



Institute of  
Economic Affairs

# Pure Public Goods vs. Constitutional Theory of Public Goods

## What It Means for the Size of Government

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# Outline

- Constitution Theory of Public Goods
- Pure Public Goods
- How different Constitutional Approach different from Economic Approach?
- What Constitutional Theory of Public Goods doesn't do?
- Efficiency of Public Goods Provision- Samuelson Rule
- Conclusion

# Constitutional Theory of Public Goods

- The Constitutional Theory of Public Goods argues that people decide which goods are public goods at a constitutional level.
- This decision is based on how much their enjoyment of the good depends on others also enjoying it (Marmolo 1999).
- The theory suggests that the government should provide public goods where there is significant demand and the benefits of the good are non-rival and non-excludable.
- The conventional theory of public goods assumes a fixed population and focuses on the government's role in providing public goods.

# Economics Definition of Public Goods

- Definition of a public good centres around two key characteristics:
  - Non-excludability (it's difficult to prevent people from using it, even if they don't pay)
  - Non-rivalry (one person's use doesn't diminish another person's enjoyment).
- Public Economic data from the Kenya National Bureau of Statistics (KNBS) is a public good,
  - It is non-rivalrous since using public data does not affect or reduce the information available to others.
  - It is not excludable since preventing others from accessing economic data, which is publicly available, is impossible.
- In a free market, a public good is frequently (but not always) undersupplied because its non-rivalrous and non-excludability properties create an incentive not to pay.

## Differences: Constitutional Approach & the Economic Approach

- Constitutional Theory of Public Goods shifts the focus from the good's inherent properties to the decision-making process behind deeming something a public good.
- It argues that a good becomes public when people collectively decide, at a constitutional level, that its enjoyment is highly interdependent.
- They believe everyone benefits when everyone has access, regardless of whether the good is technically excludable or rivalrous.
- It supposes that people agree at a macro level that their enjoyment of a good depends on everyone having access to it.
- In that case, they will choose to make it a public good at a constitutional level. This contrasts with the traditional view of public goods, which focuses on market failures as the reason for public provision.

# What Constitutional Theory of Public Goods doesn't do?

- Even though the Constitutional Theory of Public Goods assigns "public goods" characteristics to some private or club goods, it doesn't fundamentally change the inherent nature of those goods.
- Instead, it applies a different nomenclature for how the Constitution views them.
- **The Constitutional Theory of Public Goods**
  - Doesn't magically transform a private good, like a gym membership, into a pure public good, like national defence.
  - Recognizes that the "publicness" of a good can be a matter of political and constitutional choice, not just inherent economic characteristics.
  - Highlights that certain goods while possessing some private good traits, might be elevated to a "public good" status within a constitutional framework.
  - This elevation often stems from two key factors.
    - Even if consumption is somewhat excludable, the good might be deemed essential for a well-functioning society, such as education or certain infrastructure projects.
    - Access to the good might be inherently linked to protecting fundamental rights enshrined in the Constitution, as seen with healthcare or legal representation.

# Efficiency of Public Goods Provision- Samuelson Rule

- Samuelson Rule
  - Optimal Quantity of a Public Good: The optimal quantity of public good occurs where  $MB = MC$ .

# **Discussion: What does each Approach mean for Size of Government?**



# EXPANDED VIEW OF PUBLIC GOODS

## IMPLICATIONS

- Size of government
- Pending Bills and Public Debt
- Efficiency costs of taxation
- Property Rights

VOTE CODE TITLE	GROSS CURRENT ESTIMATES	GROSS CAPITAL ESTIMATES	GROSS TOTAL ESTIMATES
	2024/2025 - KSHS		
1011 Executive Office of the President	4,231,290,119	1,200,900,000	5,432,190,119
1012 Office of the Deputy President	4,575,600,000	320,400,000	4,896,000,000
1013 Office of the Prime Cabinet Secretary	1,140,788,324	-	1,140,788,324
1014 State Department for Parliamentary Affairs	458,283,000	-	458,283,000
1015 State Department for Performance and Delivery Management	597,112,861	-	597,112,861
1016 State Department for Cabinet Affairs	275,136,014	-	275,136,014
1017 State House	7,937,300,000	1,558,700,000	9,496,000,000
1023 State Department for Correctional Services	34,727,321,616	823,025,000	35,550,346,616
1024 State Department for Immigration and Citizen Services	10,149,613,872	4,810,200,000	14,959,813,872
1025 National Police Service	108,771,352,775	1,780,720,000	110,552,072,775
1026 State Department for Internal Security & National Administration	28,311,624,720	7,565,490,000	35,877,114,720
1032 State Department for Devolution	1,589,428,367	2,653,000,000	4,242,428,367
1036 State Department for the ASALs and Regional Development	4,857,493,586	7,682,894,000	12,540,387,586
1041 Ministry of Defence	171,552,817,170	1,534,000,000	173,086,817,170
1053 State Department for Foreign Affairs	20,707,347,602	2,390,100,000	23,097,447,602
1054 State Department for Diaspora Affairs	828,143,693	-	828,143,693
1064 State Department for Technical Vocational Education and Training	23,129,038,919	7,559,600,000	30,688,638,919
1065 State Department for Higher Education and Research	121,011,554,444	4,374,640,000	125,386,194,444
1066 State Department for Basic Education	121,927,562,192	20,335,560,000	142,263,122,192

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VOTE CODE TITLE	GROSS CURRENT ESTIMATES	GROSS CAPITAL ESTIMATES	GROSS TOTAL ESTIMATES
	2024/2025 - KSHS		
1071 The National Treasury	75,595,982,220	59,526,155,380	135,122,137,600
1072 State Department for Economic Planning	2,941,893,355	63,840,240,000	66,782,133,355
1082 State Department for Medical Services	64,096,874,385	34,886,533,334	98,983,407,719
1083 State Department for Public Health and Professional Standards	22,623,555,123	5,564,180,000	28,187,735,123
1091 State Department for Roads	72,086,891,250	126,875,096,825	198,961,988,075
1092 State Department for Transport	16,397,803,728	35,233,400,000	51,631,203,728
1093 State Department for Shipping and Maritime Affairs	2,269,974,935	1,324,000,000	3,593,974,935
1094 State Department for Housing & Urban Development	1,315,392,681	86,250,800,000	87,566,192,681
1095 State Department for Public Works	3,699,978,552	1,309,100,000	5,009,078,552
1104 State Department for Irrigation	1,211,382,500	21,920,780,000	23,132,162,500
1109 State Department for Water & Sanitation	5,753,338,911	46,656,400,000	52,409,738,911
1112 State Department for Lands and Physical Planning	4,166,400,000	5,854,136,000	10,020,536,000
1122 State Department for Information Communication Technology & Digital Economy	3,525,220,752	18,829,660,000	22,354,880,752
1123 State Department for Broadcasting & Telecommunications	5,409,410,364	651,900,000	6,061,310,364
1132 State Department for Sports	1,105,286,404	16,638,400,000	17,743,686,404
1134 State Department for Culture and Heritage	2,868,154,321	162,843,000	3,030,997,321
1135 State Department for Youth Affairs and Creative Economy	1,903,510,229	2,144,961,000	4,048,471,229
1152 State Department for Energy	9,894,434,710	59,769,080,497	69,663,515,207
1162 State Department for Livestock Development	5,338,504,089	6,978,450,000	12,316,954,089

VOTE CODE TITLE	GROSS CURRENT ESTIMATES	GROSS CAPITAL ESTIMATES	GROSS TOTAL ESTIMATES
	2024/2025 - KSHS		
1166 State Department for the Blue Economy and Fisheries	2,358,795,869	9,637,930,000	11,996,725,869
1169 State Department for Agriculture	15,688,696,299	30,041,728,896	45,730,425,195
1173 State Department for Cooperatives	5,734,183,583	2,346,770,000	8,080,953,583
1174 State Department for Trade	3,098,361,146	500,000,000	3,598,361,146
1175 State Department for Industry	2,072,906,621	6,366,770,000	8,439,676,621
1176 State Department for Micro, Small and Medium Enterprises Development	1,566,218,500	7,802,840,000	9,369,058,500
1177 State Department for Investment Promotion	1,110,613,914	3,605,430,000	4,716,043,914
1184 State Department for Labour and Skills Development	4,319,529,843	1,512,885,400	5,832,415,243
1185 State Department for Social Protection and Senior Citizens Affairs	33,114,925,645	2,189,880,000	35,304,805,645
1192 State Department for Mining	1,105,898,447	652,260,000	1,758,158,447
1193 State Department for Petroleum	27,325,211,883	3,875,200,000	31,200,411,883
1202 State Department for Tourism	9,858,821,808	470,000,000	10,328,821,808
1203 State Department for Wildlife	12,090,194,935	2,253,000,000	14,343,194,935
1212 State Department for Gender and Affirmative Action	2,075,841,404	4,038,700,000	6,114,541,404
1213 State Department for Public Service	18,371,244,125	1,241,445,784	19,612,689,909
1221 State Department for East African Community	612,087,899	35,400,000	647,487,899
1252 State Law Office	6,820,570,997	157,000,000	6,977,570,997
1261 The Judiciary	22,137,400,000	1,600,000,000	23,737,400,000
1271 Ethics and Anti-Corruption Commission	4,113,630,000	57,920,000	4,171,550,000



VOTE CODE TITLE	GROSS CURRENT ESTIMATES	GROSS CAPITAL ESTIMATES	GROSS TOTAL ESTIMATES
	2024/2025 - KSHS		
1281 National Intelligence Service	46,351,000,000	-	46,351,000,000
1291 Office of the Director of Public Prosecutions	3,959,020,000	48,500,000	4,007,520,000
1311 Office of the Registrar of Political Parties	2,037,871,453	-	2,037,871,453
1321 Witness Protection Agency	741,192,500	-	741,192,500
1331 State Department for Environment & Climate Change	3,332,335,109	1,686,796,186	5,019,131,295
1332 State Department for Forestry	9,043,630,000	4,020,300,000	13,063,930,000
2011 Kenya National Commission on Human Rights	478,074,025	-	478,074,025
2021 National Land Commission	1,868,362,679	147,860,000	2,016,222,679
2031 Independent Electoral and Boundaries Commission	3,730,899,680	24,320,000	3,755,219,680
2041 Parliamentary Service Commission	1,167,000,000	-	1,167,000,000
2042 National Assembly	26,775,000,000	-	26,775,000,000
2043 Parliamentary Joint Services	6,581,000,000	2,065,000,000	8,646,000,000
2044 Senate	8,010,000,000	-	8,010,000,000
2051 Judicial Service Commission	902,900,000	-	902,900,000
2061 Commission on Revenue Allocation	413,465,304	-	413,465,304
2071 Public Service Commission	3,622,230,017	45,300,000	3,667,530,017
2081 Salaries and Remuneration Commission	472,230,922	-	472,230,922
2091 Teachers Service Commission	357,773,737,118	442,329,000	358,216,066,118
2101 National Police Service Commission	1,131,272,317	-	1,131,272,317

VOTE CODE TITLE	GROSS CURRENT ESTIMATES	GROSS CAPITAL ESTIMATES	GROSS TOTAL ESTIMATES
	2024/2025 - KSHS		
✓ 2111 Auditor General	8,211,770,850	455,000,000	8,666,770,850
✓ 2121 Controller of Budget	740,219,080	-	740,219,080
✓ 2131 Commission on Administrative Justice	661,974,500	-	661,974,500
2141 National Gender and Equality Commission	425,810,000	10,000,000	435,810,000
2151 Independent Policing Oversight Authority	1,107,672,060	-	1,107,672,060
<b>TOTAL VOTED EXPENDITURE ... KShs.</b>	<b>1,632,096,598,315</b>	<b>746,335,910,302</b>	<b>2,378,432,508,617</b>

# GoK Spending as Proportion of GDP

	2022/2023	2023/2024	2024/2025
Total Budget (ksh billion)	3,342	3,675	4,063
Total Budget (as a share of GDP)	26%	24%	24%
Total Budget per person (ksh)	66,047	87,456	78,893
Total Budget per person (ksh), Adjusted for inflation	66,047	81,204	68,717

Item	Revised 2023/2024	Estimates 2024/25	% change
<b>Revenue</b>			
<b>Total Revenue and Grants</b>	<b>3,094.90</b>	<b>3,261.00</b>	<b>5.1%</b>
Total Revenue	3,047.50	3,196.00	4.6%
Ordinary Revenue	2,576.70	2,724.00	5.4%
Total local AIA	470.80	472.00	0.3%
Grants	47.40	65.00	27.1%
<b>Expenditure</b>			
Total Discretionary Expenditure	2,538.10	2,849.44	10.9%
National Executive	2,044.00	2,322.74	12.0%
Equalization fund	10.90	8.00	-36.3%
Parliament	39.20	44.60	12.1%
Contingency Fund	1.20	5.00	76.0%
Judiciary	18.90	24.60	23.2%
County government	423.90	444.50	4.6%
<b>Non Discretionary Expenditure</b>	<b>1,137.16</b>	<b>1,213.56</b>	<b>6.3%</b>
<i>Interests</i>	946.16	1,009.90	6.3%
<i>Pension and other</i>	191.00	203.66	6.2%

Government Pending Bills Summary				
Category	30th June 2023	30th June 2024	Change	Change (%)
<b>a). MDAs</b>				
Recurrent	87.84	100.74	12.90	12.81
Development	36.07	35.72	-0.35	-0.99
<b>Sub-Total</b>	<b>123.91</b>	<b>136.45</b>	<b>12.55</b>	<b>9.20</b>
<b>b). State Corporations/SOEs/SAGAs</b>				
<b>Recurrent</b>				
PAYE	20.158	19.034	-1.12	-5.90
NSSF	0.183	0.641	0.46	71.52
NHIF	0.034	0.076	0.04	55.68
Unremitted Sacco Deductions	2.504	2.527	0.02	0.91
Unremitted Staff Loan Deductions	1.781	2.232	0.45	20.21
Pensiona Arrears	46.807	33.023	-13.78	-41.74
Consumables and General Supplies	31.073	37.827	6.75	17.86
Others	85.596	49.454	-36.14	-73.08
<b>Subtotal (Recurrent)</b>	<b>188.135</b>	<b>144.816</b>	<b>-43.32</b>	<b>-29.91</b>
<b>Development</b>	<b>255.461</b>	<b>234.999</b>	<b>-20.46</b>	<b>-8.71</b>
<b>Sub-Total</b>	<b>443.596</b>	<b>379.815</b>	<b>-63.78</b>	<b>-16.79</b>
<b>Total National Government</b>	<b>567.501</b>	<b>516.268</b>	<b>-51.23</b>	<b>-9.92</b>
<b>c). County Governments</b>				
Recurrent	28.92	143.34	114	79.82
Development	131.32	38.24	-93	-243.40
<b>Sub-Total</b>	<b>160.24</b>	<b>181.58</b>	<b>21</b>	<b>11.76</b>
<b>Grand Total</b>	<b>727.74</b>	<b>697.85</b>	<b>-30</b>	<b>-4.28</b>

# Conclusion

- Constitutional models dictate the size of government
- State capacity arguments bear consequences for property rights
- Constitutional theory does not compel government provision but that is usually the dominant interpretation (Public Choice)



# References

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Thank you!

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