

The Case for Supermajority Rules

By JOHN O. MCGINNIS
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THIS CENTURY ENDS, as it began, with extraordinary ferment about the soundness of our constitutional structures. In a series of recent decisions, the Supreme Court has appeared to revive doctrines of federalism and carve out spheres of autonomy for the states. In Congress, each house gave majority support to serious constitutional amendments setting term limits, requiring balanced budgets, and limiting tax increases. In fact, the Balanced Budget Amendment came within one vote of being sent to the states for ratification. Congress has also passed rules to restructure the federal legislative process. In an attempt to promote accountability and protect the autonomy of the states, both houses have required separate votes on unfunded mandates. The House of Representatives has passed a rule requiring a three-fifths majority to raise income tax rates.

Whatever they may signify individually, all these initiatives reflect a dissatisfaction with the continuing growth of the federal government. For despite President Clinton's declaration that the era of big government is over, the national government is as imperial and imperious as at any time in the nation's history. It spends 17 times the percentage of the nation's income as it did in 1910, and it takes a greater percentage of citizens' income in taxes than it has in peacetime ever before. The nature of federal spending has been transformed as well. Whereas in the early part of this century the budget focused on public goods, like national defense and infrastructure, that bene-

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fited everyone, today it is largely composed of transfer payments that enrich some citizens at the expense of the others. As the federal government has become ever more a dynamo for the satisfaction of private interests, a government designed for the energetic pursuit of the public purpose has been transformed into the special interest state.

Recently, some scholars and other observers have come to believe that excessive government spending is no longer a problem, because we now enjoy a surplus. Yet today's favorable fiscal situation, we submit, is adventitious and temporary. The government surplus is the result of a vibrant economy, peace, and the full employment of the baby boom generation, none of which will last forever. Indeed, as the baby boomers retire during the next 20 years, government spending obligations will grow tremendously. The most realistic projections (not the pessimistic ones) predict that by 2020, the cost of Social Security and government health care programs for the elderly alone will require payroll taxes approaching 30 percent. This bill coming due makes it all the more imperative that we focus on our fiscal Constitution right now. Today is when we should be reconstituting the government to avoid the upcoming crisis — not tomorrow, with the crisis already upon us.

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Today's bloated federal government is a legacy of yesterday's enthusiasm for collectivist solutions to social problems. While the United States suffered less than many other nations in this century from this worldwide delusion, the fervor for intrusive

social reform — one directed not only from the left, but also from the political center — has left a mark on our original charter. In the course of the Progressive Era and the New Deal, federalism and the separation of powers were so effectively weakened that the federal government came to possess plenary powers of spending and regulation. As the failures of such federal intervention have become more apparent, political attention, particularly but not only on the right, has naturally shifted to recreating an architecture for government that will discourage such excesses in the future. What we need are constitutive structures that make it easier to apply what we have learned in this century: to employ market-based and community solutions to social problems wherever possible and to deploy the heavy hand of the central authority only as a last resort.

It is our belief that the single best prospect of reconsecrating the Constitution to individual liberty and the public good would be the adoption of fiscal supermajority rules. Essentially, what such rules represent is an attempt to constrain government by requiring more than a simple majority of legislators to enact a particular category of legislation. Fiscal supermajority rules, for instance, are already at the heart of the Balanced Budget

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Amendment and the tax limitation proposals: the former requires a three-fifths majority of both the House and Senate to run a deficit or issue debt, and the latter requires a two-thirds majority to raise taxes.

The benefits of such a change in the way laws are made are potentially very large. Supermajority rules for fiscal matters would increase economic growth by decreasing the burdens the federal government imposes on citizens. They would help restore civic virtue by focusing the government on public interest projects rather than on inherently divisive transfer payments among citizens, thus allowing us together to address real social problems more energetically and effectively. Finally, by restraining the reach of the federal government, they would revive federalism more effectively than will piecemeal legislation or judicial decisions.

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The institutional strength of supermajority rules lies in their recognition of the limitations of both legislatures and judges. As history shows, legislatures working under majority rule have systematically become captive of special interests and thus tax and spend more than the public interest requires. Judges, on the other hand, have tended to aggrandize themselves by their willful misreading of text and precedent. Supermajority rules are an idea for an age skeptical of all rulers, because they restrain special interests that flourish under legislative majority rule without providing expansive authority to judges. They thus provide a better method of creating a framework for a flourishing polity than a structure that relies either exclusively on majority rule (as many conservatives, for example, would have us do), or largely on individual rights (as many libertarians urge).

Some advocates seek to achieve these same goals through other constitutive reforms, like term limits or campaign finance reform. We believe that fiscal supermajority rules, however, are more effective at restraining special interests, because they attack the root cause of their power — a government that is inherently inclined to excessive spending. The very popularity of term limits and campaign finance reform, however, shows that the burdens of our special interest state have become so large as to create a wave of popular discontent — one that supermajority rules may be able ride to success.

The special interest state

BOTH THEORY AND PRACTICE suggest that the best type of government is a limited one that provides only those goods and services that cannot be adequately supplied by the private sector — that is to say, public interest goods such as national defense, police, and infrastructure. Government of this sort both respects individual freedom and energetically promotes the welfare of the populace.

The hard task is making sure that a limited government remains limited. A government sufficiently powerful to supply public interest goods also has enough power to expropriate the property of its citizens. In the American political tradition, the first mechanism for limiting the power of government is what the Founders called republicanism and what we now call democracy: If the people can oust their leaders, this will restrain the government from abusing its powers.

Yet the American political tradition also demonstrates that democratic checks, while important, are not sufficient to protect the people from a distant central government. The Framers of the Constitution were worried about the power of a majority to abuse even a democratic government by

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opting for noxious laws. For their part, the Antifederalists — who opposed the Constitution but were responsible for pressing for the Bill of Rights — were concerned about the ability of powerful minorities to secure the passage of injurious legislation. They feared that a group of wealthy individuals would use the national government to usurp power and exploit the people.

Today, the greatest danger in our democratic political system derives from special interests — groups who wield disproportionate political power that they can use to obtain private interest benefits from the government. Special interest groups tend to have certain characteristics that enable them to suc-

ceed in the political process. In the most common type of special interest group — think of big business or big labor — each member receives a large benefit from the government. Special interests are therefore willing to incur substantial costs to operate an organization that will monitor and lobby the government. Frequently, the members of these groups can also organize on the cheap, either because they have few members or because they are already organized (such as the workers in a labor union). By contrast, most citizens on most issues find it difficult to organize and therefore exercise little political influence. For example, a consumer spends relatively little on a typical product and thus does not have incentive to lobby to prevent the government from raising its price through tariffs.

One of the strongest special interest groups today, the elderly, has some of the same features as the most common type of special interest, but not others. Like big business and big labor, the elderly receive large amounts of money from the government through Social Security and Medicare. Although they constitute a large group, and thus are hard to organize, they make up for their lack of organization with voting strength. They vote in large numbers, and they tend to vote on the basis of a candidate's position on Social Security and Medicare. The power of the elderly helps to explain why Social Security and Medicare are the third rails of American politics

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and how they have grown to encompass so much of the federal budget.

Special interests of all kinds often use their influence to support government spending increases. Indeed, when special interests act, they almost always support additional spending rather than less spending and therefore exert continuing pressure to expand government. Special interests behave this way by their very nature. While members of special interests can receive large benefits from spending programs tailored toward their interests, they benefit much less from opposing spending than does the average citizen. Spending programs are usually financed by general tax increases or by government borrowing. If the special interest successfully opposes spending for another group that is financed through a general tax increase, it will benefit only by the small amount of the tax increase that it would have paid. Most of the benefit will go to the rest of the taxpayers. Similarly, if the special interest successfully opposes spending that would have been financed by borrowing, most of the benefit will not go to the special interest, but to future taxpayers who would have to repay the debt. Rather than incurring costs opposing spending programs, special interests are better off attempting to secure programs that specifically benefit them. Mancur Olson described this phenomenon in his 1965 book, *The Logic of Collective Action*.

Unfortunately, from the point of view of the greater good, special interest groups have increased in strength throughout American history. When the country was formed, the polity was divided largely between farmers and merchants. Today, of course, it is vastly more diverse, consisting of corporate executives, clerical workers, government bureaucrats, academics, and journalists, to name just a few. As the number of occupations with distinct interests increases, the number of interest groups that have incentive to lobby the government for subsidies grows. Moreover, a stable society like ours inevitably accumulates special interest organizations. Such organizations may be hard to form, but once created have staying power. The growing power of special interests helps explain why total government spending and the amount of such spending devoted to private interest goods have both significantly increased. Unless mechanisms can be developed to limit special interests, they will continue to use their power to grow the state, enriching themselves at the public's expense and weakening the government's ability to pursue public purposes.

Undoing constitutional constraints

THE FOUNDERS' GENERATION recognized the need to limit the powers of government in order to keep it focused on the public good, rather than on the private interests of either the majority or the minority. In the original Constitution, the principal means of restraining government was the system of federalism. Under this system, the Framers gave the national government only limited powers that were devoted mainly

to national defense and to promoting free trade. The states, by contrast, were largely free to legislate, but were checked by competition. If one state passed harmful legislation, it would lose capital and population to the other states. Moreover, not only the Supreme Court, but also senators selected by the state legislators themselves, maintained the limits of the federal government. In the Senate, the states had a powerful means of constraining both the Congress and Supreme Court justices (whom the state-controlled Senate confirmed). Initially, this mechanism worked well on fiscal issues. After 125 years under the Constitution, the federal government's spending in 1910 was still only 2 percent of GDP and domestic spending was only 1 percent. This was quite an accomplishment, since it continued many decades after the Civil War and the centralization of power necessary to end slavery and reconstruct the Confederacy.

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But the limits on the national government soon began to give way. The constraints of federalism, in particular, were weakened in two different ways. First, in 1913, the nation passed two constitutional amendments that significantly expanded the federal government's powers. The Sixteenth Amendment eliminated restrictions on Congress's ability to impose income taxes, thus allowing the federal government to raise funds without limits. The

Seventeenth Amendment transferred the power of selecting senators from the state legislatures to the voters; in ratifying this amendment, states removed the most powerful check they had on the passage of federal legislation.

Second, during the New Deal, the Supreme Court reinterpreted the Constitution to allow Congress to exercise far broader powers than the Framers had conferred. Under the new interpretation, Congress had virtually unlimited authority to pass regulatory and spending programs.

These changes have tremendously increased both the powers of the federal government and the amount of federal spending. With the roadblocks from the original Constitution withdrawn and special interests in the engine room of government, the nation has been moving steadily along the track of federal spending growth. Nor has our recent economic prosperity changed all that. Indeed, the percentage of GDP devoted to domestic spending continues to grow significantly, while the main reductions in spending have come from defense — one of the few areas of federal spending devoted to a public interest good.

We have been fortunate because the baby boomers are still working, there is peace, and the nation is enjoying the benefits of the computer and telecommunications revolutions. But this is the calm before the storm. Unless substantial changes are made, first Medicare and then Social Security will run out of money, forcing the government to pass huge tax increases or to run enormous deficits. It is a sign of the power of those interests, however,

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that the nation is not even taking moderate measures to deal with these problems. Consider only what our recent fiscal politics shows — that the government finds it difficult to cut taxes, even though the country is now paying a greater percentage of national income in taxes than at any time since World War II. Proposals to save Medicare from bankruptcy have failed miserably, while the administration's plan to expand the program to people in their 50s receives attention.

The clearest indication of special interest power has been the Congress's sad inability to live within the statutory limits it has set for discretionary spending — the money the government spends outside the area of entitlements like Social Security and Medicare. Here Congress continues to behave like an alcoholic who swears that the drink he is about to have will be his last. Congress regularly enacts spending limits, then chooses to violate these limits as it enacts a new spending cap that it pledges to follow in the future. In the 1980s, Congress sought to restrain spending and deficits through the Gramm-Rudman law. In 1990, Congress violated this limit, but made sure to pass a new spending restraint that it claimed would be more effective in the future. In 1997, however, Congress transgressed this limit, but not without once again solemnly pledging to respect new spending caps.

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In the past few years, Congress has accelerated its pattern of spending breaches, playing fast and loose with the limits each year. In 1998, it was able to avoid enacting new spending caps, but only by exploiting a loophole for emergency spending, intended for unexpected occurrences. Congress cynically treated the Y2K computer problem as an unpredictable emergency, although it had certainly been aware of the issue when it enacted the caps the previous year. This year the legislature appears to be outdoing itself. It has contemplated using the emergency spending exception to fund, of all things, the 2000 census — an event so unpredictable that the Constitution just happens to mention it! Congress has also considered placing other items, such as airport funding, off budget, as if an accounting device could erase the true costs of government spending. Finally, even with such spending gimmicks both the speaker and the Senate majority leader have announced that they intend to exceed the statutory spending caps yet again.

The Republican Congress, however, looks like a model of fiscal restraint when compared to the spending programs advocated by the Democratic presidential candidates. Vice President Gore and Sen. Bradley are trying to outdo each other with expensive ideas for spending the taxpayers' money. Even the *New York Times* has recently estimated that their proposals, if enacted, would not only exceed the budget caps, but wipe out the entire Social Security surplus.

Supermajority rules and how they work

THE FIRST VIRTUE of fiscal supermajority rules can be simply stated: By increasing the percentage of legislators needed to pass additional spending, debt, or taxes, supermajority rules reduce the amount of such legislation. The second virtue is also important: By requiring a larger majority to pass laws, fiscal supermajority rules help to filter out inefficient programs. This filtering effect follows from the intuitive idea that good legislation is generally able to get more votes than bad, so that supermajority rules will block the enactment of a higher percentage of bad laws than of good laws. Our own Constitution makes such an assumption: If legislation passing with a supermajority is no better on average than legislation passing with a mere majority, there would have been no reason to require a supermajority of Congress and the states to amend the Constitution.

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Thus, a well-designed supermajority rule should create a government that is both smaller and more focused on the public interest. Consider as an example perhaps the simplest of all supermajority rules — one that requires a supermajority (say two-thirds) for any new spending. This rule certainly would have the advantageous effect of reducing the amount

of government spending. Even if it reduced both good and bad spending equally, the rule would still be beneficial if most federal government spending is currently ill-conceived — a plausible enough assumption to anyone familiar with the waste in our government programs.

Yet a supermajority rule would also filter out bad spending, while preserving the good. Voters evaluate spending bills in some measure by whether bills provide them with net benefits. A bill with more net benefits is, on average, more popular than a bill with lower net benefits or negative benefits. For instance, the spending required to defend the United States from invasion offers huge net benefits and would be easily passed under any supermajority rule. In contrast, a bill that transferred money to a small group would have fewer supporters. Thus, a supermajority rule that filters could improve government spending on balance, even if the time comes when most federal spending is well-conceived.

In fact, such a supermajority rule may mimic the workings of majority rule in an idealized version of democracy — one with majority rule and with no special interests. As we have noted, special interests systematically favor spending and have substantial leverage over legislators. Thus, in the real world, the legislature operates as if special interests control pocket boroughs

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and additional votes in the legislature. By creating a higher hurdle for spending, the legislature will pass only spending favored by an actual majority of voters. In our imperfect world such spending programs would generally obtain supermajorities of legislators, consisting both of the majority sustained by regular voters and the pocket boroughs of special interests.

A fiscal supermajority rule creates a third structure of governance — one that combines the advantages of majority rule and absolute limitations on government, such as the Bill of Rights and the protections of federalism. Like majority rule, supermajority rule ultimately permits government decisions to be made by popular consensus. If a spending program is truly popular, the judiciary cannot stop it. Moreover, because Congress ultimately passes on the wisdom of legislation, judges are not subject to societal pressure to abrogate supermajority rules in times of crisis, as they did to many constitutional limitations during the New Deal. The supermajority limitations bend in the face of popular passions so that they do not break.

On the other hand, supermajority rules are like absolute limitations that shape the political process to prevent its distortion by special interests. Thus, like federalism or individual rights, supermajority rules can help protect our basic liberties — in this case our right to keep what we earn free from the overreaching of government. As a result, supermajority rules encourage economic growth and discourage wasteful and divisive attempts by private interests to use government to obtain transfer payments for themselves.

The comparison of supermajority rules with absolute limitations shows that supermajority rules are wholly consistent with the tenets of American democracy. The existence of constitutional provisions protecting individual rights and federalism show that throughout American history popular majorities have always perfected democracy by placing constraints on national legislative majorities. Indeed, supermajority rules thwart majority decisionmaking far less than absolute limitations like individual rights because supermajority rules ultimately entrust government decisions to the representatives of the people, not to judges.

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How to draft the best rules

WE NEED TO DRAFT supermajority rules carefully to get the optimal benefits of restraining the legislature while minimizing the complexity of the function they assign to the judiciary. This will necessarily involve tradeoffs between these two objectives. Because all rules must be enforced by fallible institutions, any sensible constitutional

provision seeks to reduce the combined costs of institutional failure of both the legislatures and the courts, not just one or the other.

For instance, the rule with which we illustrated the benefits of supermajority rules — a two-thirds requirement for any spending bill — has the virtue of simplicity. Spending is a relatively easy concept to define: Under cost accounting, a government expenditure is the amount that is actually transferred from the government to a party outside the government. Applying this simple rule to all spending circumscribes judicial discretion, because little room for dispute exists in its application.

Unfortunately, this simple rule permits strategic behavior by legislators and interest groups. By holding out against passage of an important spending bill, like one that funds the treasury or justice system, legislators who want more spending can threaten a government shutdown. As we witnessed in 1995, President Clinton used the threat of government shutdown to obtain *increased* spending from the Republican Congress.

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The power of holdouts can be reduced by establishing two kinds of supermajority rules. First, a supermajority could be required to pass any spending bill that constituted a new entitlement. Since citizens do not count on receiving an entitlement that has not yet been enacted, the creation of novel benefits is much less vulnerable to holdouts. On the other hand, because existing entitlements run on automatic pilot, they create a very substantial risk of excessive spending, as Social Security and Medicare show. It is therefore imperative that a decision that can so dramatically affect the economic future not only of the living but of those yet unborn have the support of a very broad social consensus.

Second, the total amount of so-called discretionary spending — the kind that keeps the government running — should also be made subject to a slightly more complicated supermajority rule. If Congress were to spend more than a certain percentage, say 90 percent, of what it spent in the previous year, it should have to enact this overall total spending level by a two-thirds vote. Holdouts would have less leverage under this rule, because if they threaten to shut down the government, a majority could prevent its closure by authorizing 90 percent of the previous year's expenditures.

To restrain the legislature more effectively, these supermajority rules introduce slightly more complicated concepts for the judiciary to interpret. For instance, the judiciary has to decide whether spending is an entitlement. Yet this is a manageable determination, since "entitlements" can be defined as all spending not subject to the yearly appropriations process. Certainly, this is a less open-ended kind of judgment than that routinely made by the judiciary in deciding what constitutes "equal protection of the law" or "the freedom of speech." The judiciary would also have to decide what constitutes 90 percent of last year's spending. But there is little chance that this question

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will be decided mistakenly or improperly, because the amount of expenditures is so clearly defined and because Congress will almost always spend more than the 90 percent of what it spent the previous year, thereby avoiding the need for the court to make a close calculation. Another way of reducing judicial power over this fiscal calculation would be to make the president the initial monitor of congressional compliance by giving him the responsibility of sequestering funds spent in violation of the rule.

Focusing on supermajority rules as a way of optimizing restraints on both the legislature and the judiciary helps us evaluate the Balanced Budget Amendment and the Tax Limitation Amendment — the principal supermajority rules that Congress has actually proposed. First, these amendments would constrain legislative spending far more effectively if they were passed together. If only one of these methods for funding special interest spending were restrained, then we would expect Congress to circumvent that restraint simply by using the other method.

Second, even if supermajority rules were applied to both taxes and debt, these particular sorts of rules would contain more complex concepts than would supermajority rules on spending. Debt is harder to define than spending, as corporate finance shows. State experience with balanced budget provisions also indicates that judges sometimes manipulate the concept to permit legislatures to borrow money.

Tax increases are also not as easy to define, at least in a way that encourages the government to choose the optimal kind of tax. For instance, there are problems with applying a supermajority rule to all laws that increase revenues. Certainly supermajority rules should cover increases in tax rates because they can be diffused over the general public and thus are the perfect support for special interest spending. But there are laws that increase revenues, such as eliminating tax preferences, that should not be discouraged by supermajority rules, because special interests devise tax preferences to get additional resources for themselves.

One major advantage of applying supermajority rules to taxes and debt cannot be ignored. Such a constitutional amendment would probably be easier to enact than one applied to spending. Citizens simply resent increased taxes and debt more than they do excessive spending, because spending, unlike taxes or debt, can be more easily presented as a benefit to someone. Of course, it is an easy step to show that excessive spending requires either excessive taxes or excessive debt or both, but in politics even a two-step argument is often one step too many for success.

No matter what supermajority rule is chosen, special interests will not disappear. They can be expected to try to circumvent the supermajority rule by finding other kinds of legislation that will benefit them. For instance, legisla-

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tion that would require, say, supermarkets to give special low rates to the elderly would benefit a group of individuals at the expense of the public, but would not be subject to a supermajority rule on spending, debt, or taxes. Nevertheless, we would expect such substitution to be imperfect. The success of special interests lies in their ability to diffuse the costs of their program on the public through general taxes. Regulatory legislation, by contrast, often imposes costs on concentrated groups that can be expected to organize effective lobbies against it. Thus, in our imagined example, supermarkets could be expected to battle the regulatory transfer.

Since special interests could not easily substitute bad regulations for excessive spending, taxes, or debt, supermajority rules applied to these fiscal matters would reduce the overall level of special interest extractions from the federal government. Of course, we recognize that over time special interests may find ways to weaken the restraints of fiscal supermajority rules as well. But no constitutional settlement can ever be permanent. Even if supermajority rules restrain government spending for only 50 years — a third of the time in which the Constitution's original structure of enumerated powers held sway — fully two generations once again will enjoy the benefits of a government more focused on the public interest.

Rules for compassionate conservatism

FISCAL SUPERMAJORITY RULES are multipurpose tools. Besides leading to more efficient spending, these rules also advance important social objectives. Fiscal supermajority rules can create a less divided polity and help to focus citizens on common goals. They can also promote private charitable organizations, individual freedom, and federalism.

At present, special interests regularly use the state to acquire private interest goods for themselves at public expense. Farmers secure agricultural subsidies, the elderly obtain generous government pensions, and large businesses get corporate welfare. In this political world, it is natural for each citizen to regard his fellow citizens as either sources of wealth he can seize or as threats to commandeer his property. Our political regime thus generates suspicion and division as citizens are pitted against one another in a litany of spending decisions that benefit some at the expense of others.

Fiscal supermajority rules, by contrast, would help change people's sentiments about politics. Supermajority rules make it harder to pass laws that simply transfer funds from one group to another. Such laws generate opposition, and obtaining the requisite numbers for passage would become more difficult. Instead, supermajority rules tend to favor laws that appeal to a wide range of interests and therefore are popular enough to secure passage. As a result, citizens will feel more secure that their wealth is not being seized for private purposes and that the government is attempting to promote the

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interests of all. Supermajority rules will also give politicians and citizens an incentive to consider the goals and interests their fellow citizens have in common, because only this strategy will allow them to formulate a legislative agenda that can pass.

Besides making politics focus more on the common goals of citizens, fiscal supermajority rules would also promote the development of private associations devoted to benefiting other citizens. Writing in the early part of the nineteenth century when government was small, Alexis de Tocqueville observed that America was a nation of individuals who formed charities, churches, and societies for all sorts of collective goods. Unfortunately, the large government produced by the modern special interest state has tended to crowd out many of these private associations.

Because citizens now see government as the primary vehicle to address social issues, they are less motivated to organize privately to tackle them. Moreover, the higher taxes needed to fund big government deprive citizens of resources that could be used to create and sustain civic associations. In contrast, by establishing a civic world in which private citizens have more responsibility and more resources for solving social problems, supermajority rules have the potential to reinvigorate private associations and thereby create a social fabric richer in mutual aid and trust. If "compassionate conservatism" aims to refocus government on public purposes and to unleash the forces of beneficence for the poor and afflicted, supermajority rules should be seen as its signature constitutional structure.

Thus, we completely reject any contention of liberal Democrats that fiscal supermajority rules would injure the poor. Supermajority rules restrain special interests, but the poor are unlikely to form into an effective special interest group. The poor are a diffuse group and have few resources to spend becoming organized. Moreover, they can offer only their votes and not campaign contributions or other material resources useful to politicians. Therefore it should not be surprising that excessive public spending does not flow to the poor. Instead, we observe that the federal transfer programs that comprise much of the federal budget are aimed at the aging middle class. The taxes that support such entitlements in fact harm the poor significantly because the poor are more likely than the average citizen to have used the money paid in taxes for the necessities of life.

Fiscal supermajority rules also foster individual freedom. The excessive government spending under existing legislative rules deprives people of resources to spend on enterprises and projects of their choosing. Additional government spending also produces a larger and more powerful bureaucrat-

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ic state, which has more opportunity arbitrarily to infringe on freedom. Supermajority rules would reduce the size and intrusiveness of government, allowing individuals a greater measure of autonomy.

Finally, fiscal supermajority rules would promote federalism. By making it more difficult for Congress to pass legislation, these rules would limit the federal government and help preserve the authority of the states to take actions without congressional interference. Moreover, because supermajority rules filter out bad legislation, they would tend disproportionately to block federal laws in areas where the states legislate well but to allow federal laws in areas where national legislation is needed. Thus, supermajority rules would obstruct federal spending on agricultural subsidies, while not interfering with necessary spending on national defense. Supermajority rules are also superior to the traditional system of enumerated powers in promoting federalism, because supermajority rules do not rely primarily on judicial enforcement.

Thus, supermajority rules — even ones devoted to fiscal matters — are not simply about economics. Fiscal supermajority rules would promote social harmony, civic associations, freedom, and local decisionmaking — important social and moral objectives that help sustain a rich civic life in a well-functioning polity.

A new charter of liberty

IN OUR OPINION, supermajority rules can command widespread support in the coming years. As noted, the supermajority rules in the Balanced Budget Amendment and the Tax Limitation Amendment gained many votes in Congress. Even more telling is the almost universal desire to achieve a principal goal of fiscal supermajority rules — the reduction of the power of special interests. The popularity of term limits and campaign finance reform, for instance, largely derives from the promise of these proposals to take government away from the special interests and give it back to the people.

Fiscal supermajority rules, however, accomplish this objective better than campaign finance reform or term limits. Supermajority rules attack the chief cause of the special interest state — the dissolution of limitations on government spending authority. In contrast, term limitation or campaign finance reform each curtails only one means by which special interests exercise disproportionate influence — either through peculiar influence with entrenched legislators or through greater campaign contributions.

It might be thought that a supermajority rule cannot be enacted, because special interests will use their power to oppose it in an effort to protect their subsidies. Although special interests would certainly oppose reductions in their benefits under existing fiscal arrangements, supermajority rules have the advantage of disarming all special interests simultaneously. They thus

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offer a promising solution to the prisoners' dilemma that afflicts our politics: Although we would all be better off with a smaller government, it would be irrational for the members of any special interest to surrender their benefits unless they can be sure that other groups will too. Under a fiscal supermajority rule applying to all spending, the benefits to a special interest group from less spending on other special interests might be larger than the reduction in its subsidies.

Edmund Burke defended the Glorious Revolution on grounds that even revolution can be necessary to "preserve . . . that ancient Constitution of government which is our only security for law and liberty." He cautioned that the resulting reformation should proceed "upon the principle of reference to antiquity" and thus be "carefully formed upon analogical precedent, authority, and example" of prior law.

Fiscal supermajority rules are the kind of innovation Burke celebrated. We now need them to perform a task analogous to that undertaken by structures of the original Constitution that have fallen into disrepair. Like the original system of enumerated powers, constitutional supermajority rules would inhibit the government from producing private interest goods and instead concentrate its energies on the public good. They would accomplish this goal without giving excessive power to judges or other nondemocratic institutions. They would thus help achieve what Madison defined as the principal goal of a constitution: "To secure the public good, and private rights, against the danger of . . . faction, and at the same time preserve the spirit and form of popular government." Supermajority rules can provide, in short, a new charter of freedom for those who would rule themselves.

“Mr. Gorbachev, TEAR DOWN THIS WALL!”



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NATO After Kosovo

Toward “Europe Whole and Free”

By ALAN W. DOWD

WHEN NATO'S FOUNDING FATHERS convened in Washington to create the Alliance in 1949, their primary concern was protecting Western Europe from the Red Army — not smothering ethnic quarrels in the Balkans. Lord Ismay, NATO's first secretary general, famously and bluntly described the organization's mission as “keeping the Russians out, the Americans in, and the Germans down.”

For two generations, the Alliance succeeded in this three-pronged mission. But NATO did more than block Moscow's march across Europe, maintain a transatlantic bridge, and rehabilitate Germany. Remarkably, old enemies became allies under NATO's umbrella; and Western Europe, the main battleground for two world wars, became a zone of peace and stability. Today, NATO is attempting to expand that zone into Eastern Europe.

NATO's Washington Summit in April 1999 served to underscore the organization's newfound concern for the East. Alliance leaders used the occasion to unveil a new Strategic Concept — a kind of twenty-first century mission statement that views Europe as a whole, taking into account the dangers posed to the West by instability and ethnic conflict in the East.

The Strategic Concept serves to clarify NATO's expanding role in the so-called “Euro-Atlantic area,” which includes not only NATO nations, but the Balkans, former members of the Warsaw Pact, the Baltic states, Ukraine, and

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