

## Constraining Leviathan

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James M. Buchanan was regarded by many who knew him personally, and by many who knew him only through his writings, or perhaps even from second-hand commentary, as a *conservative* – conservative in the sense that he was skeptical about the potential of the state to do good, and fearful of its power to do bad. I think that this a more or less accurate characterization of his views regarding the state, but one should also recognize a more populist dimension to Buchanan arising no doubt from his upbringing in rural Tennessee. For example, Buchanan was in favor of high inheritance taxes to ensure that all individuals get off to a fair start in their lives. Thus, unlike current tea-party Republicans, for Buchanan all taxes were not an anathema.

In this essay, I nevertheless focus on what Buchanan had to say about constraining the State, or as he often referred to it, Leviathan (Buchanan, 1975; Brennan and Buchanan, 1980). James Buchanan had such a long and prolific career that it would be impossible to survey every piece he wrote that is pertinent to the subject. I concentrate on only a handful of his major works, therefore, works that I think capture important elements of his thinking.

James Buchanan laid great stress upon the important role constitutions can play in the political process, both facilitating collective action by the citizens, and constraining the State. In my view, the United States is currently enduring a constitutional crisis in which the federal government is unable to pass legislation that would benefit large fractions of the American people. Toward the end of the essay, I discuss the causes of this crisis and possible solutions to it, drawing upon the insights I have acquired from the works of one, James M. Buchanan. I begin, however, appropriately enough with *The Calculus of Consent* (1962).

## I. *The Calculus of Consent*

*The Calculus of Consent* is one among a handful of contributions to public choice that can truly be called a *classic*. It was one of the building blocks laying the foundation for what would become an immense research program falling under the heading of *public choice*. Looking back at it some 50 years after its publication, one can recognize that the objective of the book was in large part methodological. James Buchanan and Gordon Tullock wanted to demonstrate what could be learned about political processes by applying the tools of economics. More specifically, they emphasized the importance of weighing the *costs* of different political institutions when judging their desirability.

*The Calculus* was Buchanan's first, extensive exercise in what would later be called "constitutional political economy." The stated objective of the book was to describe "what *we think* a State ought to be" (Buchanan and Tullock, 1962, p. 3, italics in original). Thus, unlike most of public choice, the book can be regarded as a largely normative exercise to show both how the institutions of the State can be better understood using the methodology of the economist, and how they can be better designed for making collective decisions. The Buchanan who appears in the *Calculus* is, therefore, a rather optimistic observer of the State analyzing how it might be made to perform better, and almost nowhere can one find a discussion of how the State might best be constrained. For example, Chapter 16 deals with bicameral legislatures. The emphasis in this chapter, however, is not on how two houses in the legislature might be a more effective check on the State than one. Instead, the chapter illustrates how a two-chamber legislature might be a better way to represent citizen preferences, *if* different interests were represented in the two chambers.

The *Calculus* does contain a discussion of the attractiveness of the unanimity rule, because it guarantees that everyone is made better off from a collective action (Ch. 7), and

Buchanan extolled the virtues of the unanimity rule throughout his career. Thus, in this early and important contribution to public choice, one might reasonably say that the only constraint Buchanan would like to place on the State in an ideal world would come through the use of the unanimity rule for making collective choices. In the real world, of course, the unanimity rule can generate significant *decisionmaking costs*. Recognition of these costs led Buchanan and Tullock to develop their famous theory of the optimal voting rule (1962, pp. 63-96).<sup>1</sup>

In an appendix to the *Calculus*, Buchanan cites Immanuel Kant's social contract theory as an influence on his thinking (p. 316). Later Buchanan would remark that he and Tullock more or less consciously had the U.S. Constitution in the back of their minds when they wrote the *Calculus*. Kant was one of the greatest, and most optimistic of the Enlightenment thinkers, and some of this optimism is visible in the *Calculus*. It will fade in later years, and we will see Buchanan more concerned about constraining the State.

Nevertheless, to get a complete picture of the man, one must recognize that at the relatively young age of 40, Buchanan thought that political institutions could be designed in such a way that citizens could benefit from the State's actions.

## II. *Deficits*

The *Calculus* was not the first book Buchanan published. This honor goes to *Public Principles of Public Debt* (1958). In the mid-fifties, Buchanan spent a year in Italy on a Fulbright Research Scholarship. His readings during the year included the classic works by the early Italian writers in public economics. Their discussions of public debt led Buchanan to rethink the conventional wisdom about public debt at that time, or as he called it, the "new orthodoxy." This new orthodoxy had three strands (Buchanan, 1958, p. 5) :

1. The creation of public debt does not involve any transfer of the primary real burden to future generations.
2. The analogy between individual or private debt and public debt is fallacious in all essential respects.

3. There is a sharp and important distinction between and internal and an external public debt.

Elements of this no longer very new orthodoxy are still widely maintained today. For example, Paul Krugman, writing in the *New York Times*, is much more concerned about unemployment in the United States than the national debt, *because roughly half the national debt is domestically held*. Buchanan attacked all three elements of the new orthodoxy.<sup>2</sup>

Predictably, Buchanan's insights into the nature of the national debt arose from a shift in focus from national aggregates, which underlaid the new orthodoxy, to individual lenders and taxpayers. To see the gist of his argument, imagine a country which collects 100 in taxes each year and spends it all on public consumption goods. Suppose that in one year it declares a tax holiday – no one must pay any taxes. To continue its public consumption it issues 100 in debt to its own citizens. Suppose further, that each citizen purchases an amount of government bonds equal to what her taxes would have been, so that individual levels of private consumption remain the same. The new orthodoxy would seem to be sustained. The *real* burden on citizens in lost private goods consumption of the switch from taxes to bonds in the year they are issued remains the same. But, as Buchanan pointed out, the future behavior of bondholders and tax payers *will not* remain unchanged. All citizens who own bonds will have additional income in the future. This may lead them to consume more or work less. The government in the future will have to raise taxes if it is to maintain public consumption at 100, since it must service the debt. If the taxes fall on consumption it will be curtailed, if they fall on work it will be curtailed. Future generations bear the burden of the debt through the taxes that they pay to service it.

Buchanan was to return to the topic of public debt many times during his career. One of the more important later contributions was *Democracy in Deficit* (1977) written with Richard Wagner. In this book the point of attack shifts from the new orthodoxy to Keynesian

economics and Keynesian economists. Buchanan and Wagner saw the general acceptance of Keynesian policy prescriptions, first by economists, secondly by the intellectual community in general, and finally by politicians as having caused the rising government expenditures, budget deficits, and inflation that were occurring during the 1970s. Keynes and his followers had undermined the previously widespread belief among both economists and the general public that governments, like prudent families, should balance their budgets. While virtuous families needed to hold their spending down to the levels of their incomes, the virtuous State could and should produce full employment and economic growth by running deficits, or so the Keynesian argument went.

Unlike Buchanan's earlier book on deficits, *Democracy in Deficit* made public choice analysis a central part of the argument. Keynes and his followers wrote as if they were proffering advice to benevolent bureaucrats who would run deficits when they were needed to reduce unemployment, and would balance the budget or run surpluses when the economy returned to full employment. However, fiscal policy is decided by politicians who must run for reelection. Voters like government expenditures, and dislike taxes. Eliminating a budget deficit requires cutting expenditures, or raising taxes, or some combination of both. Each option will lose votes. Thus, democracy has a built in bias toward running deficits. This bias was offset prior to the Keynesian revolution by the prevailing consensus that the state *should not* run budget deficits, that they were immoral. With this constraint removed, politicians happily began to raise expenditures and cut taxes to win votes.

The main cost of government deficits, as Buchanan and Wagner saw it, was that they led to later inflation. Once voters came to realize this, one might expect that they would wish to avoid the future costs of inflation, demand balanced budgets, and penalize politicians who failed to provide them. To explain why this is unlikely to happen, Buchanan and Wagner

invoke a set of arguments that first appeared in Buchanan (1954), and would reappear in different guises throughout his career. The behavior of individuals in the market is much different than their behavior when they vote. An action in the market has a direct and predictable impact on an individual's welfare – she gets to consume an apple instead of an orange. The consequence of her action when she votes depends on the actions of all other voters and is therefore less direct and predictable. In the case at hand, the cost of eliminating the deficit today – lower expenditures or higher taxes – is immediate and fairly predictable, while “the benefit side of the surplus policy [lower future inflation] is never experienced, but must be *creatively imagined*” Buchanan and Wagner (1977, p. 100, italics in original). Imagined future benefits cannot compete with concrete current costs.

Since voters cannot be expected to demand balanced budgets, politicians will not vote for them, and the problem of perpetual deficits in a democracy seems insoluble. The solution offered by Buchanan and Wagner (1977, Ch. 12) is to constrain the legislature to balance its budgets by placing a balanced budget amendment in the constitution, and to constrain the central bank through a similar provision in the constitution regarding the growth in the money supply. This form of constraint on the State (Leviathan) – an appropriate constitutional rule – appears again and again in Buchanan's writings.

The rising inflation that alarmed Buchanan and Wagner in the mid-1970s peaked at 13.5% in 1981. In subsequent years, Paul Volker, chairman of the Federal Reserve, raised interest rates and brought inflation under control. Subsequent chairmen and board members have acted responsibly enough so that one cannot really argue that inflation has been a major economic problem in the United States since the early 1980s. In 1994, a political event took place, which might have restored Buchanan's faith in American politics and the American voter. Newt Gingrich ran for Congress on a platform that highlighted a “contract with

America.” One of the provisions of the contract was The Fiscal Responsibility Act, which proposed the kind of balanced budget amendment to the U.S. Constitution that Buchanan wanted. Gingrich and the Republicans triumphed in the mid-term election of 1994. Bill Clinton got the message and by the end of the 1990s, the federal budget was in surplus. Although no balanced budget amendment was added to the Constitution, economic responsibility and rationality seemed to have returned. Alas, this was not the case. George W. Bush started two wars, cut taxes and produced the biggest budget deficits since World War II – with Congress’ complicity. Bush was rewarded for these actions by reelection in 2004. As Buchanan and Wagner (1977, p. 8) noted, to rely on the wisdom of “a more sophisticated electorate” is to lean “on a frail reed.” Some, today, wish to lean on the wisdom of the tea-party movement, but this too seems to me to be a rather thin reed.

Throughout Europe vote-maximizing politicians have been running government deficits on an almost continuous basis for decades. The result is that governments face “deficit crises” on both sides of the Atlantic. The response in the European Union is shaping up to be a set of rules placing limits on the budget deficits of member states, rules to be enforced by the EU Commission, an unelected body of bureaucrats. Thus, the European solution to the debt crisis may be to take budget decisions out of the hands of elected politicians much in the spirit of Buchanan and Wagner.

The message of Buchanan and Wagner is as timely today as it was 35 years ago – perhaps even more so. If politicians in America and Europe had understood the message and acted on it much earlier, we would not be facing the fiscal crises of today.

### *III. The Limits of Liberty*

Rising government expenditures, budget deficits, and inflation were not the only things that disturbed James Buchanan during the 1970s. Starting in the late 1960s a

*revolution* of sorts began on college campuses and spread to the wider community.

Buchanan experienced the revolution personally in 1968 when he left the University of Virginia and moved to UCLA. Shortly after his arrival, UCLA students demonstrated and occupied buildings on campus. Buchanan was not pleased by the university administration's response, and quickly departed for VPI in Blacksburg, Virginia, where he and Gordon Tullock founded the Center for the Study of Public Choice.

Buchanan's 1975 book, *The Limits of Liberty*, is a reflection upon and reaction to the events of the late 1960s and early 1970s. In 1962, when the *Calculus* appeared, citizens trust in their elected leaders was at a post-World War II high, Washington D.C. had been transformed into Camelot, and democracy in the United States seemed to be functioning rather well. By 1975, a president and his brother had been assassinated along with civil rights leader Martin Luther King, Jr., the war in Vietnam had precipitated widespread dissatisfaction and protests, and a president had resigned in disgrace. By 1975, the Kantian Buchanan of 1962 had been transformed into a Hobbesian.

The analysis in the *Calculus* focused on understanding how democratic institutions function and how they might be made to function better. The state was viewed from a Wicksellian perspective as an institution for providing public goods and services that can benefit all, and the function of democratic institutions was to reveal citizen preferences for these public goods and services. The *Limits of Liberty*, in contrast, is much more concerned with understanding why states may *fail* to advance the interests of their citizens, why they may provide *bads* (1975, p. 7). Where the *Calculus* focused on the *productive* State, *The Limits of Liberty* concentrated on the *protective* State (1975, pp. 68-70).

The protective State consists of a set of rights and rules that protect individual citizens from one another, and all citizens from the State. These definitions of rights and rules, like



the choice of voting rules to reveal individual preferences, are formulated at the constitutional stage of the political process. They form the constraints within which individuals can pursue their own aims. As with public goods, all citizens can benefit from the existence of constitutional rights and other rules, because they eliminate uncertainties about the conduct of other individuals or the State, and protect property and enforce contracts so that individuals can productively engage in market transactions.

The existence of rights and rules is a form of social or legal capital. With time individuals learn to abide by the rules, respect others' rights, and exercise their own rights. It is the existence of these legal institutions and the behavior they foster that distinguishes life in civil society from life in Hobbsian anarchy, and explains why life in a civil society is superior to life in anarchy. Abiding by the rules and respecting others' rights constitutes a form of n-person prisoners' dilemma, however. Occasions arise where an individual can obtain an advantage by breaking the rules or violating the rights of others. As more and more people break the rules, a community's legal capital is eroded and it slides back toward a state of anarchy. This is what Buchanan thought he saw happening in the United States in the 1970s.

While much of *The Limits of Liberty* is devoted to *individual* behavior, social and anti-social, in Chapter 9 he takes up "The Threat of Leviathan." People who choose to go into politics or to work in public bureaucracies often do so, because they have an idea of what the "good society" is or ought to be. In office, therefore, they often strive to implement their view of what the state should be doing rather than the wishes of the citizens who elected them. People who go into politics generally have ideas about what the state could and should be doing and their actions, therefore, typically lead to an expansion of the state, an expansion beyond the level that would be chosen if only the wishes of the citizens were respected.

Persons attracted to public office may also simply enjoy exercising power, of making decisions *for* others (1975, p. 157). This additional motive for seeking public office also fosters greater State activity. Finally, the bigger the public sector is, the more opportunities politicians and bureaucrats have to obtain bribes and kickbacks from awarding contracts to particular firms, passing regulations that harm some firms and benefit others, and so on. All of these factors combine to explain the relentless growth of State activity in the United States since the 1930s.

Buchanan also describes a kind of vicious circle that surrounds the growth of State activities. Those who work for the State have an obvious incentive to see it grow. Large State expenditures may lead to higher salaries, or less work as more people are hired. In a growing public sector more positions are opening up at higher levels of the bureaucracy providing more opportunities for promotion. Thus, those working for the State favor larger government expenditures than citizens in the private sector. As the public sector grows, an increasing fraction of the voting population favors further expansion of the public sector. A dynamic upward spiral in State expenditures ensues.

What to do? In the final chapter of *The Limits of Liberty* Buchanan calls for a “constitutional revolution.” Population growth, industrialization, and all of the other economic and social changes that had occurred since the U.S. Constitution was drafted in Philadelphia had produced a large gap between the underlying constitutional rights and constraints that existed circa 1787, and those that would be adopted if the constitution were to be written anew. Buchanan does not go into detail about the content of this new constitution – that would be too much like playing God, the primary sin of many liberals – but one can guess at some of them like a balanced budget constraint. What I find remarkable about this last chapter is that, despite the underlying tone of despondency and pessimism that

one finds in the first nine chapters, in the end Buchanan remains optimistic that the American people could adopt a new constitution that would put the republic back on the road set out for it by the Founding Fathers.

#### IV. *The Power to Tax*

The arguments in *Democracy in Deficit* build on a particular model of politics. Politicians compete for votes by wooing voters with high expenditures and low taxes. *The Power to Tax* largely abstracts from this kind of competitive politics (Brennan and Buchanan, 1980). The State (Leviathan) is viewed as a monolith with a monopolist's power to tax. The authors assume that Leviathan seeks to maximize its revenues from taxation. They admit that this assumption is somewhat unrealistic, but defend it on the basis of the analytic insights it produces, just as most economists defend unrealistic assumptions like profits or wealth maximization. Because of the distortions and disincentive effects of taxation, tax revenue can be assumed to be a concave function of the the tax rate,  $R(t)$ , a function made famous by Arthur Laffer. A revenue-maximizing Leviathan chooses the tax rate corresponding to the peak of the Laffer curve.

Substituting the assumption of a revenue-maximizing dictator for a benevolent dictator leads to many striking differences with conventional models of taxation and the State. A typical exercise in optimal taxation usually would, for example, begin with the assumption that an exogenously given fixed amount of revenue must be raised. It then proceeds to analyze how this revenue can be raised with the least amount of dead weight loss. Lump sum taxes are ideal, since they produce no distortions in behavior, but are rather rare. Broad-base taxes are better than narrow-base ones, because a given amount of revenue can be raised with a lower tax rate through a broad-base tax causing fewer distortions. This conclusion gets "stood on its head" once the State is viewed as a revenue maximizer.

Narrow-base taxes are now superior, because they limit the amount of revenue the State can extract from the citizens. Definitions of income, which exclude some potential components like the implicit rents earned by homeowners, are superior to broad definitions (Ch. 3). Taxes on individual commodities are superior to general sales or value-added taxes (Ch. 4). Here the reader might contemplate what the size of the State would be if its only source of revenue were a tax on tobacco. One explanation for the relatively small size of the federal government over the 19<sup>th</sup> century might simply be that it was constrained to a fairly small set of revenue sources.

Where the last chapter of *The Limits of Liberty* was fairly short on specific proposals for a new constitution, *The Power to Tax* is replete with them. Constitutional rules regarding money expansion or inflation targets reappear, as do limitations on public deficits (Ch. 6). Earmarked taxes are better than general taxes, because they force the state to provide a public good in exchange for more tax revenue. More generally, Knut Wicksell's (1896) proposal that each expenditure item in the state's budget be tied to a specific tax to finance it, combined with a requirement of a super majority (5/6ths) to authorize any expenditure would be desirable (Ch. 7). Federalist states are superior to unitary states, because the threat of citizen exits at lower levels of government constrains regional and local Leviathans' abilities to tax without providing corresponding public goods (Ch. 9).

*The Power to Tax* constitutes Buchanan's fullest statement of how Leviathan might be constrained. All of the work in forging these constraints must be done at the constitutional stage. As with Hobbes's monarch, in the model of Brennan and Buchanan once the social contract cum constitution is signed, Leviathan is essentially unfettered except for the constraints written into the constitution.

#### V. *The Reason of Rules*

*The Reason of Rules*, also coauthored with Geoffrey Brennan (1985), is to a large extent a methodological treatise. The authors wish to demonstrate the superiority of a constitutionalist/contractarian approach to the study of politics over a noncontractarian approach. A person espousing the latter approach believes that there exists some ideal set of outcomes from the political process, a definition of the “public good,” which is “out there” and the task of the social scientist or social engineer is to discover what this “public good” is, and then bring it about. In contrast, the approach favored by Brennan and Buchanan starts with the individual and his preferences and desires. Political outcomes emerge from the interactions of individuals in the political process, just as allocations of private goods emerge from the interactions of individuals in markets. If all citizens have agreed on what the rules of the political game are, then the outcomes of the political process might be judged as good, because they emerged from a mutually agreed upon set of rules. It is the *means* by which the political outcomes are obtained that gives them normative value, not some externally imposed definition of the public good.

As its title suggests, the book is much concerned with the existence of rules and their effects on social outcomes. Rules can improve social outcomes by eliminating uncertainty about the actions of others. In much of *The Reason of Rules* the authors appear to be referring to rules imbedded in a constitution. Their notion of rules is much broader than this, however, and includes things like rules of the road (1985, pp. 7-12). Each driver is better off knowing that all other drivers will be driving on the same side of the road as she will – *assuming* all other drivers follow this rule. An important function rules can play is to get individuals to adopt cooperative strategies in prisoners’ dilemma games (1985, pp. 3-5).

The authors discuss how and why an individual’s decision in a private market differs from the same individual’s decision when voting (1985, Ch. 5). Both authors have written on

this topic several times elsewhere. Here the emphasis is on inter-temporal problems. An individual who takes out a loan to start a business faces uncertainty about future demand, costs and so forth. He knows, however, that he will be in charge of the business, and thus can react to developments in an optimal way. A voter contemplating whether the government should issue debt to finance a given project has much less, indeed essentially no, control over what the government will do in the future. In particular, he cannot assume that the government will make optimal choices in the future. This introduces a kind of myopia in individuals as voters.

This myopia produces several undesirable outcomes from democratic processes – a high-tax trap, an inflation trap, a public-debt trap, and still others (1985, Ch. 6). The high-tax trap takes the form of governments adopting policies, which lead them past the peak of the Laffer curve. Today's government increases expenditures and taxes to win votes. Over time citizens adjust to the higher taxes in ways, which reduce their tax obligations. If the tax increase is on income, they may take longer vacations, or early retirement. The self-employed may work fewer hours. Thus, in the long run the tax increase produces less revenue than it did in the short run. A cut in the tax rate might even lead to an *increase* in revenue – *in the long run*. Because this increase would not immediately occur, in the short run the government is trapped with its high tax rates. Voter myopia also leads in fairly predictable ways to the government printing too much money (inflation), and running too big of deficits.

The proposed solutions to these problems take the form of constitutional provisions dealing with tax rates, increases in the money supply, and a balanced budget constraint. The authors also propose that redistribution to the poor be dealt with in the constitution (1985, pp. 127-31).

In the closing chapter, Brennan and Buchanan pose the question, “is constitutional revolution possible in a democracy?” They answer yes, but they recognize the obstacles to achieving such a revolution. Three things work in favor of such a revolution taking place – the undesirability of the status quo, the uncertainty surrounding the effects of constitutional choices on particular individuals’ welfare, and the possibility with a complete constitutional overhaul of making side payments to compensate those who think they will lose as a result of the changes.

#### VI. *Politics by Principle, Not Reason*

*The Calculus* contains an extended discussion of the simple majority rule. Some of it is positive, as the the analyses of logrolling (Chs. 10, 11), but most of it is critical, and Buchanan criticized this rule on many other occasions. By the end of the 20<sup>th</sup> century, however, he seems to have decided to throw in the towel. *Politics by Principle, Not Reason*, written with Roger Congleton (1998), discusses how majoritarian democracy might be constrained so as to produce better outcomes. While much of the public choice literature criticizing the majority rule focuses on the problem of cycling, Buchanan and Congleton are more concerned about the tendency for the majority rule to induce redistribution.

To see the problem, consider a simple prisoners’ dilemma situation (Mueller, 2003, pp. 9-14). Two farmers have adjacent properties. Each can make himself a bit richer and better off by spending some of his time stealing the livestock of his neighbor. Both make independent decisions to steal, and the farmers wind up in the Pareto-inferior Nash equilibrium with each farmer stealing from the other. If the upper row and left column of the prisoners’ dilemma matrix are the cooperative, non-stealing strategies, then the two farmers wind up in the lower, right-hand corner of the matrix. If both farmers chose the cooperative strategy, they would move to the Pareto-superior upper left-hand corner of the matrix.

Now consider a community with two political coalitions. Members of each coalition have similar incomes, and the possibility exists to provide the whole community with a public good, financed by a proportional income tax on all members, which would make everyone better off. Provision of the public good is in the upper left-hand corner of the prisoners' dilemma matrix, non-provision is in the lower, right-hand corner. One of the coalitions is larger than the other, however. It can take advantage of its size and the community's use of the majority rule to make itself still better off by shifting some or all of the tax burden onto members of the smaller coalition – by moving into the off-diagonal box in the matrix that favors it. The community's use of the simple majority rule gives majority coalitions the legal right to steal (redistribute) from the minority. Buchanan and Congleton (1998, pp. 23-24) point out an important difference between the provision of a public good using the simple majority rule and classical prisoners' dilemma situations. In the latter, each player *independently* chooses a strategy and the outcome emerges from their two choices. With majoritarian democracy, a majority coalition can choose any of the four boxes in the matrix. It could choose to tax its own members the same as members of the minority, or even choose the opposite off-diagonal box and tax its own members more than the minority. Self-interest, of course, leads a majority coalition to choose the off-diagonal box that is most advantageous to it.

The solution to this problem is to remove the off-diagonal options from the domain of choice. Buchanan and Congleton (1998) propose to do this by enshrining a *generality principle* in the constitution. Application of the principle to taxation might take the form of a comprehensive, common tax base for all citizens, and a proportional tax to pay for a public good that all consume. The U.S. tax code illustrates vividly the disadvantages of majoritarian democracy and the potential benefits from applying the generality principle. The code is



riddled with special deductions and loopholes. In addition, to producing unfairness in taxation, these deductions and loopholes generate a tax code that is so complex that Americans spend millions of hours filling out their tax forms each year, and millions of dollars hiring tax consultants to do the job for them. Adoption of a simplified tax code consistent with the generality principle would not only restore fairness to taxation in the United States, but would also produce great savings in time and money for compliance with the code.

Buchanan and Congleton (1998, Ch. 8) state that the taxation side of the U.S. fiscal budget comes closer to meeting their generality principle than the expenditure side – a claim I might question. If true, then the expenditure side, with its many subsidies and tons of pork, is even more unfair than the tax code. Application of the generality principle to public expenditures would require that any public good or service that is provided to one segment of the community be made available to all (Buchanan and Congleton, 1998, Ch. 11). Other chapters of the book illustrate how the generality principle might be applied to the issuance of debt, redistribution, social insurance, and other government activities.

As in his earlier works, in this book Buchanan seeks to correct a perceived failure in the functioning of democracy with a constitutional change. Presumably, he would not have written the book, if he did not think that such a change in the constitution was feasible. Unlike in some of his earlier works, however, the final chapter of *Politics by Principle, Not Reason* is not so much a call for a constitutional revolution, but an expression of hope that such a change might come into being.

## VII. *Constitutional Change in the United States*

If there was a need for a constitutional revolution in the United States in 1975, 1985, and still in 1998, then in the year 2013 there is a desperate need. The federal budget deficit

has grown to an unsustainable level, fiscal crises loom in the state provision of health care and pensions, Congress is incapable of passing legislation to provide basic public goods like highway and bridge maintenance. More difficult issues, like global warming, are simply ignored. The tax code remains a taxpayer's nightmare. Thousands of Americans die each year, because the Second Amendment makes it easy for people to buy guns.

In *Constitutional Democracy* (1996), I discussed relevant developments in political science and public choice that might aid individuals when writing a new constitution. In an ideal federalist system, legislative bodies at each level of government would confine their attention to providing public goods and services that benefitted all citizens within this governmental unit. Like Brennan and Buchanan I proposed removing redistribution from day-to-day politics by giving each citizen a constitutional right to a subsistence level of income (Mueller, 1996, Ch. 16). At the national level, parties would compete for votes by offering platforms containing the bundles of public goods and services they thought should be provided at the national level (1996, Chs. 8-10). This is not how politics works in the United States, however. Those competing for seats in Congress make promises of what they will do for their constituents in their Congressional districts or states. Only the presidential candidates make promises of what they will do for the entire country, but because these promises can only be fulfilled with the concurrence of Congress, they often go unfilled. The much exalted checks and balances in the U.S. Constitution have produced deadlock and inaction. The deadlock problem has become more acute in recent years by the increasing polarization of Congress. The boundaries of jurisdictions in the House of Representatives have been redrawn and redrawn so that now candidates from both parties tend to have "safe seats." All they must do to get reelected is defeat challengers in their own parties who are even further to the left or right than they are.

Thus, I, like James Buchanan, believe the United States needs a new constitution. On the wall of the Jefferson Memorial in Washington D.C. there is a quote in which Jefferson states that each generation should be free to write its own constitution. It has been more than 200 years since the U.S. Constitution was drafted. It is high time to take a second stab at it.

If such an effort were made, parts of the current Constitution, like the First Amendment, would undoubtedly be retained. The Third Amendment's requirement that "in time of peace [a soldier cannot] be quartered in any house, without the consent of the Owner" would, presumably, go. So too, I would hope, the Second Amendment's protection of "the right of the people to keep and bear Arms." Among the rich democracies of the world, no legislative body with powers resembling those vested in the U.S. Senate violates the one-man-one-vote principle of democracy as badly as the Senate does. Surely, a new constitution for the United States would adhere more closely to basic democratic principles than the current one does.

There are two possible ways in which a constitutional revolution could take place in the United States. One would be to radically amend the existing document. Amending the Constitution is incredibly difficult, however. Two-thirds of both the House and the Senate must approve an amendment, and then it must be approved by three-fourths of the state legislatures or state-level constitutional assemblies (Article V). The second way would be to convene a new constitutional convention.

Constitutional reforms of the type needed will never come about following the procedures of Article V. Would members of the House vote for new electoral rules that would lower their probabilities of reelection? Would senators from small states vote for fairer representation in the upper chamber, or to abolish the upper chamber? Here it might be noted that some useful electoral reforms could be made without amending the Constitution.

The Constitution requires that seats in the House be apportioned among the states according to population. It does *not* demand that seats be filled by first-past-the-post elections in single-member districts. A state legislature could vote to have some or all of its House seats filled with an at large election. If the state had ten seats in the House, the ten candidates receiving the most votes *across the state* might fill them. In a state like California, a delegation filled in this way would contain some representatives from the far left of the political spectrum and some from the far right. But, it would also contain many and conceivably more from the center of the ideological spectrum than does today's delegation. Given that members of state legislatures are elected from single-member districts, even this reform seems unlikely. A couple of states, like California, have taken steps to eliminate gerrymandering in the drawing of congressional district boundaries, however, so there is some grounds for hope.

I conclude that meaningful constitutional change in the United States is only possible by means of another constitutional convention. What are the prospects of such an event? Slim. But if disenchantment with the present system continues to grow, U.S. citizens might eventually demand such a radical step.

#### VIII. *Conclusions*

James Buchanan and Richard Musgrave were two towering figures in public economics over the second half of the 20<sup>th</sup> century. They had such an impact on my own thinking that I dedicated a collection of my articles in public choice to the two of them (Mueller, 1993). Although both men were strongly influenced by Knut Wicksell's (1896) classic article, it is fair to say that they were polar opposites. Despite being educated in the United States and living there for most of his life, the German-born Musgrave retained a kind of European faith in the State as an institution for doing good. American-born Buchanan had

a typically American distrust of the State, and concern about its capacity for doing bad.

These differences were nicely brought out in a series of debates held in Munich (Buchanan and Musgrave, 1999).

I once heard Musgrave remark that Buchanan believed that citizens were capable of making an intelligent collective decision only once in their lives – when they write a constitution. This strikes me as a fair observation. Much of Buchanan’s analysis of democratic failures builds on the assumption that individuals behave radically differently as voters than they do as participants in market transactions, *and* that in some fundamental sense they behave less rationally as voters. At the same time, he seems to have believed that these same somewhat myopic, somewhat irrational individuals, when assembled to write a constitution, would make intelligent choices. He justified this shift by emphasizing the different and somewhat unique nature of constitutional choices – they are long run, and they are choices of rules and institutions not outcomes from the application of these rules. I think this is a reasonable justification.

Returning to the issue of Buchanan’s conservatism, I have always judged *pessimism* to be a salient characteristic of a conservative. He is pessimistic about man’s capability to reason, pessimistic about the future, and reverent of the past. Edmund Burke typifies my idea of a conservative.<sup>3</sup> Liberals in the classic definition are, on the other hand, basically optimistic about man’s powers of reason, and his ability to shape a better future individually or collectively. Immanuel Kant nicely typifies this sort of liberal.<sup>4</sup> By this reasoning, James Buchanan can be judged a true conservative when it comes to viewing the functioning of everyday democracy and the democratic State, but a true liberal when it comes to trust in man’s capability to shape a better future through a constitutional revolution.

Given his belief in the necessity of such a constitutional revolution, I would fault

Buchanan to some extent for not having devoted much if any space to discussing how it might come about. His vision of the constitutional process seemed to assume that the citizens themselves – *all* citizens – wrote the constitution behind a veil of ignorance created by the long-run nature of constitutional choices. But all citizens in a populous country cannot assemble to write a constitution. Do they elect representatives to a convention? If so, what electoral rule will ensure that the convention behaves like an assembly of all citizens would? Do the citizens have to ratify through a referendum the final document? If so, must the vote be unanimous? These are difficult questions, but no constitutional revolution could proceed before they were answered.<sup>5</sup>

*The Calculus of Consent* was a path-breaking contribution to constitutional political economy and public choice. It is more than 50 years since its publication, however, and the performance of democratic institutions, at least in the United States, has more or less steadily deteriorated. Throughout these years James Buchanan continually called for constitutional change to reverse this trend, so far to no avail. What the United States needs today, and looking at Argentina, Bulgaria, Greece, Italy, Venezuela and many other countries one might say what the world needs, is a 40 year-old James Buchanan and a 40 year-old Gordon Tullock to undertake a new constitutional analysis.

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1. Throughout this essay when a work is cited only by date, it is the work of Buchanan under discussion at this place.
  2. An interesting symposium on public debt appeared in Volume 23, No. 3 (September 2012) of *Constitutional Political Economy*.
  3. See my discussion and quotes (Mueller, 2009, pp. 193-95).
  4. See my discussion and quotes (Mueller, 2009, pp. 191-93).
  5. I have made an effort to offer some answers (Mueller, 1996, Ch. 21).