massacres against the Ndebele ethnic group after its members supported an opposition candidate in the country's first open elections. Writing a decade and a half earlier, Hutt (1968) had warned against a Rhodesian settlement that enabled "capitulation to the PCC [People's Caretaker Council] and ZANU" based on the "one man, one vote" principle because either group would abolish democratic governance if it attained power. After seizing power, Mugabe in his

three-decade reign dismantled the democratic postcolonial constitutional system set up in the wake of the Lancaster House Agreement of 1979. The primary victims of this chain of events were not the previous white-minority governing class but black Africans who opposed Mugabe's regime.

Indeed, Hutt had argued that establishing constitutional protection for disempowered political minorities was the "most vital point of my whole thesis" in *The Economics of the Colour Bar* (1964): "Unless parliaments are restrained by ironclad constitutional entrenchments, political majorities, as defined and distorted by electoral laws and voting procedures, will almost always be tempted to exploit their power tyrannically, that is, without true regard for the rights or feelings of political minorities or for those who lack effective political representation" (115). Such a pattern, Hutt continued, could be found in the white-minority apartheid regime of South Africa, whose conscious attempts to stoke racial prejudices exposed an "undemocratic weakness [in] certain forms of representative governmental machinery" (Hutt 1964, 116). Only a constitutional stricture against state discrimination could safeguard democratic institutions, irrespective of the party in power.

Oppressive Institutions and Transitional Political Economy

> We are here concerned, however, not with the human failings which have led to race injustices but with the types of social organisation which permit and buttress these injustices.
>
> —W. H. Hutt, *The Economics of the Colour Bar* (1964)

In a taped interview with James M. Buchanan, Friedrich Hayek made a remark that applies to Hutt's constitutional project: "[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."[2] Such conditions would be of the sort Hutt would want to see as well.

Though Hutt was a long-standing opponent of apartheid, his writings consistently espoused a solution rooted in incremental change: "Have any reputable economists ever assumed that any long-established social institution could be rapidly uprooted without the danger of deplorable reactions?," he asked early on (1943, 161–62). Notably, he wrote this question in 1943 while putting together his vision for postwar Britain in *A Plan for Reconstruction*. In work foreshadowing that of Mancur Olson (1982), he saw the eventual end of World War II as an opportunity for institutional change that would emphasize production as both a vehicle of prosperity and a safeguard of liberty: "Productive power alone can make freedom

2. F. A. Hayek, interview by James Buchanan, October 28, 1978, given as the book epigraph to Buchanan and Congleton 1998.

conceivable in the aftermath of war; and distributive security alone can make the maximisation of productivity acceptable" (1943, 157). He specified the problem as protecting whites' rights while expanding blacks' rights: "We return to the constitutional provisions intended to guarantee the *survival* of full civil rights for the Whites, and the *achievement* of these rights for the other races. These provisions must declare unconstitutional all legislation which discriminates on the grounds of race, color, creed, ancestry, sex, language, income and property, and render void or unenforceable all private economic agreements which similarly discriminate" ([1966] 1975a, 63, emphasis in original).

Honoring people's established expectations and leaving them no worse off due to his proposed institutional changes were central to his proposal—above all, a practical concession to political realities. People are generally not going to let go of their special privileges smoothly or easily, especially when letting go of those privileges invites substantial uncertainty. Concessions to the privileged are expedient ways of eliciting buy-in from those who stand to lose from institutional change. Hutt accepted this reality reluctantly but noted that such concessions are a price worth paying for increased economic efficiency and the benefits that would come with it, thus predating Barry Weingast's (1997) argument that pacts must be self-enforcing for democracy to succeed. For Hutt, this price required protection of property rights, though he also recognized that such pacts are critical because they are also necessary for economic prosperity.

Some reviewers criticized Hutt for "paternalism" based on some of the passages in *The Economics of the Colour Bar* (1964).[3] He took issue with this characterization in a letter to the editor of the *Times Literary Supplement* on October 30, 1964: "I do not regard effective political opposition to the present regime . . . as the work of 'agitators.' I am myself actively hostile to that regime. This ought to have been clear from every page of my book."[4] "Decolonization," he argued in this letter written just a few years after Ronald Coase published "The Problem of Social Cost" (1960), failed insofar as it did not provide secure property rights: "I regret profoundly the failure of . . . governments [of undeveloped countries] to perceive that, if they could only create security for private investment (certainty that private investors will not be exploited through nationalization, taxation or wage fixation by the State or through private coercion), private capital would flow into the backward areas, to finance their development, just as it flowed to the United States and Canada before 1914. Virgin resources are a natural magnet to the free capital of the world."[5]

Hutt also explicitly connected the lack of human capital among nonwhites to union-created labor-market restrictions. Why would people or states invest in human

3. W. H. Hutt to *Times Literary Supplement,* October 30, 1964, W. H. Hutt Papers, Hoover Institution, Stanford, Calif.

4. Hutt to *Times Literary Supplement,* October 30, 1964.

5. Hutt to *Times Literary Supplement,* October 30, 1964.

capital when legal prohibitions make it so that such investment will not pay off?[6] The color bar created a vicious circle. Obstructing opportunities reduced the demand for human capital among the oppressed. Racists could then look at uneducated nonwhites and say, "See? They are backward. Minimum wages are necessary to keep white workers out of such a lowly state."

Nor was this simply a political problem. Hutt recognized the human-capital problem posed for the economy. Charles Feinstein (2005) picked up on this point later in arguing that although apartheid initially succeeded in gold mining, the economy began to fail due to the policies that restricted black workers' labor supply and human capital investment. The problem was the same as those identified by Hutt: as the Afrikaner government confronted its decline, it had to adapt labor-market institutions to reduce the economic pressure for reform. Gold prices dropped in the 1970s, but it was the combination of the decline of gold, anti-apartheid campaigns, and economic isolation that led to the financial crisis that eventually ended the apartheid regime in 1994.

Throughout his career, Hutt was extremely critical of labor unions and "rate for the job" minimum-wage regulations, which, he argued, are discriminatory in both intent and effect. As he wrote, "What misled many humanitarian supporters of the system was a failure to perceive that equality of remuneration for the production of output of equal quality is *the result* of a just economic system, not a *means* of securing justice" ([1966] 1975a, 72 n., emphasis in original).

Constraining Political Majorities

The rule of law and economic freedom require constraints on political majorities. An extensive literature analyzes this view, which is most closely associated with William Riker (1982) and James M. Buchanan (1975). Hutt's critique of populism has received less attention even though he explains illiberalism clearly. To Hutt, democracy is a means to the end of protecting liberty and prosperity. He argued that the institutional problem is a lack of constitutional safeguards, not insufficient political representation.

Hutt developed and applied his theory of populism in *The Economics of the Colour Bar* (1964), his principled criticism of South African apartheid and, importantly, his explanation for its persistence. Populism and white labor unions created the color bar by exploiting an absence of constitutional constraints against discriminatory laws. Europeans arrived in South Africa in 1652, and the first slaves (mainly from outside the region) arrived in 1658. When the British abolished slavery in 1834, Afrikaners looked to escape British domination, and with the discovery of diamonds (in 1866) and gold (in 1871) they competed with the British and native people (Zulu, Sotho, and Xhosi) for control.

6. Hutt to *Times Literary Supplement,* October 30, 1964.

The color bar was the array of labor-market interventions that privileged white labor at black labor's expense. Mineral discoveries, as Francis Wilson (1972) points out, entrenched discrimination in labor markets. There were not many skilled artisans, so they had to be enticed out of Europe with very high wages, leading to an enormous differential between skilled and unskilled earnings that eventually turned into a rigid caste system, with white miners seeing themselves as a sort of aristocracy. The first legal color bar appeared as early as 1893, a stipulation in the Transvaal republic that only whites could do the actual blasting.

The Mines and Works Act of 1911 explicitly excluded black workers from many occupations, including by requiring licenses available only to white workers. In the Red Revolt in 1922, white miners, led by communists and socialists, pushed for additional protections. Though courts threw out the first Mines and Works Act in 1923, in 1926 the act reestablished the color bar. The Pact Government used the Industrial Conciliation Act of 1924, a coalition of Afrikaner nationalists and white unionists that won the election of 1924, to nationalize industries for racist purposes—to make them whiter, a white-supremacist industrial policy. The Civilised Labour Policy of 1924 promised whites a "civilized" wage, thus pushing low-income, low-skill black workers out of the labor market.

In 1948, the National Party's election legally enshrined apartheid and set the stage for the subsequent Group Areas Act of 1950, which specified where people could live. Motivated by paternalism (looking after the lesser blacks) and economic interests (protecting the rents of white workers), apartheid worked against the capitalist pressure for economic assimilation because the capitalists wanted to hire blacks at lower wages.

Hutt questioned proposals for simple majoritarianism as a sufficient corrective for neglecting the source of the original injustice. His argument takes on greater significance in light of the recent argument that constraining majorities defends inequitable institutions (MacLean 2017).[7] Moreover, Hutt's argument is considerably more nuanced than the treatment it gets from Quinn Slobodian (2018) and Niklas Olsen (2019), who interpret his proposal for a weighted franchise as a covert defense of apartheid.[8]

Hutt based his theory of illiberal populism on likely consequences of retribution and redistribution. He worried that a sudden shift to majoritarianism would lead to retributive violence that would not only threaten lives but also endanger prosperity because physical, human, and financial capital would seek safer havens. Inequality

7. Responses to MacLean 2017 include Magness, Carden, and Geloso 2019.

8. Quinn Slobodian mischaracterizes the "vital point" of Hutt's thesis (Hutt 1964, 115) by depicting it as a political warning against a black-majority democracy (2018, 173–74), when in fact Hutt illustrated his point by specifically recalling how a white-minority government under apartheid used its *political* majority "to humiliate the non-Whites" on account of their participatory exclusion. Slobodian also omits any mention of Hutt's (1968) warnings about the antidemocratic designs of Mugabe's ZANU in reference to the Rhodesian settlement (2018, 176).

increases pressure for redistribution, and throughout his work Hutt emphasized the importance of secure property rights. The potential benefits of land confiscation and redistribution, Hutt thought, are outweighed by the reductions in productivity emanating from changes in the structure and security of property rights.

In his letter to the *Times Literary Supplement* in October 1964, he restated his argument about suffrage:

> It is not true that I am "totally unsympathetic to the desire for political freedom" on the part of the non-Whites, if by "political freedom" is meant the extension of the franchise on equal terms to all races but with weightings to protect the White, Indian, and Coloured minorities (such as has usually been found essential in multi-racial communities). I explicitly advocate the impartial spreading of political power under constitutional limitations which render void legislation, administrative acts or private economic agreements which discriminate on the grounds of race, colour, creed, sex, social class, or income group. Apparently your reviewer regards any restraint on the power of a majority to exploit the political weak as "opposition to political freedom."[9]

Hutt argued instead that postapartheid South Africa should constrain legislatively conferred privilege, which he saw as the source of apartheid. The consumer sovereignty of the market was less susceptible to favoritism or punitive exclusion than the political system. The resulting prosperity, he argued, would ameliorate pressure for illiberal populism and constraints on markets.

In "South Africa's Salvation in Classic Liberalism" (1965), he pointed out the importance of constitutional restraints for preventing vengeance and the economic calamity that would ensue. "The anger aroused by the present regime," he maintained, "almost certainly would mean . . . spoliation and revenge" under unconstrained majoritarian populism. The challenge ahead required an "iron-clad constitutional entrenchment" premised on a nondiscriminatory principle. Importantly, Hutt stressed that his weighted-franchise proposal was to be transitional. He anticipated constitutional "provisions, under which the minorities"—referring here to the white, Indian, and mixed-race Cape communities—"could renounce the initial weighting" after the constitutional entrenchment of nondiscrimination as a foundational governing doctrine. Such provisions "must declare unconstitutional and void all legislation or private economic agreements which discriminate on the grounds of race, colour, creed, ancestry, sex, language, income and property" (Hutt [1966] 1975a, 61). As in *The Economics of the Colour Bar* (1964), Hutt's primary concern here was not the redistribution of political power but the construction of a constitutional bulwark against its abusive exercise for discriminatory ends, no matter where that power was situated.

9. Hutt to *Times Literary Supplement,* October 30, 1964.

Indeed, Hutt's other writings from the apartheid era belie the notion that his proposal for a weighted franchise in a democratizing South Africa was motivated by racial animus. In anticipation of the Union of South Africa's withdrawal from the British Commonwealth in May 1961, he penned a scathing letter to the *Times of London* advising the British government to offer "full British citizenship, with the right of British passports, to all South African citizens who do not wish to renounce their ties with the land which they have traditionally regarded as their motherland." Hutt insisted that "this right should be offered without regard to race, colour, or home language." Even birth in South Africa should offer no impediment to this solution. As subjects of the queen, all South Africans, he maintained, "have just as great a moral right to this privilege."[10]

An implicit principle goes unstated in this observation. Hutt's weighted-franchise proposal was a transitional mechanism in a nascent postcolonial state. In an established democracy with stable constitutional norms, a general and unweighted franchise would follow. Such a conditional prescription was not ideal, and Hutt might readily concede the point. But he offered it as a pragmatic attempt to wean South Africa from an entrenched white-supremacist state while also attempting to guard against that state's replacement by a populist authoritarian state, as had occurred in numerous other postcolonial African nations. Whether such a political transition could have been implemented as intended remains necessarily speculative, but a charitable and evidence-based reading of Hutt's position requires us to reject the claim that he presented the weighted franchise as a covert way to perpetuate apartheid. Slobodian's and Olsen's readings suffer from inattention to the problem of illiberal populism and its propensity to undermine nascent democratic institutions.

Relatedly, one might view Hutt's support for nondiscrimination, which would prevent retribution with the end of apartheid, as contradicting the proposal for discriminatory voting weights. Hutt's ([1966] 1975b) review of Buchanan and Tullock's *The Calculus of Consent* offers insight into his position's consistency. In Hutt's reading, all who understand Buchanan and Tullock's argument must accept the principle that collective decisions should be nondiscriminatory except with prior consent of those discriminated against and that any laws that discriminate on the grounds of race, color, ancestry, creed, sex, occupation, district, property, or income should be ruled unconstitutional and void. Thus, they provide a rationale for the classical liberal view of government as providing general benefits out of general tax revenue, with unanimity (and the nondiscrimination principle that follows) as the antidote to groups' privileges. In this regard, Buchanan and Tullock provide the ultimate justification for classical liberalism, which, as Hutt explained, is government as "a small group of private people, necessarily entrusted with great powers, who can be subjected to social discipline partly through the ballot but mainly through rules for

10. W. H. Hutt to *Times of London*, April 20, 1961, Hutt Papers.

making rules for making rules, *the paramount rule being non-discrmination*" ([1966] 1975b, 29, emphasis in original).

Indeed, Hutt addressed his previous work, which he characterized as an argument that a peaceful and just solution to the race problem requires protection of racial minorities by declaring unconstitutional legislation or administration decisions that discriminate based on the grounds of "race, colour, ancestry, property, income, or district." The problem is that the white government pandered to white unionists, and the British and Americans encouraged African nationalism, which had little chance of "free general acceptance" of such a constitution at the national level.

A weighted franchise is inegalitarian and a solution to the problem of domination of the majority, justified by the historical context in the specific situation of the transition from apartheid. Peter Lewin quotes Hutt on this issue: "[U]niversal suffrage would merely mean the transfer of power to a new political majority, *with no constitutional limitations to prevent retaliatory abuse*" (2000, qtd. on 262, emphasis in original). In place of universal suffrage, Hutt suggested qualification on wealth because those who have wealth would appreciate the importance of the market process in generating wealth, and that wealth would ultimately undermine racial and other prejudices (Lewin 2000). Thus, according to Hutt, the restrictions on universalism were a necessary and temporary evil, one that would make it more likely that all parties would *freely* accept the transition to constitutional democracy.

What emerges in Hutt's analysis is a more nuanced theory of populism than is provided in much of the classical liberal tradition. Hutt's analysis recognizes that the problem is not populism per se but illiberal populism. Whereas classical liberals argue that constraints are always necessary for liberty, Hutt's theory of populism recognizes that "one person, one vote" is not necessarily a problem when the underlying pressure for populism is liberal. In this regard, his theory contrasts with John C. Calhoun's notion of a concurrent majority, or a permanent veto to protect minority interests in a large and heterogeneous republic such as the United States in the nineteenth century, where such conflicts were, in essence, always a problem for political majorities. Hutt also recognized that economic anxiety and lack of economic opportunities, which arise from political failures and rent seeking, occur precisely when more constraints on democracy are necessary to improve social welfare.

Constitutional Change and the Distribution of Power

Hutt was wary of constitutions that enable special pleading. In his mind, "the goodness or success of productive effort can be judged only in light of the consumers' preferences" (1943, 215). A good constitution need not mean laissez-faire, he argued; "it simply means the end of 'pressure-group planning.'" This observation aligns with a scientific conclusion of the nineteenth century's marginalist revolution: for value to mean anything at all, it must be imputed backward from consumers' willingness to

pay. The appropriate arrangement of institutions, in this approach, is one that maximizes consumer discretion and "voting" by buying and selling in the market.

South Africa was stuck in a violence trap and needed some way to ensure a relatively peaceful transition to a permanent democratic regime. Hutt suggested having the judiciary appoint the executive:

> In order to guard against a *coup d'etat* and create faith in the permanence of the entrenchments, the police and the armed forces must be made responsible to a President, chosen initially by the Judiciary according to their appraisement of his political independence and ability to win the trust of all racial groups. It is possible that a person of the required attributes could be found in the Public Service, but it is more likely that he would be found in the judiciary itself. In any case, we recommend constitutional provision for *all subsequent Presidents to be elected, or otherwise chosen, from the judiciary*—preferably *by* the Judiciary. ([1966] 1975a, 62, emphasis in original)

With consumers' sovereignty as his normative standard, Hutt wanted to ensure that the democratic transition did not devolve rapidly into "pressure-group planning" any further than it already had with South Africa's white labor unionists' privileged position.[11] In many places, including in an exchange of letters with Z. K. Matthews about Matthews's T. B. David Lecture at the University of Cape Town, Hutt insisted that extending the franchise would not gain widespread white support without ironclad provisions protecting whites' existing property rights. He was broadly consistent with Cox, North, and Weingast, who argue that "natural states prevent violence by providing rents to those with high violence potential" (2019, 3). The violence trap that Cox, North, and Weingast identify impedes institutional reform. Hutt argued that South Africa was unlikely to evade the violence trap unless whites' property rights were protected. Importantly, he continued to emphasize the primacy of the rule of law rather than the primacy of the ballot in order to avoid violent contestations over political power: "There has been a transfer from political responsibility assumed by and administered mainly by Whites *under the rule of law,* to political independence, with responsibility transferred to black rulers and *mostly with the abandonment* of the rule of law."[12] Hutt worried that a sudden change in the franchise would subvert legal and political institutions. He wrote, "The economist's case to-day is that interventionism, which the Socialists try to paint as a virtue, has been inspired from the beginning by the most sordid spirit of grab. Each group is encouraged to scramble

11. See Magness, Carden, and Murtazashvili 2021 for a discussion of Hutt's analysis of consumer sovereignty as it pertained to his critique of apartheid. Maxime Desmarais-Tremblay (2020) explores consumers' sovereignty as Hutt's normative criterion. Anton Lowenberg and William Kaempfer (1998) offer a public-choice approach to the analysis of apartheid.

12. W. H. Hutt to George Koether, director of public relations, Continental Can Co., August 22, 1964, emphasis in original, Hutt Papers.

to get what it can for itself out of the common pool. The whole process has become a giant game of beggar-thy-neighbor and has brought scourges like unemployment, the shifting of industries, insecurity, poverty, and social injustice in its train."[13]

African reformers' efforts to end colonialism and repression emphasized "one man, one vote." In their minds, "one man, one vote" would legitimize the postapartheid state and address historical injustices. However, as Hutt argued, whites would not likely agree to the changes without constitutional protections for their property rights. Subsequent studies were consistent with Hutt's insights. Arend Lijphart (1985), in particular, argued for consociationalism in reflecting on the South African Constitution of 1983. Consociationalism is an extreme form of restriction on political majorities. Groups would be guaranteed seats and representation in government and public administration, with minorities—including whites—having vetoes over some policies. The point appears elsewhere in Hutt's work, as in a footnote about South Africa in his essay on *The Calculus of Consent*:

> A peaceful and just solution of the race problem can be won only by the adoption of rigidly entrenched provisions which protect racial minorities like the Whites, the Indians, and the Coloureds, by declaring unconstitutional legislation or administrative decisions which discriminate on grounds of race, colour, ancestry, property, income, or district. But owing to the bitterness aroused among the Africans by decades of pandering to a white proletariat, and owing to British and American encouragement of African nationalism, there is now hardly any chance of free general acceptance of such a constitution at a national convention at which the Africans were represented. ([1966] 1975b, 31–32 n.)

Hutt understood the roots of racial resentment. It had been generated among South African blacks by South African whites for generations. Whites were, in many ways, harvesting the bitter fruit they had sown and carefully cultivated. Hutt's analysis calls to mind work by Ronald Coase (1960) to the effect that what matters is the security of private-property rights rather than the initial allocation of property. Hutt would have preferred an initially unjust allocation of property under a secure structure of rights to an initially just allocation with an insecure structure of rights. Resources devoted to contesting property rights are, from a social perspective, resources wasted.

Land redistribution was one of the more popular policies in postcolonial Africa. Hutt would ask us to set aside our judgment about whether land redistribution would be just and ask instead whether it would work as intended. The track record of land expropriation and redistribution is checkered at best, and an incursion upon existing rights that would make future rights less secure might redound to the detriment of all involved.

13. W. H. Hutt to the editor of the *Cape Times,* January 3, 1946, Hutt Papers.

Hutt rejected the notion that there was a trade-off between liberty and equality. In *Plan for Reconstruction* (1943), he wrote that "there should never be any need to sacrifice freedom for equality. Indeed, the complete attainment of the former will mean the accomplishment of the latter" (137). Risk aversion and rent seeking, in contrast, prevent equality (163).

Hutt's *Plan for Reconstruction* (1943), which came complete with model legislation for labor security and capital security, was undertaken for "the working out of a framework of laws and administrative methods which will permit rapid physical recovery from war damage, and serve at the same time as the basis for a more efficient and just economic system" (1). Hutt was a big believer in the power of free markets. As Geoffrey Brennan and James Buchanan (1985) would do later, he emphasized the need for a constitutional framework that lets markets work.

Violent threats promise to make someone *worse* off. Distributional politics increases winners' living standards at the expense of the losers. Therefore, the constitutional problem is to encourage people to work together to create social gains rather than social losses. Hutt argued for "distributive security" programs that make good on people's expectations of material comforts at least before any institutional transition. Distributive security is a political bargain: "Productive power alone can make freedom conceivable in the aftermath of war; and distributive security alone can make the maximisation of productivity acceptable" (1943, 157). He continued, "In any set of fundamental reforms, the existence of vested interests in the labour field will have to be frankly recognised; the privileged sections will have to be secured against drastic destruction of their income rights; and the unions will have to remain in form and themselves supply the machinery required. Then, as in innumerable other fields of human progress, a new reality will emerge whilst the ancient show persists. That is the essence of my scheme for removing the shackles which have for so long restrained the forces of equality and plenty" (162).

Hutt's Constitutional Design

Hutt stressed that his proposal for a weighted franchise was rooted firmly in the classical liberal tradition. He appealed to Alexis de Tocqueville and John Stuart Mill, arguing that "John Stuart Mill, in his classic advocacy of representative government, insisted that the beneficiaries of relief payments should be denied the franchise" (1971, 32). He continued, "Changing experience in the working of representative democracy has been largely conditioned by the failure to entrench (by constitution or convention) what may be called 'the Tocqueville principle,' namely, that majorities should have no right to enrich themselves at the expense of minorities via the voting mechanism" (32).

Hutt's opposition to "one man, one vote" did not stem from racial antipathy or some idea that black Africans were inherently unfit for self-government. Instead,

he was concerned that a communist-backed black populist majority would replace a tyrannical white minority, subverting the democratic transition. By contrast, Hutt believed that improving economic attainment through institutional stability would provide more permanent benefits in the long run. black political power would grow as black educational attainment, incomes, and property ownership grew. Maintaining continuity of property rights, Hutt argued, was essential to legitimizing the new system in the eyes of the white minority. A weighted franchise would expand political participation while ensuring that whites were not suddenly overwhelmed politically. Failure to reassure the white minority meant that they would likely resist black rule, perhaps violently.

In 1943, Hutt wrote *Plan for Reconstruction,* an optimistic explanation of his postwar reform proposals. It is essentially a book-length analysis of the problem of politics as exchange and the kinds of bargains that might be necessary to remove impediments to economic growth. He wrote, "In any set of fundamental reforms, the existence of vested interests in the labour field will have to be frankly recognised; the privileged sections will have to be secured against drastic destruction of their income rights; and the unions will have to remain in form and themselves supply the machinery required. Then, as in innumerable other fields of human progress, a new reality will emerge whilst the ancient show persists. That is the essence of my scheme for removing the shackles which have for so long restrained the forces of equality and plenty" (162). Hutt's plan applied only to Great Britain, as he noted that it would be inapplicable in the Union of South Africa. He wrote, "Being frankly based upon the ideal of equality, the plan is inapplicable in a country in which there are subject races or classes." The reason for the inapplicability, he explained, was the dominance of a white minority that considered the other races "despised and subordinate" and excluded them from "full democratic rights." Hutt had "never heard a tolerably convincing attempt at an ethical justification of the differentiation, yet it is quietly and unashamedly accepted by the Whites" (144). Again, political realities constrained a broader application of his plan for the time being.

In 1961, students at the University of Cape Town invited the black scholar, activist, and ecumenical leader Z. K. Matthews to give the fourth annual T. B. Davie Memorial Lecture on academic freedom. Hutt handled the correspondence with Matthews, a scholar trained at Yale and the London School of Economics who had settled into a faculty position at the University of Fort Hare. He had faced a high-treason charge in 1956 for his work on the Freedom Charter with the African National Congress but was acquitted in 1962. He delivered the lecture "African Awakening and the Universities" in 1961.[14]

14. Information on Matthews is drawn from Posbee 1998. The manuscript of Matthews's T. B. Davie Lecture at the University of Cape Town, "African Awakening and the Universities," is archived in the Z. K. Matthews Papers, University of the Witwatersrand, Johannesburg, South Africa, and can be found online at http://uir.unisa.ac.za/handle/10500/4176/discover.

Matthews explained why "one man, one vote" was appealing. First, he argued that it had been imported to Africa by white settlers. Second, he argued,

> [i]t was the white man who taught the African that unless an individual possessed the vote, his legitimate interests in the state to which he belonged would not be safeguarded. In territory after territory the African experienced the fact that the white man who enjoyed the benefit of the one man-one vote principle was wooed and pampered by every political party & by every government, whereas the interests of the individual who either had no vote or enjoyed a qualified franchise, if any, did not receive the same solicitude. This has been brought home to the African in so many ways that he has come to regard the "one-man-one vote" as a panacea for his ills. Imagine his surprise when he finds the same white man who has entrenched his position in Africa through the vote now advances the theory that the one-man one vote principle is a pernicious principle which will do the African more harm than good if applied to him.

Matthews noted that observers and reformers should listen carefully: "Slogans like one man, one vote may by their simplicity be deceptive, but at the same time they may contain elements of truth which must not be glossed over, and ways and means must be found for giving effect to the valid elements of the principle and undoing its damages if any."

The letters between Hutt and Matthews illuminate both parties' thinking on the matter. Hutt asked in one letter:

> Does not the occasion of your address provide a splendid opportunity for an assurance to White South Africa that you regard ironclad entrenchments to safe-guard a White minority as a reasonable condition for the gradual sharing of political power with all races? I believe that the fear of being overwhelmed by African numbers is a greater barrier to the gradual enfranchisement of the African than the traditional feeling that the appropriate function of non-Whites is that of hewers of wood and drawers of water. The required entrenchments would not mean the perpetuation of White privilege but merely the prevention of Black privilege in a future regime.[15]

Looking forward, Hutt was not optimistic about what would happen if there were no compromise.

In his introduction to a later edition of Hutt's *Economists and the Public* ([1936] 1990), Warren Samuels writes that Hutt's "political-economic philosophy was utilitarian rather than natural rights in orientation" (1990, 1). Property rights are instru-

15. W. H. Hutt to Z. K. Matthews, July 20, 1961. Correspondence between Hutt and Matthews can be found online at http://uir.unisa.ac.za/handle/10500/4176/discover, accessed December 15, 2020.

mentally valuable, which explains Hutt's enthusiasm for ironclad constitutional protections. The owner of a piece of property might not deserve such protection in a deep moral sense, but Hutt justified the ironclad constitutional protections he sought for South African whites not by a theory of justice but by his conviction that respecting preexisting rights for whites would be part of a necessary compromise to secure political rights for South African blacks.

Regardless, Hutt did not think of political power as an end unto itself. To the extent that political power would be useful, it would eliminate government-imposed barriers to free markets. "The great hope," he wrote, "lies in a return to the orderliness, justice, security, and color-blindness of the free market economy."[16] Racial injustice, he argued, was not a problem created by the free market. Instead, "in reality, *all the colour injustices of an economic nature in South Africa stem from an overruling of the free market.*"[17]

Conclusion

Classical liberals argue that constraints on "one person, one vote" majoritarianism are critical to avoid populism. What prevailing perspectives do not do, but Hutt did, is explain the underlying sources of illiberal populism. His perspective recognized that the necessity of putting democracy in chains depends in part on the historical context. Where pressure for retribution and redistribution are strongest, constraints are more critical. Where capitalism and its opportunities are robust, constraints are less critical because the populism that will emerge is less likely to involve substantial conflict, violence, and large-scale expropriation of wealth. Whereas public-choice scholars such as James Buchanan, William Riker, and Barry Weingast offered a political theory of populism, Hutt crafted an economic theory of populism that explicitly relates capitalism to the emergence of a robust liberal democratic order. Hutt's view that capitalists would leave if their property was not protected is reminiscent of Ilya Somin's (2020) view that foot voting is often an easier way to influence policy than the ballot. In the case of illiberal populism, the source of pressure to change policy comes from voting with one's feet to secure greater economic freedoms.

Foot voting to escape such pressures could devastate an economy. Hutt's consumer-centered critique of populism defended the free market because it facilitated peaceful cooperation based on gains from trade. In a letter, he put it this way in 1946: "[A]llowed to work, the market economy could not only eliminate in a decade the housing shortage and the food shortage, but make possible a measure of social security of which few, in this sectionalist-minded age, are unable to conceive."[18]

16. W. H. Hutt, undated reply to John H. Chettle, "The Evolution of United States Policy towards South Africa," *Modern Age,* Summer (1972), Hutt Papers.

17. Hutt, reply to Chettle, "The Evolution of United States Policy towards South Africa," emphasis in original.

18. Hutt to the editor of the *Cape Times,* January 3, 1946.

Democracy, without the appropriate constraints, threatened to eliminate such prospects for gradual improvements in standards of living that Hutt recognized as necessary to ensure a lasting political order.

Hutt's analysis also offers insight into why we see populist movements that embrace liberal reform. Such movements are more likely when there is less of an underlying grievance, less wealth inequality, and more economic opportunities provided by capitalism. In such contexts, such movements may result in demands for institutional reforms that are socially beneficial. When there are perceptions of harm, greater inequality, and fewer economic opportunities, illiberal populism is more likely. We ought to be more concerned about maintaining and establishing constraints on democracy. Hutt masterfully explained why we must account for history and context to understand the origins of a lasting democratic order and, ultimately, economic prosperity.

References

Brennan, Geoffrey, and James M. Buchanan. 1985. *The Reason of Rules: Constitutional Political Economy*. New York: Cambridge University Press.

Buchanan, James M. 1975. *The Limits of Liberty: Between Anarchy and Leviathan*. Chicago: University of Chicago Press.

Buchanan, James M., and Roger D. Congleton. 1998. *Politics by Principle, Not Interest: Towards Nondiscriminatory Democracy*. Cambridge: Cambridge University Press.

Coase, Ronald H. 1960. The Problem of Social Cost. *Journal of Law and Economics* 3:1–44.

Cox, Gary W., Douglass C. North, and Barry R. Weingast. 2019. The Violence Trap: A Political-Economic Approach to the Problems of Development. *Journal of Public Finance and Public Choice* 34, no. 1: 3–19.

Desmarais-Tremblay, Maxime. 2020. W. H. Hutt and the Conceptualization of Consumers' Sovereignty. *Oxford Economic Papers* 72, no. 4: 1050–71.

Dollery, Brian. 1990. Labour Apartheid in South Africa: A Rent-Seeking Approach to Discriminatory Legislation. *Australian Economic Papers* 29, no. 54: 113–27.

Egger, John B. 1994. The Contributions of W. H. Hutt. *Review of Austrian Economics* 7, no. 1: 107–38.

Feinstein, Charles H. 2005. *An Economic History of South Africa: Conquest, Discrimination, and Development*. New York: Cambridge University Press.

Frye, Timothy. 2002. Private Protection in Russia and Poland. *American Journal of Political Science* 46, no. 3: 572–84.

Guriev, Sergei, and Andrei Rachinsky. 2005. The Role of Oligarchs in Russian Capitalism. *Journal of Economic Perspectives* 19, no. 1: 131–50.

Hutt, William H. 1943. *Plan for Reconstruction*. London: Routledge.

———. 1964. *The Economics of the Colour Bar*. London: Institute of Economic Affairs.

———. 1965. South Africa's Salvation in Classic Liberalism. *Il Politico* 30, no. 4: 782–95.

———. 1968. The Rhodesian Calumny. *New Individualist Review* 5, no. 1: 3–12.

———. 1971. *Politically Impossible …?* London: Institute of Economic Affairs.

———. [1966] 1975a. South Africa's Salvation in Classic Liberalism. In *Studies in Economics and Economic History,* edited by M. Kooy. Durham, N.C.: Duke University Press. Reprinted in *Individual Freedom: Selected Works of William H. Hutt,* edited by Svetozar Pejovich and David Klingaman, 53–74. Westport, Conn.: Greenwood Press.

———. [1966] 1975b. Unanimity versus Non-discrimination (as Criteria for Constitutional Validity). *South African Journal of Economics* 34. Reprinted in *Individual Freedom: Selected Works of William H. Hutt,* edited by Svetozar Pejovich and David Klingaman, 14–33. Westport, Conn.: Greenwood Press.

———. [1936] 1990. *Economists and the Public*. Reprinted with an introduction by Warren Samuels. New Brunswick, N.J.: Transaction.

Lewin, Peter. 2000. William Hutt and the Economics of Apartheid. *Constitutional Political Economy* 11:255–64.

Lijphart, Arend. 1985. *Power-Sharing in South Africa*. Policy Papers in International Affairs. Berkeley, Calif.: Institute of International Studies.

Lowenberg, Anton D., and William H. Kaempfer. 1998. *The Origins and Demise of South African Apartheid: A Public Choice Analysis*. Ann Arbor: University of Michigan Press.

MacLean, Nancy. 2017. *Democracy in Chains: The Deep Roots of the Radical Right's Stealth Plan for America*. New York: Viking.

Magness, Phillip W., Art Carden, and Vincent Geloso. 2019. James M. Buchanan and the Political Economy of Segregation. *Southern Economic Journal* 85, no. 3: 715–41.

Magness, Phillip W., Art Carden, and Ilia Murtazashvili. 2021. Consumer Sovereignty and W. H. Hutt's Critique of the Colour Bar. Working paper.

Olsen, Niklas. 2019. *The Sovereign Consumer: A New Intellectual History of Neoliberalism*. Cham, Switzerland: Palgrave Macmillan.

Olson, Mancur. 1982. *The Rise and Decline of Nations: Economic Growth, Stagflation, and Social Rigidities*. New Haven, Conn.: Yale University Press.

Posbee, John S. 1998. Matthews, Z(achariah) K(eodirelang). In *Biographical Dictionary of Christian Missions,* edited by Gerald H. Anderson, 442. New York: Macmillan Reference.

Riker, William H. 1982. *Liberalism against Populism: A Confrontation between the Theory of Democracy and the Theory of Social Choice*. San Francisco: Freeman.

Samuels, Warren. 1990. Introduction to W. H. Hutt, *Economists and the Public* (1936), 1–6. New Brunswick, N.J.: Transaction.

Slobodian, Quinn. 2018. *Globalists: The End of Empire and the Birth of Neoliberalism*. Cambridge, Mass.: Harvard University Press.

Somin, Ilya. 2020. *Free to Move: Foot Voting, Migration, and Political Freedom*. New York: Oxford University Press.

Sonin, Konstantin. 2003. Why the Rich May Favor Poor Protection of Property Rights. *Journal of Comparative Economics* 31, no. 4: 715–31.

Van Staden, Martin. 2019. The Liberal Tradition in South Africa, 1910–2019. *Econ Journal Watch* 16, no. 2: 258–341.

Weingast, Barry R. 1997. The Political Foundations of Democracy and the Rule of Law. *American Political Science Review* 91, no. 2: 245–63.

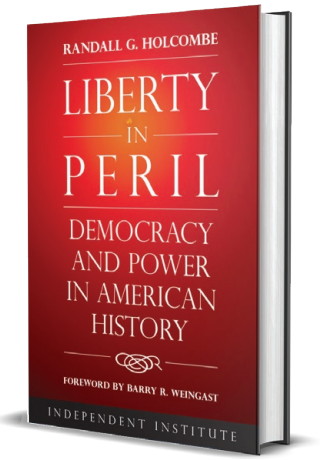
Wilson, Francis. 1972. *Labour in the South African Gold Mines 1911–1969*. Vol. 6. New York: Cambridge University Press.

SUBSCRIBE NOW AND RECEIVE A FREE BOOK!

"***The Independent Review*** does not accept pronouncements of government officials nor the conventional wisdom at face value."
—**JOHN R. MACARTHUR**, Publisher, *Harper's*

"***The Independent Review*** is excellent."
—**GARY BECKER**, Nobel Laureate in Economic Sciences

Subscribe to ***The Independent Review*** and receive a free book of your choice such as ***Liberty in Peril: Democracy and Power in American History***, by Randall G. Holcombe.



Thought-provoking and educational, ***The Independent Review*** is blazing the way toward informed debate. This quarterly journal offers leading-edge insights on today's most critical issues in economics, healthcare, education, the environment, energy, defense, law, history, political science, philosophy, and sociology.

Student? Educator? Journalist? Business or civic leader? Engaged citizen? This journal is for YOU!

Order today for more *FREE* book options

SUBSCRIBE

The Independent Review is now available digitally on mobile devices and tablets via the Apple/Android App Stores and Magzter. Subscriptions and single issues start at $2.99. **Learn More.**

Download on the App Store | GET IT ON Google Play | Available on MAGZTER

INDEPENDENT INSTITUTE, 100 SWAN WAY, OAKLAND, CA 94621 • 1 (800) 927-8733 • ORDERS@INDEPENDENT.ORG