

The Contractarian Constitutional Political Economy  
of James Buchanan

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October 8, 2013

I was indeed converted by Frank Knight, but he almost single-mindedly conveyed the message that there exists no god whose pronouncements deserve elevation to the sacrosanct, be this god within or without the scientific academy. Everything, everyone, anywhere, anytime—all is open to challenge and criticism. **There is a moral obligation to reach one's own conclusions, even if this sometimes means exposing the prophet whom you have elevated to intellectual guruship.**

—James M. Buchanan. *Economics from the Outside*. Ch. 5, Texas A&M Press 2007

There seemed to be a surprising reluctance of modern social scientists, economists and political scientists alike, to accept the two stage decision structure which constitutional understanding requires, and which all game theorists necessarily adopt. **For over a quarter-century, I have found myself trying to clarify the constitutional perspective on policies, and on the economy as well, with demonstrable but quite limited success.**

—James M. Buchanan. *Economics from the Outside*, Ch. 10, Texas A&M Press 2007.

## I. Introduction

Buchanan was a prolific author-scholar whose collected works filled more than 7,000 pages in 20 volumes through 2002. Another volume or two could be added to this collection with work published in his last decade. He is unusual among post-World War II (WWII) economists in that he routinely published in major and minor economic journals every year and also wrote a long series of influential books. His seven most cited books are *The Calculus of Consent* (1962, with Gordon Tullock), *The Power to Tax* (1980, with Geoffrey Brennan), *Limits of Liberty* (1975), *The Reason of Rules* (1985, with Geoffrey Brennan), *Democracy in Deficit* (1977, with Richard Wagner), *Public Finance in Democratic Process* (1967), and *Cost and Choice*

(1969). His seven most cited papers are “An Economic Theory of Clubs” (1965), “Externality” (1962, with Craig Stubblebine) “Polluters’ Profits and Political Response” (1975, with Gordon Tullock), “Rent Seeking and Profit Seeking” (1980), “Federalism and Fiscal Equity” (1950), and the “Constitution of Economic Policy” (1987). Together these 14 works account for more than 20,000 Google citations (August 2013).<sup>1</sup>

These classic books and articles are, of course, only the tip of the iceberg of his enormous body of work and also of his influence on political economy and public finance. Another quantitative sense of the breadth of Buchanan’s published research is given by his H-statistic, which is about 100 using Google citations. He has approximately 100 books and papers that have received more than 100 citations (August 2013). A “normal” superstar might have 20. His work includes significant pieces on ethics, political theory, and economic theory, as well as on public finance and constitutional political economy. It is truly an awesome body of work.

As the starting quotes suggest, his research is largely an effort to figure “it all out” and to explain “it” to the academic community. The breadth of his interests was unusually wide and his sense of who needed explanations was also quite broad. He was an unusually creative and deep-thinking man. Thus, the process of communicating his ideas to economists, philosophers, and political scientists required both a variety of academic venues and modes of argument. These combined with his unusually fast pace of writing produced an enormous, rich, body of work.

This paper attempts to outline and summarize the main body of work in one strand of his research, constitutional political economy. This was the field in which James Buchanan devoted the most effort and to which he made the largest contributions. Although the finely grained arguments that he developed cannot easily be summarized, the main developments and central line of reasoning can be covered in a single paper, because his analysis focuses on a single framework, which continually reappears and is further developed as his

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<sup>1</sup> Two influential edited volumes could also be added to this list of classics: *Toward a Theory of The Rent Seeking Society* (1980, edited with Gordon Tullock and Robert Tollison) and the *Theory of Public Choice II* (1984, edited with Robert Tollison).

thinking matured about what would eventually come to be called constitutional political economy. Other similar pieces could be written about his contributions to public finance, his critiques of neoclassical economics, and his contributions to philosophy, but these other strands of his research are covered only in passing in this paper insofar as they directly contribute to his constitutional political economy.<sup>2</sup>

The grounding ideas and inferences of Buchanan's approach can be summarized as follows: (a) The appropriate level for analyzing and understanding social phenomena is the individual. (b) There are often mutual gains that can best be realized through collective action. (c) There are two levels of collective decisionmaking, selection of rules (constitutional choice) and selection of actions under those rules. (d) However, one cannot know beforehand the exact consequences of rules, nor can one read the minds of those affected by those rules. (e) Because every individual's interest counts, the ultimate legitimacy of the rules chosen can only be assured by decision procedures grounded in unanimity. (f) Thus, every agreement that meets the unanimity criteria is, by definition, an improvement. (g) Collective action at the constitutional level of analysis produces both property right systems (civil law) and collective decision-making systems (political constitutions). (h) However, the legitimacy of collective action in general and constitutional governance in particular requires individuals be fundamentally to be equal in their roles as citizens at the constitutional level of choice and also in the civil society framed by the constitutions chosen.

The goal of this paper is to show how these ideas emerged in Buchanan's research and were used to develop a very rich constitutional political economy.<sup>3</sup>

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<sup>2</sup> I have previously written on Buchanan's contractarian public finance, just after he won the Nobel Prize (Congleton 1988) and on his influence on the Virginia School of Political Economy on the occasion of his 80th birthday (Congleton 2002).

<sup>3</sup> Buchanan himself often provided summaries and overviews of his own research program. This was often done in passing in order to set up new research based on his earlier work. Nonetheless, Buchanan once told me that I put the pieces of political economy puzzles together better than most people and it is hoped that he would have supported this paper as he did my paper on his public finance written shortly after he won the Nobel Prize.

## II. The Historical Context

When thinking about the work of major figures in any field, it is often useful to know a bit about the historical circumstances in which they were working. Most scholars are substantially driven by their own discipline's pressing theoretical issues, but are also influenced by the pressing policy issues of their life. This tends to be more true of economics than of many other disciplines, because economic policy is an active area of legislation. Indeed, it can be argued that neoclassical economics emerged from the efforts of scholar-activists in the nineteenth century, who developed ever-better arguments for influencing policy decisions associated with trade networks and industrialization. Thus the work of influential scholars such as Smith, Mill, and Wicksell combine innovative positive analysis with normative analyses of the policy issues of their day. This tradition continued well into the twentieth century, as economics emerged as a separate field of study and subspecialties emerged.<sup>4</sup>

That broader, largely nonmathematical, partly positive, partly normative approach to economics, which might be called the political economy approach, was widely studied at top academic graduate programs until approximately 1960. Pressures to publish were much weaker, there were fewer journals to publish in and the mathematics and econometric revolutions had not yet occurred. There were mathematically and statistically sophisticated papers, as with Harberger, Friedman, Arrow, and Samuelson's early work, but such pieces occupied relatively few pages of the leading journals. Prose supported with a few tables and geometric illustrations were more common than equations or statistical analysis in top-ranked general journals until around 1970.

Partly because of this, the training, thinking, and writing style of scholars before 1960 tended to be broader and more historical, case oriented, and literary than persons trained in periods after that.<sup>5</sup> For example, Frank Knight's very influential theory of competitive mar-

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<sup>4</sup> Note that more than half of the 14 most cited Buchanan works address policy issues of the twentieth century, albeit in a general way.

<sup>5</sup> The methodological shift that occurred in the 1970s clearly affected Buchanan's ability to place his work in the "top" journals, which he had routinely done in the 1950s and 1960s. After 1970, partly

kets, *Risk Uncertainty and Profit* (1921) was still widely read, although it included no equations, no graphs, and no statistical support. Instead, it was a closely reasoned book that explained the fundamental logic of competitive markets (and is still worth reading). Knight's great exposition of competitive theory was still widely read as a classic in the 1940s and 1950s, much as Neumann and Morgenstern (1944), Debreu (1959), or Raiffa and Schlaifer (1961) would be read today. "Computers" were still people gifted at numerical calculations, who could do massive arithmetic calculations without error, rather than programmable devices.

The practical importance of public economics had expanded greatly in the 1930s and 1940s, because the scope of government programs throughout the West had simultaneously expanded and centralized in that period. After the war, the first pressing policy issues in the United States concerned demobilization and fears that shifting about half the economy and labor force from centrally managed wartime production to unmanaged (or at least less-managed) peacetime production would generate a second Great Depression. This, of course, did not happen. Instead, Western economies boomed for the next half century (albeit, punctuated with minor busts). This indirectly produced a series of policy issues concerned with the proper degree of spending for defense, infrastructure, social insurance, and regarding the proper degree of centralization. As defense spending shrank relative to their WWII levels, other initially much smaller government programs expanded and centralized during the same period.

It also bears noting that the period in which Buchanan grew to maturity, 1930–50, was one in which major shocks disrupted the entire world, throwing individual plans into disarray. That world could not be thought of as either well ordered or entirely predictable, unlike the one that emerged in the 1950s. In Buchanan's own case, the Depression altered his family's finances, causing him to shift from planned legal training at Vanderbilt to broad liberal arts training at nearby Middle Tennessee State University, where he majored in mathematics, English, and social science. His triple major was followed by a year of master's de-

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also because of a shift in his own focus, far fewer of his major papers appear in the *Journal of Political Economy* or *American Economic Review*. Until the 1970s, the tools taught in today's intermediate microeconomics courses were sufficient to satisfy the technical requirements for publishing in essentially all economic journals.

gree-level study at the University of Tennessee. The advent of World War II, in turn, interrupted plans for graduate study at Columbia, as he joined the Navy, rather than a Ph. D. program in statistics. After the war, Buchanan changed his mind about Columbia, opting for the University of Chicago.<sup>6</sup>

For persons of Buchanan's generation, Knightian uncertainty was not an abstraction but a fact of ordinary life. Great exogenous shocks could—and did—overwhelm even the best-laid plans of mice and men. Choices were nonetheless made, and plans revised when one changed his or her mind, sometimes but not always because of new external circumstances. These facts, together with Knight's teaching, affected Buchanan's vision of economics and politics throughout his career.

### **III. Methodological Individualism and the Social Contract: Politics as Complex Exchange**

The world was different in 1950 than it had been in 1920, but few fully appreciated the differences. In this new world, there were obvious—at least to Buchanan—issues concerning the new fiscal situation. The war's central-planning effort had ended and was replaced with ordinary markets and democratic politics.

Buchanan was far more methodologically self-conscious than most economists, partly because Frank Knight had persuaded him that nothing should be taken for granted. His first published articles addressed the proper way to think about government finance in a democracy during a time of peace (*Buchanan*, 1949) and analyzed the effects of increased demands for social services on federalism and on state and national tax systems (*Buchanan* 1950).<sup>7</sup>

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<sup>6</sup> He joined the navy to avoid being drafted into the army. His switch to Economics and to the University of Chicago after the war reflected his experiences in the Navy, advice from a former political science professor (C.C. Sims) and the G. I. bill. See "Better than Plowing" (*Buchanan* 1986, "Early Education," and "Sense of Authority."

<sup>7</sup> Buchanan's early work on interstate fiscal equalization (1950) was an effort to counter centralizing tendencies inherent in what would later be called a welfare state. "The laissez faire result will be the ultimate centralization of a large share of effective political power, either directly through the assumption by the central government of traditional state and local functions, or indirectly through restraining financial conditions in an expanded grant-in-aid system. Therefore, those who desire to see maintained a truly decentralized political structure in the power sense, must take some action in

If we accept the quid pro quo ideal, **the benefit principle is correct in the abstract; and the problem of individual imputation of benefits is a technical, not a theoretical, problem.** (Buchanan 1949: 499)

In his view, most of his contemporaries were making fundamental methodological mistakes about incidence, equity, and government policies. These mistakes were partly because the mainstream utility-maximizing framework indirectly made preference orderings appear to be both stable and potentially measurable, but also because most public economists too readily accepted utilitarian and other aggregate normative theories. Among Buchanan's "relatively absolute absolutes" was the principle that fiscal and regulatory policies should be assessed at the level of individuals or families.

#### **A. Consensus as the Only Plausible Norm, Given Methodological Individualism**

His alternative to the utilitarian framework was outlined in his second published piece (Buchanan 1949), but continued to evolve during the 1950s until it had an explicitly contractual and consensual basis.

[Part VI. CONSENSUS AMONG REASONABLE MEN.] In developing the argument of this essay, I have assumed that the social group is composed of reasonable men, capable of recognizing what they want, of acting on this recognition, and of being convinced of their own advantage after reasonable discussion. **Governmental action, at the important margins of decision, is assumed to arise when such individuals agree that certain tasks should be collectively performed.** To this extent, my argument rests on some implicit acceptance of a **contract theory of the state.** Since it is carried out only after general agreement, collective action is essentially voluntary action. (Buchanan 1959: 134).

A consensual basis for state policies is required if one accepts the net benefit principle if benefits are subjective and not fully known by individuals until a choice is made. If one does not believe that people are simply maximizing a preexisting utility function, but rather inventing their rank orderings over goods as they make decisions, the only possible method through which universal net benefits can be determined is agreement. There is no other

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support of proposals aimed at adjusting these interstate fiscal differences." (Buchanan 1950: 599).

possibility.<sup>8</sup>

It is this combination of beliefs, rather than the benefit principle or methodological individualism or subjectivism alone that led Buchanan to become a contractarian.

Most utilitarians also begin with the assumption that it is individuals that matter. Everyone counts and counts as individuals. State or class interests, grandeur and legacy do not, except insofar as they are values of individuals in the community of interest. However in contrast to Buchanan and other contractarians, it is total utility that determines whether a policy is a good one or not, not whether all anticipate net benefits from the decisions reached. This requires adding up utilities (aggregating them as real numbers), which in turn requires utilities to exist independently of any choices made.

Note that the assumption that utility functions do not really exist also separates Buchanan from those who rely only on the Pareto criteria. A policy analyst who regarded only Pareto-superior moves to be improvements would also attempt to find policies that made some better off and none worse off. However, as long as utility functions were stable and could be estimated, there would be no benefit from actually asking the persons affected whether they agreed with such policies or not. Without such readily estimable utility functions, there is really no alternative but to ask.

Methodological individualism led Buchanan to a particular normative theory because he regarded rank orders of alternatives to be a consequence of choice, rather than the determinant of choice. His contractarian approach may have been stimulated by the conventional methodological training of economists, but his support for it is not simply that individuals are the atoms of social systems. Nor, does methodological individualism necessarily make one a contractarian. Utilitarians simultaneously use individualistic models of choice

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<sup>8</sup> “The attempt to examine the consistency of majority voting requires the assumption that individual values do not themselves change during the decision-making process. The vulnerability of this assumption in the general case has been shown by Schoeffler. **Individual values are, of course, constantly changing**; so a post-decision ordering may be different from a pre-decision ordering” Buchanan (1954a: 120). See also (Buchanan 1959: 136). Regarding over aggregative normative analysis, consider this criticism of focusing on state and state governments rather than individuals: “Equality in terms of states is difficult to comprehend, and it carries with it little ethical force for its policy implementation. And, is there any ethical precept which implies that states should be placed in positions of equality?” (Buchanan 1950: 586).

while using aggregate indicators of policy performance.<sup>9</sup>

## **B. From the Productive State to Constitutional Analysis**

Only if governments can be productive, in the sense that they produce services that are expected to yield net benefits for everyone, can governments be based on agreement. Unless there are policies that can advance joint interests, a contractarian theory of public policy and good government would be uninteresting. The result would be the null set rather than a rich menu of alternatives.

The idea that collective action could be mutually beneficial is thus evident throughout Buchanan's long career.

The state has its origin in, and depends for its continuance upon, the desires of individuals to fulfill a certain portion of their wants collectively. The state has no ends other than those of its individual members and is not a separate decision-making unit. State decisions are, in the final analysis, the collective decisions of individuals. (Buchanan 1949: 498.)

The idea that collective action could advance broad shared interests was doubtless something he brought to Chicago with him, rather than being generated by his training there. His family had long been involved in local politics and the idea that national interests were at stake in WWII was (nearly) universally accepted after Pearl Harbor (although not before).<sup>10</sup>

Nonetheless, most of his early published work was of the conventional one-policy-at-a-time variety, which still dominates the field of public economics. This early work analyzed public utility pricing, tax systems, revenue-sharing systems, and public debt—essentially one policy at a time. Policy decisions and governmental structures were initially

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<sup>9</sup> “Properly understood, my position is both democratic and egalitarian, and I am as much a scientist as any of my disciplinary peers in economics. But I am passionately individualistic, and my emphasis on individual liberty does set me apart from many of my academic colleagues whose mindsets are mildly elitist and, hence, collectivist.” (Buchanan 2007: Kindle location 1900.)

<sup>10</sup> The Senate unanimously supported the declarations of war against Japan, Germany, and Italy in December 1941 in three separate votes (82–0, 88–0, 90–0). See the US Senate Website. There was only a single negative vote in the House of Representatives opposing the declaration of war against Japan after Pearl Harbor.

beyond the scope of his analysis, in part because it was regarded to be beyond the scope of economics.

During the late 1950s, Buchanan gradually shifted from the conventional policy-by-policy perspective of mainstream public economics to an institutional or constitutional perspective. If policies are chosen through politics and some policies are generally believed to be less desirable than others, then improving the method of choice could be an effective manner for improving public policy. His interest in governments was also partly a consequence of his concern about where the proper line between government and private action should lie, both in general and on particular policies. Such concerns were and remain natural ones for public economists—although few become constitutional theorists.

His shift to a constitutional perspective was also stimulated by the new rational choice-based research on government decision making pioneered by Black (1948, 1958), Arrow (1951), and Downs (1957). Buchanan first discussed the process of making public policies in his review and critique of Arrow's classic book (Buchanan 1954a) and began thinking systematically about institutional choice in his examination of differences between market and democratic decisions at roughly the same time (Buchanan 1954b). These became main focuses of his research during the next few years.<sup>11</sup>

At the end of his first decade as an academic economist, a grand synthesis of his thoughts on public economics and political economy was presented in a book written with a departmental visitor in the 1959–1960 academic year.

### ***C. The Calculus of Consent***

Gordon Tullock was a visiting scholar at the University of Virginia in 1958-9. During his visit, Tullock analyzed problems with majority rule voting (1959) and toward the end of his stay began to analyze choices among collective choice methods.<sup>12</sup> At some point during

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<sup>11</sup> Buchanan spent the 1956–57 academic year as a Fulbright fellow in Italy, where he read classic works by Italian public finance scholars such as de Marco, Mazzola, and Puviani. (He had previously read an English translation of de Marco's *First Principles of Public Finance* during his graduate school days.) His Italian year also increased his interest in the politics of public finance and in Italy itself. (See Buchanan 2007: ch. 6.)

<sup>12</sup> It is interesting to note that Buchanan controlled his own intellectual environment more than

his visit, Tullock realized that a continuum of voting methods existed and that it was not immediately obvious that there anything special about majority rule. Tullock circulated a paper titled “A Preliminary Investigation of the Theory of Constitutions” in the department, which includes the core of what would become chapter 6 of the *Calculus of Consent*.

Toward the end of Tullock’s visit, Buchanan and Tullock recognized that their ideas about constitutional theory were complementary, and they began to write a book that would forever link their names in the minds of persons working in the fields of public choice and constitutional political economy.<sup>13</sup> Buchanan and Tullock were about the same age at the time (40 and 38, respectively) and both very quick, creative, and hardworking men. However, Buchanan as department chairman and the more experienced and better-known scholar was the senior partner in this extraordinary project. *The Calculus of Consent* was Buchanan’s fourth book and Tullock’s first.<sup>14</sup>

*The Calculus* developed new tools for constitutional analysis and placed the results and approach in a broad philosophical context. Tullock’s chapters provide the neoclassical geometry of institutional choice, whereas Buchanan’s stress the reasons why such choices

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most academics do, and did so from a relatively early age. Buchanan had been recruited to the University of Virginia in 1956 to be department chairman (from Florida State University, where he had been chairman for two years). Shortly after moving to Virginia, he secured a grant to fund a visiting scholars program that brought Knight, Hayek, Polanyi, Allai, Ohlin, Hutchison, Black, Leoni, and many others to campus. He and Warren Nutter created the Thomas Jefferson Center for Study of Political Economy in 1957. Tullock joined, initially as a visiting scholar, in 1958. He remained chairman until 1962, but continued codirecting the center. (His talent as an administrator and leader was evidently partly the result of his experience as a junior naval officer at the headquarters of the Pacific Fleet during WWII, where he had many opportunities to observe and experience the effects of leadership and organization, both good and bad.)

<sup>13</sup> It is my belief that it was Buchanan, rather than Tullock, that saw the overarching importance of what he and Tullock had been working on and suggested the book project, which they wrote over the course of a year. (Tullock was at the University of South Carolina for most of that period, making their joint efforts dependent on old-fashioned postal mail, as there was no Internet or e-mail at the time). The last draft of the book emerged from Buchanan’s typewriter and has his “voice”—as true of most of his coauthored works. Both men had obtained fellowships for that year (Buchanan from Ford and Tullock from Rockefeller), which allowed them to devote themselves nearly full-time to the work.

<sup>14</sup> Buchanan had previously published two textbooks (the first coauthored) and a scholarly book on the public debt. Tullock had written a draft of a book on bureaucracy, but it was not published until well after the *Calculus* and evidently needed some editorial help from Buchanan to get it into shape for publication.

might be made—indeed have to be made. Together they demonstrated that rational-choice models can be used to analyze a broad range of constitutional architectures and normative issues.<sup>15</sup>

The book format allowed Buchanan to further develop several methodological and philosophical arguments that he had previously published in journal articles in very condensed form. Ideas worked out for his 1949 paper on the theory of governance and his 1954a paper analyzing and criticizing Arrow's famous book are especially evident. Points expressed in a few sentences in previous journal articles are expanded into chapters, as arguments were fleshed out and integrated. Examples of the "old ideas" include the following: connections between assumptions of free will and the possibility of a constitutional theory (1954a: 120), critiques of aggregate welfare economics (1954a: 117–19), his insistence that unanimous agreement is required for true social choices to occur (1954a: 121), that both markets and political systems may produce a spontaneous order (1954a: 122), the difference between individual and collective rationality (1954a: 122–23), and that self-interest not be interpreted too narrowly (1954a: 120).<sup>16</sup> Several other novel points emerge as extensions of arguments previously developed, for example, on the importance of uncertainty in voting and the differences between choices and outcomes in politics and in markets at the individual and system-wide levels of analysis (1954b).

Given this, one can understand Buchanan's modesty about the originality of the contribution of *Calculus*, although for most readers the overall effect of the first five chapters of *Calculus* was a bold, new, self-consistent methodology for thinking about rational choice itself, how it can and should be used to think about markets, politics, and institutional choice, and about fundamental differences between the outcomes produced by markets and politics.

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<sup>15</sup> See Congleton (2012) for an overview of Tullock's contributions to the *Calculus* and to constitutional political economy. The neoclassical parts that demonstrate how rational-choice models can be used to analyze alternative decision rules and constitutional architectures is mostly Tullock's contribution to the joint enterprise.

<sup>16</sup> Buchanan once told me that his piece on Arrow was the only one in which he felt intellectual epiphanies, and in a careful reading of this dense piece, one can see many points that would be repeated in his constitutional political economy that were worked out in that piece for the first time.

A synthesis and restatement can be original and thought-provoking work, even if many of the individual ideas have been read before.

In addition, many completely new points were made in both Buchanan's and Tullock's chapters, often mentioned in passing in a few tightly written sentences. These including short riffs that anticipated Buchanan's (1965) theory of clubs (1962: 40, 86), Brennan and Hamlin's (2000) theory of expressive voting and Brian Caplan's (2011) theory of rational irrationality (1962: 35). Buchanan's contributions to Tullock's chapter 6 on optimal collective decision rules include Buchanan's first clear statement of what would later be called a "veil of uncertainty," and why such a veil may increase prospects for constitutional agreement (1962: 60–62).<sup>17</sup> Chapter 7 extends and deepens Buchanan's critique of social welfare functions and defends consensus as a normative criteria, again elaborating points made in passing or implied in earlier work, but here given a central role and broader elaboration. Chapter 8 further investigates differences between political and market choices and includes several new geometric tools and a short analysis of federalism that anticipates much of what will be known as fiscal federalism after Oates' (1972) book is written a decade later.

That consent could be used as a norm had been suggested during the seventeenth and eighteenth centuries, as social contract theory was developed by Hobbes, Locke, Montesquieu, and Rousseau. *The Calculus* does not directly revisit the arguments or the hypothetical settings of the Enlightenment political philosophers, as *The Limits of Liberty* would more than a decade later. Instead it points out that there are good economic reasons for persons to agree to solve various public goods and externality problems. Given this, some method of making decisions is necessary.

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<sup>17</sup> The term "veil" for the uncertainty idea was applied much later, after it had been found to complement and contrast with Rawls's use of the "veil of ignorance" in his classic book on justice as fairness (1971). The more or less contemporaneous work of Rawls and Harsanyi on fairness and uncertainty and earlier work by Vickrey were at that point unknown to Buchanan or Tullock. Otherwise, the contrast between what would later be called their "veil of uncertainty" approach, the Rawlsian "veil of ignorance," and Harsanyi's utilitarian uncertainty would surely have been laid out in *Calculus*, instead of at a much later date. See, for example Buchanan and Vanberg (1989). Indeed those early pieces by Rawls and Harsanyi are not much cited relative to pieces written well after *Calculus*.

*The Calculus* suggests that group of individuals might unanimously agree to use decision rules that require less than unanimous agreement for purposes of day-to-day decision making in order to reduce decision costs. Majority rule is simply one of the possible decision rules that a group might agree to.

#### **D. Bootstrapping**

This general pattern of revisiting old ideas, extending, deepening, and generalizing them, while sprinkling the result with innovations that would later become significant pieces is a hallmark of Buchanan's work. A few earlier sentences would be expanded into a paper, a paragraph or two into a book.

Bootstrapping in this sense is partly a mode of communication and partly a methodology for creating a coherent world view. Ideas that are published as secondary or tertiary points in separate papers will pass unnoticed by many readers. Combining them in one place makes them more complete and obvious, which makes them more likely to be understood and to attract attention. Extending old ideas into new papers also creates a connected analysis that tends to make the results internally consistent, at the same time that the reach of older ideas is extended. Generalizing older ideas normally requires significant innovation. For example, Buchanan's (1965) important paper on the theory of clubs is arguably a "mere" generalization of Tullock's analysis of the effects of group size on decision-making costs developed in chapter 8 of *Calculus*. However, this particular generalization required an entirely new idea about the shareability of goods, which created a new, previously unnoticed continuum between pure private and pure public goods.

The result of bootstrapping is a body of work that is ever growing but intertwined and mutually reinforcing. Of course, it helped that Buchanan's political economy never became mainstream. Although scholars from many fields of academia could appreciate the sophistication and grandeur of his contractarian approach and many others found bits and pieces of it to be of great interest, only a handful of scholars truly joined his research program. Buchanan, nonetheless, tirelessly tried to persuade more to do so.<sup>18</sup>

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<sup>18</sup> There is a phrase that captures this relentless effort that Buchanan would introduce to his stu-

That so many of the ideas developed at length in his books are based on earlier shorter pieces written by him alone makes the innovations easier to digest and also allows us to separate the Buchanan contributions from those of his coauthors.<sup>19</sup>

#### IV. Regrounding Liberal Constitutional Theory

##### A. After *Calculus*

Having worked out a new philosophical basis for normative public economics and provided a new economic basis for thinking about constitutions, Buchanan and Tullock went off in intellectually separate directions after *The Calculus*. With Buchanan's assistance, Tullock's preexisting manuscript on bureaucracy became a book (1965). Tullock subsequently focused on rational choice-based analyses of science, law, and interest group politics. The most influential of his many contributions during the next two decades were his conceptual and game theoretic foundations for what would become the rent-seeking strand of public choice research (1967, 1980).<sup>20</sup>

Buchanan returned to public economics with papers on externalities (1962 [with Stubblebine], 1966, 1969), earmarked taxes (1963), various critiques of Pigovian pricing (1962, 1968), and peak-load pricing (1966). During this period, he also wrote a short paper on club goods (1965a), which is arguably his most important contribution to neoclassical economics. In addition, he continued to deepen and extend his contractarian normative theory and thoughts on methodological individualism. His clearest methodological statement about the proper roles of economics and economists was published in 1964 in the *Southern Economic Journal*. A series of papers that addressed philosophical issues were pub-

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dents each year: "Only by varied and repeated iteration can new ideas be impressed on unwilling minds." A sentiment expressed to him by Frank Knight with roots in Herbert Spencer. And, it may serve as a partial explanation for his interest in revisiting fundamental issues so many times.

<sup>19</sup> Coauthors were often necessary stimulants to larger book enterprises, but in most cases, the main body of the work reflected generalization of earlier pieces rather than the creative contributions of those coauthors. Moreover, as with *Calculus*, the final drafts normally emerge from Buchanan's manual typewriters, which increases his claim of authorship, because so many of the novel contributions of his coauthors are rewritten to bring them into the Buchanan universe.

<sup>20</sup> See Congleton, Hillman, and Konrad (2008) for an overview of the enormous literature stimulated by Tullock's two papers on rent seeking.

lished in *Ethics*, a leading philosophy journal published by the University of Chicago. Those papers analyzed such topics as the choice of ethical systems in large and small groups (1965b), the role of truth in science and politics (1967), and the nature and political implications of different notions of equality (1971), among other topics.

As his world view and methodology deepened and reputation expanded, Buchanan's pace of writing and publication accelerated, with a half dozen or more papers becoming his normal annual rate of production in the 1960s, rather than the former two or three.<sup>21</sup>

Buchanan and Tullock's return to political economy occurred in the mid to late 1960s and was stimulated in large part by two related events: establishment of a new journal, originally *Papers in Non-Market Decision Making*, later renamed *Public Choice*, and second, creation of a new center at Virginia Polytechnic Institute (VPI) in 1968. The journal was an outgrowth of a series of meetings that Buchanan and Tullock had organized among those interested in non-utilitarian normative theory and the extension of rational-choice models to social science generally, including such scholars as John Rawls, William Riker, James Coleman, and Mancur Olson, among others. These conferences revealed a need for a journal devoted to such issues.

The new center was initially organized by Charles Goetz, a former Buchanan student, who with the support of his chairman and dean worked to establish a Center for Study of Public Choice at VPI in Blacksburg, Virginia. Together, they persuaded Gordon Tullock to move to VPI in 1968 and Buchanan in the following year. Leadership roles at both the journal and the new center naturally focused both Buchanan and Tullock's attention on rational-choice politics, political science, and constitutional theory.<sup>22</sup>

In Buchanan's case, it could be said that his "new" research agenda was simply the establishment of deeper foundations and new applications of ideas that he had previously

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<sup>21</sup> The acceleration may also reflect the fact that he stopped being the University of Virginia's economics department chairman in 1962.

<sup>22</sup> Buchanan became the director of the new center and Tullock the editor of *Public Choice*. Buchanan had left the University of Virginia for the University of California, Los Angeles in 1968. Tullock had joined the faculty at University of Virginia in 1962, but moved on to Rice University in 1967, after being denied promotion to full professorship, in part because Tullock lacked a PhD in economics.

worked out. Again, much of his work was presaged by earlier publications, and again he wrote on a variety of topics, not all of which fell under the rubric of constitutional political economy. For example, Buchanan wrote a few pieces analyzing broad issues of the day, reflecting his concern that social capital had been and was being eroded by the social shifts of the 1960s.<sup>23</sup> Buchanan's pace of writing increased again as he began routinely writing 8–10 papers a year and a new book every 2–3 years (often a collection of conference papers).<sup>24</sup>

The remainder of this paper focuses on Buchanan's major books on contractarian political economy written in the next three decades: *The Limits of Liberty* (1975), *The Power to Tax* (with G. Brennan 1980), *The Reason of Rules* (with G. Brennan 1985) and *Politics by Principle, Not Interest* (with R. D. Congleton, 1998). These are not the only places in which he addresses issues associated with constitutional political economy, but the books provided Buchanan with an opportunity to bring his ideas together and elaborate them in a manner that was not possible in shorter pieces.

### **B. *The Limits of Liberty***

*The Calculus of Consent* showed how rational-choice models can be used to analyze the emergence of a liberal constitutional design from a constitutional convention of forward-looking men and women. It does not analyze what came before nor how the *status quo ante* might have emerged, but it does show that reasonable men and women could have adopted the complex constitutional architecture of the United States as a means of pursuing common interests while minimizing risks from political externalities and decision costs. It is in effect an abstract analysis of the U.S. constitutional convention of 1787 and the state equivalents that took place in about the same period. These constitutional negotiations took place in a setting in which potential members of a polity were initially known and preexisting distributions of property, income, and welfare could be protected and extended through better

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<sup>23</sup> The most important of these was a book (Buchanan 1977) on the political economy of national debt coauthored with Richard Wagner.

<sup>24</sup> His output rate of about one page a day of finished material continued thereafter for most of his life; 350 pages a year is ten 28–page papers and a third of a 200–page book. His output slowed a bit after his retirement at the age of 80 in 1999. Even in his late eighties, he routinely produced more original work each year than most of his colleagues at George Mason University or VPI.

institutions for collective decision making.

*The Limits of Liberty* investigates issues associated with the origins of the pre-political setting. It was stimulated by the mass demonstrations of the 1960s, the anarchy seminar series organized by Winston Bush at VPI, and Buchanan's own increasing interest in the conceptual foundations of contractarianism and constitutional theory. *Limits* revisits what might be called the Lockean critique of Hobbes, although it does not mention Locke's theory, except in passing near the end of the book.<sup>25</sup> Buchanan, like Locke, rejects the social contract suggested by Hobbes, namely one in which unlimited sovereignty is shifted to the king or parliament. This is partly because he accepts Locke's conclusion that such one-sided contracts would never be agreed to. However, his reasoning does not rest on the Lockean defense that anarchy might be preferable to Hobbes' social compact, but rather on the ability of a well-designed constitution to produce outcomes that are better for all citizens than those associated with Hobbes's unconstrained sovereign. Buchanan shares with Hobbes a vision of anarchy that is quite unpleasant.

In *Limits of Liberty* Buchanan lays out a seven-level analysis, although as before he stresses just two: the constitutional level and the post-constitutional level, and focuses for the most part on the first two. The seven levels are: (1) the Hobbesian equilibrium, (2) the civil law, (3) post-civil law activities including trade and theft, (4) the political constitution, (5) post-constitutional political activities including voting and vote trading, (6) a process of constitutional review, and (7) activities that take place given that review process, including legal activities associated with review and perhaps constitutional amendment. Three pairs of constitutional agreements and post constitutional behaviors are included in this schema (2 and 3, 4 and 5, 6 and 7) .

The essential logic of the seven stages of constitutional development is as follows. Buchanan suggests that the first round of constitutional negotiations takes the anarchy equilibrium distributions of wealth and welfare as given and attempts to reduce losses from ongoing conflict by developing clear domains in which individuals would exercise complete

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<sup>25</sup> Buchanan once told me that the timing for *The Limits to Liberty* was also influenced by the 200th anniversary of the Declaration of Independence, which occurred in 1976.

control. This is Buchanan's novel theory of the origin of common law, or civil law more generally. It can be thought of as a multi-dimensional cease-fire agreement. Given the equilibrium that emerges under the civil law agreed to, Buchanan suggests that another round of constitutional negotiations would take place over political constitutions of the sort analyzed in *The Calculus of Consent*. A contract-based government emerges in the fourth stage in part because some method of enforcement is necessary to prevent a reversion to lawless state. The persons at risk would unanimously agree to enforced limits on their private liberties in exchange for similar commitments by the other members of their community. In addition to enforcement problems, there also are public good and externality problems that can be addressed by such governments. Swamps might be drained or mosquito abatement provided, for example. Although the contractarian state is a productive organization, the political constitution also needs to be enforced to restrict collective action to the agreed processes of decision making and domain of public policy. This requires a constitutional review process of some sort, as with a supreme court.

Most of the analysis of *Limits of Liberty* focuses on the shift from anarchy to a law-based society. In contrast to most contractarian works, however, *Limits* does not assume that all persons are initially equal in their abilities. As a consequence, the initial equilibrium of wealth and welfare may be very unequal and bargaining may lead to a broad range of social contracts, which partly accounts for the subtitle of the book. Essentially anything between anarchy and Leviathan can emerge, according to the initial distribution of talents and luck in the pre-constitutional setting.

What is unique about Buchanan's analysis besides attempting to analyze unequal beginnings is that he shows that a very broad spectrum of possible institutions can be consistent with contractarian procedural norms. For example, slavery could result from agreement, as a dominant party in a struggle over resources may offer the obvious loser a choice between living as a dutiful slave or death. (Accepting slavery can be a voluntary choice if the alternative is death—as obliquely suggested by the slogan on New Hampshire license plates.) Indeed, Buchanan suggests that Hobbes' solution is essentially equivalent to a slavery contract.

As in *The Calculus*, much of *Limits of Liberty* is “simply” a restatement, elaboration, and better integration of points that he had made before. Other ideas could be said to have been “in the air” at VPI at the time, including the idea that resources could be wasted in conflict and that avoiding losses from such conflict could motivate agreement.<sup>26</sup> As in *The Calculus*, there are also many new tightly expressed points, including ones that anticipate Epstein’s (1985) work on takings, Meltzer and Richard’s (1983) work on majoritarian redistribution, my own work on how particular institutions may reduce losses from conflict (1980, 1983), and the social capital research program that emerged in the 1990s following Putnam’s (1995, 2000) highly cited paper and book. Buchanan uses the term public capital, rather than social capital, to refer to ingrained patterns of deference to the law. There are also novel, often implicit, critiques of Hobbes and Locke in many of the special cases examined.

The overall analysis undermines some of the appeal of contractarianism as a social philosophy, which must have been an unpleasant surprise for Buchanan. If even slavery is conceptually compatible with contractarianism, can any social state be considered illegitimate? Nonetheless, in *Limits*, Buchanan insists that only procedures through which contracts are negotiated can be evaluated, not the outcomes of those contracts.

It is evidently the assumption of natural equality that produces liberal as opposed to authoritarian social contracts. In the last few chapters and subsequent normative work, Buchanan returns to a hypothetical world of equals and also to the constitutional problems of contemporary Western democracies.

### ***C. The Power to Tax***

His next book on constitutional political economy (with Geoffrey Brennan) returns to public economics, but analyzes a variety of public finance issues as problems in constitutional design, rather than conventional public policies. Brennan and Buchanan focus on fiscal rather than political constitutional issues, a focus missing from both classic contractarian analysis and contemporary public economics. *The Power to Tax* (1980) analyzes whether restrictions on a government’s power to tax is likely to be part of a constitutional design

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<sup>26</sup> Indeed, I remember making this point in an undergraduate term paper written at VPI in 1973.

adapted by citizens who realize that political agency problems exist.<sup>27</sup>

Both their 1977 paper and book use Hobbes' term for an uncontrollable government, but this use should be interpreted as a worst-case outcome of constitutional design errors, rather than as a necessary evil to escape from an even worse anarchy. Leviathan is the aim of a social contract in Hobbes, where its associated law and order justify unlimited transfers of authority to a central authority. In *Power to Tax*, Leviathan is analyzed as a possible consequence of imperfect constitutional design, which allows the government's taxing authority to be captured by a stable transfer-maximizing majority coalition, a budget-maximizing, poorly monitored Niskanen-type bureaucracy, or by a powerful self-interested political leader (president or prime minister) interested in expensive projects.

In their analysis, Buchanan and Brennan assume that constitutional constraints can limit such a Leviathan's behavior, whereas in Hobbes's context, no constraints can bind the ruler. In contrast to *Limits of Liberty*, no effort is made to explain from whence the status quo ante comes, nor in contrast to *Calculus*, is there a sustained effort to analyze electoral methods of aligning the central government's interests with those of the governed. The civil law and its associated distribution of wealth and welfare are taken for granted, and electoral measures are assumed to operate poorly because of the cost of monitoring.

Only the tax side of the fiscal ledger attracts significant attention in the book, which breaks from Buchanan's early work on government finance.<sup>28</sup> The difference is that in this case revenues produced are initially assumed to be spent on projects that generate little or no benefits for the average tax payer. This assumption frees them to think about alternative tax instruments in terms of their incentive effects on the behavior of a tax-revenue maximiz-

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<sup>27</sup> *The Power to Tax* is the only one of Buchanan's major coauthored books in which no mention of a division of writing responsibilities is mentioned in the preface. This book, more than the others, is evidently truly a joint work, and Brennan's influence on the prose and models is evident throughout the book. *The Power to Tax* is an extended version of Buchanan and Brennan (1977), a provocative piece published in the *Journal of Public Economics*.

<sup>28</sup> In this it could be said to complement *Democracy in Deficit: The Political Legacy of Lord Keynes*, written with Richard Wagner and published in 1977. That book focused nearly entirely on the political economy of debt finance. The policy relevance and impact of *Democracy in Deficit* and *The Power to Tax* doubtless played a role in bringing Buchanan's work to the attention of the Nobel Committee a few years later.

ing fisc. These constitutional and behavioral assumptions both motivate and simplify the analysis conducted in the book.

*The Power to Tax* for the most part evaluates how total and net tax burdens can be reduced in the absence of effective monitoring by voters. Among their more controversial contributions to normative public finance are defenses of relatively narrow tax bases, uniform taxation, regressive taxes and opposition to lump-sum taxes. Most of these rules limit the revenue yield of a given tax system. Eliminating the use of lump-sum (confiscatory) taxes implies that a government cannot simply take everything that it wants, up to and including the liberty of taxpayers, as might be said of a true Leviathan. Moreover, linking revenue sources to complementary government services can induce a net-revenue maximizing government to produce desired services, as a gasoline tax may be said to encourage the production of highways.

It bears noting that mainstream normative analysis of tax systems reaches exactly opposite conclusions. Lump-sum taxes are supported by most public finance scholars because they minimize deadweight losses, although they are very rarely used in the real world. These same scholars also favor well-crafted, highly variegated taxes (as with Ramsay excise taxes), which can also reduce deadweight losses relative to uniform taxation. These too are rarely used in the real world. Earmarking, it is argued, may inefficiently induce expenditures on unneeded public services. Utilitarian-based analysis of optimal taxation tends to favor progressive taxation, rather than progressive or proportional taxation, because diminishing marginal utility of income implies that tax burdens can be reduced through such taxes.

The mainstream approach, of course, is ardently utilitarian rather than contractarian in methodology, and its conclusions completely ignore the possibility that high officials (or the electorate) have any but utilitarian goals. The base model of most public economics is the well-mannered social welfare-maximizing central planner, which is essentially the opposite of Leviathan. No possible divergence between the interests of government officials and the implicitly utilitarian citizenry is acknowledged or analyzed. Instead, optimal taxation is determined by investigating what a benevolent central planner would do in particular circumstances. *The Power to Tax* demonstrates that once political agency costs are brought into

the analysis, many normative conclusions change.

Although their conclusions about the best tax instruments vary as they examine a long series of special cases, their general conclusion is that neither tax systems nor tax rates should be subject to manipulation by every officeholder that may assume authority. Instead taxation should be limited to relatively clear sources of revenue, to tax systems with uniform rates on the allowed tax bases, and ideally to tax bases that are complementary to the public services desired. If political agency problems are possible, tax systems should (and will) include a constitutional dimension.

Although relatively little of the book is devoted to positive analysis, it is interesting to note that most Western governments are both politically and constitutionally restricted from using lump-sum taxes. The various takings clauses of constitutional documents imply that governments cannot simply take a private house, hotel, or office building and use them to provide offices to bureaucrats; they must compensate the owners if they wish to do so. Moreover, most income tax, value-added tax, and property tax systems in the West are relatively flat and use only a subset of economic income for their tax bases. Although relatively modest changes in rates or tax bases do take place as the government's leadership shifts among political parties, few radical changes do. Such inhibitions make little sense from the perspective of contemporary normative public finance, which assumes that governments always maximize social welfare. However, they make complete sense from the constitutional perspective of *The Power to Tax*, in which the benevolence of government or the alignment of its interests with those of the citizenry is not taken for granted and not assumed on the part of the citizenry.<sup>29</sup> It is quite possible the citizenry (or constitutional negotiators) had already reached many of Brennan and Buchanan's conclusions, if not the public finance in-

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<sup>29</sup> Their paper and book stimulated only a modest amount of theoretical work in public finance on fiscal constitutions, as with Usher (1981). It may have played a larger role in politics, in which tax constraints were often proposed via referenda. Their analysis of tax competition among governments played a larger role in the subsequent federalism literature, as with Oates (1985) and Qian and Weingast (1997), and in the corruption literature that emerged in the next two decades, as with Rose–Ackerman (1999) and Schneider and Enste (2000). The Leviathan model also played a role in subsequent analyses of dictatorship by Olson (1993) and Wintrobe (1998) and for constitutional theory as applied to policy analysis (Persson and Tabellini 2003).

telligentsia.

The impact of the book may partly reflect the latter: that it provides theoretical underpinnings for intuitions that many economists, policy analysts, and voters already had. Its impact also reflects the fact that it was written at a time when governments in the West were growing rapidly as national social insurance and transfer systems expanded. It is in the period between 1960 and 1985 that the modern welfare state emerged.<sup>30</sup> In that context, it could well be imagined that governments were trying to maximize their revenues. The book's narrow focus, clear message, and neutrality with respect to contemporary politics doubtless also increased its impact.

#### **D. *The Reason of Rules***

*The Reason of Rules* (1985), also written with Geoffrey Brennan, is arguably the keystone in the Buchanan constitutional edifice.<sup>31</sup> It provides the clearest and most complete statement of Buchanan's rule-based, two-stage approach to political economy. It revisits the logical foundations of constitutionalism and contractarianism, integrates and extends old arguments, and generalizes the approach to include "ordinary" choices by individuals. Unlike *The Power to Tax*, it is a broad and deep book, necessarily so because of the issues discussed. It does not revisit in substantial detail the institutional arguments worked out in *The Calculus of Consent*, *Limits of Liberty*, or *Power to Tax*. Instead, the book takes those for granted and demonstrates that the contractarian and constitutional perspective can be used to shed light on a wide variety of issues in both private and social life. In particular, it builds a contractarian case for rule-based precommitments.<sup>32</sup>

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<sup>30</sup> See Congleton and Bose (2010) for a public choice analysis of the emergence of the welfare state in this period.

<sup>31</sup> In contrast to *The Power to Tax*, whose first draft was penned by Geoffrey Brennan, the writing of *The Reason of Rules* was similar to that of *The Calculus of Consent*, in which different chapters were written principally by different authors. As with the Tullock collaboration, there are distinct differences in styles of argument and analysis in their respective chapters. The contrast in styles somehow manages to make the book more interesting, as tightly woven arguments are combined with novel ideas and new choice models, geometry, and supporting mathematics. Brennan, like Tullock, is far more neoclassical and less concerned with creating tightly woven arguments than is Buchanan.

<sup>32</sup> Readers interested in Buchanan's constitutionalism and contractarianism are directed especially to the first three chapters of *The Reason of Rules*. The first is by Brennan, who is the more neoclassical

The contractarian norm is essentially a voluntaristic one, which might at first seem to run counter to arguments favoring rules. After all, rule-bound behavior involves constraints and enforcement often involves force. In Buchanan's normative universe, essentially any voluntaristic procedure dominates ones in which coercion plays a role, other things being equal. If two people agree that X is better than Y and a shift from Y to X affects no one else, then Y is better than X. Why? simply because the people affected agree that it is. Procedures such as voluntary exchange and consensus-based decision making are good procedures, because they generate voluntary agreements.

In contrast, constitutional and many other rules outlaw a subset of potential agreements, and their enforcement requires threats of various kinds, which Buchanan and Brennan refer to as coercion. Such rules are always suspect, *unless they have formally been agreed to* at another stage of negotiations. *The Calculus of Consent, Limits of Liberty*, and many shorter pieces had previously demonstrated that a wide variety of such rules could be unanimously agreed to as constitutional or quasi-constitutional prohibitions, because they, on balance, *increase* the domain of potential mutually beneficial agreements that can be realized, rather than reduce them.

For example, in *Limits of Liberty*, it is argued that clear boundaries and domains of permissible actions reduce wasteful conflict, freeing resources for other uses. Such boundaries limit some choices, but produce new possibilities as resources are redirected from conflict to productive uses. The constraints focused on in *Limits* were mostly of the civil law variety, and their justification relied on mutual advantages from reduced conflict, rather than problems associated with weakness of will or tradeoffs between short- and long-run interests. Property rights were solutions to social dilemmas, rather than efforts to correct propensities to make systematic mistakes in judgment.<sup>33</sup>

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of the two. Chapters 2 and 3 provide very clear statements of Buchanan constitutionalism and contractarianism and includes a penetrating analysis of why so many others disagree with that perspective.

<sup>33</sup> The notion of weakness of will was evidently introduced into Buchanan and Brennan's thinking by Jon Ester's (1979) book, *Ulysses and the Sirens: Studies in Rationality and Irrationality*. The idea that people occasionally make mistakes was introduced into game theory at about the same time by Kreps and Wilson (1982), which produces equilibriums they refer to as "trembling hand equilibria."

The *Reason of Rules* explores new possible rationales for constitutional rules, namely that tradeoffs between short- and long-term interests may be incorrectly resolved. This provides a possible voluntaristic, long-term interest explanation for rules that reduce opportunities, on balance, rather than increase them. To provide new analytical foundations for old arguments in favor of self restraint, what might be called “quasi-rational” individuals are introduced. Such persons realize that temptations exist and that failing to resist such temptations will cause long-term damage to their lives.

A quasi-rational man (my term) has two modes of thought, a long-term one in which costs and benefits are carefully considered, and a short-term one in which only near-term consequences are evaluated. In real time, the latter may dominate in some choice settings, because there is insufficient time to fully explore long-term consequences. Instead of risking mistakes at moments of weakness, haste, or crisis, quasi-rational persons adopt rules during their private constitutional moments—rules that rule out some possible choices. Such rules or precommitments may be adopted in private lives by individuals, such as when an individual forswears all possible opportunities to try heroin or to jump off cliffs.

Such conflicts between short- and long-term interests would be acknowledged by most readers to exist in their private lives. Buchanan and Brennan spend most of the middle of the book explaining why such problems exist for collective decisions as well. Indeed, they argue that such problems are even more endemic in the collective choice settings, because no single individual can determine the choices in the short run. Moreover, given the uncertainties of electoral politics, politicians may lack a clear interest in resisting short-term temptations. Indeed, they may benefit from touting programs with only short-term benefits, even if they cause major problems in the future. Quasi-rational individuals may thus favor laws that reduce such temptations for themselves and their governments.<sup>34</sup>

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Ronald Heiner (1983) suggested that rules are adopted to reduce decision errors associated with informational and computational errors.

<sup>34</sup> It bears noting that weakness of will is not a problem for “neoclassical man,” who would not be in the least tempted by short-term gains that induce great long-term losses. No matter how great the short-term advantages of intoxicating experiments may be, if they are expected to cause long-term harms greater than their benefits, there is no question about the choice that would be made by rational men and women.

Buchanan and Brennan suggest that such measures as balanced budget rules, limits on governmental growth, and limiting transfer schemes to general demogrants might be defended on such grounds. These, in addition to rules that characterize civil law (*Limits of Liberty*), collective choice procedures (*The Calculus of Consent*), and rule out discriminatory taxation (*Power to Tax*) are domains of constitutional design and reform that can advance universal ends and therefore may obtain universal assent.

### **E. *Politics by Principle, Beyond Majority Rule***

*Politics by Principal, Not Interest* (1998, with Roger Congleton) is the last of Buchanan's book-length expositions of constitutional theory. By the time this book was published, 50 years had elapsed since Buchanan began writing about public economics.<sup>35</sup> Early on, he had settled on the individualistic level of analysis and the trade analogy. Good policies make everyone better off. But what does that mean, what is the reference point? He suggested the status quo as the reference point. "We begin from here" and improvements result from consensus, essentially by definition. The latter is necessary because the status quo is substantially subjective, involving visions not only of the present but of futures associated with it. Thus, unanimity is not only the best test of whether gains to collective action exist, but the only true test of whether all affected parties expect to be better off—or at least no worse off.

The "process" of choice is emphasized over and over in the normative parts of Buchanan's books and in other published work. Only the process through which agreements are reached can truly be evaluated, because both the status quo and future outcomes cannot be known. Thus, the contractarian test is fundamentally procedural: if a reform or amendment is unanimously agreed to by those directly affected, it is both an improvement and a legitimate one.<sup>36</sup> Buchanan's arguments favoring "process" over "end-state" analysis were

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<sup>35</sup> The preface mentions that the book took longer to write than the other books, about four years, but Buchanan does not fully explain the reason. His coauthor's wife was killed in a car accident shortly after the book project was begun (in 1994), and it took Congleton more than a year to completely reorganize (reinvent) his life and those of his three children, while attending to classes, seminars, and various time-consuming legal activities. Buchanan waited patiently.

<sup>36</sup> Unfortunately, unanimity is not entirely observable, because persons who expect to be made bet-

significant contributions to ethics and social theory, because economists and utilitarian philosophy had largely ignored the importance of procedural norms.

However, *unanimous agreement is not the only procedural norm used in contemporary Western politics*. There is very broad support for another procedural norm, namely majority rule. The most ardent adherents to procedural norms in contemporary politics use majority support as their test for improvement (following Rousseau). For *majoritarians*, any policy that has majority support from the electorate (whether direct or indirect) is good—essentially by definition. *Politics by Principle* challenges that conclusion by demonstrating that majoritarian procedures can be improved by restricting policy choices to ones that do not discriminate among individuals.

*Politics by Principle* uses ordinary intuitions of fairness and justice as a point of departure for that claim. It then shifts to contractarian arguments, by showing that “generality” can improve majoritarian outcomes for all concerned.

Generality increases fairness, as would be true of a Rawlsian analysis. Reducing the scope of public policy discrimination tends to reduce the influence of special interest groups and also tendencies that unconstrained democracies would have to undermine civil law systems and thereby undermine economic production and development. However, Buchanan and Congleton’s main defense of generality rules is neither increased fairness nor reduced rent-seeking losses. Instead, they suggest that without a generality rule, public policy itself would be (overly) unstable, increasing the riskiness of public policies and reducing the average advantage realized by majoritarian choice procedures. Without a generality rule or some equivalent, the problem of cyclic majorities first analyzed by Black (1948) and subsequently generalized by Arrow (1951) would prove endemic.<sup>37</sup> This is shown to be the case for a wide

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ter off often have strategic reasons to deny it, in the hope of becoming even more better off. The observable scope of unanimous agreement is smaller than the underlying reality of agreement.

<sup>37</sup> These points by themselves were not entirely novel. As uniform treatment, as an institutional device for reducing losses from rent-seeking contests had long been in the literature (Congleton 1980). That generality or universality could reduce majoritarian cycles within a legislature had been suggested by Weingast and Shepsle (1981). However, no book-length generalization or detailed exploration of the issue had been attempted.

variety of public policies: taxation, the regulation of externalities, solutions to public goods problems, and fiscal federalism.

As usual in a Buchanan book, the first few chapters revisit the contractarian and constitutionalist approach to public policy. The first three chapters reveal some evolution in his thinking about those issues. In contrast to *The Limits of Liberty* analysis, he now restricts the normative case for social contracts to a world of civic equals.<sup>38</sup> In his words: “Law then becomes legitimate only if all persons could have agreed conceptually, and such agreement is most likely when all persons affected are generally and reciprocally constrained in their behavior” (p. 8). Slavery is no longer a legitimate outcome for contractarian normative theory, as it had been in 1975.

Nonetheless, civil and criminal law remain logically prior to politics, for reasons developed in *The Limits of Liberty*. From a contractarian perspective only “positive-sum-game” politics are legitimate, and these require a status quo ante with reasonably well defined rights.<sup>39</sup> Indeed, a well functioning legal system is taken for granted in their analysis. Buchanan and Congleton suggest that public policy should resemble an ideal civil and criminal law system. Everyone should be equal before “the law,” whether it be civil, criminal, or public policy legislation.

Buchanan’s (1954) critique of Arrow is central to the analysis. Cyclic majorities are regarded as important phenomena but not ones that should be entirely eliminated. Shifts of government from one political party or coalition to another increase the legitimacy of gov-

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<sup>38</sup> Civic equality is my term for the type of equality that Buchanan suggests is necessary for contractarian justice: “equal liberties under law” (p. 8). His remarks at the time of Rawls’ death are similar in spirit: “[Rawls] analytical enterprise was not driven by fellow feeling, at least directly. He sought to find principles that embody **justice in a society of natural equals**, in the same sense of equality defined by Thomas Jefferson in the Declaration of Independence and referenced by Adam Smith in his comparison between the street porter and the philosopher.” (“Obituary: Justice among Natural Equals: Memorial Marker for John Rawls,” *Public Choice* [2003] 115: iii–v.)

<sup>39</sup> I had missed this aspect of Buchanan’s world view at the time and had written a chapter demonstrating that equality before the law was more necessary to sustain democratic than authoritarian regimes. Indeed, I argued that equality before the law is a necessary, although not sufficient, condition for democracies to exist in the long run. That chapter was rejected by Buchanan as incompatible with his prior work and was published separately (Congleton 1997).

ernment rather than undermine it. However, there are problems associated with policy-induced cycles that can be reduced through a generality rule. To demonstrate this, Buchanan invented a new use for the conventional payoff matrices of elementary game theory. That analytical device is used to characterize a series of policy choice settings and demonstrate that cycles are less likely along “the diagonals” (where the cells characterizing equal treatment are found) than “off the diagonal” (where individuals or groups are treated unequally).

Their analysis demonstrates there are many cases in which essentially all participants prefer a generality rule that restricts policy choices to “the diagonal” to unconstrained majority rule. Generality restrictions are not adopted to solve social dilemma, weakness of will, or inequity problems, but rather to increase the average net advantages produced by democratic politics. In this sense, a generality principle can be said to improve the efficiency of majority rule-based governance—as well as its fairness and stability.

In a manner similar to the *Power to Tax*, it could be argued that Western constitutions include formal and informal uniformity constraints of the kind supported by Buchanan and Congleton’s arguments—restraints that make little sense from the perspective of utilitarian analysis. However, their book neglects those positive applications in order to focus on normative analysis.

## **V. Conclusions: The Rules of the Game Matter and Rules Are Themselves Subjects of Choice**

The term “rules of the game” is used just four times in *The Calculus of Consent*, once in the main body and three times in the appendix by Gordon Tullock. Yet the term came to have special meaning in the constitutional political economy literature that emerged after *The Calculus*, largely because of Buchanan’s subsequent emphasis on the distinction between choices over rules and choices made under the rules chosen.<sup>40</sup>

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<sup>40</sup> Tullock credited their colleague Jacob Vining with bringing this distinction to their attention. See the Tullock appendix at the end of *The Calculus of Consent*. (It is interesting to note that had one read the appendices alone, one would have been inclined to suppose that Tullock was an economist and Buchanan a political philosopher; rather, Tullock was a lawyer by training and Buchanan the economist of this insightful pair.) Buchanan made a similar point in *The Limits of Liberty* and in *Economics from the Outside* (2007).

There is a sense in which the importance of rules is completely obvious, once attention is focused on them. One can play a nearly infinite variety of games with an ordinary deck or two of cards by simply adjusting the rules of the game. The rules of card games are adopted at the start of play; and given those rules, play takes place and the winner of the subsequent game is determined by the specific rules applied, by luck, and by the strategies devised with both the rules and luck of the draw in mind. The former is often sufficiently important that many card games are considered games of skill.

Nonetheless, the technical vocabulary of contemporary economics and game theory lack the word “rules.” Instead, specialists focus on transitive well-ordered preferences, feasible sets of various kinds, best reply functions, and sub-game perfection. It was mainly in Buchanan’s work that the two levels of choice gained significance in economics and political economy, and through the influence of his work that constitutional theory obtained renewed, if not universal, attention in political science. Indeed, pointing out that “the rules of the game matter” and that those choosing the rules do so with their self interests in mind may be said to have produced Buchanan’s Nobel Prize in 1986.

Nonetheless, as typical of Buchanan’s way of thinking, even the idea that the rules of the game matter should be challenged. At some point during the late 1960s, he realized that it may not be as obvious why political constitutions matter as he had previously thought. Shortly before *Calculus* went to press, Ronald Coase (1960) wrote “On the Problem of Social Cost,” the first part of which suggests that, if transactions costs can be ignored and well-defined, tradable rights exist, then Pareto-optimal results should follow under essentially all institutions as a consequence of bargaining and exchange. Moreover, if there is a unique Pareto optimal result, any initial assignment of property rights and liability, whether economic or political, will yield the same outcome. If so, the rules of the game would *not matter*; they would simply define alternative starting points.

Some years later, Buchanan (1973) wrote a paper that took the provocative first part of Coase’s famous article seriously and attempted to determine whether the rules of politics could be said to matter, given the assumptions of tradable “property rights,” broadly construed, zero transactions costs, and a Pareto set composed of a single point. Given those

assumptions, Buchanan's analysis showed that rules of the game did not always matter.

However, after exploring several possibilities, Buchanan concludes the following:

When other considerations are accounted for, however, this implication [the irrelevance of rules] need not follow. When transactions costs are recognized, and especially when distributional implications are considered, efficiency "in the large" may dictate the governmental organization of activities along with the *inalienability* of the rights delegated necessarily to bureaucratic decision-makers. There is *no final escape from the requirements that each particular institutional change proposed must be examined on its own merits*, on some case-by-case procedure, with the interdependence among separate organizational decisions. (Buchanan 1973, p. 594)

Buchanan's approach can be said to be similar to that of Coase, a former colleague at the University of Virginia, insofar as bargaining and contracts are central to it, but it is ardently "non-Coasian," insofar as the rules of the game matter and always do in the Buchanan universe.<sup>41</sup>

### **A. Buchanan's Private Normative Vision**

Although Buchanan was very much interested in public policy issues during his lifetime, he wrote very little that could be construed as recommendations to government officials, fellow travelers, or the citizenry. Most of his writing is consequently of broad interest across the political spectrum of contemporary liberalism, especially among contractarians. Yet he did have personal opinions about public policies, many of which were reached as consequences of his broader analysis and others that evidently came before it. In many respects, his preferred public policies are similar to that of other Chicago-trained classical liberals, although his rationales for those positions are often entirely original.

Scattered within his enormous body of work are a few recurring themes and illustrations that shed light on what his personal political positions behind the veil would be. There

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<sup>41</sup> Of course, the second half of Coase's famous paper demonstrates that Coase is also not "Coasian" in this sense. In the second part of the paper, Coase demonstrates if transactions cost are significant (and he would argue they always are), alternative liability laws and other institutions have real and often profound effects on market outcomes. Institutions are important precisely because they reduce transactions costs. (See for example Coase 1988, ch. 1.) (Ronald Coase died at the age of 102 in early September while this paper was being written, but after this footnote first became part of the draft.)

may be no “natural rights” according to Buchanan, but there are nonetheless some obvious rights, procedures, and policies that would be agreed to in a world of equals. Among these are well-defined areas in which people are free to choose (*Limits of Liberty*). In addition, because law enforcement, public goods, and externality problems exist, groups would organize governments that rely on various electoral methods for selecting persons and policies (*The Calculus of Consent*). Those political institutions would also have clear bounded areas of authority (*The Reason of Rules* and *Politics by Interest*), and may be incentivized through fiscal restraints as well as electoral politics (*The Power to Tax*). Taxes and other public policies should be nondiscriminatory and flat, and public debt should rarely be used and then only for capital goods or similar investments that would shape the world to come (*Politics by Principle, Democracy in Deficit*).

Regarding redistributive policies, Buchanan once wrote the following:

[The individualist] will tend to place confiscatory inheritance taxation high on his scale for social reform. He will lend his support to massive public outlays on general education, and he will support selective programs to eliminate poverty. He will tend to oppose an “establishment,” and he will oppose the political ambitions of the Kennedy’s and the Rockefeller’s. (Buchanan 1971: 238).

It seems obvious that the individualist he had in mind was himself, although these conclusions emerge from a careful analysis of what agreements about redistribution would look like, given different degrees and kinds of inequalities and different goals among those negotiating over redistributive policies.

## **B. Buchanan’s Legacy: “Mighty Fast and Fairly Accurate?”**

During his military service as a naval officer in WWII, Buchanan was once introduced by one admiral to another as “This is Buchanan, who is mighty fast and fairly accurate,” an introduction he has always felt was completely appropriate. As noted at the beginning of this essay, Buchanan was an extraordinarily prolific scholar. His untiring efforts to

better understand and articulate his contractarian constitutional political economy produced a huge, highly original body of work. Nonetheless, he was well aware that even after 60 years and thousands of pages of ingenious analysis, the result was not as complete or as tightly reasoned as it could have been.

Even sympathetic readers will often notice what appear to be (and often are) logical leaps and minor inconsistencies. Such readers, however, bear in mind that similar problems are evident in even highly mathematical and statistical treatments, if one thinks a bit about the assumptions embedded in those models. Walrasian price theory, for example, includes no actor that can actually determine prices, and yet it claims to be a price theory. Such problems are more evident in prose, however, because we conduct so much of our lives using ordinary language in settings in which it is often very useful for us to detect misdirections. This makes reading some parts of Buchanan's work a bit difficult, because gaps and implicit assumptions remain troubling, although he clearly aspires to a completely integrated and general argument. The errors and inconsistencies of others less interested in consistency—as might be said of several of Buchanan's coauthors—are perhaps a bit more easily forgiven because they do not aspire to consistency or completeness.

Buchanan's minor slips are normally forgiven for other reasons. Buchanan had such a clear vision of the "main lines" of his argument that it allowed him to see the big picture more clearly and more deeply than most of his contemporaries or, indeed, more so than all but a few political economists during the past two centuries. Although he did not necessarily see how every single part of his approach could be seamlessly integrated, he intuitively saw the broad outlines of the argument with extreme clarity and did not let minor exceptions and confusions interfere with his main line of argument. The details could be—and often were—worked out later. His "main line" of argument was evident from the second paper he published (1949), "The Pure Theory of Government Finance," in which he sketches out a surprisingly general approach to government policy grounded in methodological individualism and institutions. In that piece, he suggested that public policies should be analyzed in much the same manner that we evaluate exchange, at the level of individual net benefits.

Few other scholars even attempt to devise an all-encompassing framework for their

work, let alone attempt to do so at such an early age. The general is beyond their interest or ken. Or perhaps their “relatively absolute absolutes” are more absolute and narrow than Buchanan’s were, and so are less subject to personal analysis and articulation. Such absolutes are often simply what was learned from their professors in graduate school.

Buchanan’s belief, as noted at the beginning of this essay, was that all ideas are open to challenge and that a scholar has a moral obligation to figure things out for himself. Thus, he was duty bound to work out his own framework. Those of his colleagues who were also interested in grand frameworks, usually wrote and thought more slowly; so they could work out only a small subset of the detailed arguments necessary to support their visions. Buchanan’s speed allowed him to paint with a broad brush like an expressionist, but also like a patient pointillist, carefully creating independent finely grained points that together added up to a broad, impressive, substantially new, and very important vision.

This was in large part because, as Admiral Spruance said, Buchanan was “mighty fast and fairly accurate.” He was fast enough to cover enormous ground, modest enough to claim that little of it was perfect, yet, he was always sufficiently accurate to be of broad interest. Bootstrapping, combined with Buchanan’s creative, fast pen and interest in fundamental issues made the result unusually broad, deeply rooted, fine grained, and internally consistent—in a word, awesome.

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