



"LIBERTY MATTERS"



A FORUM FOR THE DISCUSSION OF MATTERS PERTAINING TO LIBERTY

JAMES BUCHANAN: AN ASSESSMENT (March, 2013)



James M. Buchanan (1919–2013)

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LIBERTY MATTERS

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1. LIBERTY MATTERS: JAMES BUCHANAN: AN ASSESSMENT (MARCH, 2013)

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THE DEBATE

SUMMARY

To commemorate the recent death of James M. Buchanan (1919-2013) on January 9 a number of scholars will discuss his considerable contribution to economic and political theory, most notably his work on "public choice" and constitutionalism. Geoffrey Brennan, who worked closely with Buchanan for many years, deals first with Buchanan's contractarianism and then turns to his theory of constitutionalism, trying to indicate how these two c's are related. He then attempts to connect the "constitutional contractarian" project to Buchanan's credentials as a classical liberal and raises a number of other queries about the intellectual scheme he created, including the double role of exchange, the nature of market operations, the supply of versus the demand for rules, chosen versus inherited rules, and "expressive constitutionalism."

The online discussion consists of the following parts:

1. **Lead Essay:** Geoffrey Brennan, "James Buchanan: An Assessment"

2. Responses and Critiques:

1. Response by Viktor J. Vanberg [Posted: March 8, 2013]
2. Response by Peter Boettke [Posted: March 8, 2013]

3. Response by Steven Horwitz [Posted: March 11, 2013]
4. Response by Loren Lomasky [Posted: March 12, 2013]
5. Response by Edward Stringham [Posted: March 13, 2013]

3. The Conversation:

1. Response by Geoffrey Brennan [March 18, 2013]
2. Viktor Vanberg's reply to Geoffrey Brennan [March 19, 2013]
3. Geoffrey Brennan's reply to Viktor Vanberg [March 19, 2013]
4. Loren Lomasky's comment [March 22, 2013]
5. Viktor Vanberg's comment [March 22, 2013]
6. Steven Horwitz's comment [March 23, 2013]
7. Viktor Vanberg's reply to Steven Horwitz [March 25, 2013]
8. Geoffrey Brennan's comment on Horwitz [March 25, 2013]
9. Geoffrey Brennan's comment on Vanberg [March 25, 2013]
10. Geoffrey Brennan's comment on Loren Lomasky [March 25, 2013]
11. Peter Boettke's comment on Buchanan et al. [March 26, 2013]
12. Peter Boettke's second comment on Brennan et al. [March 26, 2013]

ABOUT THE AUTHORS

Geoffrey Brennan is professor in the Moral, Social and Political Theory Centre, Philosophy School, RISSS, Australian National University. He simultaneously holds a research professorship jointly at UNC-Chapel Hill (philosophy) and Duke University (political science). He spent the years 1976-1983 in the Public Choice Center at Virginia Tech, and is coauthor with James Buchanan of *The Power to Tax* (1980) and *The Reason of Rules* (1985), as well as a dozen or so articles in refereed journals.

Peter Boettke is University Professor of Economics and Philosophy at George Mason University and the BB&T Professor for the Study of

Capitalism at the Mercatus Center. He is the author most recently of *Living Economics: Yesterday, Today, Tomorrow* and has been the editor of the *Review of Austrian Economics* since 1998.

Steven Horwitz is Charles A. Dana Professor of Economics and department chair at St. Lawrence University in Canton, NY. He is the author of two books, *Microfoundations and Macroeconomics: An Austrian Perspective* (Routledge, 2000) and *Monetary Evolution, Free Banking, and Economic Order* (Westview, 1992), and has written extensively on Austrian economics, Hayekian political economy, monetary theory and history, and macroeconomics. In addition to several dozen articles in numerous professional journals, he has also done nationally recognized public-policy work on the role of the private sector during Hurricane Katrina for the Mercatus Center, where he is an affiliated senior scholar. His current research is on the economics and social theory of the family, and is at work on a book on classical liberalism and the family.

Loren Lomasky has been Cory Professor of Political Philosophy at the University of Virginia, Charlottesville, VA. since 2003. He works mainly on liberal political theory, but a reckless habit of consorting with economists has led him to muse from a Public Choice perspective about voting in democracies.

Edward Peter Stringham is the L.V. Hackley endowed professor for the Study of Capitalism and Free Enterprise at Fayetteville State University, North Carolina. He is editor of *Anarchy, State, and Public Choice* (2006, Elgar), *Anarchy and the Law* (2007, Transaction), and author of *Private Governance* (forthcoming with Oxford University Press). Read more here: <www.ssrn.com/author=685664>.

Viktor J. Vanberg is professor emeritus, Freiburg University, Germany, and member of the board of the Walter Eucken Institute in Freiburg, which he directed from 2001 to 2010. From 1983 to 1995 he was a research associate and professor of economics at the Center for Study of Public Choice at George Mason University. He is coauthor with James Buchanan of a number of journal articles. <<http://www.walter-eucken-institut.de/>>.

1. LEAD ESSAY: GEOFFREY BRENNAN: JAMES BUCHANAN: AN ASSESSMENT [MARCH, 2013]

It is one of the features of an intellectual's work that it has a life independent of – and possibly more extensive than -- its creator. In that sense, Jim Buchanan's death ("after a short illness") on January 9 is of no particular *academic* significance – beyond the fact that Jim himself is no longer around to correct misinterpretations of the Buchanan position (as he saw it).[1] On the other hand, it would be unseemly for the occasion to go unmarked. At the very least, Buchanan's death provides an opportunity to restate and re-assess the "Buchanan position" (at least as *I* see it); and such restatement and reassessment is my purpose here.

Most economists are of the "have-brain-will-travel" kind. Armed with our kitbag of techniques and our distinctive disciplinary perspective, we look around for varied applications (often finding them in unlikely places). For most of us, our lifetime "contribution" is just the sum of our little inroads (if any at all) into a range of little problems. There is no particular dividing line in the epistemic division of labor that marks off our individualized "contributions"; and the lifetime whole is not much more than the sum of the parts.

In that sense, Buchanan was distinctive -- not just in the size of the contribution, but also in its coherence. There is, associated with his work, an identifiable "research program" – not so much "Public Choice theory" as such, but what is sometimes called "Virginia School political economy," or what I prefer to call "constitutional contractarianism," because the latter term is more descriptive. Of course, that program evolved and became more self-conscious as the work accumulated;[2] but it is uncanny how much of it can be identified in Buchanan's writings right from the start.[3]

In what follows I will deal first with Buchanan's contractarianism and then turn to the constitutionalism, trying to indicate how these two c's are related. I will then try to connect the "constitutional contractarian" project to Buchanan's credentials as a classical liberal and raise a number of

other queries about the intellectual scheme that seem to me worth discussing.

CONTRACTARIANISM

For Buchanan, economics properly pursued is the "science" (with much emphasis on the "logic") of *exchange*. [4] In other words, "exchange" is the lens through which economists should look at the social world, identifying both actual and potential instances of it and its consequences, where present. In this he was a faithful (if originally unconscious) disciple of Richard Whately.[5] Jim used to say that the proper point of departure for an economics principles course was Menger's account of two horse-traders [auf deutsch], and more generally that the measure of the quality of any principles course was how soon it got to "exchange." For him, exchange is central.

Of course, he saw markets as the primary institution for the mobilization of exchange possibilities. But his version of the "economic analysis of the study of *political* processes" (or "Public Choice theory," as it came to be called) was distinctive in Public Choice circles for its emphasis on "*politics as exchange*" – a phrase he repeated many times.[6] (As an aside, we should note that for many libertarians/classical liberals it might be more natural to think in terms of politics as *coercion* – and though Buchanan certainly did not deny the possibility of coercion in politics, he equally certainly denied that all government action is intrinsically coercive.) He believed that exchange via political action is possible and that the role of the economist is to uncover those exchange possibilities. In this, he followed Knut Wicksell (unquestionably one of Buchanan's intellectual heroes) and Wicksell's other interpreter, Erik Lindahl – and in this sense was a participant along with Musgrave and Samuelson in the analysis of public goods and associated market failure that dominated the welfare economics/public economics of the 1950s and early 1960s.

That is, Buchanan fully accepted the public-goods argument that markets sometimes fail to exploit all the mutual benefits that are on offer in human society. And he also accepted the (Wicksellian) proposition that collective action could in principle appropriate such

“gains from exchange” in public-goods supply. In other words, he thought that there is (in principle) a role for the “productive state” as well as the “protective state” – to use a distinction he developed explicitly in the *Limits of Liberty* (1975). He explicitly rejected anarchy as a viable option, broadly embracing the Hobbesian argument for government and in the process adding his own kind of ‘rational reconstruction’ of the Hobbesian position.

Indeed, much of Buchanan’s mid-career work involved exploring the details of market-failure argument. Two of his most famous (certainly his most widely cited) papers were his analysis of price-excludable collective goods – his “theory of clubs” (1965) – and his “externality” piece with Craig Stubblebine (1962). And in 1968 he offered a book-length treatment, *The Demand and Supply of Public Goods*, of the public-goods argument, explicitly trying to connect his own exchange variant to the standard neoclassical version.

Equally, however, Buchanan recognized – again from the earliest point in his career – that the mere fact of market failure to appropriate gains from exchange does not show that government can succeed. The message that Buchanan took from the public-goods literature is rather that the appropriation of possible gains from exchange represents an *institutional problematic*. Again following Wicksell, he explicitly and forcefully rejected the “benevolent despot” model of government that he saw as dominating standard public economics.[7] Indeed, critique of this “benevolent despot” model became the focus for the entire Public Choice movement over the early decades of its development. One way (Buchanan’s way) to express that critique was to emphasize that efficiency/Pareto optimality[8] is an “*emergent*” property, reflecting the institutional features of the process in which different exchanges are made (or fail to be made). The standard neoclassical approach deriving from Samuelson’s treatment, by contrast, was to treat Pareto optimality as a property that could (in principle) be imposed by governmental fiat.[9]

Broadly Buchanan accepted the Austrian critique of the “socialist calculation exercise”[10]– but unlike the Austrians he was not prepared to accept that governments (or social planners) would be motivated to secure Pareto optimality (even for the purposes of the

argument)! For him, any such assumption of government “benevolence” assumed what had to be proven: that is, it assumed that agents motivated by the same kinds of desires that apply to market agents would, by the operation of democratic incentives, be led to behave in the public interest. That claim, he thought, requires an *argument* – not an assumption! And exploring whether any such argument could be sustained became the central agenda for Public Choice analysis. In that exploration, Public Choice theorists took it as obligatory that political agents should be assigned the self-interested motivations ascribed to market agents – to treat the political process as a scramble for rival interests, just as market processes are taken to be. It is in this spirit that Buchanan referred to the Public Choice enterprise as “a theory of *political failure*” to set alongside the analysis of so-called “market failure”[11] or, to use another of his well-chosen epithets, Public Choice is “politics without romance.”

But at this point Buchanan might seem to face a problem – namely, how this comparison of markets and politics in terms of the exchange norms he endorsed could conceivably have any influence on anything. If markets fail less than politics fails, what possible impact could this fact have on either politics or markets? There simply seemed no point in the exercise where the normative force of the comparison could gain any purchase.

As I see it, it is in the face of this problem that Buchanan’s “constitutional” turn is to be understood. And it is to this I now turn.

CONSTITUTIONALISM

A central part of the Buchanan intellectual scheme is the distinction between the rules of the game and plays of the game within the rules. Buchanan conceived of both markets and politics as games played within rules. But he thought that there was a “higher” level of choice – the choice of the rules. This level of choice is the “*constitutional*” level. Constitutions in Buchanan’s sense have, then, two central features:

1. a specification of the proper domains of market and political operation (which entails, in particular, limits on the domain of political decision-making). The notion that it might be

left to in-period political processes to determine their own sphere of activities struck Buchanan as totally inconsistent with the constitutional logic. Limited government is the *sine qua non* of the constitutional approach;

2. a specification of how in-period politics is to operate. The most familiar illustration of this latter concern is, of course, the determination – in the *Calculus of Consent*, written with Gordon Tullock – of the “optimal decision rule” (or rules more accurately, since different kinds of decisions would predictably call for more or less inclusive majorities). Of course, the *Calculus* contains many other interesting arguments -- about bicameralism and the separation of powers, and fascinating suggestions about the role of institutions that are not strictly either markets or political processes, but something else – institutions of “civil society” perhaps. But the issue that most readers take away from the *Calculus* is that of whether simple majority rule would be the “appropriate” rule for collective decisions – with “appropriate” here taken to mean “unanimously chosen at the constitutional level.”

In an important sense the significance of “constitutional choice” lies in its capacity to instantiate the normative authority of exchange. In a move redolent of Rawls’s famous “veil of ignorance,”[12] Buchanan’s thought was that uncertainty about where one would lie in relation to the rules over the long horizon that were expected to be in place would moderate the effects of self-interest and thereby permit application of the unanimity rule (universal veto). In this way, Wicksell’s ideal of unanimity – the rule that Buchanan and Wicksell both saw as the “exchange ideal” – could be applied. Such a rule could not be applied for in-period collective decision-making because of “decision-making costs”: This was the central claim in the *Calculus* analysis. In that sense, unanimity at the in-period level is self-defeating: One would expect (virtual) unanimous consent to the proposition that unanimity be abandoned as the decision-rule for ordinary politics.

In-period politics could never be expected, then, to be fully “efficient” – to appropriate all possible gains from exchange – any more than markets could. The

objective is not to eliminate market or political failure, but to optimize across institutions so that “failures” are minimized. That is, within the limits of what is institutionally feasible, one could specify an optimal mix of decentralized (market) and centralized (political) decision-making institutions – and it is *that* mix that would emerge in a unanimously chosen constitution behind a suitably thick veil of ignorance.

QUESTIONS AND QUERIES

Now that I have outlined Jim’s main contributions, I would like to raise some points about his work that seem worth discussing.

1. *Buchanan as a Classical Liberal*: Buchanan is a self-declared classical liberal. By this, I take it that he means that he places a high value on liberty (understood as something like “noncoercive social relations”) and that he is a minimalist about the appropriate role of governments. His Public Choice analysis can clearly be viewed as providing the reasoned grounds for that minimalism, as his description of Public Choice theory as the “theory of political failure” suggests. Yet he is an unusual classical liberal. For one thing, whereas most classical liberals take as their point of departure some kind of conception of the individual’s moral rights and derive their conception of liberty in terms of rights violations (or coercion), Buchanan’s normative point of departure is in the intrinsically collective exercise of jointly working out the rules of the social/economic/political game to which citizens are to be subject. In that latter exercise all individuals hold a virtually complete right of veto over what those rules will be (including the specification of the personal and property rights that the individuals will possess and be subject to). Many libertarians have thought that this collectivist point of departure is inconsistent with true liberal individualism. Buchanan was insistent that social outcomes are not chosen because they are efficient (or fair) – they are efficient (or fair) because they are *chosen* (in the appropriate unanimous setting). In that sense, the foundational liberal element is embodied in the fact of unanimous constitutional choice – whatever the outcome of that choice process may turn out to be.

Buchanan was an unusual classical liberal in other ways. He believed rather passionately in confiscatory estate and gift duties: He reckoned that inherited wealth (though not self-made or first-generation wealth) violates basic equality of opportunity, and his enmity towards dynasties was notable. Hence the antipathy to John F. Kennedy mentioned in footnote 12. Buchanan though Papa Joe had bought the White House for his boys, and it infuriated him. However, one might think that individual sovereignty should extend to gifts and bequests, and that totally confiscatory gift/estate duties are unlikely to emerge from unanimously approved political rules.

2. *The Double Role of Exchange*: A related aspect of the Buchanan construction is the double work that the notion of exchange plays. At one level, individuals behind the veil of ignorance will predictably assess alternative institutions according to the mutual gains those institutions give rise: Clearly, certain basic facts about the operation of markets and the operation of democratic politics under various specifications will predictably be taken into account by the constitutional contractors. And it is specifically the role of economics (and Public Choice analysis as part of that enterprise) to reveal those facts in relation both to markets and to democratic political process. But within Buchanan's scheme the ultimate exercise of "exchange" occurs in and through the constitutional contract itself, and the ultimate test of markets and politics lies in the constitutional endorsement they receive. In this way, the determination of the truth of claims about markets and/or of Public Choice seems to be assigned to the judgment of actual constitutional contractors. Buchanan could sometimes make such subjectivist gestures towards truth claims; but it seems bizarre to allow claims about the exchange properties of markets (say) to be determined by constitutional contract.

3. *Market Operations*: In the late afternoon of his life, Buchanan became intrigued by the significance of "increasing returns" in the operation of markets. In essence, this involved a recapturing of Smith's account of the fundamental forces making for the wealth of nations and recognizing its distinctiveness (as say from Ricardo and the modern mainstream tradition). One notable feature of this work is its "objectivist" qualities, that is, the "general opulence" distributed across all classes of society that was the explanandum for Smith is an externally observable phenomenon – a brute fact

about human progress and not something that exists merely in the mind of the observer/evaluator.

4. *The Supply of Versus the Demand for Rules*: It is one thing to establish the "reason for rules," and even what rules agents might choose in the hypothetical constitutional setting, and another entirely to explain how those rules will be enforced at the in-period level. As Bentham famously put it in relation to rights, the demand for rules no more are rules than hunger is bread. In the treatment in the *Calculus*, where the agenda is to discuss modest modifications of rules that are already in play (the size of the majority), the assumption that the modifications will be enforced can be carried perhaps by the uncontested fact that simple majority rule seems to be pretty robust. But as the agenda is generalized to include the entire template for rules governing social and political and economic life, the problem becomes acute. It needs to be explained just why agents who know their positions and who are presumed to be predominantly self-interested will find it in their interests to enforce and/or comply with the provisions previously agreed. To the extent that we look to courts to make decisions on the rules, and to the police to enforce court decisions, do we not need a "theory of *legal failure*," alongside market failure and political failure, to sustain the entire project? Buchanan seems to have had a blind spot about this issue. But without some response to the *quis custodet ipsos custodes* challenge, it is by no means clear that the whole elegant intellectual edifice can get off the ground. And to the extent that the necessary response involves some modification of the extreme *homo economicus* motivational hypothesis, may we not be required to carry that modification into the analysis of markets and in-period politics on exactly the same generality grounds that Public Choice mounts its attack on the benevolent despot?

5. *Chosen versus Inherited Rules?* It is a critical feature of Buchanan's constitutional paradigm that citizens choose the rules by which they are to live: Those rules have to be products of explicit consent. That fact explains why the market is an "efficient" institution only to the extent that it is constitutionally endorsed. Many observers (including Hayek and in another sense Hume) are inclined to respect "evolved rules" in themselves and to doubt the intellectual pretension that Buchanan's kind of constitutional constructivism involves. Buchanan himself explicitly rejects that kind

of “respect”: He thought it invokes a kind of quietism towards the institutional status quo that is ultimately servile. Middle ground is presumably available here – but one would certainly want some principled way of discerning which established rules ought to be treated with piety and which ought to be interrogated and perhaps ruthlessly overturned. There may be a tension between American vigor and European traditionalism in play here.

6. *Expressive Constitutionalism?* I cannot forbear to mention, by way of conclusion, an anxiety that arises out of work of my own on voting.[13] That work is an extension of the idea of rational ignorance attributable to Downs in the sense that it takes as its point of departure the asymptotic irrelevance of each individual voter in determining the electoral outcome. This means that the relation between interests and behavior has a character in markets quite different from that in the ballot box. The individual voter is subject to a veil of insignificance not unlike the Rawlsian/Buchanan veil of ignorance, in that agents are distanced from their interests by the circumstances of choice. This fact very much blunts the distinction Buchanan draws between constitutional and in-period levels of choice in two senses: first because interests are attenuated in both settings; and second because individuals are in a large-number setting in making their constitutional agreements and hence a significant element of expressive behavior is likely to enter at the constitutional level. That is, people can quite rationally “cheer” for democracy or “trial by jury” or whatever, even when such institutions would not deliver better outcomes for them. This is not just a matter of rational ignorance – though there will predictably be plenty of that. It is also a matter of giving rational assent to all kinds of nostrums that “have strong expressive appeal” even when one knows they are silly or worse. Consider for example the vast extension of “rights” that seem characteristic of most modern (popularly endorsed) constitutions.

It is possible that in raising such queries I have been unjust to Buchanan’s intellectual scheme or placed the emphasis inappropriately -- or perhaps “buried” where I should have “praised.” My own view is that the way to honor Jim is to take his ideas seriously. That is what I hope I have done here. And I take confidence from the fact that Jim himself never drew back from a good robust argument!

End Notes

[1] There is an interesting question here as to whether authors’ intentions are definitive in “proper interpretation.” In fact, Jim was never much preoccupied with what others made of his work: He was content to let it speak for itself (admittedly, in many iterations!) In any event, the fact of Jim’s absence gives interpreters (like me here) a certain license – and a corresponding responsibility – that we didn’t have in the same measure when he was alive.

[2] And of course not quite everything can be neatly shoehorned into a single frame. In over 20 volumes of work (the *Collected Works* published by Liberty Fund amounts to 19 and includes almost everything published up until 1998) there are bound to be somewhat independent pieces. But the claim of a general conceptual unity stands.]

[3] See for example his 1949 *Journal of Political Economy* article “The Pure Theory of Government Finance” – one of his very first major pieces. This article can be found in vol. 1 of *The Collected Works of James M. Buchanan*, pp. 119-32. [Not available online.]

[4] He drew a distinction between “logic” and “science” falling pretty much along the lines of the Austrian distinction between the a priori and the empirical. And like the Austrians, he thought that the a priori element could take one a long way.

[5] Whately, as the second incumbent of the Oxford Drummond chair in the 1830s, engaged a stirring (but obviously unsuccessful) battle to have the name of the discipline changed from “political economy”/“economics” to “catallactics.”

[6] Elsewhere I try to indicate what I see as distinctive in Buchanan’s emphasis on “politics as exchange” and in particular contrast his perspective with more conventional interpretations of the “Public Choice paradigm.” See Brennan (2012).

[7] Despite protestations to the contrary, I reckon it still does. In most public-economics texts, “Public Choice” analysis is relegated to a separate independent chapter – as if it were a rather eccentric preoccupation that some scholars regard as important, but which can be excluded if the lecturer prefers. A distinguished

notable exception to this generalization is Arye Hillman's (2003) text and especially the second edition thereof.

[8] And, indeed, any normative feature of the social order against which market outcomes might be assessed (so "distributive justice," for example). Buchanan and I discuss this issue explicitly in our *Reason of Rules* (1985) ch 7.

[9] In this, there was a kinship between the Public Choice approach and the earlier Austrian critique of "socialist calculation." But whereas the Austrians emphasized the epistemic constraints involved in recognizing optimality, the Public Choice scholars emphasized the motivational aspects: If governments had the power to impose outcomes, why would they be motivated to choose the one that maximizes the "public interest" as they see it?

[10] He agreed, that is, that social planners would lack the information required for any such imposition.

[11] I say "so-called" here since the existence of "failure" in any relevant sense presumably implies that it is feasible to have something better.

[12] Buchanan always recognized the affinity between his approach and that of John Rawls, and often remarked that his project and Rawls's are very similar, even though "they have been interpreted differently." On one notable occasion at a Liberty Fund conference, Anthony Flew was mounting an all-out attack on Rawls's "procrustean" scheme and was astounded at the severity of Buchanan's response. Buchanan was as defensive of Rawls as he was enraged by John E. Kennedy (though the Kennedy issue is another story.)

[13] In various collaborations: Brennan and Lomasky (1993), Brennan and Hamlin (1998), and notably Brennan and Buchanan (1984).

2. RESPONSES AND CRITIQUES

1. RESPONSE BY VIKTOR J. VANBERG

When Geoffrey Brennan begins his assessment of James M. Buchanan's work with remarks on the author's authority in interpreting his own creation, he addresses a general issue that is of particular significance when the author is, as in Buchanan's case, a paradigm-creator whose life-work centers around, as Brennan puts it, "an identifiable research program." For those who carry such a research program because they consider it more promising than relevant alternatives, there are essentially two alternative attitudes towards the paradigm-creator's work. They can look at it as a contribution to what K. R. Popper calls the world of "objective knowledge" and see their own task in further solidifying and expanding the theoretical edifice for which the paradigm-creator laid the foundations, but which he may not have already worked out fully and consistently in all its ramifications. Or, alternatively, they can treat it as a definitive and authoritative doctrine proclaimed by a "master" who has left for them little more than the exercise of interpreting his work most faithfully. The first attitude promotes science as a cumulative enterprise that is advanced by – again in Popper's terminology – "conjectures and refutations" or "trial and error-elimination." The second attitude easily leads to sectarianism, a fate that the paradigm Ludwig von Mises created appears to have suffered in some libertarian quarters.

It is obviously the first attitude that informs Geoffrey Brennan's restatement and reassessment of the "Buchanan position"; it is surely the attitude that Jim Buchanan would have wanted us to display when we approach his work, and more specifically his "constitutional contractarianism"; and it is in this spirit that I want to comment on the first two of the six "questions and queries" that Geoffrey poses in the latter part of his essay.

The first point that, under the heading "Buchanan as a Classical Liberal," Geoffrey suggests for discussion concerns whether some parts of Buchanan's work may not be inconsistent with a "true liberal individualism." Specifically he refers to the argument, central to the

Buchanan paradigm, that working out the rules of the social/economic/political game is an "intrinsically collective exercise," and to Jim's belief in "confiscatory estate and gift duties." I will address each aspect in turn.

As far as the consistency of the Buchanan paradigm with a "true liberal individualism" is concerned I have argued on several occasions (e.g. in Vanberg 2001) that, in my assessment, it is Buchanan's particular merit to have rectified a deficiency of the "free-market liberalism" that many libertarians claim to be the only doctrine consistent with the value of individual liberty. Advocates of free-market liberalism are surely right in emphasizing that market transactions are distinguished by the fact that they are voluntarily entered into by the parties involved, whose agreement testifies that each expects to gain, thereby conferring legitimacy on the transaction. They are also right, when they apply the same logic to collective arrangements – such as business organizations, clubs, or other kinds of associations – that are voluntarily entered into by market participants even if the "constitution" to which the contracting parties agree limits their in-period freedom of choice, such as employees who agree to follow, within defined limits, the orders of their employer, or stockholders who have to accept whatever decisions the agreed-upon corporate decision-procedures generate. Such judgments on within-market transactions and arrangements are derived from the presumption that when we speak of a "market" we thereby mean a social arena within which voluntary contracting is the only legitimate method by which participants can enlist the cooperation of others.

What free-market liberals easily lose sight of is the fact that markets as "arenas for voluntary cooperation" are not a gift of nature, but are rather social institutions the working properties of which depend on the presence and effective enforcement of "rules of the game" that define what strategies the market participants may or may not legitimately employ in pursuit of their self-interest. These rules may be, and as a matter of fact are, defined differently in different polities, and with differently defined rules the outcome patterns that result from legitimate market transactions may differ significantly. [1] Accordingly, the question arises of what provides legitimacy to the very institutional framework within which markets operate

and which delimits the liberty individuals enjoy as market participants. What makes this question particularly relevant is that, as much as markets operating within “appropriate” rules can be trusted to work beneficially, markets cannot be expected to spontaneously generate and enforce the rules – at least not all of them – that are required for their beneficial working. Surely, for those rules of the market game that are by necessity subject to collective-political choice, free-market liberals face the question of how, by what criteria, they propose to judge the merits of potential alternative rules. And, upon further reflection, it should be apparent that rules that have evolved spontaneously cannot per se be exempt from critical scrutiny, but that for them, too, free-market liberals must specify the criteria against which they ought to be judged.

I neither want nor need to comment on how – if at all – free-market liberals have responded to the noted challenge, e.g., by invoking natural-rights doctrines. What I want to stress is that James Buchanan must be credited for having spelled out what, as I submit, is in fact the answer that a consistent adherence to a “true liberal individualism” requires. Buchanan’s contractarian constitutionalism simply insists that if a liberal individualism considers market transactions and arrangements legitimate because of their voluntary contractual nature, it must apply the same criterion of legitimacy, namely voluntary agreement among the parties involved, to the *constitutional level* at which the “rules of the game” are – explicitly or implicitly – adopted, be it the rules of the market or the rules of politics. In other words, Buchanan insists that a free-market liberalism that emphasizes individuals’ sovereignty at the subconstitutional level of within-market choices must be supplemented by a *constitutional liberalism* that respects individuals as sovereign choosers at the constitutional level as well, where they jointly decide on the rules under which they want to live.

Extending the fundamental normative principle of voluntary choice and voluntary contract to the constitutional level of course raises the question of how this principle can be meaningfully specified and secured at that level, a question that is obviously much more difficult to answer than in the case of market transactions where what “voluntary” means is defined in terms of the rules that constitute the market as an arena of voluntary cooperation. Yet the fact that the question is difficult to answer cannot be a legitimate

excuse for classical liberals simply to ignore it. They should, instead, at least appreciate – if not join – the enterprise that Buchanan’s research program pursues: Inquiring into how the processes by which constitutional rules are adopted and reformed may themselves be framed by rules that advance and secure voluntariness in constitutional choice. That the political processes in modern democracies, not to speak of other regimes, have grave deficiencies in this regard has often and rightly been criticized from within the liberal paradigm. With his contractarian constitutionalism Buchanan reminds his fellow liberals that they ought to go beyond such criticism and face the task of suggesting institutional reforms in the democratic process that may help to strengthen individual sovereignty at the constitutional level -- to the extent that, given the inherent nature of collective-political choice, it can be realized at that level.

On the sub-issue that Geoffrey raises under the heading “Buchanan as a Classical Liberal,” namely Jim’s “passionate belief in confiscatory estate and gift duties,” I have only a very brief comment to make. It can, indeed, be viewed as an exemplification of what I noted at the beginning of my comment, namely, that there is little reason to expect a paradigm-creator to be always consistent in his own contributions to the theoretical edifice for which he laid the foundations. The very logic of his own paradigm implies that if Buchanan’s noted belief is meant to reflect more than his personal preference, it can only be treated as a proposal for constitutional reform that he conjectures to produce mutual gains for all members of the polity. Whether there are indeed good reasons to assume that this conjecture is correct is surely debatable. And whether it is a proposal that is likely to pass the agreement test is, as Geoffrey submits, rather doubtful.

The second question that, under the heading “The Double Role of Exchange,” Geoffrey poses concerns whether Buchanan’s insistence on agreement among the individuals concerned as “the ultimate test” of the constitutional economists’ conjectures about welfare-improving constitutional reforms means that the “actual constitutional contractors” are assigned the authority to determine the truth of claims that economists make about the factual working properties of institutions in markets and politics. As Geoffrey notes, it would indeed be “bizarre” if the contractarian-constitutional paradigm were to imply

that, say, the members of a polity to whom a constitutional economist proposes what he conjectures to be a mutually beneficial constitutional reform were to determine, by their acceptance or rejection of the proposal, the truth or falsehood of the factual claims that are part and parcel of it. This is, however, definitely not the case, and it becomes apparent why this is so as soon as one explicitly distinguishes between the two subconjectures that are included in the constitutional economist's conjectures about mutually beneficial constitutional changes, namely, on the one hand, conjectures about the change in outcome patterns that the suggested reform can be expected to produce and, on the other hand, the economist's presumption that the addressees of his proposal will welcome the predicted changes and will, therefore, share a common constitutional interest in the suggested reform.

Accordingly, the "truth value" of the constitutional economist's conjectures about mutually beneficial constitutional reforms will depend, on the one hand, on the correctness of his hypotheses about the factual working properties of rules and, on the other hand, on his conjectures about the addressees' subjective evaluation of the consequences that the rules under consideration are predicted to have. If his reform proposal does not pass the agreement test, his conjecture that the suggested reform promises mutual gains for all persons involved must be regarded as refuted, at least for the time being. [2] Such refutation, however, does not at all mean that the economist's hypotheses about the factual working properties of the pre-reform and post-reform rules are thereby falsified. The contractarian-constitutional paradigm respects the members of a rule-choosing group as the ultimate judges of what, in their own assessment, can count as a "welfare-enhancing" reform. Yet it definitely does not install them as judges on the truth or falsehood of the economist's conjectures about the factual consequences that suggested constitutional reforms can be expected to produce.

End Notes

[1] Consider for example the different outcome patterns that can be expected to result if the property rights in urban plots include or exclude the right to use

them for purposes such as, e.g., pig breeding or operating a shooting range.

[2] The qualifier "for the time being" is added to account for the possibility that the failure to gain agreement may be due to misperceptions on the addressees' part, misperceptions that might be corrected by further information on the actual effects of the suggested reforms.

2. RESPONSE BY PETER BOETTKE: "*THE POLITICAL ECONOMIST OF HIS AND OUR AGE: JAMES M. BUCHANAN*"

It is hard to imagine a more fitting person to write a tribute to James Buchanan than his longtime associate and coauthor Geoffrey Brennan. Few understand Buchanan's subtle positions with respect to philosophy, politics, and economics as well as Brennan. And Brennan's tribute also captures the critical attitude that Buchanan believed we must always take. From his teacher Frank Knight, Buchanan learned many things, but perhaps the most important one was to treat all ideas critically and to hold nothing as sacrosanct. The onward-and-upward call that characterizes Buchanan's intellectual career is what we must also adopt as our own if we want to make progress in the field of political economy.

After years of studying Buchanan's writings and assigning them to students, I have lots of questions, some of which overlap with Brennan's questions. I also have lots of appreciation, but no doubt Brennan is right that the best way to honor the legacy of Buchanan is to push the boundaries, leave the comfort zone, and probe deeper into the research program of constitutional political economy and the relationship between social philosophy and political economy more generally.

Two big questions that remain for me about Buchanan's system, which Brennan raises, relate to (a) endogenous preferences and (b) evolutionary explanations for the rules on which we agree. First, let's examine endogenous preferences. Brennan in joint work with Philip Pettit (e.g., Brennan and Pettit 2002) has raised this issue to a new level in *Public Choice*/

political economy discourse. Yes, they argue, power may corrupt, but political office and the responsibility of leadership may ennoble the office holder. Julian LeGrande's *Motivation, Agency and Public Policy: Of Knights and Knaves, Pawns and Queens* (2003) raised this endogenous preference critique of Public Choice theory as well. Buchanan himself seems to recognize this point in his essay "Natural and Artificial Man" (1979a), where he makes a strong argument for the autonomy of the individual as a prerequisite for discovering the path to constructing his or her life. "Man wants liberty," Buchanan states, "to become the man he wants to become." Such an open-ended model of man raises a different set of questions from those that arise when Buchanan models man in the more closed-ended maximizing framework.

Anyone who follows Public Choice and Buchanan's contributions to the field in particular will recognize immediately that he considers methodological individualism, homo-economicus, and politics-as-exchange as the three pillars on which the economic analysis of politics rests. But what actual purpose does homo-economicus play in Buchanan's work when in essays like "What Should Economists Do?" (1979b) he seemingly rejects the maximizing model and the allocation paradigm? First, a careful reading demonstrates that Buchanan does not reject maximizing at the level of the individual. It is the intellectual sliding from the individual to the collective that he objects to. Individuals are teleological; economic systems are not. So treating the economic problem that society faces as the allocation of scarce means among competing ends is simply a nonstarter for Buchanan. This methodological restriction against carelessly sliding from the individual to the collective is also what underlies his critique of organismic views of the state (see Buchanan "A Pure Theory of Public Finance" 1949) as well as his critique of Arrow's "Impossibility Theorem" (see Buchanan "Social Choice, Democracy and Free Markets" 1954).

It is perfectly legitimate in Buchanan's system to see the individual as engaged in a self-interested rational choice; it is quite another to see society behaving collectively along these lines. It is also the case that Buchanan's model of man is not one of narrow self-interest; a variety of arguments can enter the utility function. As Brennan points out in his remarks, Buchanan actually waffles back and forth

between a position of pure logic, or philosophical understanding of human choosing, and the scientific/predictive theory. If men act like rats, Buchanan argues, then we can model them as maximizers; if men act like human choosers, engage in a quest to discover whom they want to become, then the maximizing model of man is not as useful a descriptor. So what use can it be put towards?

Here--and Geoff Brennan knows this better than anyone--Buchanan shifts the homo-economicus assumption from either an "as if" to explain economic behavior or a "normative benchmark" for decision theory to a tool in constitutional construction. This is the Humean move: In designing a government we must presume that all men are knaves and then build political institutions that guard against the knavishness in all of us. This is how a robust political and economic system can be cultivated--by rules that do not require us to become better people for their operation, but which work even when we are sometimes good, more often bad; sometimes smart, but more often stupid. The rules, not the behavioral assumptions, do the heavy analytical lifting in political economy.

Buchanan, like Hamilton in *Federalist 1*, wants us to address the challenge of whether our constitutions are going to be consequence of accident and force (historical evolution) or choice and reflection (constitutional craftsmanship). While not denying the power of historical evolution, Buchanan denies its "efficiency" in selecting the right rules by which we can live better together. Instead, he opts for choice and reflection, and that hope is to be found in constitutional contractarianism (to use Brennan apt phraseology). Buchanan's use of a rational-actor logic--in a situation where the actor himself has no idea of his particular endowments of talents and position in the postconstitutional contract world--will produce agreement on fair rules. This constitutional agreement will be harder to broker the more concrete the rules of resource distribution under discussion, but easier to broker the more abstract and general the rules for the social game we are to play.

Since 2008 Buchanan sharpened his criticism of the over-optimism about the efficient evolution of rules governing the economic and political game of modern society. The New Chicago School, he argued repeatedly, had been led into an error by stressing the

machine-like efficiency of the market economy without emphasizing that the market functions or fails to function on the basis of the rules within which it operates. And Buchanan held out particular criticism for a naïve form of libertarianism, which thinks that the market itself can produce its own rules through evolutionary selection. He attributes this position to Hayek and his followers. Buchanan makes some fundamental points about not only the reason of rules, but the necessity of rules and their enforcement.

I have argued repeatedly throughout my own career--which has been defined by the postcommunist transitions and the failure of development planning (see Boettke 1990; 1993; 2001)--that one of the really significant practical challenges in political economy is contemplating whether the “transition to the market is too important to be left to the market?” [1] I don’t want to emphasize the normative element of this but rather the positive political economy of this question. In many ways this is just an implications of taking Buchanan’s own admonition that we begin with the “here and now” in political economy analysis. When discussing transition economies, and failed and weak states, as Raghuram Rajan (2004) does, it is a mistake in economic analysis to treat the institutional framework as given when in fact the absence of that institutional framework explains why the situation is what it is.

While fully conceding Buchanan’s point about the misuse of evolutionary arguments, I have to respectfully disagree with my teacher. [2] I don’t think the mere move to social contract theory and veils of uncertainty at the rules stage solves the difficulties that Buchanan identifies. However sympathetic I am to Buchanan’s efforts, I think the more fruitful research approach is to take the challenge seriously and seek to identify the mechanisms operative in social evolutionary processes that serve a functional role analogous to property, prices and profit/loss within the market economy and which provide us with functional rules on which we can agree.

We must see constitutions as capable of being made from the “bottom up” rather than as always the consequences of “top-down” choice, precisely because in the situations of transition and development that we study, the institutional capacity to achieve order from the “top down” is absent almost by definition. It is

important to stress that such constitution-making from the bottom up, along the lines discussed by Vincent and Elinor Ostrom in their respective work, does not commit the analysis to viewing constitutions as merely the product of historical accident and force, but instead as genuine products of reflection and choice. The rules that make possible self-governance and the overcoming of social dilemmas can be, but are not necessarily, limited to evolved informal social norms. Covenants without the sword of the state can take many forms--and we need to be open as economists and political economists to studying the details of the variety of design principles that enable effective self-governance. [3]

The open-ended model of choice, I would like to contend, fits with the bottom-up approach to constitutional craftsmanship. [4] The rules that enable us to turn situations of social conflict into opportunities for realizing the gains from social cooperation under the division of labor are those rules that Buchanan identifies in his reflection on constitutional construction. They are general; they minimize predation (including public predation and thus political externalities); and they introduce a structure of countervailing forces that check opportunistic behavior by pitting it against other opportunists rather than relying on saintly conversions among political actors.

James Buchanan is *the* political economist of his and our age. He thought deeply about issues in social philosophy and political economy that, among his contemporaries, perhaps only Amartya Sen also took on. He was a political economist in the Smithian sense of a moral philosopher in the age of economic scientism. In this sense he was very much following in the footsteps of his teacher Knight and also Hayek. Others were strong classical liberals, such as Milton Friedman, and still others were more hardnosed Public Choice economists, such as Gordon Tullock. But Buchanan waged a different intellectual battle--one for the soul of a discipline and an idea. The practice of economics had been derailed by excessive aggregation on the one hand and excessive formalism on the other by mid-20th century. Buchanan had to pick up his pen and try to counter these. The result is an amazing intellectual legacy for scholars to draw on in the fields of philosophy, politics, and economics.

End Notes

[1] Peter Leeson and I published a paper under that title (Boettke and Leeson 2003), and we also examine similar issues in our work on two-tiered entrepreneurship (Leeson and Boettke 2009), also see my overview papers on the topic (see Boettke 2011).

[2] For an appreciation of the central insights of Buchanan to the intellectual tradition of “mainline” economics, see my discussion of his work in *Living Economics* (Boettke 2012, 42-65; 241-61).

[3] On the Ostroms’ contributions to political economy of self-governance see Boettke (2012, 139-158; 159-171). Also see Aligica and Boettke (2010) for a book length discussion of the research program of the Bloomington School of Political Economy.

[4] On the open-ended model of choice and its implications for political economy see Richard Wagner’s *Mind, Society, and Human Action* (2010).

3. RESPONSE BY STEVEN HORWITZ: "BREAKING OPEN THE BLACK BOXES OF POLITICAL ECONOMY"

Geoffrey Brennan has given us a very comprehensive once-over-lightly treatment of the breadth of James Buchanan’s contributions. In reading it, I was struck again by that very breadth and how Buchanan was a major figure in several fundamental areas in economics. One of the great joys of reading his work is that, perhaps more than any other 20th century economist aside from F. A. Hayek, Buchanan asked questions that penetrated to the core of economics as a discipline. He was a master at stepping back from the conversation and asking us all to consider what it all meant and whether we were even talking about the right thing. His legacy, I believe, will be the ways in which he asked the kind of questions that undermined the conventional wisdom and led economists to look at their subject matter with new eyes. Once you see economics as about exchange and the institutions that frame it, as Buchanan does, you never see it the same way again.

One point Brennan raises in several places is Buchanan’s relationship with the Austrians, specifically with respect to their contribution to the debate over the feasibility of rational calculation under socialism. Starting with Ludwig von Mises’s 1920 paper [“Economic Calculation in the Socialist Commonwealth”] and 1922 book [*Socialism*], and extending through Hayek’s famous essays in the 1930s and 40s, the Austrians argued that central economic planners would lack the knowledge necessary to allocate resources with any semblance of economic rationality. As Brennan points out, Buchanan accepted this argument, but chose to ask a different question: If political actors *did* have the knowledge necessary, would they have the incentives to act on that knowledge in the right way? It is worth noting that one can view the Austrian contribution as asking the inverse question: *Even if* planners’ incentives are properly aligned, can they acquire the knowledge to do the right thing that they really wish to do?

Buchanan and the Austrians were looking at the same big questions in political economy from opposite sides of the street. I think this is not accidental. What they all shared was a dissatisfaction with the ways in which the emerging neoclassical mainstream of the interwar and postwar years was thinking about these issues. As formalism and technique began to squeeze out economic intuition and decades of accumulated knowledge about the operation of markets and politics, the discipline began to lose sight of how real-world institutions actually worked. Increasingly committed to a formalism that had no role for uncertainty and imperfect knowledge, economics lost its ability to understand perhaps the most fundamental question in the social sciences: How do we achieve social cooperation and coordination in a world of anonymous, self-regarding, and epistemically limited actors? The institutions of the market and politics had become black boxes that economic understanding could not penetrate.

What the Austrians and Buchanan did was break open the black boxes of the market and politics respectively and reveal their inner workings, which contrasted with the official models of the discipline. For the Austrians, Mises’s work on economic calculation and then Hayek’s work on the role of knowledge in the market process both challenged the emerging equilibrium-oriented formalism that was increasingly

unable to understand how market institutions facilitated the use of knowledge through the price system, which in turn generated economic coordination among anonymous actors. Rather than the perfectly informed agents maximizing known preferences against known constraints using given prices of general equilibrium analysis, the Austrians saw the market as a process through which actors with epistemic limits engaged in social learning. This is the key lesson of Hayek's series of knowledge papers in the 1930s and '40s.

One important implication of this work is that it revealed markets as "imperfect" in comparison to perfectly competitive general equilibrium. The Austrian argument was never that markets solved every problem ideally, only that they did so better than a world in which they were absent. This point mattered because it was half of what would become a two-part challenge to the theory of "market failure" that was beginning to emerge. Developed in the same period as the Austrian work, but arguably codified after World War II in Samuelson's *Principles*, this view argued that any way in which markets failed to live up to the perfectly competitive ideal was defined as a "market failure," with the presumption that it could be remedied by appropriately designed government intervention. Market failure, by this definition, was omnipresent. What the Austrians argued was that the comparison to the perfectly competitive ideal was misguided: It relied on a view of human agency and knowledge that was at odds with the reality of human action and therefore presented a conception of "markets" that bore no relationship to the actual institutions of the market.

The other half of this challenge came from Buchanan. Just as the Austrians had broken open the black box of the market to challenge the blackboard models of midcentury economists, Buchanan and the Public Choice tradition broke open the black box of politics to challenge the blackboard models of the state held by economists, political scientists, and others. For Buchanan, even if markets "failed," the question was whether the blackboard models of government intervention could work as promised. For example, pollution was often seen as a "market failure" caused by polluters imposing costs on third parties, rather than bearing them directly, which implied that they were producing more pollution than was optimal. The

correction would be for governments to tax the polluters an amount that matched the social cost of the pollution, thereby discouraging their behavior and providing the revenue needed to compensate those harmed by the pollution. On the blackboard, this solution would bring about the efficient result the market could not achieve.

What Buchanan did was to point out that the problem with the "market failure implies political remedy" formula is that these models invoked a "behavioral asymmetry" about market and political actors. In the perfect-competition model, actors were assumed to be motivated by their self-interest in their response to costs and benefits. By contrast political actors were never modeled as thinking about their self-interest; they simply did what the blackboard models said they should do in the public interest. No one ever asked whether doing what economists said "should" be done was actually in the interest of political actors. To be precise, Buchanan's contribution here was not to say that politicians are self-interested, but to simply demand that we treat economic and political actors symmetrically. That is, doing political economy responsibly means making the same assumptions about the motivations of political actors as economic ones. This is what Buchanan means by saying that we need "politics without romance."

Breaking open the black box of politics meant that politics too now had to be seen as the realm of self-interested exchange. With voters, politicians, and bureaucrats all behaving in broadly self-interested ways in response to incentives, the idea that governments would do what economic models said they should was forever changed from an assumption to a question. Just as the Austrians pointed out that real-world markets are about the strivings of epistemically limited actors engaging in exchange rather than maximization, Buchanan pointed out that real-world political institutions are about self-interested actors engaging in exchange rather than automatically serving the public interest.

Breaking open these black boxes gives us a truly comparative political economy. With neither markets nor politics able to function like the blackboard ideal, we are forced to actually compare how each system works in its imperfect reality. This is where Buchanan's emphasis on "rules of the game" moves to the

forefront. A political economy that asks how well different sets of rules will function when the game is played by actors who are both epistemically limited and broadly self-interested will be, in Mark Pennington's (2011) term, "robust" with regard to assumptions about human action and motivation. Sets of rules that generate wealth-increasing and coordination-enhancing exchanges even when knowledge is limited and knavery is afoot will be ones that we will want to adopt if we care about human progress.

Buchanan's constitutionalism, which parallels many of the ideas in Hayek's later work, such as *The Constitution of Liberty* (1960), is the natural resting place for both Public Choice theorists and Austrians. What modern Austrian economics can bring to Buchanan's work is the question of whether constitutional rules must, as he believed, be imposed exogenously. As Brennan notes, Buchanan did not believe that market processes could generate all of their own rules. Rules that prevented destructive self-interest or channeled it into productive uses had to be the product of political deliberation. A younger generation of scholars in the Austrian tradition is challenging that view. Although they largely accept Buchanan's analysis of the problems of politics, they are exploring whether markets and other nonpolitical processes can endogenously generate rules and norms that lead to effective self-governance in the absence of the state. They too are doing "constitutional political economy," but the word "constitutional" refers not to a literal constitution, but to our ability to generate self-enforcing norms of that sort. Buchanan himself was indeed skeptical of the possibility of a stateless society, but his work, like Hayek's, might point in a more radical direction.

4. RESPONSE BY LOREN LOMASKY: "JAMES BUCHANAN AS POLITICAL PHILOSOPHER"

As the leading figure in the Virginia School of Political Economy, James Buchanan traversed several disciplines. His greatest fame, as certified by the Nobel Prize committee, is as an economist, but Buchanan saw himself as operating in a tradition that reckons

philosophers Thomas Hobbes and David Hume as exemplary members. It is, then, appropriate on this occasion to ask what his work means to political philosophy.

If that is understood as a request for a description of the state of contemporary philosophical discourse, the indicated answer is "not much." Although I have not undertaken a literature search, my own experience yields few sightings (or citations) of Buchanan in mainstream philosophical publications. This is not altogether surprising. The geography of contemporary academia is such that transit across disciplinary lines typically is slow and tentative. For example, in the immediate wake of the renaissance in political philosophy that followed the publication of John Rawls's *A Theory of Justice* and Robert Nozick's *Anarchy, State, and Utopia*, Friedrich Hayek was mostly invisible in philosophical exchanges. Now he is everywhere. [1] Recognition delayed is not necessarily recognition denied. Will Buchanan's influence similarly wax in subsequent decades? I expect that it will, but even more I hope that it will. That is not because of filial piety to someone I liked and respected but because there is much that the practice of political philosophy can take away from his strategic commitments. I will briefly discuss two such areas below: (1) Buchanan's distinctive contractarianism; (2) Public Choice's homo politicus anthropology.

James Buchanan's Constitutional Contractarianism

Much of Buchanan's work subsequent to the 1962 publication of *Calculus of Consent* was directed at working out the ramifications of choosing rules at a constitutional level that will then govern the terms under which subsequent political bargains can be made. This program bears an obvious resemblance to Rawls's derivation of principles of justice. Like Rawls, Buchanan is a *constructivist*. This means that rules are not chosen because they are independently ascertained to be authoritative but rather are authoritative because they are chosen (under a suitably defined set of background conditions that guarantee fairness). For Rawls fairness is achieved via a mechanism of standing behind a *veil of ignorance* that separates individuals from knowledge of their own individuating features and thus deprives them of a capacity to rig the rules in their own private interest. Buchanan's less stylized characterization of the constitutional choice situation

eschews a formal veil of ignorance but suggests that uncertainty about future circumstances is functionally similar. Any rule selected now will govern an indefinite number of choice situations in which one will occupy a vast and indeterminate range of roles. Accordingly, it is the part of rational prudence to opt for institutions under which one will do well in an expected sense whether in any given play of the game one happens to be advantaged or disadvantaged. These contractarian similarities may explain Buchanan's affinity toward Rawls despite the considerable ideological distance separating them. [2]

The two constructions, however, are not interchangeable. Rawlsian contract is hypothetical and idealized, stripped of time, place and even the personalities of the so-called contractors. It aims to elicit invariant principles of social justice. For Buchanan there are starting positions but no Original Position. Rather, constitutional agreement is conceived like all other exchange as a means for getting from here to there, wherever "here" may be. If rules currently in force fail to allow some potentially productive exchanges to take place, then people can render themselves better off by judiciously altering those rules. This is a program for adjustment *in medias res*, not the moral foundationalism that characterizes Rawls's theory and those of his contractarian predecessors such as Hobbes, Locke, and Kant. Which approach is better? The answer is: It depends for what. Without in any way wishing to diminish the significance of the philosophical tradition, I think the search for invariant principles can usefully be supplemented by strategies for principled adjustment.

Among the most challenging problems in the contemporary practice of politics is how to replace palpably substandard rules of decision-making by more robust ones. Let me offer what I hope the reader will agree is an especially salient example. The United States and most European Union countries have shown themselves discouragingly unable to get a handle on reining in intergenerational transfers. Both with regard to funding pensions of former public employees and to maintaining the medium- and long-term solvency of general governmental welfare programs such as Social Security and Medicare, amassing liabilities has proved to be electorally popular while working out realistic policies for picking up the tab remains well-nigh impossible. As I write this piece, barely two months

removed from the near-death experience of hurtling toward the vaunted "fiscal cliff" and two days into the new age of sequester, it is clear that lurching from one ad hoc policy to the next is unequal to the task of rationalizing the budget process. Rather, what is called for is less focus on individual crisis response – which mostly amounts to kicking the can down the road – and redirection to consideration of the rules under which political actors operate. Here's one thought: Perhaps legislatures would do better if supermajorities were required whenever transfers to current recipients will burden future generations. Frankly, I am not sure how or whether this could effectively be implemented, or whether it would be one of those many cases in which the proposed "cure" turns out to exacerbate the problem. What I am relatively sure of is that no extended consideration of the pros and cons of, say, Rawls's Difference Principle or any similarly abstract postulate of justice is liable to make these problems any more tractable. On the other hand, Buchanan's version of constitutional contract may aid us in thinking more clearly about how the rules of the political game could be altered in a manner that serves the long-term interests of all affected parties.

I confess that despite the above, I tend not to share Buchanan's optimism concerning prospects for intelligent and effective rule change. His version of a veil of ignorance is apt in many cases to be insufficient to shield individuals from precise knowledge of their own expected gains and losses under a proposed new regime of rules. That is obviously so with regard to knowledge of the generational cohort to which one belongs and the gains or losses one thereby stands to realize. Thus general support for rule-based solutions to the sorts of issues mentioned in the preceding paragraph are apt to be contentious. But what alternative strategy holds out more promise?

Homo Politicus

Buchanan insists that individuals who enter the political arena bring with them the same motivational profile that informs their market activities. Self-interest narrowly construed is what propels both kinds of efforts. Regardless of whether the individuals in question are office-holders or the voters who put them there, *homo politicus* reveals himself to be the self-same creature as *homo economicus*. That is what Buchanan

means when he characterizes the theory of Public Choice as a “politics without romance.”

By way of contrast, philosophical thinking lays the romance on as thick as a Mexican soap opera. [3] From Plato’s philosopher-kings onward, politics is typically conceived as the disinterested and ennobling pursuit of a common good. Rulers as well as humble citizens are expected to set aside their private interests in favor of that which tends to advance the well-being of the greater community. [4] Rousseau set out with unequaled flair the opposition of a general will to private individual wills, Less dramatic but similarly romantic, the contemporary theory of “deliberative democracy” conceives the primary business of citizens to be, as the name has it, deliberating democratically. More specifically, deliberative democrats argue that it is not enough for people to cast the occasional election-day ballot or even to lend some thought to the nature of their own interests and which candidate promises to do best by them. Rather, they are to study – intensively, as opposed to consuming a handful of soundbites during off hours – the issues at stake and how the candidates stand on them. Crucially, they are then to estimate which among the available alternatives best serves the citizenry at large and then lend to it their efforts, which include but go well beyond the mere act of voting.

Is there a conflict between the pursuit of one’s personal projects and intensive engagement in political discourse? No – not if one happens to be a professor of political theory. For almost everyone else, however, political activity is orders of magnitude less central than making a living, raising one’s kids, upgrading to the latest iPhone model, attending (or staying away from) the house of worship of one’s choice, and all manner of other private pursuits. When politics does enter such an individual’s life, it is probably as an adjunct to these interests, not as the vehicle for pursuing an abstractly conceived common good. Some will argue that this amounts to civic irresponsibility. I am inclined instead to believe that more harm is done to the body politic by excessive political zeal than by too little, but this is not the occasion to enter into that discussion. Instead, I advance the modest point that a theory of democratic accountability optimized for a nation of political philosophers is apt not to fit well a populace whose priorities lie elsewhere. This isn’t to deny that there are lessons to be learned from utopian

constructions; philosophy surely is ornamented by the contributions of Plato, Rawls, Nozick, and even that rascal Rousseau. In contemporary democratic theory, however, utopianism is excessive. Deliberative democracy and other utopian accounts [5] offer little assistance to the workaday job of piecemeal institutional improvement. If I may be allowed a brief descent into the jargon of the discipline, political philosophers distinguish *ideal* from *nonideal* theory, and it is to the former that they devote a disproportionate amount of attention. It can be argued that mainstream Public Choice theory errs in the opposite direction. [6] I interpret Buchanan as endeavoring to split the difference. Although illusion-free, *homo politicus* nonetheless is keen to improve his own lot along with that of his fellows by consensual agreements concerning the rules that govern them. Buchanan’s intermediate position can, I believe, support productive strategies for thinking about how democracies can be reengineered so as perform more smoothly.

Conclusion

As Geoff Brennan observes, Buchanan pursued a remarkably intensive and coherent research program over the course of more than 60 years. From it I have extracted two themes that complement the enterprise of political philosophy. If this mini-essay were longer, I would supplement them with others. Here are two that ought to be of special interest to libertarians: (1) the debate between anarchy and the limited state; (2) Buchanan’s unique intragenerational libertarianism coupled with substantial intergenerational redistribution in service of a view of social justice that is more commonly encountered on the left. Mostly, though, in these paragraphs I have been trying to persuade philosophers and the philosophically minded to reconsider the work of a theorist who belongs to them no less than he does to the economists.

Endnotes

[1] There is no mention of Hayek in the index of Rawls’s massive book.

[2] See Brennan’s preceding essay. At a conference for which he and I were co-organizers we observed that this respect was reciprocated.

[3] I recommend to curious readers the Univision network.

[4] A conspicuous exception is David Hume, who advises in “Of the Independency of Parliament,” “POLITICAL writers have established it as a maxim, that, in contriving any system of government, and fixing the several checks and controuls of the constitution, every man ought to be supposed a knave, and to have no other end, in all his actions, than private interest.”

[5] See, for example, David Estlund, *Democratic Authority: A Philosophical Framework* (Princeton: 2009), a splendidly ingenious and technically sophisticated volume that makes no concession to realism.

[6] See Loren Lomasky, “Public Choice and Political Philosophy,” *Public Choice* 152 (September 2012), pp. 323-27.

5. RESPONSE BY EDWARD STRINGHAM: "JAMES BUCHANAN AND THE ECONOMICS OF ANARCHY"

How is order in society created? James Buchanan is well known for his work on the economics of politics and constitutional political economy, and Brennan (2013) and others do an excellent job summarizing these contributions. I, however, would like to highlight another area of my professor’s pioneering work, the economics of anarchy. [1] Buchanan was not afraid to ask big questions in political economy, including what would property rights and economics look like without government. Buchanan (1974) wrote: “It is high time to shift out of the pragmatic mind-set that has been our national characteristic. The grand alternatives for social organization must be reconsidered. The loss of faith in the socialist dream has not, and probably will not, restore faith in laissez-faire. But what are the effective alternatives? Does anarchism deserve a hearing, and, if so, what sort of anarchism?”

Buchanan was in many ways a traditional Hobbesian. Brennan (2013) is correct to write that Buchanan “rejected anarchy as a viable option, broadly embracing the Hobbesian argument for government and in the process adding his own kind of ‘rational

reconstruction’ of the Hobbesian position.” Buchanan believed that under anarchy property rights would be insecure, often using the dictionary definition of anarchy that entails disorder, not just lack of government. On the other hand, Buchanan was not a traditional Hobbesian and had certain affinities toward individualist anarchism. [2] Buchanan wrote, “To the individualist, the ideal or utopian world is necessarily anarchistic in some basic philosophical sense.” [3]

Buchanan saw the study of anarchy as a worthy enterprise rather than something to be dismissed by assumption. He focused his study of anarchy at the Center for Study of Public Choice in the early 1970s after the arrival of his colleague, Winston Bush. Buchanan describes the importance of those years:

Winston Bush galvanized our interests in the theory of anarchy, an organizational alternative that had never seriously been analyzed. What were the descriptive features of Hobbesian anarchy? Could something like an anarchistic equilibrium be defined? Bush was instrumental in organizing a series of weekly workshops in 1972 during which each participant in turn presented papers on differing aspects of the theory of anarchy. As revised, these papers were published in *Explorations in the Theory of Anarchy*. Those weeks were exciting because never before or since have I participated so fully in a genuinely multiparty ongoing research effort, one that we knew to be relevant in some ultimate sense For me this brief period of research activity was important because it gave me a new focus on my whole enterprise. (1992: 116)

After contributing to the volumes *Explorations in the Theory of Anarchy* and *Further Explorations in the Theory of Anarchy* (Tullock 1972, 1974), [4] Buchanan wrote in *The Limits of Liberty* (1975), “‘Ordered anarchy’ remains the objective, but ‘ordered’ by whom? Neither the state nor the savage is noble, and this reality must be squarely faced.” In these early works, Buchanan focused on the insecurity of property rights under anarchy and analyzed why people would want to establish government.

Yet in some of his later writings Buchanan questioned some of his original work. In 2004 Buchanan wrote, “As I now reflect on that burst of

interest in the theory of anarchy, I now realize that we were perhaps too influenced by the Bush-Tullock presumption to the effect that the behavioral hypotheses used were necessarily empirically grounded” (2004, 268). The Hobbesian beliefs about human behavior might not always hold. Buchanan wrote that their pessimistic assumptions “led us to neglect at that time any effort to work out just what an ordered anarchy would look like. What would be the results if persons should behave so as to internalize all of the relevant externalities in their dealings among themselves?” Buchanan did not end up answering these questions, but raising questions about his earlier conclusions show the signs of a true philosophical anarchist.

In what I consider one of his most underappreciated works, Buchanan, along with Winston Bush, seemed to question the viability of the entire constitutionalist enterprise. Buchanan and Bush (1974) published “Political Constraints on Contractual Redistribution” in the *American Economic Review*, but it has less than 1/100 of the citations of *The Limits of Liberty*. Here they make a simple but important point: Even if there is an agreement about a particular set of property rights in period one, people will use the government to rearrange those property rights in subsequent periods. Those less satisfied with any particular outcome will have an incentive to have the previously agreed-on rules jettisoned or changed for their personal gain. Property rights may be insecure under anarchy, but so too will they be insecure after the establishment of government. If one takes the insight seriously, to what extent is establishing government an improvement?

In 1986 Buchanan had a very positive review of Anthony de Jasay’s *The State* (1985), which Buchanan describes as accepting “the analysis of the anarcho-capitalists, like Rothbard.” Ultimately, Buchanan says he retains “a residual faith in some positive potential” for the state, but Buchanan admits, “If we are to be honest in our evaluation, the observed outreaches of modern politics seem to fit Jasay’s model of the churning adversary state.” Not only was Buchanan open to the idea that government does not exist to protect people, he was also open to the idea that order comes independently from government. Buchanan (1994, 132) wrote, “Much of human activity takes place in a setting described as ‘ordered anarchy,’ by

which I refer to the simultaneous presence of apparent order and absence of formal laws governing behavior. How is such ordered anarchy possible? . . . The answer suggested by my argument here is that interacting parties choose to constrain their separate choices in such fashion as to create non-intersecting and therefore nonconflictual outcomes.” Buchanan pointed to factors including morality in constraining a Hobbesian war of all against all.

Buchanan never was a traditional anarchist, but at many points he came close, and many scholars influenced by Buchanan have explored such a position in more depth (Boettke 2005). [5] Modern economists have used Public Choice to analyze the creation of government law enforcement as a way of generating revenue for the state (Benson 1994, Curott and Stringham 2010) [6] and analyzed ways in which private clubs enforce rules and regulations that are usually considered to be the domain of the state (Anderson and Hill 2004; Boettke 2012a,b; Leeson, 2011; Powell and Stringham 2009; Stringham 2006). [7] To these Public Choice economists the government is not created to fill a void that existed without government. One can analyze all of these questions from a purely positive point of view, but the work can have help influence our normative conclusions. Buchanan’s spirit of inquiry about the viability of anarchy should be viewed as a model for others to follow. One need not simply assume that order under anarchy is impossible or that the state will automatically solve problems. Instead, we can view these as open questions to be investigated in future explorations in the economics of anarchy. [8]

Endnotes

[1] See Stringham, "Overlapping Jurisdictions" (2006) <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1324407>

[2] See Stringham, "Anarchy and the law" (no date) <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1768172>

[3] Buchanan, *The Limits of Liberty*, chap. 1 "The Commencement" <<http://oll.libertyfund.org/title/1827/103247/2214426>>.

[4] See Stringham, "Introduction" to *Anarchy, state, and public choice* (2005) <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2228946>

[5] See Boettke, "Anarchism as a Progressive Research Program in Political Economy" (2005) <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1538490>

[6] See Currott and Stringham (no date) "The rise of government law enforcement in England." <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1711665>

[7] See Stringham (2006) "Overlapping Jurisdictions" <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1674470>

[8] See Boettke (2012a) "Anarchism and Austrian Economics" <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1871727>

3. THE CONVERSATION

1. RESPONSE BY GEOFFREY BRENNAN [MARCH 18, 2013]

The responses to what Steve Horwitz aptly refers to as my “once-over-lightly” treatment of Buchanan themes raise a number of very interesting issues. On many aspects of those commentaries, no response is really necessary. They either amplify pieces of the Buchanan intellectual scheme that I dealt with too cursorily or re-express them in more elegant terms. There are, however, at least three themes that I think are worth an additional comment or two at this stage.

One, which crops up in several of the contributions (Boettke, Horwitz, and Stringham in particular), relates to the status of anarchy – and more specifically the possibility of “rules without government.” I think the commentators are right that Buchanan is psychologically ambivalent about such possibilities – but I also think the textual evidence on this matter is pretty clear. In particular:

1. In the *Limits of Liberty*, Buchanan expressly refers to the attractions of anarchy as a snare and delusion. He does not deny the attractiveness to classical liberals of ordered anarchy as an abstract idea – but he is clear that it ought to be rejected as a practical possibility. Again, in his introduction to *Freedom in Constitutional Contract*, he insists that freedom is possible “only in constitutional contract.”

2. Buchanan is openly skeptical about “evolved norms” as a source of grounding appropriate “rules of the game.” He thought that the evolutionary approach made for an excessive quietism in the face of existing practices. The contractarianism he endorses requires, as he saw it, explicit popular consent of agents to the rules under which they are to be governed. Perhaps in this he was excessively influenced by the American experience – which he saw as a paradigmatic example of a people constructing the rules of the sociopolitical game.

In making this observation, I do not want myself to take a stand. The work of Elinor Ostrom on commons management and of Peter Leeson on the pirates’ code seems to suggest that ordered anarchy is

possible in some situations – and specifically in those where the number of agents is not too large. Whether that work is sufficient to dispose entirely of the relevance of the Hobbesian picture is more debatable. Arguably, Buchanan saw his efforts as directed at larger scale institutions like the modern state. And it is important to recall that in that setting he remained committed to changes in rules that would command virtually unanimous support. In that respect, more extreme libertarian proposals seem unpromising.

The second issue is more fine-grained and relates expressly to Viktor Vanberg’s commentary. The issue is the voluntariness of market transactions. I’m not sure whether there is any substantive disagreement between Viktor and me, but it will help to underline my own understanding of the logic of Buchanan’s position if I say a little about it.

Viktor quite rightly observes that “in the case of market transactions,... what ‘voluntary’ means is defined in terms of the rules that constitute the market....” I agree 100 percent. But I think the point cuts deeper than Viktor suggests. Specifically, if he and I are agreed on this, then the remarks Viktor makes earlier about the voluntariness of market transactions seem entirely question-begging.

This is what Viktor says:

Advocates of free-market liberalism are surely right in emphasizing that market transactions are distinguished by the fact that they are voluntarily entered into by the parties involved, whose agreement testifies that each expects to gain *thereby conferring legitimacy on the transaction*. [Emphasis added.]

It seems to me that this is disingenuous on two counts. One ambiguity involves the definition of the set of “parties involved.” If this is meant to include only the contracting parties, the claim is true by definition. But there are other parties who are affected by exchanges between A and B – namely, others across the whole trading nexus. This is an issue that became more salient to Buchanan as he worked in later life on increasing returns and the work ethic, out of the first three chapters of Smith’s *Wealth of Nations*.

An example will help. When X purchases from Y the right to use Y’s (patented) invention – say, to produce the motor car – X reduces the value of the

human capital of many an ostler and horse-breaker and saddle-maker and blacksmith. These people endure losses by virtue of the X/Y exchange. This is, I take it, simply a fact. It is a fact that reflects the manifold and complex interdependencies that make up the market order. Of course, these losses are not, under the rules of the typical market game, “harms” or “injuries”; they simply reflect the fact that within a highly interdependent structure, “rights” are entitlements to *inflict* as well as to *avoid* losses. Some losses are called “harms/injuries” and others are not. Which are which is the role of the rights structure to specify.

What we can say is that, in any transaction between X and Y, there are:

- Expected gains to X (B_x);
- Expected gains to Y (B_y);
- Actual losses endured by third parties (L_c);
- Actual gains accruing to fourth parties, (B_d).

In most cases, and specifically for “private goods,” there is a strong presumption that the aggregate of these gains and losses is positive. Market transactions will in such cases be “efficient.” But this does not make them fully *voluntary*: Any losses endured by the C’s are *involuntary* losses. So, though we can make a defense of market transactions on the basis of their expected *efficiency*, we cannot do so on the basis of their *voluntariness*. Put another way, if voluntariness “confers legitimacy on the transaction,” then we have to define “voluntariness” to exclude the will of any losers – and that seems just plain arbitrary.

Another way of putting the point is to observe that unanimity among all citizens (what Buchanan identifies as the ultimate contractarian test) is not the same as agreement among contracting parties in a market exchange, because in the case of explicit unanimity every affected party has a right of veto, which is not true in the market!

What Buchanan recognized fully, I believe – and what I think Viktor only recognizes in part – is that market transactions can only make claim to full contractarian credentials if those who lose under any market transaction have agreed to the rules of the market game. Viktor emphasizes that markets can operate under a variety of more detailed rules, and hence free-market liberals need a procedure for

deciding which among those possible rule-regimes are “truly voluntary.” But it seems clear to me (as I believe it did to Buchanan – at least, the post-Smithian Buchanan of the “work ethic” strand) that the very idea of voluntariness that is thought to undergird market transactions is not self-evident. Free-market liberals are *not* “surely right” – indeed they are not right at all! – to claim that market transactions are voluntary for the “parties involved,” unless one is prepared to stipulate that only the contracting parties themselves (and not affected others) have moral standing. And that seems to require a notion of “voluntariness” that is entirely question-begging.

I have taken a lot of space trying to clarify this point, because it seems to me to be one on which many free-market liberals seem to be confused. Buchanan himself was certainly not confused on this point. He clearly thought that markets require a deeper contractarian defense – and it is this defense that the constitutional contract is designed to provide. As I say, I am not sure whether Viktor would disagree. But some of the things he says seem inconsistent with others; and I think this is a matter that demands total clarity.

The final issue is specific to Lomasky’s commentary. And here, I have to confess to some surprise -- surprise both as to Lomasky’s own position and to his attribution of Buchanan’s.

The latter first. Lomasky describes Buchanan as committed to a motivational structure involving “*self-interest narrowly construed*” in both politics and economics. For Buchanan, Lomasky says, “politics without romance” means that *homo politicus* and *homo economicus* are one. My perception of Buchanan’s position here is that it was more nuanced. He was committed to basic motivational symmetry; but he recognized as early as 1954 – and certainly in his paper on “voter choice” with me in 1981 – that the same *motivational* structure could admit different behaviors. He did insist that anyone who claimed any difference between political and market behavior had to provide a justificatory argument. And it would have to be consistent with motivational symmetry. But his commitment to *homo economicus* always struck me as more equivocal than Loren paints it (and for example more equivocal than Gordon Tullock’s or Bob Tollison’s were).

Second, on Loren’s own position, I had taken it that he himself is deeply skeptical about the

extrapolation of homo economicus to electoral settings. Accepted that political issues (and issues of institutional design) are of less interest to most ordinary mortals than they are to political philosophers (and probably, for that matter, than they were to Buchanan!). However, I take it that the difference between ideal and non-ideal theory is less a matter of the extent to which theorists of either stripe think political theory is important, and more a matter of how feasibility considerations bite in the analysis. I agree that, in this ideal/non-ideal typology, Buchanan is definitely on the *non-ideal* side of the fence. But it would certainly be a mistake to think that, to be a non-ideal theorist, one would have to embrace predominant self-interest as a political motivation. Or that making such an assumption might help to find an appropriate "middle way"!

2. VIKTOR VANBERG'S REPLY TO GEOFFREY BRENNAN'S RESPONSE [MARCH 19, 2013]

I appreciate very much *and entirely agree* with Geoffrey's response to my comment. He is right in pointing out that my remark on free-market liberalism's emphasis on the voluntariness and legitimacy of market transactions appears to be not perfectly consonant with my claim that "voluntariness" is "defined in terms of the rules that constitute the market." His critique reminds me that I should have been more careful in emphasizing a distinction that I have discussed explicitly in my "Markets and Regulation" paper referenced in my comment. There I argue:

That there is a distinction to be drawn here between sub-constitutional and constitutional agreements is overlooked by authors who, like Rothbard, suggest that, since each and every market exchange is a voluntary transaction, the market order itself can be said to be unanimously approved. As much as the constitutional liberal agrees with the claim that the game of catallaxy provides benefits, and is attractive to all participants, he cannot agree that this claim is proven by the voluntariness of market transactions. The ultimate test for the

attractiveness of the market order can only be its attractiveness and voluntary acceptance as a constitutional order.

In regard to the *game of catallaxy* (Hayek) we must distinguish between two issues: the legitimacy of actions and transactions *within* the game and the legitimacy *of* the game. The former derives from the players staying within the rules of the game, the latter from the players' agreement on the rules. Geoffrey rightly points out that when, in reference to market transactions, I speak of agreement among the "parties involved," this is ambiguous because "there are other parties who are affected by exchanges between A and B," parties that may not at all agree to being harmed by what A and B agree upon. He also rightly points out that "it is the role of the rights structure." i.e., of the rules of the *game of catallaxy*, to distinguish between "harms" that players must tolerate because they result from legitimate, rule-abiding actions and "harms" they are entitled to be protected against because they result from rule-violating actions.

The issue of the legitimacy-conferring capacity of agreement is obviously relevant only for harms to others that result from rule-abiding agreements between A and B. To be sure, players can hardly be expected to joyfully agree to losses inflicted on them by other players' actions, even if these actions remain perfectly within the rules of the game. But fairness requires them to accept such losses when playing a game under mutually agreed-upon rules. It is by their agreement to the rules of the game that individuals agree to accept losses that may result from rule-abiding playing of the game. As Hayek has persistently emphasized, there are indeed good reasons for them to agree to playing the *game of catallaxy* – compared to other feasible games – because they can trust that the "general compensation" it promises will outweigh the losses it will inflict on them. As a side-remark: Free-market liberals would do their cause a good service if they would put more energy in convincing their fellow-citizens why, and under what rules, such "trust" in the market game is justified rather than proclaiming "natural rights" justifications for the market order.

I reckon, Geoffrey and I are in perfect agreement in these matters.

3. GEOFFREY BRENNAN'S REPLY TO VIKTOR VANBERG [MARCH 19, 2013]

I agree that we are agreed. And in that sense, Viktor and I – and more to the point Jim Buchanan – have to insist that markets are *not* totally voluntary institutions in the sense that not all affected parties have the right of veto, and that classical liberals/libertarians have to answer to that challenge. As Viktor remarks in his earlier piece, libertarians might appeal to some form of “natural rights” structure to do this; they might think the proper property rights structure is given by fundamental normative principles. But that is expressly not the case for Buchanan. For him the proper rights structure is to be derived by constitutional contract in which (virtually) all participants exercise a capacity to veto. It is that constitutional right of veto that is the core of the classical liberal commitment in the Buchanan scheme.

4. LOREN LOMASKY'S COMMENT [MARCH 22, 2013]

I was once privy to a conversation between Jim Buchanan and Geoff Brennan in which Jim put forth a characteristically hyperbolic hypothesis. “Jim, that’s not what you really believe!” Geoff corrected and then explained in some detail why that comment didn’t represent the considered Buchanan view. Somewhat sheepishly, Jim concurred. If the principal party himself has a lesser understanding of Buchanan’s real views than Geoff does, who am I to dispute him?

Nonetheless, I believe that those commentators whose interpretations Geoff is correcting have a point – including this commentator. Although Buchanan clearly rejects anarchism for deep programmatic reasons, he shares with the anarchist a profound suspicion of state “solutions” to just about any problem. To put it another way, his inability to make the full leap into anarchism is for him a matter of regret. Similarly, he rejects *homo economicus* as an accurate depiction of people in nonmarket contexts including, of course, the political arena. Nonetheless,

he insists for methodological reasons that this is the proper model to bring to Public Choice analysis. (This may be his parallel to Rawls’s commitment to the rationality of maximin.) Buchanan concedes the Brennan-Lomasky point that in situations where individuals are unable to act decisively to produce desired outcomes, their interest in expressive activity may come to the fore. For him, unlike us, this was regarded as something of a side point, offering only modest analytical gains. We respectfully disagree.

I wouldn’t be surprised if there already is a Ph.D. dissertation in progress that aims to set out a synoptic statement of Jim Buchanan’s expressed views. That’s a worthwhile project. Also worthwhile, however, is thinking about how to harness the potential of Buchanan’s theories even in ways their author may have ignored or even explicitly rejected. That, I believe, is what the Brennan respondents are up to here, including the one concerning whom I am able to speak with some authority.

5. VIKTOR VANBERG'S COMMENT [MARCH 22, 2013]

Geoffrey’s remark on the “constitutional right to veto” as “the core of the classical liberal commitment in the Buchanan scheme” provokes me to add a few qualifying arguments to which, I presume, Geoffrey can subscribe.

To begin with the easier case of constitutional contracts that individuals conclude as private-law subjects when, in a market environment, they form voluntary associations, such as business enterprises or sports clubs: Those who originally form and those who later join the existing association testify by their voluntarily doing so that they agree to its constitution. Anticipating that in a changing world the need for constitutional adjustments may arise, they will have prudential reasons – as they have been elaborated by James Buchanan and Gordon Tullock in *The Calculus of Consent* – to accept provisions in the constitutional contract that allow for changes in particular rules to be made with less-than-unanimous approval by all members. In other words, considering the disadvantages of requiring unanimity as a decision rule

even at the constitutional level, there are prudential reasons for them to dispense with a veto-right with regard to partial constitutional reforms. They retain, though, a “veto-right” with regard to the inclusive constitutional contract in the sense that they can exit from the association if a constitutional change they disapprove weighs in their assessment heavy enough so as to outweigh the advantages they can expect from keeping up their membership.

The more difficult case concerns the constitutional contract on which political communities or states are based. A particular feature of these associations is that membership status is typically not acquired by explicit voluntary choice but by being born into the community. That is, for most members we can only take the fact that they maintain their “imposed” membership status in the face of viable exit-options as an indicator of their implicit agreement to the constitutional contract on which the political community in which they live is based. Furthermore, the prudential reasons that require even relatively small private associations to allow for non-unanimous constitutional reforms apply a fortiori to political communities that comprise much larger numbers of members. Citizens-members of such communities do, therefore, not have a veto-right with regard to particular constitutional changes. The “veto-right” they possess is limited to the right to exit from the polity, a right the effectiveness of which obviously depends on the availability of accessible alternatives.

The point I am trying to make is that the veto-right to which Geoffrey refers is, in the sense stated, only a rather qualified right. This fact does, however, not invalidate at all the core tenet of Buchanan’s contractarian constitutionalism, which I see in the insistence on voluntary agreement as the *ultimate legitimizing principle* in social affairs despite the impracticability of unanimity as a decision rule in an ongoing collective enterprise. The noted qualifications simply reflect facts of life to which we must adjust our efforts to find institutional arrangements that allow us to realize – to the largest extent possible in the world as it is – the “classical liberal commitment” to the ideal of individual sovereignty, just as we must adjust in our day-to-day activities to the constraints that geography or weather impose on us.

6. STEVEN HORWITZ'S COMMENT [MARCH 23, 2013]

I want to chime in briefly on the exchange between Viktor and Geoffrey about the importance of the rules of the game, especially with respect to the “voluntariness” of market interactions and our willingness to accept various market outcomes as legitimate. The distinction that Viktor makes between “harms” that come from the playing of the game of catallaxy *within* the rules (e.g., a loss of income that comes from a shift in market demand and a new pattern of exchanges) versus the harms that come from people *violating* those rules (e.g., private predation or private actors seeking to expand the reach of the state for their own personal gain) is crucially important. It is one that free-market liberals should indeed be more vocal about, particularly in the context of issues such as income inequality. We need to hammer home the idea that play within the rules is positive sum, because it benefits all players in the long run even if it increases measured inequality, while violations of those rules are negative sum, because any change in the distribution of income they create are the result of some gaining at the expense of others.

Of course for decades the modern state has rewritten the rules of the game in ways that invite this sort of negative-sum rent-seeking behavior. Private actors have adapted by, on various margins, shifting their profit-seeking resource expenditures to more vigorously compete in the political arena for the rents available there – or to protect themselves against such behavior by others. As more and more firms have felt compelled to open Washington offices to rent-seek and/or rent-protect, the amount of negative-sum behavior has expanded. As problematic as this all is, the degree to which governments have used pure discretion to pick winners and alter the outcome of the game has still been reasonably modest. Rather, the entanglement of rent- and profit-seeking has produced a set of rules that has led to suboptimal games being played.

I wonder, though, whether the last few years haven’t changed this in a significant way. Rather than just setting up rules that make for bad games, the modern state seems more like referees in an American

football game who us their discretion to decide what yard line the ball should be placed on and what sorts of plays are legitimate. The bailouts and subsidies of the last half-decade are a perfect example of this sort of behavior by the modern state.

We might distinguish three cases corresponding to this evolution.

- 1) The liberal ideal: Here the state is (at most) a referee, and all would agree on the rules of the game, legitimating all outcomes as voluntary in the way Viktor and Geoffrey have discussed.
- 2) The rent-seeking society: The state remains (mostly) a referee but the rules are such that not all would agree to them because of the negative-sum outcomes they produce. In this world, not all outcomes are voluntary.
- 3) The discretionary state: Here we have not only a set of rules that people do not agree on, but we also have a “referee” who sees its role as more intentionally affecting the outcome of the game by using its discretion to help or harm specific players far more systematically than in the rent-seeking society. Not only are the rules themselves unable to command assent, but the arbitrariness of the enforcement of even those rules that would command assent breaks down any sense that outcomes are legitimate.

Perhaps much of the frustration of groups from Occupy Wall Street to the Tea Party over the last few years reflects the movement toward the third scenario. Confidence in both the fairness of the rules *and their enforcement* has been shattered to such a degree that perhaps few people feel the outcomes in this very entangled political economy are legitimate.

In a world that seems less and less governed by rules, Buchanan’s work couldn’t be more relevant. If indeed western countries have moved to a stage where the state’s power has become increasingly discretionary and has thereby systematically destroyed any remaining belief that economic outcomes are voluntary and therefore legitimate, then not only have we retrogressed to a premodern understanding of the state, but all bets are off as to what happens next. When the referee, and not just the rules, is seen as illegitimate, we are approaching a constitutional crisis (in Buchanan’s sense

of constitutional), the outcome of which might not be pretty.

7. VIKTOR VANBERG'S REPLY TO STEVEN HORWITZ [MARCH 25, 2013]

Steven’s distinction between the rent-seeking state and the discretionary state is useful. It highlights the difference between discriminatory legislation and arbitrary enforcement of rules as two ways in which governments can obstruct the very principles on which a society of free and equal people – forming a democratic polity as a “cooperative venture for mutual advantage” (Rawls) – ought to be based. There is, though, a commonality between the two vices. Both are equally inimical to what Hayek emphasized as the “essence of the liberal position”: “the denial of all privilege, if privilege is understood in its proper and original meaning of the state granting and protecting rights to some which are not available on equal terms to others.” Just like any privileged treatment that legislatures grant to rent-seeking interest groups, so every discretionary intervention into the “game of catallaxy” necessarily means that the state bestows privileges on some players at the expense of others.

When Steven speaks of such discretionary and discriminatory state activity as retrogression “to a pre-modern understanding of the state,” he restates in different terms what the founders of the ordo-liberal Freiburg School of Law and Economics (Vanberg, *The Constitution of Markets*, chapter 3) have described as “refeudalization.” They applied this label to the discretionary state whose privilege-granting interventions into the economic process represent in essence a movement back to the kind of discriminatory order of privileges that had been characteristic of the feudal society. The interventionist state, so the Freiburg ordo-liberals argued, is only seemingly all-powerful, but is actually a rather weak state. It is its very “power” to grant privileges that makes it inevitably the target of special-interest demands, turning it into a “playball of interest-group pressures” and weakening its capacity to perform its proper task of serving the common interests of the citizenry.

8. GEOFFREY BRENNAN'S COMMENT ON HORWITZ [MARCH 25, 2013]

A quick word on Steve Horwitz's latest. Well, two words, actually.

That markets are positive-sum over the long haul for most goods for most persons is a claim that most economists would agree with. Some debate will go on at the margin about how long a haul is needed and whether we should be concerned about the (small number of) long-term losers and about the range of goods – but these are all judgments about institutional *efficiency* not institutional *voluntariness*. Buchanan thinks these are connected because virtually all individuals will opt at the constitutional level for an extensive role for markets – but it is only to the extent that they do so opt that the *voluntariness requirement* is satisfied. Maybe this is pedantic – but note that if in fact people don't so opt, markets are not voluntary institutions in Buchanan's sense.

As to “playing by the rules,” it is a fact -- unfortunate for libertarians – that we in the United States have a set of rules that actually permit much more extensive government activity than most libertarians would prefer. Buchanan shared the view that other, more restrictive rules would be better – but the ultimate test of betterness for Buchanan in this is the capacity to persuade virtually everyone to change the rules of the political game in the recommended way! If you can't manage that, then the prevailing rules are shown to be “optimal”! As things now stand, libertarianism seems to be a minority view. And in my experience most of them are so on the basis of some kind of natural-rights notions. I don't think Buchanan's constitutional contractarianism can be mobilized in support of any such “natural rights” arguments: Constitutional contracts are by constitutional *exchange*, which means being prepared to give up something you value. Rights foundationalists do not usually seem to me prepared to give much up!

9. GEOFFREY BRENNAN'S COMMENT ON VIKTOR VANBERG [MARCH 25, 2013]

Hmm. I'm not sure I do subscribe to Viktor's latest gloss – partly because I am not completely sure what's at stake.

For one thing, I reckon that agreements made between a number of individuals to form a club from which other individuals are explicitly excluded might turn out to violate constitutional agreements, depending on what contractors behind the constitutional veil of ignorance have to say about such cases – and if those agreements say nothing, how in-period politics following the agreed procedures happens to deal with them. For another, whether capacity to exit is a sufficient protection in the case of all contracts (multi-person or not) is not self-evident. I do not deny that we might have anxieties about contracts that deny exit rights once the contract is made – but some of the cases involved in this category seem to me to be “hard ones.”

The other aspect of Viktor's comment that worries me is what I take to be a suggestion that, since virtual unanimity is more or less infeasible at the constitutional level, we can't take Buchanan's constitutionalism too seriously. That is, treating constitutional agreement as a “purely conceptual ideal” seems to me to invite giving Buchanan's scheme a passing nod of approval and then getting on with the business of day-to-day politics. I'm not sure whether I myself fully endorse Buchanan's constitutional contractarianism – but I would have thought that Jim wanted it to have more teeth than is suggested by “purely conceptual ideal”!

Perhaps Viktor and I are not in such close agreement after all.

10. GEOFFREY BRENNAN'S COMMENT ON LOREN LOMASKY [MARCH 25, 2013]

Tempting as it is to play the game – “This is what Buchanan should have said” – it is a dubious game once Jim isn’t around any longer to speak for himself. I think Loren is right to say that Jim had a kind of love/hate relationship with anarchy – and Buchanan says as much in the early pages of *Limits to Liberty*. But having acknowledged his “love” in those pages, Buchanan goes on *immediately* in those same pages to repudiate it as a hopeless love. In the “Gospel according to Lomasky,” anarchy may stand high as an exemplar of noncoercion – but to enroll Buchanan as a fellow disciple either requires massive interpretative license or a serious challenge to Buchanan’s coherence.

I think it’s pretty clear that Buchanan bought Hobbes’s interpretation of what anarchy would be like – and Jim did not like that kind of world! He had tried it at UCLA and retreated to the Appalachian foothills to get away from it!

11. PETER BOETTKE'S COMMENT ON BUCHANAN ET AL. [MARCH 26, 2013]

James Buchanan considered himself a “philosophical anarchist,” and this was so because of his normative affinity with a philosophy of complete autonomy of the individual. Theoretically, Buchanan believed in the right of secession down to the level of the individual. But, practically, he demurred, our social existence requires collective action.

Thus Buchanan lumped all anarchist theories, including modern anarchocapitalist theories associated with Murray Rothbard and David Friedman, with other “romantic” political theories. And, historically contemplated, clearly Buchanan was right in this judgment. Anarchistic political thought from Godwin to Bakunin was romantic in precisely the sense Buchanan intended -- requiring a perfecting transformation of humanity for the social system to work.

Rothbard was actually more vulnerable to this criticism, basing his political theory on natural rights

and pure deduction from the nonaggression axiom. His is a theory of anarchism without much emphasis on “mechanism” and “institutional design,” but one that emphasized the moral “rightness” of a social system so organized. Rothbard, like Buchanan, is a “philosophical anarchist,” but unlike Buchanan he doesn’t see the practical limitations, or perhaps more accurately, he makes an argument that even if the practical arguments against it were right, the moral principles far outweigh them. Liberty damn the consequences. For Rothbard, however, it was a happy coincidence that, as a matter of logic and fact, a society based on the consistent application of individual rights to private property resulted in the most efficient economic society humanly possible. But make no mistake, Rothbard’s anarchism is a “moral theory” of anarchism.

Friedman’s argument represents a different tradition in libertarian thought. His is an “economic theory” of anarchism, and one that at least suggests some of the “mechanisms” and “institutional designs” that might be in operation and how they may in fact work in theory. Nevertheless, Buchanan lumped Friedman and Rothbard together and then lumped them in with the Godwin to Bakunin romantic political theorists. However attractive such theories are philosophically, they must be rejected due to need for hard analytics to access alternative institutional arrangements in diverse human societies.

Thus Buchanan explored the escape through a constitutional contract from the Hobbesian jungle that practical anarchy would condemn us to. Once the escape has been achieved, Buchanan’s attention turns to how we can avoid the collapse into Leviathan. Through successful collective action at the constitutional level a state is constituted, but now comes the task of institutional design such that the protective and productive state are operating effectively without unleashing the negative force of the redistributive state. If the redistributive state evolves unchecked, we devolve into the churning state -- where interest groups are pitted against each other in a war of all against all in zero-sum games. Buchanan would like to see a world of nonzero-sum games -- only positive-sum games.

I have gone into this background because it is my assessment that Buchanan’s normative caricature of

anarchism results in a blind spot in Virginia Political Economy. Since the financial crisis of 2008, Buchanan pinpointed the problem as one of an overly optimistic faith on the part of modern Chicago economist that market behavior can check itself without a proper framework of rules to discipline the behavior of market participants. There is much to be said for Buchanan's position, and we will provide a much better analysis of the financial crisis if we move the analysis to the level of rules and the institutional framework. Economic analysis is ultimately about exchange and the institutions within which exchange takes place. As Buchanan wrote in *The Demand and Supply of Public Goods*: "Appropriately thorough analysis should include an examination of the institutional structure itself in a predictive explanatory sense. The economist should not be content with postulating models and then working within such models. *His task includes the derivation of the institutional order itself from the set of elementary behavioral hypotheses with which he commences.* In this manner, genuine institutional economics becomes a significant and an important part of fundamental economic theory." [1]

Thus an appropriately thorough institutional economics would not just stress the necessity of the framework, but explain both the origins of the framework and the mechanisms in operation to sustain the framework. Here I think the pigeonholing of "anarchism" into the normative camp misses the critical insights that can be learned for our constitutional analysis from the empirical project of the positive political economy of anarchism. First, we have a wealth of information about the institutional transformations that took place in medieval societies as we moved from personal exchange to impersonal exchange. (see, e.g., the work of Avner Greif [2006]) [2] This work -- which explores institutional prerequisites for the birth of modern economic growth -- emphasizes self-enforcement/self-regulation, evolutionary experimentation with a diversity of rules, and some mix between top-down and bottom-up rule design and establishment. The state is no doubt a major player, but the state is not a single unified entity either. This point actually had a significant intellectual influence on Buchanan's work in public finance, as evidenced not only in his 1949 "A Pure Theory of Government Finance" but in subsequent works that reflect the influence of the Italian public-finance

theorists on his work after his Fulbright year (1955-56). Public economics must proceed, according to Buchanan, without the delusion of state omniscience and benevolence. "Real rather than idealized politics, with real persons as actors -- these were the building blocks in the Italian constructions, whether those of the cooperative-democratic state or the ruling class-monopoly state." [3]

A critical point of emphasis in Buchanan's work is that public finance implies a political theory. Most public economists engage in their work with only an implicit recognition of the underlying political theory. Buchanan wants his fellow public economists to make that recognition explicit. His political theory was a version of contractarianism. The leap out of the Hobbesian jungle was accomplished through a social contract. In his stylized treatment, Buchanan is forced to turn a blind eye to the myriad ways in which individuals and groups can turn situations of conflict into opportunities for social cooperation. [4] Instead, he produces a stylized analytical "history" of freedom in constitutional contract and the structural organization of government that in many ways over-theorizes the social contract and under-"historizes" the way in which rules are subjected to trial-and-error as conflict-resolving mechanisms within and between groups.

Buchanan does this for an important reason -- he distinguishes between the games we play within a given set of rules and the choices we make over the rules of the game. He has a great analytical "faith" that within the appropriate set of rules the order that will emerge within the process of its emergence will in fact be a socially desirable one. Yes, Virginia, the market process exhibits a strong tendency toward 1) realizing the mutual gains from trade, 2) inducing the innovations that will result in least-cost technologies being utilized in production, and 3) responding to the diverse demands of the most willing consumers by providing them with the goods and services they desire when they desire them. In short, within the right institutional framework, the economic forces at work tend to continuously agitate action until a point of exchange efficiency, production efficiency, and product-mix efficiency emerge. To deny this is to deny the fundamental logic of the economic way of thinking. While not denying this strong tendency, and in fact relying on it, Buchanan has put the emphasis on the

activity of the market that brings about that tendency -- the dynamic competition and entrepreneurial adjustments, the learning and adaptation to changing circumstances, the very *becoming* of the competitive market process. He focused his attention on the reconciliation process among diverse market participants, the working out of their differences through exchange. Consider closely the argument Buchanan provides in "What Should Economists Do?" (1964) or much later in "The Market as a Creative Process" (2000 [1991] with Viktor Vanberg). [5] The market has no grand teleology toward which it is heading, though its participants certainly do. The order of the market is indeed an emergent order. Yet the market is not chaotic, but possesses the strong tendency toward realizing the gains from trade and innovation, and producing social cooperation under the division of labor.

The fundamental question that must be raised is one of application of the rules-selection process to the choice among frameworks of rules themselves. I argued that first, Buchanan failed to incorporate the scientific knowledge that we have learned from the historical evolution of rule regimes from medieval times, and the emergence of capitalism. Of course, for the operation to take place we must recognize that there is some level at which meta-rules are in operation. For Europe, for example, it has been hypothesized that the lack of a unified empire like the ones in Russia or China resulted in a healthy competition between the decentralized states, enabling the birth of modern capitalism. Russia and China no doubt had political competition going on, but the meta-rule situation of a unified empire meant that the competition took a different form from the trial-and-error policies of economic freedom. But Buchanan not only failed to incorporate this historical knowledge into his account, a second potential shortcoming is that he missed the opportunity to apply his insights to the empirical puzzle of failed and weak states, and transitioning economies. It is precisely situations where the rules of the games are up for grabs that the task of the political economist must include "*the derivation of the institutional order itself from the set of elementary behavioral hypotheses.*"

By divorcing the constitutional project from the empirical puzzle, Buchanan is able to develop a rational-choice model of rule-making with choosers

who are devoid of their humanity not through the typical modeling exercise of omniscience, but through an atypical move of depriving actors of concrete incentives through the veil of uncertainty. What if, instead, we must examine constitution-making in a world of diverse populations (heterogeneous agents), in large-group settings, and perhaps in a situation defined by recent and deep conflicts? This is the world that political economists have been addressing in the postsocialist context, in the postwar context, in the African, Latin American, and Middle East context.

Conceptually, constitution-making is an exercise of choice over the rules by which we will play the social game. Theoretically, it makes sense to think of justness as fairness, and thus we strive for rules that permit neither dominion nor discrimination. Normatively, as Hamilton raised it in Federalist #1, we prefer to have our constitutions to be products of reflection and choice, rather than accident and force.

Anarchy can be read as synonymous with chaos, or absence of law, in which case its operation depends on either the transformation of humanity or the normative embrace of nasty, brutish and short existence. This is how Buchanan read those who sought to discuss endogenous rule-formation. But the "economics of anarchy" literature can proceed along a different line than which either Buchanan and Bush took -- or Friedman, or even more recent work by Hirschleifer or Dixit.[6] Research on the positive political economy of anarchism simply means the theoretical and empirical discussion of the endogenous formation of rules of the game in the absence of monopoly provider of the rules. To assume that we can have a monopoly provider that has the capacity to exogenously impose rules on the population that reflect the consensus of the governed is as heroic an assumption as any that traditional public-finance theory operates under.

So yes, James Buchanan was not an anarchist and in fact was highly critical of the libertarian anarchist with whom he intellectually engaged. He extended those criticisms to Hayekian evolutionism in general. There simply is, in his analysis, no processes of selection over the rules within the evolutionary process that would ensure the choice of good rules and the weeding out of bad ones. But he never really engaged the strongest arguments against his position in this

regard, as he was content to dismiss the moral theory of anarchism as possessing a certain philosophical desirability but practical shortcomings. However, his own work, e.g., *Limits of Liberty* (1975), while distancing him from the radical libertarianism of the Rothbard, David Friedman, and even Nozick variety, nevertheless set the analytical groundwork for later work in “analytical anarchism.” It is this work, which provides the theoretical puzzle for collective action, that forms the basis for the “positive political economy of anarchism” as an empirical project in modern political economy. But by remaining blind to this literature and the possibilities it has to offer, constitutional political economists are missing out on the greatest set of “natural experiments” of the ideas and concepts they work with. As we move onward and upward with the Buchanan project, it is my opinion that work on the endogenous formation of the rules of the game among large, diverse, and often divided populations must take center stage. “Anarchy,” in other words, cannot be dismissed out of hand as a relic of romantic political philosophy, but instead must be embraced as the empirical reality that has formed the basis of some of the most pressing issues in comparative political economy over the past 30 years in non-western societies.

The western democratic states have their own sets of issues that must be confronted head-on by the constitutional political economist as well. Buchanan’s profound work should guide us in both paths, but he spoke more directly to the questions that confront the western democratic states. However, Buchananesque work might yield the highest returns when applied to the areas of transitioning, developing, and failed and weak states, where the basic framework of rules of the game are either ill-defined or poorly enforced, and thus are in need of our analytical attention if we are to address the fundamental problems that plague these societies and the efforts to improve their economic and political well-being.

Endnotes

[1] Buchanan 1999[1968], 5, emphasis added). <<http://oll.libertyfund.org/title/1067>>.

[2] Avner Greif [2006], *Institutions and the Path to the Modern Economy*.

[3] Buchanan 1999[1986], 17). In vol. 1 of *The Collected Works of James M. Buchanan*, pp. 119-32. [Not available online.]

[4] Consider, for example, the important passage in *The Calculus of Consent* (1999 [1962], 81) where Buchanan and Tullock explicitly state: “Therefore, our analysis of the constitution-making process has little relevance for a society that is characterized by a sharp cleavage of the population into distinguishable social classes or separate racial, religious, or ethnic groupings sufficient to encourage the formation of predictable political coalitions and in which one of these coalitions has a clearly advantageous position at the constitutional stage.” <oll.libertyfund.org/title/1063/31524/1580999>. But as I will argue, it is precisely this sort of environment that is most relevant for modern political economy to grapple with, and not the stylized analytical exercise of producing a constitutional-level agreement from behind a veil of uncertainty -- though I will argue that Buchanan and Tullock are underselling the contribution that they have to offer to the exercise of constitution-making from the bottom up and in a conflict prone world.

[5] Buchanan, "What Should Economists Do?" (1964) and (with Viktor Vanberg) "The Market as a Creative Process" (1991).

[6] Hirshleifer, Jack, *The Dark Side of the Force: Economic Foundations of Conflict Theory*, (2001) and Dixit, Avinash, *Lawlessness and Economics: Alternative Modes of Governance* (2004).

12. PETER BOETTKE’S SECOND COMMENT ON BRENNAN ET AL. [MARCH 26, 2013]

Geoff (and Viktor) correctly argue (obviously because they are two of the closest thinkers to Buchanan) that Buchanan’s ultimate welfare test was agreement. In fact, in Buchanan’s rightly famous 1959 paper, “Positive Economics, Welfare Economics, and Political Economy,” he negotiates the passion for reform that entices folks to study economics with the strictures of positive analysis via the concept of agreement. The political economist qua reformer proposes his changes as hypotheses subject to refutation

through the process of obtaining agreement from other political decision-makers. If the reforms fail to generate a consensus, then they fail.

Buchanan's political economy demands that the analysis must begin with the "here and now" and not imagine some start-state that could be easily perfected. Since we begin with the here and now, and then propose changes that must meet with agreement or they are rejected, the Buchanan-style political economy reformer must be ready to follow the compensation principle through to its logical conclusion if Pareto improving-policies are to be instituted.

What if we find ourselves, as we do in our current world, where the status quo is biased in the favor of one group, or group of groups, and the proposed reforms are designed to upset that status quo? In Buchanan's framework, and here I think he is surely correct, we must propose reforms treating that status quo as given and any proposal must involve compensation to those who are supposed to voluntarily give up their privileged position. In economic terms, we must be willing to provide the present value of the future income stream they expect from the privileged position they are to abandon, and we must be able to credibly commit to honoring that payment if we hope to get reforms off the ground. Failure to either propose the compensation package or get the credible commitment will block reforms.

This is the reformers dilemma, and Buchanan gave us the analytical tools to think clearly about reforming the rent-seeking society. But this analysis is largely within an existing set of meta-rules about how society is organized in political life. We are still at the rule level of analysis, so we are not engaged in public policy as conventionally understood, but we also aren't at the highest level of constitution-making either. Part of the problem is that our current situation emerged because at the highest level of constitution-making mistakes were made in the design principles. If the design principles were right, then the rent-seeking state would not have emerged in the ordinary play of politics. Remember Buchanan is striving for a political order that exhibits neither dominion nor discrimination.

In *The Calculus of Consent* (1962), Buchanan and Tullock explained how super-majority voting rules would bind political action from producing significant

externalities in collective action. They were often criticized by intellectual opponents for this deviation from simple majority rule. In *Politics by Principle, Not Interest* (1998), Buchanan and Congleton run a different intellectual argument to address political externalities. They permit simple majority voting to determine policy, but they restrict what can be voted on. Only policies that pass the "generality norm" can be subject to voting; all policies that benefit one party or small group of interested parties at the expense of others are eliminated from consideration. The arguments in *The Calculus* and *Politics by Principle* would restrain our expression of political preferences, but do so by making sure to minimize the opportunity that collective choices have to impose significant externalities on others.

So Buchanan does rely on agreement, and in fact, prefers unanimity as the norm, but as his famous deviation from unanimity to "conceptual unanimity" (which Leland Yeager loved to famously say meant "NOT unanimity") demonstrates, he didn't let his own logic ensnare him in intellectual traps. This is how his endorsement of the "relatively absolute absolutes" gives him the wiggle room that perhaps we are not recognizing in this conversation.

Buchanan's endorsement of the status quo is an analytical endorsement; a positive political economy position with absolutely no normative weight is attributed to the status quo. Thus in my reading no normative weight is given to agreements produced in light of proposed reforms. If he did provide normative weight to those agreements, then why would he wish to restrict decision-making through super-majorities or a generality norm. Obviously, the opportunity for collective action to produce significant externalities must be prevented. Buchanan seeks to find ways to institutionally constrain our decision processes.

ADDITIONAL READING

ONLINE RESOURCES

The Collected Works of James M. Buchanan, Foreword by Geoffrey Brennan, Hartmut Kliemt, and Robert D. Tollison, 20 vols. (Indianapolis: Liberty Fund, 1999-2002). The following 9 volumes are available online: <<http://oll.libertyfund.org/title/280>>.

- Vol. 2. (Public Principles of Public Debt: A Defense and Restatement <<http://oll.libertyfund.org/title/279>>
- Vol. 3. The Calculus of Consent: Logical Foundations of Constitutional Democracy <<http://oll.libertyfund.org/title/1063>>
- Vol. 4. Public Finance in Democratic Process: Fiscal Institutions and Individual Choice <<http://oll.libertyfund.org/title/1073>>
- Vol. 5. The Demand and Supply of Public Goods <<http://oll.libertyfund.org/title/1067>>
- Vol. 6 Cost and Choice: An Inquiry in Economic Theory <<http://oll.libertyfund.org/title/1068>>
- vol. 7 The Limits of Liberty: Between Anarchy and Leviathan) <<http://oll.libertyfund.org/title/1827>>
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- Vol. 10 The Reason of Rules: Constitutional Political Economy <<http://oll.libertyfund.org/title/1826>>

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- Part 1 <<http://oll.libertyfund.org/title/1030>>
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RECOMMENDED READING ON BUCHANAN AND HIS THOUGHT

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