

The Collected Works of  
James M. Buchanan

VOLUME 7

*The Limits of Liberty*



*James M. Buchanan*  
*Blacksburg, Virginia, 1977*

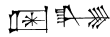
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Between Anarchy and Leviathan

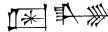
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To the memory of my colleague  
*Winston C. Bush*

And the main, most serious problem of social order and progress is . . . the problem of having the rules obeyed, or preventing cheating. As far as I can see there is no intellectual solution of that problem. No social machinery of “sanctions” will keep the game from breaking up in a quarrel, or a fight (the game of being a society can rarely just dissolve!) unless the participants have an irrational preference to having it go on even when they seem individually to get the worst of it. Or else the society must be maintained by force, from without—for a dictator is not a member of the society he rules—and then it is questionable whether it can be called a society in the moral sense.

—Frank H. Knight,  
“Intellectual Confusion on Morals and Economics”

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## Foreword

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When *The Limits of Liberty* was published in 1975, the name James M. Buchanan became widely known even among the less well informed political philosophers and political theorists.<sup>1</sup> The book may be seen as a contribution to at least two debates that were thriving at the time of its publication. On the one hand, it built on and contributed to the “explorations in the theory of anarchy” (as the title of a volume edited by Gordon Tullock in 1972 is called), and thus, on a debate that at the time was one of the focal interests of the Virginia School of Political Economy.<sup>2</sup> On the other hand, the book contributed to the debate about political contractarianism originating from John Rawls’s 1971 book *A Theory of Justice*.<sup>3</sup> Whereas, quite regrettably, the Virginia debate about anarchy was already well beyond its peak when *The Limits of Liberty* was published, the discussion of political contractarianism among philosophers, economists, and political scientists was still on its ascent. Within this debate, besides Rawls and Robert Nozick, Buchanan holds a central place as one of the “three new contractarians.”<sup>4</sup>

The term “new contractarians” naturally provokes the question, who were the old ones? Now, as with the new, there certainly were more than three old contractarians. Yet, clearly, the three most prominent figures in the contractarian tradition are Thomas Hobbes, John Locke, and Immanuel Kant. In the literature, Buchanan is seen to be standing on Hobbes’s shoulders, Nozick on Locke’s, and Rawls on Kant’s. As far as Rawls and Nozick are con-

1. James M. Buchanan, *The Limits of Liberty: Between Anarchy and Leviathan* (Chicago: University of Chicago Press, 1975), volume 7 in the series.

2. Gordon Tullock, ed., *Explorations in the Theory of Anarchy* (Blacksburg, Va.: Center for Study of Public Choice, 1972).

3. John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971).

4. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974).



cerned, this classification seems natural. Rawls is a self-declared Kantian, and Nozick starts explicitly from Lockean premises. Buchanan, however, would not classify himself as a Hobbesian, and rightly so. For Buchanan's deepest ethical and normative political concern is the respect for the autonomy of the individual person. This concern is Kantian, not Hobbesian.<sup>5</sup>

Within the corpus of Buchanan's work, *The Limits of Liberty* has presumably the strongest relationship to *The Calculus of Consent*.<sup>6</sup> In this regard, some additional observations deserve to be mentioned. On the one hand, the basic normative premise of the *Calculus* requires that politics be conceived as a Paretian enterprise operating to everyone's advantage. *The Limits of Liberty* is complementary and logically prior to (even though it is chronologically later than) the *Calculus* in that it characterizes the status quo from the point where Paretian politics starts and at the same time describes conceivable processes of interindividual agreement that might lead from a natural equilibrium to a political one. On the other hand, *The Calculus of Consent* is a forerunner specifically of the contractarianism of *The Limits of Liberty* and generally of post-Rawlsian "new contractarianism." In particular, Buchanan's unduly neglected appendix to the *Calculus*, "Marginal Notes on Reading Political Philosophy," foreshadowed, at a time when political philosophy was practically dead, many arguments that would later be popularized in other works, including, of course, *The Limits of Liberty*.

Hartmut Kliemt  
University of Duisburg  
1998

5. This somewhat down-to-earth Kantianism of Buchanan is also clearly brought out in some of the essays on constitutional political economy, volume 16 in the series, *Choice, Contract, and Constitutions*; and the philosophical essays, volume 17 in the series, *Moral Science and Moral Order*.

6. James M. Buchanan and Gordon Tullock, *The Calculus of Consent: Logical Foundations of Constitutional Democracy* (Ann Arbor: University of Michigan Press, 1962), volume 3 in the series. Hereafter referred to as the *Calculus*.

## *Preface*

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Precepts for living together are not going to be handed down from on high. Men must use their own intelligence in imposing order on chaos, intelligence not in scientific problem-solving but in the more difficult sense of finding and maintaining agreement among themselves. Anarchy is ideal for ideal men; passionate men must be reasonable. Like so many men have done before me, I examine the bases for a society of men and women who want to be free but who recognize the inherent limits that social interdependence places on them. Individual liberty cannot be unbounded, but the same forces which make some limits necessary may, if allowed to operate, restrict the range of human freedom far below that which is sustainable.

We start from here, from where we are, and not from some idealized world peopled by beings with a different history and with utopian institutions. Some appreciation of the status quo is essential before discussion can begin about prospects for improvement. Might existing institutions conceptually have emerged from contractual behavior of men? May we explain the set of rights that exist on basically contractual grounds? How and why are these rights maintained? The relationship between individual rights and the presumed distribution of natural talents must be significant for social stability. Social order, as such, implies something that resembles social contract, or quasi-contract, but it is essential that we respect the categorical distinction between the constitutional contract that delineates rights and the postconstitutional contract that involves exchanges in these rights.

Men want freedom from constraints, while at the same time they recognize the necessity of order. This paradox of being governed becomes more intense as the politicized share in life increases, as the state takes on more power over personal affairs. The state serves a double role, that of enforcing constitutional order and that of providing “public goods.” This duality gen-

erates its own confusions and misunderstandings. “Law,” in itself, is a “public good,” with all of the familiar problems in securing voluntary compliance. Enforcement is essential, but the unwillingness of those who abide by law to punish those who violate it, and to do so effectively, must portend erosion and ultimate destruction of the order that we observe. These problems emerge in modern society even when government is ideally responsive to the demands of citizens. When government takes on an independent life of its own, when Leviathan lives and breathes, a whole set of additional control issues comes into being. “Ordered anarchy” remains the objective, but “ordered” by whom? Neither the state nor the savage is noble, and this reality must be squarely faced.

Institutions evolve, but those that survive and prosper need not be those which are “best,” as evaluated by the men who live under them. Institutional evolution may place men increasingly in situations described by the dilemma made familiar in modern game theory. General escape may be possible only through genuine revolution in constitutional structure, through generalized rewriting of social contract. To expect such a revolution to take place may seem visionary, and in this respect the book may be considered quasi-utopian. Rethinking must precede action, however, and if this book causes social philosophers to think more about “getting to” the better society and less about describing their own versions of paradise once gained, my purpose will have been fulfilled.

I am fully conscious of the fact that, as a professional economist, I am straying beyond my disciplinary boundaries. I am motivated by the importance of the issues and by the conviction that contributions in many subjects may be made by outsiders looking in as well as by insiders talking among themselves. I treat here of issues discussed by learned philosophers through the ages, whose discussions have themselves been discussed by specialists. I have read some, but by no means all, of these primary and secondary works. To have done so would have required that I become a professional political philosopher at the cost of abandoning my own disciplinary base. As an economist, I am a specialist in contract, and to my fellows a contractarian approach carries its own defense once individual values are accepted as the base materials. To those scholars, early or late, who have tried to demolish contractarian constructions, my efforts will not seem responsive to their criti-

cisms. This is not my purpose, and those who reject the contractarian approach out of hand will find little in an economist's attempts at clarification.

In this book, as in earlier works, I emphasize the necessity of distinguishing two stages of social interaction, one which involves the selection of rules and one which involves action within these rules as selected. The critical importance assigned to this distinction reflects the general influence of "my professor," Frank H. Knight, and, somewhat more directly, the outcome of discussions with my colleague Rutledge Vining during several years of my tenure at the University of Virginia.

In its specific form, this book emerged as my own interpretation, elaboration, and extension of a more recent discussion that continued over a period of two years in Blacksburg at the Center for Study of Public Choice, Virginia Polytechnic Institute and State University. This discussion involved the participation and contributions of many colleagues and students, only a few of whom can be noted here. Gordon Tullock and Winston Bush were central figures, and the influence of each man on my own thinking was substantial. Each read early drafts of this book by chapter as these were produced. After a quasi-finished draft of the book was finished, and external to the initial discussion, William Breit, Dennis Mueller, Richard Wagner, and Robert Tollison made helpful and detailed comments. At a final revision stage, Nicolaus Tideman offered highly useful suggestions.

As for Mrs. Betty Tillman Ross, only the name is slightly changed from that which appeared in several of my earlier books. Her cheerful cooperation in general and her particular assistance in getting my manuscripts processed through various stages remain essential inputs in my own production function.

Financial support for my own research at various stages of the project was provided by the National Science Foundation.

*Blacksburg, Virginia*  
March 1974

*The Limits of Liberty*

# 1. Commencement

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Those who seek specific descriptions of the “good society” will not find them here. A listing of my own private preferences would be both unproductive and uninteresting. I claim no rights to impose these preferences on others, even within the limits of persuasion. In these introductory sentences, I have by implication expressed my disagreement with those who retain a Platonic faith that there is “truth” in politics, remaining only to be discovered and, once discovered, capable of being explained to reasonable men. We live together because social organization provides the efficient means of achieving our individual objectives and not because society offers us a means of arriving at some transcendental common bliss. Politics is a process of compromising our differences, and we differ as to desired collective objectives just as we do over baskets of ordinary consumption goods. In a truth-judgment conception of politics, there might be some merit in an attempt to lay down precepts for the good society. Some professional search for quasi-objective standards might be legitimate. In sharp contrast, when we view politics as process, as means through which group differences are reconciled, any attempt to lay down standards becomes effort largely wasted at best and pernicious at worst, even for the man who qualifies himself as expert.

My approach is profoundly *individualistic*, in an ontological-methodological sense, although consistent adherence to this norm is almost as difficult as it is different. This does not imply that the approach is personal, and the methodological individualist is necessarily precluded from the projection of his own values. His role must remain more circumscribed than that of the collectivist-cum-elitist who is required to specify objectives for social action that are independent from individual values other than his own and those of his cohorts. By contrast, the individualist is forced to acknowledge the mutual existence of fellow men, who also have values, and he violates his pre-

cepts at the outset when and if he begins to assign men differential weights. He simply cannot play at being God, no matter how joyful the pretense; hubris cannot be descriptive of his attitude.

These limits offer the individualist a distinct comparative advantage in a positive analysis of social interaction. Accepting a self-imposed inability to suggest explicit criteria for social policy, the individualist tends to devote relatively more intellectual energy to analysis of what he observes and relatively less to suggestions about what might be. He cannot stop the world and get off, but the important realization that he is one among many men itself generates the humility demanded by science. The neutrality of his analytics lends credence to his predictions. The wholly detached role of social ecologist is important and praiseworthy, and perhaps there should be more rather than less analysis without commitment, analysis that accepts the morality of the scientist and shuns that of the social reformer. Thomas Hardy in *The Dynasts*, the aging Pareto in search of social uniformities—these men exemplify the attitude involved, that of the disinterested observer who watches the absurdities of men and stands bemused at the comedy made tragedy by his own necessary participation.

There is, however, something that is itself demoralizing in accepting the mantle of the cynic, the man with little hope or faith, the sayer of social doom. Despite the pessimism of prediction, should we not try responsibly to lend our efforts toward a “better” world? And must we not acknowledge this to be possible? This brings us up to snuff, however, since we have eschewed the simplistic criteria for “betterness” handed out by the omnipresent social reformers. Consistency demands that we list our private preferences as being neither more nor less significant than those held by others, and it thereby dampens our natural lapse into the cocoon of the philosopher-king.

The approach must be *democratic*, which in this sense is merely a variant of the definitional norm for individualism. Each man counts for one, and that is that. Once this basic premise is fully acknowledged, an escape route from cynicism seems to be offered. A criterion for “betterness” is suggested. A situation is judged “good” to the extent that it allows individuals to get what they want to get, whatsoever this might be, limited only by the principle of mutual agreement. Individual freedom becomes the overriding objective for social policy, not as an instrumental element in attaining economic or cultural bliss, and not as some metaphysically superior value, but much more

simply as a necessary consequence of an individualist-democratic methodology. In some personal and private baring of my soul, I may not “like” the observed results of a regime that allows other men to be free, and, further, I may not even place a high subjective value on my own freedom from the coercion of others. Such possible subjective rankings may exist, but the point to be emphasized is that the dominant role of individual liberty is imposed by an acceptance of the methodology of individualism and not by the subjective valuations of this or that social philosopher.

### The Anarchist Utopia

To the individualist, the ideal or utopian world is necessarily anarchistic in some basic philosophical sense. This world is peopled exclusively by persons who respect the minimal set of behavioral norms dictated by mutual tolerance and respect. Individuals remain free to “do their own things” within such limits, and cooperative ventures are exclusively voluntary. Persons retain the freedom to opt out of any sharing arrangements which they might join. No man holds coercive power over any other man, and there is no impersonal bureaucracy, military or civil, that imposes external constraint. The state does indeed wither away in this utopia, and any recrudescence of governmental forms becomes iniquitous. Essentially and emphatically, this utopia is not communist, even in an idealized meaning of this historically tortured word. There are no predetermined sharing precepts. Communes may exist, but hermits may also abound and they may or may not be misers. Cooperative relationships are necessarily contractual, and these must reflect mutual gain to all participants, at least in some *ex ante* or anticipated stage.

This is a loosely constrained utopia. It allows for much variability in the attainable levels of “desirability,” even as idealized. The persons who inhabit this utopia need do no other than respect their fellows, itself a minimal behavioral limit, at least on its face. Within this constraint, wide differences in interpersonal behavior patterns may be conceptually observable. To any single observer, some of these may be “preferred” to others.

The anarchist utopia must be acknowledged to hold a lingering if ultimately spurious attractiveness. Little more than casual reflection is required, however, to suggest that the whole idea is a conceptual mirage. What are to be the defining limits on individual freedom of behavior? At the outset, al-



lowing each man to do his own thing seems practicable. But what happens when mutual agreement on the boundaries of propriety does not exist? What if one person is disturbed by long-hairs while others choose to allow their hair to grow? Even for such a simple example, the anarchist utopia is threatened, and to shore it up something about limits must be said. At this point, a value norm may be injected to the effect that overt external interference with personal dress or hair style should not be countenanced. But this norm would require enforcement, unless there should be some natural and universal agreement on its desirability, in which case there would have arisen no need to inject it in the first place. If there is even one person who thinks it appropriate to constrain others' freedom to their own life-styles, no anarchistic order can survive in the strict sense of the term.

When forced into such discussions of practical organizational problems, however, the philosophical anarchist has other strings to his bow. He may accept the relevance of our example, but he may reject the implications for his own vision of utopia. A notion of interpersonal reciprocity may be introduced, and the argument made that the busybody might agree voluntarily to respect others' freedom. He might do so because he would recognize that, should he fail to do so, other persons would, in their own turn, impose restrictions on his own freedom of personal action. Hence, despite his presumed internal and private preference about long hair, the potential busybody might refrain from interfering because of this fear of reciprocal intrusion into his own behavior pattern.

The anticipated reciprocities may not, however, be comparable in value as among the several actors. If others in the group possess no intrinsic desire to interfere, and especially if interference itself is costly, the busybody may, without fear, continue to forestall the attainment of what will be, at best, the fragile equilibrium of this idealized world. But this particular flaw in the anarchist's vision seems to be remedied once we allow for free exchange among persons, along with agreement on some commonly valued commodity as a numeraire. Such a commodity, a "money," facilitates a comparison of values, and allows others, acting as a unit, to buy off or to bribe a single recalcitrant. The busybody may be induced to refrain from interfering with the personal behavior of others through appropriately settled compensations. Side payments in the commonly valued commodity allow those with disparate evaluations to come to terms. Once such side payments or bribes are introduced,

however, a new set of issues arises. If there is potential money in it, individuals will find it to their advantage to be recalcitrant, not because this expresses their internal private preference but because it promises to yield valued returns. If the man who genuinely dislikes long-hairs so much that he is prompted to interfere in the absence of payment is “bought off” by monetary reward, others who care not one whit for hair styles may also commence interfering, motivated by the promise of monetary reward. Order in the anarchist society is not guaranteed by some agreement on a numeraire.

Anarchy as the basic organizing principle for social order begins to break down upon careful analysis even if we stay within the confines of personal behavior, narrowly considered. Its limits become more evident when we shift attention to activities that necessarily involve potential conflict among separate persons. Before introducing these, however, a more positive, if less sweeping, defense of anarchy needs to be made. Even if we acknowledge that the principle fails as a universal basis for social order, we should recognize that its essential properties can be observed to operate over large areas of human interaction. It is important to make this recognition explicitly, since the very ubiquitousness of orderly anarchy tends to draw attention only toward the boundaries where disorder threatens.

There are countless activities that require persons to adhere to fundamental rules for mutual tolerance, activities that may be observed to go on apace day by day and without formal rules. They go on because participants accept the standards of conduct that are minimally demanded for order to be established and maintained. Consider ordinary conversation in a multiperson group. Communication does take place through some generalized acceptance of the rule that only one person speaks at a time. Anarchy works. It fails to work when and if individuals refuse to accept the minimal rule for mutual tolerance. Communication on the Tower of Babel would have ceased if all men should have tried to speak at once, quite apart from the distortion in tongues. It is paradoxical to note that modern-day radicals often call themselves anarchists when their behavior in heckling speakers and in disrupting meetings insures nothing more than a collapse of what are remaining elements of viable anarchy.

This is only a single example. Was the university of the 1960s vulnerable to disruption largely because it was organized as an orderly anarchy and, as such, critically dependent on adherence to implicit rules of mutual tolerance

and respect? Since the 1960s universities have become less anarchistic; they have moved toward formalized rules as the boundary limits to acceptable behavior were overstepped. To the extent that more and more human interactions exhibit conflicts at the boundaries, institutional means for resolving these will emerge, and the set of formalized rules will expand. If men abide by rules implicitly, formalization is not required. If they do not do so, formalization, implementation, and enforcement become necessary.

The emergence of new conflicts should not, however, distract too much attention away from the analytically uninteresting but comprehensive set of interactions that continue to be carried on in acceptably orderly fashion without formally defined rules for personal behavior. Men and women manage to walk along city pavements. With rare exceptions, they respect queues in supermarkets, in banks, and in airports. There does exist a sense of ordinary respect for his fellow man in the ingrained habit pattern of the average American. This can be observed empirically all around us. Whether this reflects a heritage of Christian or Kantian ethics that were once explicitly taught or whether such habit patterns are even more basic to the human psyche, their existence cannot be denied.<sup>1</sup> The ominous threat posed by the 1960s was the potential erosion of these habit patterns. If Americans lose mutual tolerance for each other; if they do not continue to accept “live and let live” precepts for many of their social interactions independently of governmentally determined coercive rules, the area of civilized life that is both anarchistic and orderly must shrink, with untold consequences in human suffering. As noted earlier, any equilibrium attainable under anarchy is, at best, fragile. The individualist must view any reduction in the sphere of activities *ordered* by anarchy as an unmitigated “bad.” He must recognize, nonetheless, that anarchy remains tolerable only to the extent that it does produce an acceptable degree of order. The anarchistic war of each against all, where life becomes nasty, brutish, and short, will be dominated by the order that the sovereign can impose.

1. For additional examples along with a more comprehensive discussion, see Roland N. McKean, “The Economics of Trust, Altruism, and Corporate Responsibility,” in *Altruism, Morality, and Economic Theory*, ed. E. S. Phelps (New York: Russell Sage Foundation, forthcoming). Also see Diane Windy Charnovitz, “The Economics of Etiquette and Customs: The Theory of Property Rights as Applied to Rules of Behavior” (M.S. thesis, University of Virginia, Charlottesville, Virginia, 1972).

One additional point should be made in this introductory discussion of ordered anarchy, a point that has been suggested earlier but one that is worthy of emphasis. What are the moral attributes of the results that will be produced through voluntary personal interactions in the absence of formalized rules? What are “good” and “bad” results here? The answer is simple, but it is extremely important. That is “good” which “tends to emerge” from the free choices of the individuals who are involved. It is impossible for an external observer to lay down criteria for “goodness” independent of the *process* through which results or outcomes are attained. The evaluation is applied to the means of attaining outcomes, not to outcomes as such. And to the extent that individuals are observed to be responding freely within the minimally required conditions of mutual tolerance and respect, any outcome that emerges merits classification as “good,” regardless of its precise descriptive content. This relationship between evaluation and procedural criteria also applies when nonanarchistic principles of order are considered. Unless it is fully understood to apply in those interactions where anarchy is the organizing principle, however, the more subtle relevance of the relationship in formalized interactions may be difficult to comprehend.

### *The Calculus of Consent*

When he recognizes that there are limits to the other-regardingness of men, and that personal conflict would be ubiquitous in anarchy, the extreme individualist is forced to acknowledge the necessity of some enforcing agent, some institutionalized means of resolving interpersonal disputes.<sup>2</sup> The origins of the state can be derived from an individualistic calculus in this way, at least conceptually, as we know from the writings of Thomas Hobbes as well as from earlier and later contractarians. This essentially economic methodology can be extended to provide conceptual explanations for many of the aspects of political reality that we observe. This was the framework for *The*

2. There are exceptions. Murray Rothbard argues that conflicts could be resolved by the protective associations or clubs that would be formed voluntarily in genuine anarchy. See his *For a New Liberty* (New York: Macmillan, 1973). His approach fails to come to grips with the problem of defining rights initially, the issue that is central to my discussion.