The Collected Works of
James M. Buchanan

VOLUME 11

Politics by Principle, Not Interest

James M. Buchanan and Roger D. Congleton,
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Toward Nondiscriminatory Democracy

James M. Buchanan and Roger D. Congleton

LIBERTY FUND

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[The First Amendment] ought to read, "Congress shall make no law authorizing government to take any discriminatory measures of coercion." I think that would make all the other rights unnecessary, and it creates the sort of conditions I would want to see.

—Friedrich A. Hayek, in a videotaped interview with James M. Buchanan, 28 October 1978

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Foreword

Toward Nondiscriminatory Democracy is the instructive subtitle of *Politics by Principle, Not Interest,* which James Buchanan wrote with his colleague Roger Congleton. *The Calculus of Consent* (written with Gordon Tullock and republished as volume 3 of the Collected Works) also draws attention to democracy in its subtitle, *Logical Foundations of Constitutional Democracy.*[1] Though separated by some thirty-five years, the two books are closely related not only in content but also in the basic method of approaching problems of democratic politics within a constitutional political economy perspective, as more broadly characterized in the essays collected in volume 16 of the Collected Works, *Constitutional Political Economy.* Yet, using one of James Buchanan's favorite phrases, we can say that *Politics by Principle* looks at democracy through a "different window." In *The Calculus of Consent,* the majority required for the acceptance of a decision is itself treated as a policy variable that can be chosen freely on the level of constitutional choice. Individuals could choose a majority of, say, 90 percent, 75 percent, 66 percent, or, for that matter, 50 percent, as seems fitting. In the light of Wicksellian considerations and the likely consequences of constitutional choices as assessed behind the veil of uncertainty, in theory there is nothing special about the 50 percent rule. However, in the real world of modern constitutional democracies, actual practices as well as widely shared conviction systems of the citizens clearly grant special status to the simple majority rule.

In *Politics by Principle, Not Interest,* in contrast to *The Calculus of Consent,*

1. James M. Buchanan and Roger D. Congleton, *Politics by Principle, Not Interest: Toward Nondiscriminatory Democracy* (Cambridge: Cambridge University Press, 1998); James M. Buchanan and Gordon Tullock, *The Calculus of Consent: Logical Foundations of Constitutional Democracy* (Ann Arbor: University of Michigan Press, 1962).

the prevalence of the simple majority rule is accepted as a fact of political life that cannot be altered by theoretical and political argument—at least not in any foreseeable future. Therefore, the constitutional political economist who intends to refrain from "playing God" and, thus, from imposing his own views on the citizens at large must make the simple majority rule a constraint on all his policy suggestions. Even on the constitutional level behind the veil of uncertainty, consensus on removing the simple majority rule from its privileged position cannot reasonably be expected. The political economist who, like Buchanan, subscribes to the consensus norm and is, at the same time, deeply concerned about the rough-and-tumble of day-to-day politics under the simple majority rule must propose reforms in other regards and hope that consensus on those reforms might eventually be found.

In particular, if the simple majority rule seems to foster discriminatory and Leviathan-like politics—also described in volumes 9 and 13 of the Collected Works—constraints other than higher majority parameters should be constitutionally imposed on in-period political decision making and law enactment below the constitutional level.[2] With this move, quite naturally, the classical concerns of classical liberalism are revived. Preferential treatment of individuals for reasons of justice, equity, and "true" equality will eventually erode the fundamental principles of the rule of law. Laws that grant privileges and discriminate among citizens, even though enacted according to democratic procedures, are morally deficient. Equal treatment under the rule of law requires that all citizens be treated equally regardless of their differences.

It is at this point that Buchanan's most recent concerns meet with those expressed by F. A. Hayek in *The Constitution of Liberty*.[3] One should be well aware though that Hayek, in his later years, became increasingly skeptical about the prospects of constitutional reform. As a consequence, Hayek suggested that the evils of majoritarian law enactment be avoided by eliminating central law enactment itself. For Buchanan, however, it amounts to throwing

2. Geoffrey Brennan and James M. Buchanan, *The Power to Tax: Analytical Foundations of a Fiscal Constitution* (New York: Cambridge University Press, 198), and *Politics as Public Choice*, volumes 9 and 13 in the series, respectively.

3. F. A. Hayek, *The Constitution of Liberty* (Chicago: University of Chicago Press, 1960).

the baby out with the bath water if the power of central rule enactment is eliminated for the sole purpose of preventing its abuse by majorities. It is, therefore, Hayek the "Whig revisionist" rather than Hayek the "Conservative evolutionist" whom Buchanan would regard as his ally. Moreover, given his general approach to political reform, Buchanan has to confine his own suggestions for improving the constitution to those measures on which consensus, at least conceivably, could be reached. In the foreseeable future, consensus on removing the majority rule from its central place in the game of politics is in fact inconceivable. Therefore, due to deep-rooted convictions, all modern democratic constitutions must, of necessity, be built around majoritarian central law enactment.

Imposing constitutional constraints on majoritarian politics such that a more principled pattern might emerge must be a political aim of high priority for all who wish for free and responsible citizens to live together peacefully as political equals under the rule of general laws. Buchanan and Congleton's efforts to revive the classical liberal agenda in *Politics by Principle, Not Interest* are of the greatest interest in that regard. And this interest is not merely a theoretical one.

Hartmut Kliemt
University of Duisburg
1998

Roger Congleton

This book, like others in the series, embodies the working out and presentation of a single idea. In this case, the idea is the extension and application of the generality principle to majoritarian politics. Would we need to restrict democratic politics by other constitutional constraints if the generality norm could be enforced for any and all collective actions?

The basic logic involved in analyzing this question captured my own attention. My colleague Roger Congleton came on board as joint author in our efforts to suggest applications of the precepts in practical political reality. As we soon discovered, it is much easier to discuss the generality principle as an abstract ideal than it is to define the precise conditions for its satisfaction in any particular setting. As J. S. Mill suggested, however, the difficulties in defining the practicable ideal should not, and do not, mitigate against classifying movements toward or away from the stylized objective.

Preface

"Politics by principle" is that which modern politics is not. What we observe is "politics by interest," whether in the form of explicitly discriminatory treatment (rewarding or punishing) of particular groupings of citizens or of some elitist-*dirigiste* classification of citizens into the deserving and nondeserving on the basis of a presumed superior wisdom about what is really "good" for us all. The proper principle for politics is that of generalization or generality. This standard is met when political actions apply to all persons independent of membership in a dominant coalition or an effective interest group. The generality principle is violated to the extent that political action is overtly discriminatory in the sense that the effects, positive or negative, depend on personalized identification. The generality norm finds its post-Enlightenment philosophical foundation in Kant's normative precept for a personalized ethics and its institutional embodiment in the idealized rule of law that does, indeed, set out widely agreed upon criteria for the evaluation of legal structures.

In one sense, it is surprising that the generalization principle has not been applied directly to politics. But except in those settings in which politically driven action impinges upon the generality precept promoted in law, there has been little recognition of the potential relevance of the generalization norm. Such failure or oversight has been due, in large part, to the residual dominance of a romanticized and idealized vision of "the state"—an entity that remains benevolent toward its citizens while providing citizens with opportunity for full self-realization. In this vision, any principle must act to constrain the collective-political enterprise and may prevent the state from "doing good," as defined in its own omniscient discovery.

Why has the generality principle been understood to be critically important in the working of the law but relatively less significant for politics? Per-

haps the recognition that "the law" must be applied in a decentralized institutional setting has partially forestalled a romanticism comparable to that which has motivated politics. Many separate judges could scarcely be deemed omnisciently benevolent to an extent necessary to generate a coherent structure of law, without which social order cannot emerge. As it develops, and as it is widely observed, law must incorporate some variant of a generalization norm; unequal treatment of like cases violates law in its basic definitional sense. By contrast, romanticized politics remains monolithic; the "good" is defined uniquely by the collective agency of the state. There need be no ultimate dispute among competing authorities.

The idealistic vision of politics has been challenged seriously, both in theory and in practice over the course of the decades after World War II. And the challenges have succeeded in bringing politics and politicians out of the obscurantist haze that characterized post-Hegelian mentality. Both in the academy and on the street, politics and politicians are now exposed to a skepticism that is reminiscent of the late eighteenth century—the period during which the constitutional principles for the politics of classical liberal order were laid down. The modern shift in public attitudes toward politics and politicians has not, however, been accompanied by a reinvigoration of constitutional discourse, aimed at imposing limits on the extended range of state activity that the two-century dominance of the romantic vision allowed to occur. There has as yet come to be no widespread understanding that a nonmonolithic, nonbenevolent, and nonomniscient politics requires an anchor in principle, lest it remain subject to the capricious forces of rotating coalitional interests.

This book is an enterprise of constitutional argument—one that is normative only to the extent that it remains informed throughout by the single principle of generality. There is no effort to lay down precise guidelines for what should and should not be done by politics. The critical distinction is procedural rather than substantive. Politics by principle constrains agents and agencies of governance to act nondiscriminatorily, to treat all persons and groups of persons alike, and to refrain from behavior that is, in its nature, selective. Within the limits of such constraints, politics may do much or little, and it may do what is done in varying ways.

We argue that our politics may be made "better" in the evaluation of all

participants, if political action can be constrained constitutionally so as to meet more closely the generality norm. We acknowledge that this normative stance is based on our own positive analysis of how the politics that we observe actually works. The basic public-choice model of politics that informs our whole discussion need not be accepted by all observers-analysts, and, further, differing normative inferences may be drawn, even from a commonly shared analysis.

We advance no claim of synthesis. Our scholarship is limited to what we claim to be consistent application of an internally coherent perspective to complex phenomena of social interaction. We make no effort to extend the discussion to include either detailed consideration or criticism of alternative perspectives that are acknowledged to exist. This disclaimer seems especially important for the inquiry that we undertake in this book.

In particular, we defend our willingness to publish this book against possible charges that we neglect major lines of inquiry, both precursory and parallel to our own, and notably in legal philosophy, both old and modern. The generality norm—its history, its development in application, its current standing—has long been central in the discourse of legal scholars and jurists. We acknowledge our illiteracy in front of this whole body of scholarship, but we accompany this acknowledgement by a reminder that there are advantages of specialization in intellectual-philosophical inquiry as well as in more mundane activity. As political economists, we could, at best, remain dilettantes in legal philosophy. Is it not best to reduce somewhat the sweep of our persuasive potential and to enter our admittedly restricted set of insights into the lists alongside others that may be advanced by those whose perspectives and scientific credentials differ?

When all is said and done, how is synthesis achieved? Is it not possible that synthesis emerges more or less spontaneously as the insights offered by several perspectives are advanced? Perhaps each of the blind men, having himself first described his personal experiential encounter with the reality of the elephant, arrives at some accurate comprehension of the whole beast as he integrates the accounts of others with his own. Perhaps no overarching synthesizer need arise at all.

This book has gone through a relatively long gestation period. Elements of the analytical argument were developed by Professor Buchanan in both

lecture presentations and published materials as early as 1993.[1] Extended and more technical versions of central portions of the argument were presented at the meeting of the European Public Choice Society in Valencia, Spain, in early 1994 and published in 1995.[2] This paper closely parallels the analysis of Chapter 3, but it is more specifically organized as a basic criticism of public-choice theory.

The book is jointly authored, and it is always appropriate to attempt some attribution of responsibility to the separate contributors. Professor Buchanan initially developed the central argument, as referenced earlier, and he is primarily responsible both for the introductory Chapter 1 and for the analytical chapters in Part 2. Professor Congleton joined the enterprise when prospects for a book-length presentation were initially discussed, and his primary responsibility may be identified in several of the application chapters in Part 3. More specifically, Professor Congleton prepared initial versions of Chapters 6, 10, 12, and 13 and is also a major contributor to Chapter 11. Professor Buchanan wrote the early drafts for Chapters 7, 8, and 9 as well as Chapter 11. He is also primarily responsible for the concluding Chapter 14.

1. James M. Buchanan, "How Can Constitutions Be Designed So That Politicians Who Seek to Serve 'Public Interest' Can Survive and Prosper?" *Constitutional Political Economy* 4 (Winter 1993): 1–6.

2. James M. Buchanan, "Foundational Concerns: A Criticism of Public Choice Theory," in *Current Issues in Public Choice,* ed. José Casas Pardo and Friedrich Schneider (Cheltenham, U.K.: Edward Elgar, 1995), 3–20.

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We have also found many discussions with Yong J. Yoon to be helpful, especially with reference to the logical underpinnings of the stylized models examined in Part 1. We are grateful to Todd Sandler and to an anonymous reader for many detailed comments that helped us to clarify the final argument developed in this book.

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James M. Buchanan
Roger D. Congleton
Fairfax, Virginia
June 1997

PART ONE

Introduction

1. Generality, Law, and Politics

Social sciences analyze the relationships between and among persons, groups, and organizations. This inclusive definition incorporates economic, legal, political, and social interactions. In ordinary market exchange, the individual is simultaneously a demander and supplier, a buyer and seller. In social arrangements, the person may be both a care giver and a care receiver, a lover and a beloved, a gift taker and a gift giver, a friend and a befriended. By comparison, in law and in politics such reciprocity need not be present. The individual is subject to the law, but he may or may not be a member-participant of the organized entity that makes-changes or enforces the law. In fiscal politics, the individual is subject to the coerced exaction of taxation and to the possible nonexclusive benefits of governmental programs, but he may or may not be a member-voter-participant in the collectivity that makes basic political choices. In either of these cases, in which the individual is subject to but not a participant in the process, reaction rather than explicit reciprocation describes behavior.

Our concern in this book is exclusively with those structures of social order that qualify as "democratic" in some ultimate participatory sense. We shall not analyze the relationships between individuals and an externally existing maker-enforcer of law and political authority. Critics may suggest that the authority of convention and tradition, especially in law, places any subject-person in a position that is not different, in kind, from that which is present under externally imposed rules. But the individual, as a participant in a continuing process, also plays some part in constructing the order itself. There is no basis for a classification of persons into the two permanently defined sets of subjects and rulers. In another sense, of course, the individual remains always subject to the law and to political dictates, no matter what the degree of participation. Nonetheless, "democracy," defined in