
Consenting to Collective Action

The Classical Liberal Constitutional Calculus of James M. Buchanan

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James M. Buchanan, a self-described classical liberal, had a research program extending more than half a century that was dedicated to analyzing—and justifying—collective action, including coercive action undertaken by governments. Buchanan’s classical-liberal ideology rests firmly on a foundation of individualism, so it is interesting to analyze how his analysis moves from that individualistic foundation to a justification of collective action in which individuals are forced to comply with government edicts. The essence of Buchanan’s framework is the idea that individuals can agree to be coerced and that the coercion they agree to furthers their own individual goals, including protecting them from having their rights violated by others. My analysis of Buchanan’s constitutional calculus first looks at his individualistic foundation, then discusses the constitutional problem that Buchanan envisions, and, finally, analyzes critically some aspects of his constitutional calculus that may be at odds with his classical-liberal foundation.

Individualism

Buchanan stated in “The Soul of Classical Liberalism,” “The encompassing vision that informs classical liberalism is described by an interaction of persons and groups

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within a rule-bound set of behavioral norms that allow each person or agent to achieve internally defined goals that are mutually achievable by all participants. . . . There is, and can be, no social or collective purpose to be expected from the process of interaction; only private purposes are realized, even under the idealized operation of the structure and even if collectivized institutions may be instruments toward such achievements” (2000, 115). This idea appears in one of Buchanan’s earlier works where he stated, “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” (1949, 498). Buchanan made it clear that within his classical-liberal viewpoint, the only purpose of government is to accomplish individuals’ ends. There is no such thing as a “social or collective purpose.” Herein lies an issue that warrants further analysis within Buchanan’s constitutional framework, however. Collective action, taking this individualistic approach, is undertaken to accomplish “only private purposes,” but under any nonunanimous-decision rule some people are in a position to use the force of government to accomplish their private purposes at the expense of others. Buchanan (1962) explicitly said so. Rent seeking is an obvious example of some people—the rent seekers—gaining rents for themselves at the expense of others.

Still, the idea of politics as exchange lies at the foundation of *The Calculus of Consent* when early on Buchanan and his coauthor Gordon Tullock stated, “Men co-operate through exchange of goods and services in organized markets, and such co-operation implies mutual gain. . . . At base, political or collective action under the individualistic view of the State is much the same. Two or more individuals find it mutually advantageous to join forces to accomplish certain common purposes” (1962, 19).

With respect again to Buchanan’s conception of government, rent seeking is an example where people do not “achieve internally defined goals that are mutually achievable by all participants” (2000, 115). Some gain at the expense of others. Buchanan was, of course, very familiar with the rent-seeking literature begun by Tullock (1967) and Anne Krueger (1974) and extended by many others. William Baumol (1990), for example, indicated how the coercive institutions of government can turn the activities that individuals pursue for their mutual gain into predatory activities where some individuals use the force of government to extract resources from others and in the process lower aggregate productivity. As Tullock (1975) and Mancur Olson (1982) noted, once these predatory institutions develop, they are difficult to reverse. There is a substantial public-choice literature that develops models in which the force of government is used to benefit some at the expense of others rather than, as Buchanan presented it, to secure mutual gains through collective action.

Buchanan and Tullock addressed this issue, building on the individualistic approach that is consistent with all of Buchanan’s work.

It seems futile to talk seriously of a “theory” of constitutions in a society other than that which is composed of free individuals—at least free in the

sense that deliberate exploitation is absent. This point will require further elaboration as we proceed, because . . . our analysis of decision procedures reveals that certain rules will allow certain members of the group to use the structure to obtain differential advantage. However, it is precisely the recognition that the State may be used for such purposes which should prompt rational individuals to place constitutional restrictions on the use of the political process. (1962, 13)

The purpose of constitutional rules is to address—but not necessarily to prevent—rent seeking and, more generally, government actions that benefit special interests at the expense of the general public.

Perhaps the best-known chapter of Buchanan and Tullock's *Calculus of Consent* (1962) is chapter 6, where they demonstrated that a group might unanimously agree to a less than unanimous decision rule for some types of decisions. People will recognize that group decisions will sometimes go against their interests, but at the same time they believe that over a large number of decisions the benefits of the less-inclusive decision rule will exceed the costs. Assuming that rents are generated within a collective decision-making process that has been approved unanimously, Buchanan and Tullock suggested that any losses to rent seeking are a cost that is outweighed by the benefit generated by the collective activity the less than unanimous decision rule facilitates.

Two major assumptions underlie this conclusion. The first is that the collective decision-making process has been agreed to unanimously, and the second is that the actual outcomes generated by that process were within the bounds of the expectations of those who agreed to it. In other words, the outcomes were not unanticipated and worse than what those agreeing expected when they tendered their agreement. Both of these assumptions are far from self-evident as descriptions of actual government action.

Buchanan was consistently inclined to look at political activity within the framework of collective agreement, as opposed to viewing that some use the force of government to coerce others. He stated that his constitutional political economy research program emphasizes “cooperative rather than conflictual” interaction among individuals (1990, 1). In one of his earlier published works, he commented, “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” (1949, 498).

The Classical-Liberal Question: How to Preserve Liberty?

The classical-liberal problem that Buchanan saw is embodied in the title of his 1975 book *The Limits of Liberty: Between Anarchy and Leviathan*. He painted a Hobbesian picture of anarchy, where life is a “war of all against all” as well as “nasty, brutish, and short.” Then, referring to the individual who wants to preserve classical-liberal values, he said, “When he recognizes that there are limits to the other-regardingness of men,

and that personal conflict would be ubiquitous in anarchy, the extreme individualist is forced to acknowledge the necessity of some enforcing agent, some institutionalized means of resolving interpersonal disputes” (1975, 6). Buchanan recognized that not everyone holds this Hobbesian view of anarchy, citing Murray Rothbard (1973), but he went on to criticize Rothbard for not coming to grips with the problem of defining an initial set of rights.

One can debate the Hobbesian vision of anarchy with the viability of Rothbard’s vision, as I have done previously (Holcombe 2004), but Buchanan’s vision of a society without government is Hobbesian, which gives rise to the necessity of government to preserve liberty. He continued to hold this position in his later work. Geoffrey Brennan and Buchanan referenced Hobbes to say that we benefit from a set of rules that govern people’s interactions with each other because “without [these rules] we would surely fight. We would fight because the object of desire for one individual would be claimed by another. Rules define the private spaces within which each of us can carry out our own activities” (1985, 5). Buchanan commented that “to the individualist, utopia is anarchist, but as a realist he recognizes the necessity of an enforcing agent, a collectivity, a state” (1975, 12).

At the other end of the spectrum from anarchy is Leviathan government. A government with the power to protect people’s rights also has the power to violate them, so the classical-liberal challenge is to design a governing structure that constrains that power so that it is used to achieve individuals’ ends when they must be achieved collectively. Liberty lies between anarchy and Leviathan.

The method Buchanan used to identify those institutions that will preserve liberty was to assume that those who hold government power use it to extract as much as they can from the citizenry for their own purpose. Brennan and Buchanan justified this assumption, saying, “The monopoly-state model of government may be acknowledged to be useful, not necessarily because it predicts how governments always, or even frequently, work, but because there are inherent tendencies in the structure of government to push it toward that sort of behavior implied in the monopolistic model, tendencies that may emerge in settings where constraints are wholly absent” (1980, 20). This argument is similar to Friedrich Hayek’s (1944) argument about why the worst get on top: government power attracts them and gives them the incentive to use that power for their personal benefit. Government institutions need to be designed to prevent people who want to use the force of government against the interests of its citizens if liberty is to be preserved.

Buchanan did raise the question about the applicability of his approach to analyze politics as exchange, saying, “So long as collective action is interpreted largely as the embodiment of individual behavior aimed at securing the efficiency attainable from cooperative effort, there was a natural tendency to neglect the problems that arise in controlling the self-perpetuating and self-enhancing arms of the collectivity itself. The control of government scarcely emerges as an issue when we treat collective action in strictly contractarian terms. Such control becomes a central problem when

political power over and beyond plausible contractarian limits is acknowledged to exist" (1975, 8). That power is the Leviathan government that threatens liberty.

Thus, Buchanan later said of his and Tullock's book *The Calculus of Consent*, "The framework for analysis was necessarily contractarian, in that we tried to explain the emergence of observed institutions and to provide norms for changes in existing rules by conceptually placing persons in idealized positions from which mutual agreement might be expected. . . . I have come to be increasingly disturbed by this basically optimistic ontology. . . . Zero-sum and negative-sum analogues yield better explanatory results in many areas of modern politics" (1975, 6–7). So the issue becomes to devise a method of preventing—or at least minimizing—those zero-sum and negative-sum outcomes that can be produced by Leviathan government.

Brennan and Buchanan noted, "If rules influence outcomes and if some outcomes are 'better' than others, it follows that to the extent that rules can be chosen, the study and analysis of comparative rules and institutions become proper objects of our attention" (1985, 2). This points directly to the importance of the institutional and constitutional framework—the rules—to be able to constrain Leviathan government so it will operate for its members' well-being.

As Buchanan saw it, liberty lies between anarchy and Leviathan, and the classical-liberal question is how to design a government that protects individual rights to preserve liberty from the threat of a "war of all against all" in anarchy but at the same time constrains that government so that it works for the interests of the individuals it governs and does not grow into a Leviathan that violates individual rights and works against the interests of the governed. Buchanan's answer is that liberty is preserved when the rules under which government operates are agreed to by those who are governed by them.

Agreement with the Constitutional Contract

This idea of agreement lies at the center of *The Limits of Liberty*. Recognizing the problems everyone would face in Hobbesian anarchy, Buchanan said, "[T]wo or more persons may rationally choose to be governed by prior selection and implementation of enforcement institutions" (1975, 94). As he set out the argument, government follows a set of rules predetermined and agreed-upon by those who are governed, and "resort to third-party adjudication produces 'government' of the ideal type in practicality" (1975, 95). All individuals essentially find it in their own self-interests to agree to be coerced.

To avoid Hobbesian anarchy, people find it in their interest to agree to rules that everyone respect the rights of others, but there will always be the problem of opportunists violating those rules for their personal gain. Thus, Buchanan argued, there needs to be some third-party enforcer for those rules, which is government. That is what Buchanan labeled the "protective state." People might agree to more than this from government, however. Some production can be undertaken more efficiently

when it is a collective undertaking rather than being undertaken through bilateral transactions, so Buchanan also saw a role for the productive state to produce these goods and services. The productive state “enables the community of persons to increase their overall levels of economic well-being, to shift toward the efficiency frontier. Only through governmental-collective processes can individuals secure the net benefits of goods and services that are characterized by extreme jointness efficiencies and by extreme nonexcludability, goods and services that would tend to be produced suboptimally or not at all in the absence of collective-governmental action” (1975, 97).

People can agree to be coerced not only to protect their rights and escape from Hobbesian anarchy, then, but also to collectively participate in the production of goods and services. Following Harold Hochman and James Rodgers’s (1969) arguments, we can say that when the benefits of production are nonexcludable, people have an incentive to free-ride, so those goods will be underproduced. Everyone can increase their well-being by committing that they will contribute only if a significant fraction of the population makes the same commitment. But when transaction costs are high, this agreement to contribute can be accomplished only by using government to force everyone to contribute. We agree to be coerced because we are better off as a result.

This way of thinking put Buchanan in a camp different from many libertarian thinkers, who see clear limits to the legitimate role of government. Libertarian anarchists such as Rothbard (1982) have argued that all government activity is unethical, and Ayn Rand (1961) and Robert Nozick (1974) saw a legitimate role for government, but also with clear limits defined by their arguments. Government beyond those clear limits violates the rights of the governed. But with Buchanan, the limits of the scope of government are defined by the agreement of those who are governed, and there is no mechanism in his framework that would prevent any type of taxation, limits on free speech or a free press, regulations on economic activity, or any other type of government restrictions as long as the people being governed by those rules agree to them. This opens the possibility that people might agree to a government that oversteps the bounds of classical liberalism.

Buchanan’s check on government’s overstepping of its bounds is the requirement that everyone subject to the government’s rules agrees to them. This unanimity requirement defines the limits of liberty, which opens the question of how Buchanan’s procedural mechanism of agreement can produce a classical-liberal outcome.

Unanimity and Liberalism

Unanimity and liberalism would appear to make an uneasy pair. The logic of the unanimity requirement to preserve individual freedom goes back to the requirement that people must face third-party constraints to preserve their rights and avoid the wretched conditions of Hobbesian anarchy. What constraints? The test is unanimous agreement. If everyone agrees to certain constraints and certain enforcement

mechanisms, then one can conclude that those constraints and mechanisms make them better off. Otherwise, they would not agree.

The test is a procedural one. The legitimate role of government is the role that people agree to, even if what emerges from that agreement is not what they expected. Buchanan stated, “Contractual obligation, expressed by the willingness of individuals to behave in accordance with specified terms, depends critically on explicit or imagined participation. Individuals, having ‘given their word’ are ‘honor bound’ to live up to the terms. This remains true even if, subsequent to the agreement, these terms come to be viewed as ‘unfair’ or ‘unjust.’” If a process is agreed to, based “on explicit or imagined participation,” then individuals are bound to the outcome of the process, even if after the fact the outcome was something they did not anticipate (1975, 74). Following Buchanan and Tullock’s logic (1962, chap. 6), one might agree to abide by majority rule for certain decisions, and the majority might decide on something substantially illiberal that the classical-liberal minority did not foresee. Nevertheless, everyone is still bound by the outcome that was produced by the procedure to which they agreed.

The preceding paragraph refers to “imagined participation” in the agreement with the process. To see whether this imagined participation holds in particular cases, Buchanan stated, “Individuals must ask themselves how their own positions compare with those that they might have expected to secure in a renegotiated contractual settlement” (1975, 75). Agreement is implied if their current positions are within the bounds they might have anticipated if the rules were continuously renegotiated. If this quotation is compared with the one in the preceding paragraph, a question that comes up is why “their own positions” are relevant to the contract. The previous paragraph says participants are bound by the contract even if they view the terms to be unfair or unjust, yet the quotation in this paragraph suggests that if they view their own positions as unfair or unjust, that calls into question the initial agreement. But, setting this issue aside, Buchanan went on to say, “That set of rights which might be widely accepted as being within the limits of what we may call here the ‘renegotiation expectations’ of individuals will not be uniform over communities and over time. . . . This suggests that there can be no resort to idealized general standards through which a legal or constitutional structure in a particular community at a particular stage of historical development might be judged” (1975, 75).

These passages suggest that the liberty that exists between anarchy and Leviathan would not necessarily guarantee freedom of speech, protection of private property, freedom of trade, or the freedom to participate in one’s government. What if citizens of a society were to become particularly enamored with a charismatic leader and unanimously agree to make that person the dictator, but the dictator then takes away the rights to freedom of speech, property ownership, and so forth? Even if the people later come to view the outcome as unfair or unjust, they apparently would still be bound by the agreement. However, if they look at the outcome and determine that their own positions are worse than they thought would exist under a renegotiation,

perhaps this outcome would not meet the test of this framework. There is some ambiguity on this question in Buchanan's work.

It appears that as long as the outcome maintains imagined agreement, it passes Buchanan's test, so if people agree to abridge their freedom of speech or their freedom of property ownership, Buchanan's framework judges this abridgement to be within the limits of liberty because of the agreement. This is the uneasy fit between unanimity and liberalism. The two are consistent only to the extent that people would not agree to an illiberal regime. But Buchanan indicated that there is no way to know what people might agree to and that what they agree to can vary over time and from place to place. Is this really what one means by liberty?

A second issue is the imagined agreement. Most people within a society did not agree to the rules in that society; the rules were forced on them (even if they like the rules). So, in using Buchanan's standard, one must look for what imagined agreement entails.

Imagined Agreement with a Social Contract

Buchanan defined a "natural distribution" that would exist among individuals in Hobbesian anarchy and imagined a bargaining process that begins from that natural distribution (1975, 24). He continued: "The specific distribution of rights that comes in the initial leap from anarchy is linked to the relative commands over goods and the relative freedom of behavior enjoyed by the separate persons in the previously existing natural state. This is a necessary consequence of contractual agreement" (25). People agree to constitutional rules only when they are better off with them than without them. Buchanan used a hypothetical agreement among individuals to emerge from Hobbesian anarchy as a benchmark for determining agreement. The contract includes a government to enforce the rules of the contract, designed to prevent opportunistic behavior that can lead to a devolution back to anarchy. "The final or ultimate constitutional contract will define the rights assigned to each person in the inclusive community. And each person will find his own position improved over that which he might have enjoyed in any one of the natural distributions noted above, because he will not have to exert or contribute effort to defense and predation, either as an individual on his own account or as a contributing member of a subset of the total community" (32).

Buchanan asked, "Does a 'social contract' in which all members of the community agree to make all collective choices relating to the provision and cost-sharing of a purely public good embody coercion as meaningfully defined? Ex ante, each participant knows that he will secure gains under such a contract, gains over and beyond those secured when none of the pure public good is provided. . . . Hence, it would seem that an agreement to join a collectivity that would make its decisions only under a rule of unanimity could be reached noncoercively" (1975, 38–39). He clarified by saying that "[i]t is important to recognize both the purpose and the limits of the

constitutional constraints that may be imposed on the operation of nonunanimity rules for collective decision-making at the postconstitutional stage of social interaction. To remain within what we may call broad contractual bounds, individuals must be assured that, in the net, operational politics will produce for them benefits rather than damages" (47). This means they must believe they are at least as well off as they would be if the contract were renegotiated from anarchy. "Individuals must ask themselves how their own positions compare with those they might have expected to secure in a renegotiated contractual settlement" (75).

Buchanan's conception of agreement has often been compared with the agreement behind the veil of ignorance that John Rawls (1971) proposed as signifying agreement. They differ in their details, largely because in Buchanan's renegotiation from anarchy people know their individual characteristics, whereas behind the veil of ignorance they do not. But the two conceptions have the element in common that both entail a hypothetical agreement. Both Buchanan and Rawls recognized that people did not, in fact, agree with any social contract, yet they argued that there is a conceptual agreement if people would have agreed from behind a veil of ignorance or in a renegotiation of the contract from anarchy.

Leland Yeager (1985, 2001) has harshly criticized this framework of hypothetical agreement, noting that this imagined agreement—to use Buchanan's term—means that people did not actually agree. Yeager views this imagined agreement as a major flaw of the entire contractarian framework, from a classical-liberal perspective, because the contractarian framework makes it appear that government action is based on agreement, whereas in fact all government action is based on coercion. Yeager notes that the only reason for having a government is to force people to do things they would not choose to do if not coerced. If people would voluntarily pay for those goods that government provides, there would be no reason to force people to pay taxes. If people would voluntarily do what government regulations mandate, there would be no reason to have a government to force compliance. This is true no matter how much one favors or supports what government does. The only reason for government is to force people to do what they would otherwise choose not to.

Buchanan recognized this point when he argued the need for government as an outside agent to enforce compliance with the social contract. He noted the possibility of prisoner's dilemma situations in which individuals have a narrow self-interest to act in a way that, if all individuals behaved that way, would make everyone in the group worse off. The solution is the outside enforcement agent—government—for the benefit of everyone. The social contract implies that people agree to be coerced. As Yeager notes, the coercion is real—the basis of government—whereas the agreement is hypothetical and imagined. Buchanan's contractarian framework, Yeager says, misrepresents government coercion as the product of agreement. In fact, people did not agree. This is a significant point of tension between Buchanan's contractarianism and his classical liberalism.

This implied agreement with the social contract presents a danger to classical liberalism because it is unobservable and therefore impossible to refute conclusively.

(It is also impossible to demonstrate conclusively.) Using Buchanan's criterion for agreement of renegotiation from anarchy, one can look at any contemporary institution—say, government redistribution programs—and claim that it would be a feature of the social contract if that contract were renegotiated from anarchy. Hochman and Rodgers (1969) made just that argument, saying there is a free-rider problem because the benefit people want is to make the poor better off, and potential donors can free-ride off the charity of others. Everyone would be better off if the government engaged in forced redistribution. So government redistribution meets the test of agreement because people would agree to it if the social contract were renegotiated from anarchy.

If someone says, "I do not agree with government's forced redistribution programs," the contractarian relying on Buchanan's framework might argue that the person would agree in a renegotiation from anarchy, so even though the person claims not to agree, that person is really in agreement. Someone in a privileged position today would not want to go back to anarchy and renegotiate without those privileges, but if forced back to anarchy, the dissenter would be in agreement. There is no way to prove that argument, but there is no way to refute it either because it rests on what someone would do in a hypothetical situation that has no basis in reality. The reality is that the dissenter is being coerced, even though the contractarian claims the dissenter is in agreement (see Holcombe 2011). Yeager's critique seems persuasive.

Agreement and Classical Liberalism

Buchanan argued that political philosophy needs to be more cognizant of the requirement that citizens must agree with government actions for liberty to be preserved. "Too often," he said, "the libertarian, like his socialist counterpart, discusses reforms under the 'as if' assumption that he is simply advising some benevolent despot who will lay down the proposed changes, with little or no reference to the consent of participating parties" (1975, 177). Liberty requires the consent of the governed.

According to Buchanan, "The emergence of a modified public philosophy in this respect should not be beyond the bounds of hope. Both the ideas and the events of the preceding decades have created a potentially receptive attitude in the ordinary man. . . . Democracy remains conceptually possible only if individuals view government in the consent paradigm. . . . On cursory examination, the attitudinal shift that I have outlined seems to be in accord with straightforward laissez-faire precepts. The orthodox libertarian would find no apparent difficulty in associating himself with the position suggested" (1975, 176–77). But the previous section already noted Yeager's difficulty, which is that Buchanan's contractarian paradigm relies on a hypothetical agreement that makes government appear to be the product of agreement when in fact it is the product of coercion.

Buchanan said, "If men would only commence to think in contractarian terms, if they will think of the state in the roles as defined, and if they will recognize individual

rights as existent in the status quo, I should not be at all insistent on the particulars” (1975, 176). One might argue that it is as much wishful thinking to hope that men would think in contractarian terms as for libertarians to hope to advise some benevolent despot. Although Buchanan was not insistent on the particulars here, he was in other works.

Buchanan and Nicos Devletoglou (1970) critiqued the demonstrations on college campuses in the 1960s as a breakdown of social order and a violation of the social contract, but within Buchanan’s (1975) framework, perhaps those demonstrators believed that the status quo was outside the bounds of what they would have expected from a renegotiation from anarchy. Many of those demonstrations were in response to the Vietnam War and the military draft, and it is easy to view college students who see their friends drafted as arguing (by means of their demonstrations) that conscription is antithetical to libertarian ideals. Other demonstrations were in response to racial discrimination following the civil rights movement in the 1960s, which again is easily viewed as a protest that the status quo is outside the bounds of renegotiation from anarchy.

Buchanan and Wagner (1977) argued that deficit finance violates the social contract and does not meet the criterion of agreement. With much support for deficit finance during President Barack Obama’s presidency, it is unclear whether deficit finance does, in fact, violate Buchanan’s agreement criterion. And because agreement is the test, it is possible that although people would not have agreed with deficit finance in the 1970s when that book was written, they do agree now. Agreement is a slippery criterion for defending liberty.

Joseph Schumpeter (1950) was explicitly skeptical about agreement, arguing that in democratic governments the people who receive the most benefit from a liberal society are unwilling to defend it, and he pessimistically foresaw that socialism would replace capitalism not because socialism was a better system, but because capitalism did not have the ideological support that socialism did. Along similar lines, Hayek (1944) argued that socialism was the road to serfdom, independent of whether popular opinion supported it. These two classical-liberal thinkers were not willing to argue that people would agree to a classical-liberal society or that a liberal society could be defined as the product of agreement; rather, they were afraid that the criterion of agreement would push society the other way: that popular opinion would push people to agree to abandon the classical-liberal principles that made them prosperous—and free.

Conclusion

Buchanan viewed a society without government as characterized by prisoner’s dilemma problems, where individuals who follow their own narrow interests work against everyone’s best interest. These prisoner’s dilemma problems come in two forms. First, some people will not respect the rights of others, so a liberal society

requires the protective state. Second, some people will be free riders when collective action to produce public goods would benefit everyone, so those public goods will be underproduced. Thus, a prosperous society requires the productive state, which forces people to pay, and in exchange improves their welfare by producing those public goods that would be underproduced otherwise. People's welfare can be enhanced and their liberty protected only with this outside enforcement mechanism—the state. People agree to be coerced in order to preserve their liberty.

There is an uneasy tension between Buchanan's classical-liberal values and his contractarian framework based on imagined agreement. One might argue, along the lines of Hayek (1944) and Schumpeter (1950), that people might agree to give up their liberty, but perhaps a bigger issue with using Buchanan's contractarian framework to identify the limits of liberty is that it is based on an imagined agreement that depicts government as the result of consent rather than coercion. Buchanan's contractarian framework might even be twisted to be used as pro-state propaganda. "I do not agree." "Ah, but you would agree in a renegotiation from anarchy; therefore, you are in agreement." Such a hypothetical argument would be difficult to disprove.

Buchanan's views on government were a response to the social dilemma he envisioned for when there is no government: the problems of Hobbesian anarchy that require an outside enforcement agent to overcome. Buchanan argued that a classical-liberal government must be one agreed to by its citizens. This idea goes back to Locke ([1690] 1960) and is found in the U.S. Declaration of Independence, which says that to secure liberty "governments are instituted among men, deriving their just powers from the consent of the governed." Buchanan's idea of consent to the constitutional contract goes back to the classical-liberal origin of the United States. The question then becomes, What does "the consent of the governed" mean when, in fact, most people did not agree? Although one might argue that the conventions held in the states in 1789 to ratify the Constitution constituted agreement, in 1975, when Buchanan published *The Limits of Liberty*, that agreement was long gone, and no matter how much people in the twentieth (and twenty-first) century liked their government, they did not actually agree to it. Here, Buchanan's imagined agreement with the constitutional rules in a renegotiation from anarchy is his answer to designing a set of rules to overcome this social dilemma.

Another approach to the dilemma Buchanan grappled with is to assume it away. Rothbard argued that all government is unethical (Rothbard 1982) and that anarchy would be more productive than being subject to government anyway (Rothbard 1973). Perhaps he is right, and anarchy would not be the Hobbesian "war of all against all" that Buchanan feared. But both Rothbard's and Buchanan's visions of anarchy rest on assumptions about human behavior and assumptions about the robustness of institutions, without any empirical evidence. Buchanan dismissed Rothbard's view of anarchy out of hand, saying, "The anarchist utopia must be acknowledged to hold a lingering if ultimately spurious attractiveness. Little more

than casual reflection is required, however, to suggest that the whole idea is a conceptual mirage” (1975, 3).

Perhaps Buchanan underestimated the potential for an orderly anarchy, but an analysis of his classical liberalism must start with his conception of the social dilemma that a classical-liberal society faces. Anarchy of any type is not a realistic alternative in the foreseeable future because government will use force to maintain its authority, so, realistically, any attempt to move toward the governing principles of classical liberalism must be in the form of constraining the powers of government. Buchanan’s research program in constitutional economics consistently focused on exactly that: constraining the powers of government.

Buchanan started with classical-liberal values but saw the need for an outside enforcer to protect people’s rights and to organize productive activity that cannot be undertaken without collective action. Without a third-party enforcer, a productive and orderly society “is a conceptual mirage.” The mechanism for ensuring that the enforcer acts for everyone’s benefit is to make it subject to the consent of the governed. Grappling with that uneasy tension between consent and coercion is the dominant issue in Buchanan’s work, from *The Calculus of Consent* (1962) through *The Limits of Liberty* (1975) and *The Reason of Rules* (1985). Dismissing the issue, as Rothbard did, is one way out in an academic setting. But if one wants to apply tools of analysis to consider restoring the ideas of classical liberalism in the real world, Buchanan’s work begins that project by identifying the critical issues and offers an approach for dealing with them. Unresolved tensions do remain. Buchanan left classical liberals with some work to do, but he also left some tools for doing that work.

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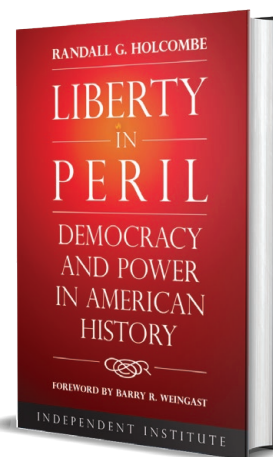
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