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# Buchanan as a Classical Liberal

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James M. Buchanan was a contractarian. I am not.<sup>1</sup> But I share Buchanan's classical-liberal ideals.<sup>2</sup> In my account of what I regard as Buchanan's classical-liberal views, I start with a reconstruction of the somewhat unconventional but very far-sighted way in which Buchanan intuitively made the conceptual distinction between what I call "philosophical" liberalism and "political" (or institutional) liberalism. It seems that Buchanan in his more unguarded moments intended to subscribe to both philosophical and political liberalism. Accepting that philosophical liberalism is impossible, however, I think that Buchanan should be seen as a "communitarian liberal philosopher." His philosophical use of the unanimity principle rather naturally led him to this position and the political liberalism implied by it. As an *ordo-* rather than an *anarcholiberal*, Buchanan understood that in a world without a state, all life would become "politicized." He understood that the central classical-liberal ideal of

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1. That foundational disagreement brought Buchanan and me into contact the first time through the intervention of our common friend Hans Albert in 1984. Hans at that time had the idea to let the star of economic contractarianism "fight it out" with a then young philosopher economist who was—in the tracks of Hume—criticizing the so-called new contractarians—Buchanan, Robert Nozick, and John Rawls. That we did not fight it out frustrated Hans's hopes and his love of controversy. Nevertheless, he was pleased to have initiated what would become a professional relationship and friendship between Jim and me. I will remain forever grateful for this.

2. Buchanan and I taught courses on philosophy and economics together beginning in 1984. Several of these ten-day lecture courses either at the European Forum in Alpbach, Tyrol, or at the Center for Study of Public Choice in Fairfax, Virginia, followed in later years. These events in which we took turns in lecturing went well, I believe, despite the disagreement on "contractarianism" as a justificatory model, precisely because we shared classical-liberal ideals.

being able to live a nonpolitical life can paradoxically be brought about only—if at all—politically and only by state institutions embodying limited government and rule of law.

## Philosophical and Institutional Liberalism

In 1975, Buchanan gave a talk at the Economics Department of Virginia Tech in which he criticized Amartya Sen's account of the liberal paradox.<sup>3</sup> On the day before the presentation, he had sent one copy of his paper to a graduate student. From this student's desk—remember those were the days when a copy machine and a fax machine formed the pinnacle of communication technology—the draft of the paper eventually made its way to Sen, who afterward would routinely draw attention to it (though only to reject it as an important yet mistaken criticism). However, the audience at Buchanan's talk expressed the view that Buchanan had missed the boat entirely. This negative response discouraged Buchanan from publishing the paper at all. Jim commented in a personal communication to me that he just could not understand what the critics of his position were driving at. He nevertheless had the feeling that he should be cautious because everybody seemed to turn against him on this point.

With the benefit of hindsight and after a long debate,<sup>4</sup> I believe that Buchanan was right on political liberalism (liberal institutions) and wrong on philosophical liberalism (liberal welfare economics).<sup>5</sup> Because these concepts have been so frequently misunderstood, let me briefly indicate what is going on here.

## Rights in Political and in Philosophical Liberalism

Buchanan made the simple point that the actors in a game can make choices regarding *actions* only. The choices are *not* choices among the *outcomes* of the game. The outcomes emerge. They are objects of individual *evaluation* and ranking, but not of *individual* choice making. Which of the outcomes emerges cannot be “chosen” in the proper sense by any of the actors single-handedly.

In relation to the preceding basic insight, players of the game of life can have rights to act in certain ways, but—unless they are dictators over the alternatives—they cannot have rights to control outcomes. Rather trivially, only a dictator can have

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3. For the background of the stylized account presented here, see the special issue of the journal *Analyse und Kritik* (Analysis and Criticism) in which the paper was printed (“The Paradox of Liberalism” 1996) with several comments and responses from others, including Sen himself. See also Buchanan [1996] 2001.

4. Robert Sugden said what Buchanan would have said in technical terms had he been more technically minded; see, for instance, Sugden 1985.

5. Prasanta Pattanaik (2005) traces a parallel distinction back to an ambiguity in Kenneth Arrow's original work.

full control. Yet there cannot be more than one dictator. If several individuals have the right to rank outcomes of a game, then there would need to be several dictators.

From the preceding, it is obvious that much depends on how we conceptualize “rights” (on this conceptualization, see also Sen 1970 and Gaertner, Suzumura, and Pattanaik 1992). As long as we understand rights to amount to the institutional allocation of separate sets of permissible actions from which actors may choose, there will not be any problem. Each chooses among the actions open to him or her independently, and an outcome emerges without being chosen by any actor. The exercise of actors’ institutional rights is always possible, although the outcome of their separate choices may be unanimously nondesired (i.e., Pareto dominated).

Buchanan time and again insisted that what comes out of individual actions under a set of institutionalized “action rights” is—unless the actors themselves agree to do something about it—to be respected and accepted as legitimate. Beyond the individual evaluations, there is no further standard of evaluation (and what comes out of choices comes out). As a classical *political* liberal, Buchanan focused on individuals’ institutionally fixed choice sets rather than on their preferences. *Political or institutional liberalism* of that kind is obviously free of conceptual paradoxes.

However, if we are speaking about liberal ways of forming or passing value *judgments* about which outcomes are better than others, then things change. That such *judgments* can coexist as judgments is obvious. Person 1 can say, “I like *x* better than *y* as a collective result” whereas person 2 can simultaneously say, “I like *y* better than *x* as a collective result.” But it is also obvious that the contradictory preferences concerning collective outcomes cannot be realized simultaneously. Both person 1 and person 2 cannot be dictators concerning the ordering of collective outcomes.

The shift of perspective from actions (institutional or political perspective) to evaluations of the results of (separate) actions (welfare economics and evaluative ethics perspective) is highly relevant. Confusion and the air of paradox arose in the discussion of the so-called liberal paradox described earlier because Sen framed the concept of a right in terms of “local” dictatorship over collective outcomes. If you have the right to dictate outcomes rather than merely to choose actions, then different dictates from different dictators may obviously clash. Buchanan recognized that actions may coexist and that there thus was no paradox of political liberalism. But he wrongly assumed that philosophical liberalism would be possible as well.

## Philosophical Liberalism Is Impossible

If we impose certain requirements on the kind and form of *judgments* concerning individuals’ ranking of collective alternatives, then *philosophical* liberalism will emerge. In philosophical as opposed to political liberalism, the focus is not on institutions (and the actions they offer) anymore, but rather on the way value *judgments* (in particular on outcomes) are formed.

Philosophical liberalism is not a far-fetched idea: first, it is very natural for individuals to order collective outcomes—as they affect them—even if no individual can choose them;<sup>6</sup> second, in forming their own value judgments concerning collective outcomes, liberals will want to incorporate other individuals' plural value judgments in their own. By endorsing other individuals' values within their ordering of outcomes, they express liberal respect for those values.

For example, a philosophical liberal will want others to get their way at least sometimes. More specifically, a liberal prude will want, say, to rubberstamp the values of a lascivious other in her own value judgment. Though she resents reading a "juicy" book herself, and though she resents it if others do read the book, she still respects those other individuals' independent value judgments and therefore is willing to rank the collective state that the lascivious person prefers higher than the one she herself prefers. But what should the philosophical or evaluative liberal do if "nosy preferences" are present?

A liberal welfare economist must not only accept that there can be as many welfare functions as there are individuals.<sup>7</sup> He must also accept that he cannot let his personal welfare function for the collectivity be determined by the individuals' preferences in ways that still show some fundamental liberal respect for the evaluations of each and every individual. He cannot "own" the values of others *no matter what* while securing Pareto efficiency. In the sphere of *evaluations*, it is impossible to adopt the stance of a Paretian liberal.

No welfare function can simply *trace* individuals' values. Forms of philosophical liberalism that intend to trace or endorse individual value judgments without passing judgment seem impossible. Using Buchanan's own terms, an economist who intends to do welfare economics cannot but play "God" by imposing her or his own values. Buchanan's approach does not work for evaluative ethics. His value skepticism that requires the evaluator not to play God is in trouble. If classical liberalism were of the philosophical type, it would suffer from Sen's argument, and Buchanan in his more unguarded moments came close to such an untenable philosophical view. However, this being acknowledged, Buchanan got it completely right as an institutional classical political liberal. And this is the only liberalism that really matters.

## Philosophical versus Classical Political Liberalism

Buchanan did not use the terms *philosophical liberalism* and *political liberalism* as proposed here. Yet he "rightly" insisted that rights of the classical-liberal kind are sets of actions from which individuals are institutionally entitled to choose as seems

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6. People tend to forget that even in proper collective-choice processes such as voting, they have only the option to say yes or no rather than properly choosing the collective result that they are called to vote for.

7. Because the individual functions are unique only up to affine linear transformations, this applies even if all individuals' welfare functions are common knowledge.

fit. The corresponding “action or choice rights” entitle individuals to exert certain kinds of externalities by choosing independently. Buchanan understood that this is always possible.

Though Sen tried to maintain the appearance that his arguments were relevant for political liberalism, Buchanan was right in insisting that there is no paradox of *political* liberalism. However, with respect to what I call “philosophical (or judgmental) liberalism,” Sen’s formal point stands. If we explicate the concept of a “philosophical liberal” as somebody who intends to form her own value judgments in terms that respect and incorporate others’ value judgments in her own, there are impossibility results, like Sen’s: to accept preferences as “given” and simply to follow the given preferences in forming the evaluator’s own preferences over outcomes for the collectivity at large is not possible if individual values are to be decisive for the evaluator’s judgment no matter what (or without any evaluator judgment) over the whole domain. More trivially put, we cannot let several others independently dictate what our value judgments should be. Obviously, we cannot follow them all if their dictates clash. In that case, we must take a stance ourselves.

In sum, on the level of forming value *judgments*, the philosophically liberal respect for others’ values must be conceptualized differently than by simply letting individual valuations be (minimally) decisive. A tracing of the values of other individuals free of any further evaluation by the individual doing the tracing (e.g., the philosophically liberal welfare economist) is impossible.

Though Buchanan and Gordon Tullock were certainly not aware of the impossibility of philosophical liberalism (or the corresponding welfare economics), their book *The Calculus of Consent* ([1962] 1999) can be read as providing preemptively a philosophical response to the problems Sen’s later impossibility result raises. The argument of *Calculus* shows the strength of classical *political* liberalism, yet it is more statist than most present libertarians like.

## The Classical-Liberal Calculus of Publicness and Privateness

*The Calculus of Consent* starts from the premise that the legitimacy of decision making derives from unanimity. On the fundamental constitutional stage, the main results of unanimous decision making are the rules of the later “game of society.” If everybody unanimously agrees on something, then that agreement is constitutive for the legitimacy of the result. So much seems clear, yet it is less clear what unanimity means.

On the one hand, there is an anarcholiberal conception of unanimity. Here, the search for agreement starts from some “natural-law” system fulfilling the conditions “*of the stability of possession, of its transference by consent, and of the performance of promises*” (Hume [1739] 1896, sec. 6, first sentence, emphasis in original). Any such system of natural law implicitly defines legitimate acts and the permissible externalities on others arising from such acts.

On the other hand, there is the communitarian-liberal view according to which everybody concerned has a veto against any action. In that case, nobody is entitled to choose an alternative from the relevant common domain unilaterally. The individuals must be authorized by the community to act. The choice of an outcome is viable for actors acting in collective concert only by making them puppets on strings executing the collectively fixed choice.

In the first case, the presumption is that within the constraints of “natural law,” “everything” is allowed; in the second case, the presumption is that “everything” is forbidden unless explicitly authorized by the collectivity. If the choices are made in agreement, the two forms of agreement are to be distinguished. In the first case, any number of actors can agree to coordinate their separate choices. Those who do not agree are simply left out of the coordination, and those who agree go ahead in a noncoordinated manner. The individuals are entitled to exert the relevant externalities, if any, on their peers. In the second case, the authority to fix actions to be performed by the individuals rests with the collective body or corporate actor. If the “dance” is fixed by some act of unanimous collective voting, all must agree before an act can be legitimately performed by any of the individuals acting on behalf of the collectivity.

Obviously, in an anarcho-liberal starting situation, individuals can agree on forming groups (clubs) that work afterward according to a principle of unanimity under a veto rule. They collectivize certain decisions on behalf of individuals’ original natural-law authority to act. Likewise, in a communitarian starting situation, the people who have a veto can decide to privatize a sphere of action. They collectively decide that the collectivity will not have a say and that some sphere of individual actions will not be subject to collective decision making.

In the first case, the community of those who are granted the role of veto players is *endogenously* formed in a situation in which no veto exists because everything conforming with “natural law” is allowed. In the second case, the community of those who count as veto players (as individuals) must be *exogenously* given.

The preceding illustration makes it clear that “unanimity” is an ambiguous concept. It can be either of the “individualist” variety (any number and no veto) or of the communitarian variety (all and veto). If it comes to fundamental frameworks in which we conceptually characterize what we regard as legitimate, both types of unanimity are to be considered as alternatives.

## From Unanimity to Privacy

The justificatory exercise presented in *The Calculus of Consent* starts with the maximum externality of having only the community or collectivity as a legitimate “author” of acts. This seems weird from an individualist point of view, yet in the next step the communitarian liberals in *Calculus* argue that reasonable individuals will use their collective or communitarian authority to devolve the collective authority. In a fundamental collective

constitutional choice act, what is to count as private and what is to count as public are determined consensually (see Kukathas 1996).

The right to veto everything expresses the respect for the separateness of persons in the deliberations of those who—like the authors of *The Calculus of Consent*—start as genuine democrats from a conception of “political community.” The “logical foundations of constitutional democracy” (as the book is subtitled) are communitarian. Constitutional politics starts within the sphere of politics rather than constituting the political sphere by private acts. The veto is projected or translated politically onto a politically protected right to decide certain matters privately. It is the most fundamental *constitutional political* act of all: to define what is to be political and what is to be nonpolitical.<sup>8</sup>

Classical liberals of the ordoliberal stripe—adherents of Buchanan-type constitutional political economy or of the so-called Freiburg school—may feel somewhat hard-pressed if they are asked to concede that in their justificatory deliberations they start from the presumption that everything is forbidden. However, that is the only way to grant a veto to everybody. And the latter is—as Buchanan and Tullock well understood—the most natural way to express classical-liberal ideals of the separateness of persons in the presence of (collective) political interdependence within a collective-choice setting: in the fundamental logic of constitutional democracy, the anti-utilitarian intuition of an initial normative separateness of persons is conceptually expressed by the assumption that everybody is willing to grant a veto to everybody else. And what in the deliberational process of opinion formation can better emphasize the fundamental value of respecting the individual person’s inviolability than forbidding any action to be taken unless all agree?

This universal veto translates into suggesting political institutions and political rules that respect the individual as much as possible. The conceptual exercise in the sphere of opinion formation will naturally lead to proposing the institutional assignment of *political* rights and an *institutionalized* enforcement process for those rights under rule of law. The conceptual veto represents in liberalism and in the deliberational sphere underlying it a “sense of justice” that easily translates into an institutionalized “bill of rights” (and, for that matter, the requirement of qualified majorities, as in Buchanan and Tullock’s calculus of consent).

The premise that “everything is forbidden unless explicitly allowed” is a conceptual starting point that strongly suggests the creation of a depoliticized sphere beyond collective choice by a political mechanism: “Everything is forbidden unless explicitly agreed on!” normatively acknowledges the factual primacy of collective politics. But then it goes for taming the beast as much as possible. The assumption that all have a veto is the strongest *political* endorsement of the value of “respect for individuals as

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8. This decision has to be made as well if we start from some presumption of privacy and build the political from there. As becomes entirely clear from a careful reading of Robert Nozick’s book *Anarchy, State, Utopia* (1974), a political act needs to be performed when the ultramimimal state is turned into the minimal state.

separate persons” against the intrusions of collective politics. The individuals can, each on his or her own, stop the collectivity in the pursuit of its aims, but they also can unanimously agree on anything in an act of pure procedural justification.

## Anarchy as Politics and Privacy as Policy

For the classical liberal, the communitarian-liberal position in *The Calculus of Consent* has some advantages over the seemingly more natural anarcholiberal position (to which Buchanan came closer in *The Limits of Liberty* [(1975) 2000]). The former position starts within the sphere of politics rather than constituting the sphere of politics out of some nonpolitical state of affairs. It thereby implicitly acknowledges that once the state and politics properly exist, they are an overwhelming force as a matter of fact.

Now, clearly, there was a world before state politics took over. From this statement, one might infer that this world was a world without politics. Quite trivially, if we define politics to “mean” that the state is involved, then no politics existed before the state emerged. However, if we think of politics in terms of certain forms of behavior, then a state of anarchy need not be a state of affairs without politics. Quite the contrary, if we read descriptions of such states of affairs as prevailed in medieval Iceland, then politics pervaded all social life there even though no central state existed.

For instance, the most striking feature of Njal’s saga is not how procedurally elaborate anarchical law was,<sup>9</sup> but rather that everybody, despite the important role that the law played, had to engage in the task of political coalition building all the time.<sup>10</sup> Whether somebody got her or his due in the Icelandic system was dependent on what the law said. But the fact that the law was not centrally enforced had the consequence that the number of supporters of a claim mattered for the very possibility of enforcement.

In the Icelandic system, the ease of coalition building in favor of a claim was a function of the legitimacy of the claim according to law. In any dispute, the law defined the focal point of opinion formation among observers who might or might not enter the fray. In this sense, what the law said did matter indirectly through easing or impeding coalition formation when one was facing the challenge of getting one’s claims enforced. Whether one could enforce a claim was in the end dependent on the strength of the group of supporters. And this obviously forced every member of the Icelandic society to engage in social networking. Icelandic individuals had to act as politicians do and clap every shoulder in sight.

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9. With an interesting role for the “law speaker” in a positive law system before the ascent of writing.

10. For Njal’s saga, see the Penguin edition (Radice and Baldick 1960), and for useful comments on it see Friedman 1979 and Solvason 1990.

Obviously, a society's politicized character may be even worse if a central state exists. If you are unlucky and live under a politicized central state with no rule of law and no well-defined veto powers such as institutionalized rights, then you may be a completely powerless victim of the central system and the "great humanists" running it. However, under the lucky circumstance of a working classical-liberal order, politics make it viable that individuals can lead private lives without engaging in coalition building all the time. They have stable natural law with central enforcement. The citizens can be reasonably assured that they can make it on their own as individuals against coalitions of other individuals and even against the state when they go to court.

The ability "to go for it alone" as created by classical-liberal institutions was presumably the deepest political concern of James M. Buchanan as a person. He wanted to live in a society that would politically create a maximum sphere in which individuals could privately pursue their own ends with their own private means. This is why he became a communitarian or ordoliberal rather than an anarcholiberal. In other words, Buchanan was a classical political liberal.

## Conclusion

An impressively coherent classical-liberal position emerges from Buchanan's works. This is certainly also due to the fact that in practically each paper he wrote, Buchanan rehearsed some basic convictions, which he referred to as his "contractarianism." Though I to a large extent agree with the results, I do not agree with Buchanan's view that his liberalism was more or less an expression of his contractarianism. I believe that it could not even be founded on a contractarian argument unless we identified contractarianism with (basically Kantian) liberal communitarianism.

If "contractual agreement" is used as a *source* of justification—either of institutions or of principles of argumentation and deliberation—doing so puts the classical-liberal views at risk. It becomes a threat for the legal norms of interpersonal respect rather than strengthening them. By constructing a veil of ignorance or uncertainty, it rationalizes practically everything as the outcome of conceivable contractual agreement. If the term *contractarianism* merely expresses the *aim* of living in a society in which broadly Kantian norms of interindividual respect for the autonomy of other individuals are implemented through the rule of law, then it is another word for classical political liberalism. I completely agree with the aim of implementing classical-liberal political institutions. But if I had to choose between fictions, then I would prefer the original communitarian fiction that everything is forbidden unless agreed to by the individuals affected—the communitarian agreement—to the anarchical contractarian fiction of an endogenous original contract. My own view is entirely anticontractarian on the level of justification. But I do fully endorse Buchanan's view that in a world in which states exist and state politics cannot be avoided, we better care for liberal political institutions and provide some intellectual basis for political liberalism. Philosophical liberalism is not that basis.

The paradox that we can have a truly private sphere—if at all—only within classical-liberal politics did not escape Buchanan. The classical liberal should focus on liberal constitutional policies and institutions and avoid the traps of philosophical liberalism. In *The Calculus of Consent*, we find the modern soul of classical liberalism. It is about interpersonal respect and not about a social contract latently endangering that respect.

That Buchanan himself, like other liberals in their desire to respect the values of others, tended to fall into the trap of largely irrelevant philosophical liberalism should be noted. But then we should go on with the business of strengthening politically liberal institutions.

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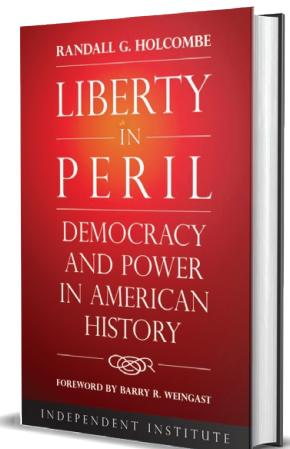
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