

The Collected Works of  
James M. Buchanan

VOLUME 10

*The Reason of Rules*



*James M. Buchanan and Geoffrey Brennan,  
Spitzingsee, Bavaria, May 1998*

---

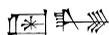
*The Collected Works of*  
James M. Buchanan

---

VOLUME 10  
*The Reason of Rules*  
Constitutional Political Economy

---

*Geoffrey Brennan*  
*and*  
*James M. Buchanan*



LIBERTY FUND

*Indianapolis*

This book is published by Liberty Fund, Inc., a foundation established to encourage study of the ideal of a society of free and responsible individuals.



The cuneiform inscription that serves as our logo and as the design motif for our endpapers is the earliest-known written appearance of the word “freedom” (*amagi*), or “liberty.” It is taken from a clay document written about 2300 B.C. in the Sumerian city-state of Lagash.

Foreword and coauthor note © 2000 by Liberty Fund, Inc.

© 1985 by Cambridge University Press

All rights reserved

Printed in the United States of America

12 15 16 17 18 C 7 6 5 4 3

15 16 17 18 19 P 7 6 5 4 3

*Library of Congress Cataloging-in-Publication Data*

Brennan, Geoffrey, 1944–

The reason of rules : constitutional political economy / Geoffrey Brennan,  
James M. Buchanan.

p. cm. — (The collected works of James M. Buchanan ; v. 10)

Originally published: Cambridge ; New York : Cambridge  
University Press, 1985.

Includes bibliographical references and index.

ISBN 978-0-86597-231-5 (hc : alk. paper). — ISBN 978-0-86597-232-2 (pb : alk. paper)

1. Economics—Political aspects. 2. Social contract.

3. Constitutional law. I. Buchanan, James M. II. Title.

III. Series: Buchanan, James M. Works. 1999 ; v. 10.

HB73.B74 2000

338.9—dc21 99-24060

LIBERTY FUND, INC.

8335 Allison Pointe Trail, Suite 300

Indianapolis, IN 46250-1684

# *Contents*

---

Foreword	xi
Preface	xv
1. The Constitutional Imperative	3
I. Introduction	3
II. Reasons for Rules	5
III. Rules of Games	8
IV. Rules of the Road	10
V. Rules of the Market Order	16
VI. Rules of Political Order	18
VII. The Importance of Rules	19
2. The Contractarian Vision	23
I. Introduction	23
II. Noncontractarian Constitutionalism	24
III. Individuals as Sources of Value	25
IV. Contract and Exchange	27
V. Politics in the Exchange Perspective	29
VI. Unanimity as the Contractual Ideal	31
VII. Agreement on Rules and the Veils of Ignorance and Uncertainty	33
VIII. Conclusions	36
3. The Myth of Benevolence	38
I. Introduction	38
II. Private Good and Public Good	39
III. Science, Truth, and Politics	43

IV. The Authoritarian Imperative	46
V. Majoritarian Democracy in the Noncontractarian Paradigm	48
VI. The Aim of Politics	50
4. Modeling the Individual for Constitutional Analysis	53
I. Introduction	53
II. <i>Homo economicus</i> in Politics: The Argument for Symmetry	56
III. Science and the Empiricist Defense	58
IV. A Methodological Defense of the Differential Interest Model of Behavior	59
V. Social Evaluation and Quasi–Risk Aversion	61
VI. Gresham’s Law in Politics	68
VII. Summary	73
5. Time, Temptation, and the Constrained Future	76
Preface	76
<i>Part 1. Individual Private Choice</i>	
I. Introduction	77
II. The Ultimate <i>Z</i> ’s	77
III. Preferences for Preferences	78
IV. Past, Present, and Future	80
<i>Part 2. Individual Public Choice</i>	
I. Introduction	83
II. Society with a History	84
III. Temporal Interdependence	85
IV. An Illustration	87
V. Moral Rules and/or Constitutional Commitment	89
6. Politics Without Rules, I: Time and Nonconstrained Collective Action	92
I. Introduction	92
II. The Social Discount Rate	93
III. The High-Tax Trap	94
IV. The Inflation Trap	101
V. The Public-Debt Trap	104
VI. Other Examples	106
VII. Conclusions	107

7. Rules and Justice	108
I. Introduction	108
II. Just Conduct and the Notion of Desert	109
III. Justice and Promise Keeping	111
IV. Justice among Rules	117
V. Just Rules, Agreed-on Rules, and Just Conduct	119
VI. Conclusions	123
8. Politics Without Rules, II: Distributive Justice and Distributive Politics	125
I. Introduction	125
II. Distributive Justice: The Conventional View	126
III. The Constitutional Perspective and Institutional Incidence	128
IV. The Incidence of Unrestricted Majoritarianism	131
V. Tax Rules and Distribution under Majority Rule	135
VI. Direct Constitutionalism and Distributive Justice	142
VII. Summary	146
9. Is Constitutional Revolution Possible in Democracy?	149
I. Introduction	149
II. Pareto-Superior Change and Wicksellian Unanimity	151
III. Distributional Limits and Prospective Rules	152
IV. Status Quo Entitlements and Distributional Envy	155
V. Constitutional Change and Free Riders	160
VI. The Role of Norms	162
VII. Toward a Civic Religion	165
Index	169

## Foreword

---

*The Reason of Rules*, by Geoffrey Brennan and James M. Buchanan, is a book-length attempt to focus the energies of economists and other social analysts on the nature and function of the rules under which ordinary political life and market life function.<sup>1</sup> The argument is that modern economics seems mired in either explaining the obvious or overmathematizing the trivial. The message of this book is that such efforts are misguided and that analysts' time would be much better spent on the problem of how rules can be devised and improved upon so that the ordinary life of an economy can proceed with a minimum of social dilemma ingredients. In other words, there is more than one way to get out of the jungle; can we develop any positive and normative theories of what the "best" way might be?

Harkening back to classical economics, Brennan and Buchanan stress that this consideration of rules is not really a new problem for economic analysis, and they point out that applying the analytical rigor of modern economics to rules and their selection is not an entirely new intellectual enterprise. The foundation stones have barely, if at all, been laid in this work, and this book is as good a source as any in all of Buchanan's work for capturing the essence of his vision of constitutional political economy.

There are, of course, other sources of this approach contained in various papers and books in this collection of Buchanan's works. The basic idea of the importance of rules dates to at least *The Calculus of Consent* and threads its way through Buchanan's work to this very day.<sup>2</sup> More than anything else,

1. Geoffrey Brennan and James M. Buchanan, *The Reason of Rules: Constitutional Political Economy* (Cambridge: Cambridge University Press, 1985), volume 10 in the series.

2. 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.

Buchanan's basic insight that rules are important can be said to have driven most of his written work over his career. More than any other single scholar, he is responsible for this emphasis and its emergence in modern economics and political science.

*The Reason of Rules* reflects an attempt to erect some methodological and analytical substance around this basic idea of rules. Perhaps it reflects a turning point in economics in that this book foreshadows the work of future constitutional theorists. It is hard to be sure about this because the problem that Buchanan assigns himself is so hard. However, the inherent difficulty of the problem reflects the stature of Buchanan the man and scholar. Better to build a base camp so that others can ultimately scale the highest mountain than to climb a nearby hill.

Robert D. Tollison  
*University of Mississippi*  
1998

## Geoffrey Brennan

---

As we noted in the preface, *The Reason of Rules* is a response to critics of *The Power to Tax*, also jointly authored with Geoffrey Brennan. In an analytical sense, Brennan and I were essentially clones of each other in the whole enterprise. We shared the same reactions to the criticisms of those who seemed simply to misunderstand our whole purpose in the earlier book.

We had planned to write a third book, which we were to call *The Power to Transfer*. This book has not been, and will not be, written. The basic analysis proved to be much more difficult than we had anticipated, and, also, Geoffrey Brennan returned to Australian National University in 1983.

Geoffrey Brennan probably knows how I think better than any other co-author. For me, it is good that he serves as coeditor of the Collected Works.

James M. Buchanan  
*Fairfax, Virginia*  
1998

## Preface

---

Anglo-American jurisprudence emphasizes the rule of reason; it grossly neglects the reason of rules. We play socioeconomic-legal-political games that can be described empirically only by their rules. But most of us play without *an understanding or appreciation* of the rules, how they came into being, how they are enforced, how they can be changed, and, most important, how they can be normatively evaluated. Basic “constitutional illiteracy” extends to and includes both the learned and the lay. We note with a mixture of admiration and envy those clever strategists who manipulate existing rules to their own advantage. It is these persons in the role of spivs rather than the sages that all too many emulate. Intelligence abounds, but wisdom seems increasingly scarce.

Our hypothesis is corroborated by the veneration Americans accord their Founding Fathers. James Madison, Benjamin Franklin, Thomas Jefferson, and their peers are distinguished by their essential understanding of the reason of rules in political order, an understanding they implanted in the constitutional documents, the “sacred” texts that have, indeed, worked their influence through two centuries. The wisdom and understanding of the Founders have been seriously eroded in our time. The deterioration of the social-intellectual-philosophical capital of Western civil order is now widely, if only intuitively, sensed.

At the most fundamental level, rules find their reason in the never-ending desire of people to live together in peace and harmony, without the continuing Hobbesian war of each against all. How can social order be established and preserved? All social science and philosophy must address this question, either directly or indirectly.

In part, the relative neglect of the question in its explicit form stems from the absence of a clearly defined answer. When we recognize that man’s nat-

ural proclivity is to pursue his own interests and that different persons' interests almost inevitably come into conflict, it is all too easy to despair. Any social order seems to rest on extremely fragile foundations. Must life tend to be either "nasty, brutish, and short" in anarchy or "nasty, brutish, and slavish" under Leviathan?

Two broadly defined escape routes have offered hope to scholars and citizens through the ages. One of them is man's capacity for moral improvement. People may, in a time to be, come to love one another. Much energy has been expended in promoting this objective. The observed record of success is dubious, although we do not want here to judge such effort unworthy or unnecessary.

The second possible avenue of escape from the "social dilemma" does not require that people become "better" in some basic moral sense. This approach starts with the empirical realities of persons as they exist, moral warts and all. These realities, summarized somewhat unsatisfactorily in the catchall term "human nature," limit the attainable states of social harmony. But even within such constraints, hope emerges for sustainable social order through the appropriate design, construction, and maintenance of *rules* that set limits on the way in which each person is allowed to order his conduct toward others.

The notion that rules may substitute for morals has been familiar to economists and philosophers at least since Adam Smith. And, of course, the great intellectual discovery of the eighteenth century was the spontaneous order of the market, the discovery that within an appropriate structure of rules ("laws and institutions" in Adam Smith's phraseology), individuals in following their own interests can further the interests of others. The result is the great network of social coordination—refined and extended to the boundaries of the division of labor—that even after centuries defies the imagination when evaluated as a cooperative enterprise. The cooperation of agents in a market, however, requires neither that such agents understand the structure nor that they transcend ordinary precepts of morality in their behavior. What it does require is an appropriate "constitutional context"—a proper structure of rules, along with some arrangements for their enforcement.

All of this was once the centerpiece of "political economy," and even today economics textbooks retain vestiges of such principles. But at one time an economist was literally defined as a person who "knows how markets work,"

with “work” being understood in terms of the coordination of individual behavior through the institutional structure. Since the early years of this century, however, professional economists have shifted their attention. They have become preoccupied with predicting the effects of exogenous changes on the observable and measurable aspects of market outcomes (price, wage rates, quantities, etc.) and with elaborating the logical implications of alternative assumptions (or alternative “models”). With this shift of attention, modern economists seem to have all but lost the earlier understanding, which was, perhaps, their primary *raison d'être* in any “social” sense.

In public-choice theory, which applies the techniques and analytic apparatus of modern economics to the study of political processes, a similar divergence in emphasis is distinguishable. Some modern scholars view public-choice theory as offering a “pure science” of politics that is fully analogous to the “science” of markets. The objective is to derive testable hypotheses about the effects of specified changes in basic parameters on observed political results. Still other public-choice (social-choice) theorists concern themselves with analytic esoterica in the modeling of alternative political arrangements. The third strand of research activity within public choice, and the strand with which we have been personally most involved, has more in common with the earlier tradition in “political economy.” The objective here is to understand the workings of alternative political institutions so that choices among such institutions (or structures of rules) can be more fully informed. We have called this research program “constitutional political economy,” both in our subtitle for this book and in other works. Broadly defined, the methodology of constitutional political economy is the subject matter of this book.

This research program is not new for either of us. We have, jointly, separately, and severally, in bits and pieces, here and there, made previous attempts to shore up constitutional understanding. Specifically, we have made some start at analyzing how rules of political order work, how such rules might be chosen, and how normative criteria for such choices might be established. We have also, particularly in works written in the early 1980s, attempted to analyze the basic logic of rules, to indicate why rules or institutions rather than outcomes should be the central focus of inquiry. As it turns out, this sort of analysis, which we had thought to be almost universally understood, has proved surprisingly controversial. Our experience in attempting to persuade others, both in the academy and beyond, to accept the results

of analysis of the more sophisticated and complex questions of constitutional design has generated a developing conviction that the intellectual problem lies at the deepest level of the mental process. Without a shared “constitutional mentality,” without some initial common ground from which discourse can proceed, all argument on design comes to naught. Persons must be cognizant of the *reason* of rules before they can enter into dialogues devoted to questions concerning choices among rules.

Since we are ourselves professional economists, we have been particularly mystified by the reluctance of our profession to adopt what we have called the constitutional perspective. Economists in this century have been greatly concerned with “market failure,” which was the central focus of the theoretical welfare economists that dominated economic thought during the middle decades of the century. This market-failure emphasis extended to both micro- and macrolevels of analysis. Scholars working at either of these levels showed no reluctance in proffering advice to governments on detailed market correctives and macroeconomic management. In retrospect, post-public choice, it seems strange that these scholars so rarely showed a willingness to apply their analytic apparatus to institutions other than the market; they paid almost no attention to politics and political institutions. Once a policy recommendation seemed to have emerged from their market-failure analytics, there was no subsequent analysis aimed at proving that persons in their political roles, as either principals or agents, would somehow behave as the economists’ precepts dictated. Implicitly, economists seemed locked into the presumption that political authority is vested in a group of moral superpersons, whose behavior might be described by an appropriately constrained social welfare function. Initial cursory attempts by a few public-choice pioneers to inject a bit of practical realism into our models of individual behavior in politics were subjected to charges of ideological bias. The myth of the benign despot seems to have considerable staying power, a phenomenon that we examine specifically in Chapter 3.

In its most fundamental aspects, the difference between the constitutionalist and nonconstitutionalist perspectives involves a difference in man’s vision of himself as a conscious being interacting with others in a social order. Our interests are limited by our presupposition that persons must be evaluated as moral equals. In our research program, the constitutionalist perspective is necessarily contractarian, a point that is the subject matter of Chapter 2.

The discussion in this book can be divided into four parts. The first four chapters cover general issues in any analysis of rules. Chapter 1 makes the basic distinction between end states, or outcomes, emergent from behavior within rules and the rules themselves. We attempt to indicate why our emphasis on rules is important by introducing several independent justifications. As already noted, Chapter 2 discusses the properties of the normative stance usually labeled “contractarian.” As also noted, Chapter 3 embodies our attempt to understand the opposition to a constitutional approach. Chapter 4 is concerned with a methodological dimension of the distinction between in-period and constitutional choice—a widely overlooked dimension that brings our work more closely into line with that of the classical political economists. Specifically, we argue that the behavioral assumptions appropriate for an analysis of rules may be different from those relevant to making predictions about outcomes generated under well-defined rules.

Chapters 5 and 6 deal with the temporal dimension of choice in the private—as distinct from the collective—choice setting. The object is to show that individuals will rationally discount the future more heavily in the collective-choice context—a fact that provides a distinct reason for rules in collective-choice settings. The general abstract argument of Chapter 5 is developed in Chapter 6 by appeal to three modern examples. The analysis of “politics without rules” through these examples establishes general support for the earlier analytic argument.

Chapters 7 and 8 deal with the connection between rules and “justice,” variously construed. Chapter 7 offers an interpretation of the notion of justice that depends on the prior existence of rule-bound behavior. To the extent that justice is valued, justice so understood provides a reason for rules. In Chapter 8 we attend to the question of distributive justice. The focus is on the workings of “politics without rules” in the attempted implementation of a norm for distributive justice, as opposed to the more familiar discussion devoted to comparisons of alternative imaginable “distributions.”

The book concludes with Chapter 9, which stands apart from the rest of the discussion. We could properly be accused of naïveté if we failed to address the critical issue of implementation. Is constitutional change possible in democracy? Clearly, *no*, if there is widespread ignorance about the reason of rules. But even with some requisite constitutional wisdom, how can reform surmount identifiable self-interest? Cassandra looks over our shoulders

here, but our whole effort, in this book and elsewhere, testifies to our faith that we can, as participants in the ongoing academic dialogue and ultimately as citizens, *improve* the rules of the game we play.

As noted, part of the motivation for our exercise in this book lies in the reaction our previous work encountered—among sympathizers and antagonists alike. Much of that reaction was based, we believe, on a major misunderstanding—a failure to grasp what we had attempted to do. Whether we have been more successful in the present effort only our readers can decide. The only point to be made here is that in writing this book, we have been more than usually dependent on our critics. In this connection, we should express particular gratitude to Richard Musgrave and Jules Coleman, who paid us the greatest possible academic compliment—that of taking our work seriously. Among our immediate colleagues, Dwight Lee contributed to some of the ideas expressed in the chapters on politics and time, and Loren Lomasky, always a stimulating presence, provided valued comments on earlier versions of Chapters 6 and 7. Viktor Vanberg’s comments on Chapter 1 helped us avoid ambiguities, and Dennis Mueller’s comments on Chapter 7 were helpful. Robert Tollison’s several notes helped us improve the whole manuscript.

This book, like its predecessor, *The Power to Tax*,<sup>1</sup> and many shorter works, is a genuinely joint product of both authors. The labor had to be divided, however, and first-draft responsibility parceled out. To Brennan fell the task of initially drafting Chapters 1, 4, 7, and 8; to Buchanan the remainder, Chapters 2, 3, 5, 6, and 9. Some of the material in Buchanan’s chapters in particular was originally presented in lectures at Liberty Fund conferences at Snowbird, Utah, in 1981 and at Oxford, England, in 1982.

We have been assisted in our efforts directly by the Center for Study of Public Choice, George Mason University, and indirectly by those who have generously supported the center’s program. For the more inclusive project on “constitutional political economy” of which this book is only a part, we

[1. Geoffrey Brennan and James M. Buchanan, *The Power to Tax: Analytical Foundations of Fiscal Constitution* (New York: Cambridge University Press, 1980), volume 9 in the series.]

gratefully acknowledge the specific support of the Foundation for Research in Economics and Education, Los Angeles.

In the emerging Buchanan tradition, we must once again thank Betty Tillman for putting the package together. Her effort was more than usually noble, since it occurred in the wake of a major move that involved the entire Public Choice Center, a move she orchestrated virtually unaided. Her extraordinary dedication and unfailing cheerfulness, which have been characteristic for more than two decades, have continually surprised us and merit our continuing gratitude.

*The Reason of Rules*

# 1. The Constitutional Imperative

---

## I. Introduction

There is something profoundly unsatisfactory about economists' introducing their subject matter by reference to the Robinson Crusoe who faces an "economic problem" because he must decide how to allocate his scarce resources (including time) among competing uses. With this introduction, it becomes far too easy to slip from the Crusoe setting into one in which "society" as such also faces the "economic problem" and to jump, almost inadvertently, from analyses of individual utility maximization to direct concern with maximization of value for society.

What is left out in such a pedagogical sequence is the *interaction* among separate individuals who make up a society. Individuals face choices in a social setting in which the existence and behavior of other persons, along with the institutions that constrain their behavior, are much more important than the physical constraints of nature. Economics is, or should be, about individual behavior in society.

Such behavior is not necessarily "social" in the sense that individuals recognize the existence of reciprocal influence among the actions of directly interacting parties. Individual behavior in large modern societies may be totally impersonal, as exemplified in the idealized models of competitive markets. In the limiting case, all participants respond to exogenously determined parameters: No person exercises any direct influence on another. The outcomes of the complex interdependence of all actors are not available as objects of choice for any actor.

In the limiting case, or in more general settings where at least some part of behavior is explicitly "social," the *rules* that coordinate the actions of individuals are important and are crucial to any understanding of the inter-